Personnel, Operations & Procedures (POP) Committee
Volusia Growth Management Commission

MINUTES FOR
WORKSHOP MEETING HELD
Tuesday, March 3, 2009

1st Floor Training Room
Thomas C. Kelly Administration Center
123 W. Indiana Avenue
DeLand, FL 32720

The meeting was called to order at 10:00 a.m. by Committee Chair, Gerald Brandon.

The following POP Committee Members were present: John Heaphy, James Kerr, Dwight Lewis, and Sandra Walters.

Also in attendance: VGMC Chair Joan Spinney, VGMC Legal Counsel Paul Chipok, VGMC Planner Barry Wilcox, VGMC Coordinator Merry Smith, Michael Woods of Cobb Cole, and Pat Hatfield from the DeLand Beacon.

Discussion of Draft Amendments prepared by Scott Simpson, 1/28/09

Section 90-31 Definitions:

Adjacent Jurisdiction: Mr. Chipok reported that this change is consistent with the earlier committee recommended changes. VGMC Chair Spinney asked if the term contiguous boundaries rules out issues such as water flow that may have an affect on other jurisdictions. Mr. Chipok clarified that this language is not addressing affected jurisdictions, it is specific to the definition of an adjacent jurisdiction. He then reviewed the methods to call for a public hearing pursuant to our current rules, which includes non-adjacent jurisdictions as an affected and aggrieved party.

Mr. Chipok stated the draft proposes a minor modification to the definition of *Certification and certificate*, which he stated is a wording change that poses no problem from a legal standpoint.

Mr. Chipok pointed out that this draft also changed the time for adjacent jurisdictions to object, comment or request a public hearing from 30 days to 40 days. He stated he was unsure what prompted this change and would check with Mr. Simpson.

Mr. Kerr commented that he was in favor of the language proposed by Mr. Simpson for the definition of adjacent jurisdiction. Mr. Chipok stated he has no legal objections to the proposed change and that it is consistent with the changes earlier proposed by the committee. The committee discussed the change in timeframe from 30 to 40 days and concurred the timeframe should remain at 30 days as in the current rules.

Section 90-32 Interpretation of article:

Mr. Chipok stated the recommendation to delete items (1) and (2) is more of a policy issue than legal issue. Ms. Walters recommended that both of those items remain in the rules and stated she feels they are both standard contract language. Mr. Brandon concurred.

Mr. Kerr asked Mr. Chipok what the significance is in adding the proposed language referencing the charter and 163 if items (1) and (2) are deleted. Mr. Chipok stated he has no legal issue with the proposed new language as we are already required to be consistent with Chapter 163 and the charter. He further stated it is a true statement and does not put any additional burdens on the commission which we are not already working within.

Mr. Kerr commented that the wording in (2) appears to come off as aggressive on the part of VGMC, although he added that having been on the commission for many years he does not believe that is the case. Mr. Kerr suggested either deleting the provision or rewording it.

Ms. Walters commented that it is standard language and feels it should remain in the rules. The other members of the committee commented they did not have a problem with leaving it in or removing it. Mr. Kerr asked Mr. Chipok to give a layman's interpretation of (2). Mr. Chipok stated that if there is a situation where a provision of our rules could be interpreted in more than one way, essentially you could compare the language in (2) which states "liberally construed in favor of the commission" to the baseball rule that the tie goes to the runner, and VGMC would be the runner. With that, Mr. Kerr suggested keeping the language in. There was a general consensus to leave (1) and (2) in the rules.

Mr. Chipok commented that our rules are designed to comply with Chapter 163, and that the local jurisdictions are required to respond back to DCA within 60 days from the ORC report. He stated the theme of some of the comments is that our timeframe skews that, however he stated that our timeframe was consciously written to fit within that timeframe. Mr. Chipok stated there are certain situations where there has been no intergovernmental coordination prior to submitting an application and an issue such as traffic impacts arises which results in the need for a traffic study that cannot be accomplished within that 60 day period. Mr. Chipok stated that although Chapter 163 states 60 days, there is not a penalty for the jurisdiction if they do not meet that timeframe. He further stated if the jurisdiction wishes to remain consistent with that requirement, they can withdraw their application from our process to allow time to work on the outstanding issues and then roll the application to a future cycle for adoption. Mr. Chipok stated our current rules don't allow the same application to be resubmitted for a period of twelve months, however, we are looking at reducing that time to six months and also considering a provision that would allow a jurisdiction to withdraw an application without penalty if it is done so two weeks prior to a scheduled public hearing. He added that allowing withdrawal of an application without penalty lends more flexibility, and that when the jurisdiction resubmits we avoid situations where there is a pending application based on one set of premises, and the resubmitted application based on new information and intergovernmental cooperation which may have occurred during the process. This way, he stated the commission will be dealing with only the current application.

Several of the committee members commented in favor of amending the rules allowing the withdrawal of the application without penalty and reducing the term of resubmission to 6 months. Mr. Chipok stated the issue of allowing withdrawal without penalty has been discussed by the committee and is included in the VGMC proposed rules revisions, Section 90-42. He added that the recommendation to reduce the reapplication timeframe from 12 months to 6 months came from Mr. Simpon's draft without the benefit of seeing the recommendation to allow withdrawal without penalty. General discussion ensued relating to a 6 month vs. 12 month timeframe. Mr. Chipok clarified that this provision would only apply in those cases where the commission took final action on an application, not on an application which was withdrawn as allowed under the proposed amendments.

For the purpose of discussion with Mr. Simpson, Mr. Chipok asked the committee for their input with respect to his recommendation to reduce the reapplication period from 12 months to 6 months in Section 90-42. There was a consensus of the committee to recommend reducing the waiting period for reapplication to 6 months.

Section 90-33 Findings, purpose and intent:

The recommendation is to delete the language "create incentives" under item (5).

Mr. Chipok stated the sense is that VGMC should not be delving into zoning issues, however, in some instances the incentives or alternatives for getting the application approved takes on the nature of a zoning condition. As an example, Mr. Chipok explained that staff has to evaluate a comp plan amendment based on the maximum allowed under the proposed use, which can result in negative impacts. The jurisdiction, however, may not intend to build out to the maximum, but rather plan to limit the development. In those cases, the analysis can be based on the intended development, however, in order to approve the amendment, a condition is imposed requiring that the property be developed as a PUD and submitted to VGMC for review. This is the enforcement mechanism to ensure it is consistent with the condition which was placed on the original approval. Mr. Chipok stated this is the way the system has evolved over the past 20 years in those circumstances, and that it takes on the nature of a zoning condition but it is directly involved in getting the amendment through the comprehensive plan stage.

General discussion ensued relating to one-time resolutions, and those resolutions that are ongoing such as in mixed-use districts.

Referring to line 2 of item (5), Mr. Brandon suggested that the term "several" be deleted and instead read "...in order to provide a forum for the local governments...".

The committee discussed the recommendation to remove the term "create incentives" and generally agreed there would be no adverse impact in deleting it. There was a general consensus to delete "create incentives" and also to delete the word "several" as suggested by Mr. Brandon.

Section 90-34 Certificate of plan consistency required:

This recommendation would delete the provision that every comprehensive plan has to be reviewed by the commission. Mr. Chipok stated in his opinion, deleting that would be inconsistent with the plain language of the charter. Ms. Spinney asked Mr. Chipok if he received any response to the letter he sent out to the jurisdictions addressing this issue. Mr. Chipok responded that he had not received a specific response, however, at the last VCOG meeting they recognized there are some issues that need to be further addressed. Additionally, Mr. Chipok stated that neither VCOG or the County want to have conflicting resolutions going to the County Council for approval, and that we should try to have a majority of the issues resolved in advance of the County Council's consideration.

The committee agreed that the proposed stricken language regarding the commission review should remain in the procedures.

The committee also discussed the proposed additional language to this section. Mr. Chipok stated he was unsure of the purpose of the proposed language and that timing is already addressed in the procedures which states we must act within 90 days.

There was a consensus of the committee to keep Sec. 90-34 of the rules as currently written and not recommend the proposed changes.

Section 90-35 application for certificate; procedure for issuance; public hearing requirements:

Mr. Chipok stated this recommendation is a substantial rewrite of sections (a) & (b) which deletes the specific listing of materials and information to be included with the application, and provides that the only material required at submittal is the proposed amendment, all documentation considered by the applicant jurisdiction, and a list of the adjacent jurisdictions.

Mr. Chipok commented that he believes what is proposed in this recommendation is too subjective, and he does not feel that the current submittal process is too burdensome. He also stated there has been considerable discussion in prior meetings concerning revisions to the application and submittal requirements, and the committee's recommended revisions are basically just a codification of what is currently being submitted. Additionally, Mr. Chipok stated we are not saying that specific types of maps, etc. must be included, adding that if there is something necessary for staff analysis which is not included in the submittal, staff will request it through an RAI.

Mr. Wilcox commented that there are no standardized submittal requirements throughout the county and the jurisdictions all have varying submittal requirements. He stated he reviews the information that is provided with each application to determine whether there is additional information necessary to deem it consistent, or whether the information submitted suffices. Mr. Wilcox stated the proposed recommendation is narrowing in that we would be limited to working with only what is provided by the applicant jurisdiction.

Mr. Brandon commented that he has gone over the recommendations several times, and he is not in favor of the rewrite. Mr. Chipok stated the totality of the comments has added quick timing situations, added a completeness review and narrowed the submittal requirements. He stated one

way to look at the totality of the comments is as if it is saying 'we are only going to give you what we give you, you have to tell us if it is ok or not within a very short period of time, and if you don't you are precluded from denying us and it is approved automatically'.

Mr. Brandon commented that these are VGMC's rules and regulations, and while we have asked for input from outside sources, it is up to the commission whether to accept some, none or all of the recommendations. Additionally, he stated it is up to the VGMC to submit the amendments to the County Council for approval.

Mr. Chipok suggested that the committee consider leaving (a) & (b) as is without the recommendations of Mr. Simpson's draft and then provide him with a draft of the revised application form the committee has been working on. The committee concurred.

With respect to subsection (c), Mr. Chipok stated the recommendation deletes the public notice requirements, makes no newspaper advertisement of the amendment application and also deletes the provision to substantially affected or aggrieved party. Mr. Chipok stated that he believes public notice should be retained. He stated one way of approaching this is to look at what the original purpose was for including substantially affected and aggrieved parties.

Mr. Chipok stated the commission was created by the charter, which was created by the people, and states there shall be intergovernmental coordination among the jurisdictions. He stated he believes everyone is in agreement that the jurisdictions have the authority and access to the system. Additionally, the charter language is clear that the VGMC shall review every application. The question deals with how the third parties gain access to the system.

Mr. Chipok stated he spoke with Tom Cloud and when the original procedures were developed, they provided that substantially affected and aggrieved parties could request a public hearing, and in that manner bring matters before the commission. The issue is what would happen if you delete the ability for a third party to access the system. Mr. Chipok stated that to date, there has been no court challenge to the VGMC for not holding a public hearing. He stated we give the ability through the public notice that they have a jurisdictional time period to access our system and if they do not speak up within that time period they are obligated to be silent on the issue. If the provision to request a public hearing is cut out, and someone wants to speak to an application, we don't have an access into the system. Mr. Chipok stated the public would say we have a charter provision created by the people for the jurisdictions to do this and the public doesn't have access. Mr. Chipok asked what a judge would do with that. Would the judge say due process has been served, or would he say no, there is a due process right to speak on these issues and that should be done at a public hearing. Mr. Chipok stated the answer is unknown. He stated if you delete the provision for substantially affected parties to request a public hearing, then you are looking at third parties claiming they were rebuffed from the system and demand some sort of extraordinary writ to 1) stop the application process by the VGMC until a hearing is held; and 2) asking the extraordinary writ to force the VGMC to hold a public hearing, and possibly some form of lawsuit that states that our rules are unconstitutional because there is a denial of due process and access to the system. Mr. Chipok stated that is a potential result of action to get rid of substantially affected parties.

Ms. Spinney commented that access for the public and substantially affected parties should be at the local level. She compared the action to jumping over one court to go to the supreme court and demanding to be heard because you say it's due process, whether you haven't participated in the process up front, or didn't like the outcome.

Mr. Chipok stated his thought was to still have a county wide public notice as we do currently, but if an individual has an issue with a particular amendment application, their redress should be to the elected officials in their local jurisdiction and request them to take the intergovernmental coordination issue up with the VGMC on behalf of their jurisdiction. This would allow members of the public access to the system through their local officials. Ms. Spinney commented that would be the appropriate place for access. Mr. Chipok stated this is a concept he has not drafted any language for as of yet and requested direction from the committee before going into discussions with the attorneys.

Mr. Chipok confirmed that adjacent jurisdictions already have access and we are not changing that. Additionally, he stated the committee has essentially stated that conceptually any jurisdiction, including the School Board, should have access. The committee was in agreement.

The second portion is that the VGMC, by the charter language, has the right to review every application and call a pubic hearing if they see any issues. Mr. Chipok commented that no one has raised objections to our review criteria in 90-37, with the exception of some tinkering to language regarding interlocal agreements.

The third part deals with the public and how are they going to get access to the system. Mr. Chipok stated that to cut everyone out from a due process standpoint could be very problematic. With that, he stated the issue becomes whether individuals should have rights to the process without a filter of the local government, or should we draft language to direct them to work through their local government. Mr. Chipok stated he could not guarantee that would pass muster, but the language could be drafted in the best way possible to make sure they have a due right to the system. Mr. Brandon reminded the committee that the purpose of today's meeting is to give direction to Mr. Chipok as he goes into his meeting with the attorneys and nothing will be finalized until later.

Ms. Spinney asked if there was a way that language could be written somewhere into the rules that short circuit having the public come in and demand that the commission act as a zoning board. Mr. Chipok responded that when the public comes in, the commission is still limited to our review power and as he states prior to every pubic hearing, we only have the right to look at intergovernmental coordination issues to determine whether the proposed comprehensive plan is consistent with neighboring jurisdiction's comprehensive plans, which is determined through the consistency review criteria in section 90-37. Mr. Chipok stated the commission is not here to determine whether it is a good plan or bad plan, adding that issue is up to the local jurisdiction.

Mr. Chipok stated he was looking for direction from the committee in terms of whether they are in agreement that 1) the VGMC must be a part of the system and has the right to review every application; 2) that public notice should continue; and 3) the public will in some way have access to the system. At a minimum, he stated we would recommend that the public work with their

local governments as a point of access to the system, or whether it is determined after due process discussions with the local attorneys it is determined that the third party substantially affected parties should have an independent right. Mr. Lewis commented that in order to be a substantially affected party, the public has to have some kind of criteria that is evaluated to determine if they have standing to ask for the hearing. Mr. Chipok responded that the current advertised notice states that a substantially affected party can request a public hearing. He stated when a request is received by the VGMC, it is forwarded to staff, however, they do not make a determination as to whether or not it is a valid request for public hearing or whether they are truly an affected party. Instead, a public hearing is scheduled and the first order of business is to do a party status determination on the individual who requested the public hearing. Mr. Chipok stated this is a commission decision and not an administrative staff determination, adding that the Renard test is applied to determining party status.

Mr. Lewis stated he shares the same concerns as Ms. Spinney with respect to this process. He stated that the public's grievance should be at the comp plan stage with whatever jurisdiction is proposing the amendment. He stated what's happened in the past is if they don't achieve what they are looking for at the local level, they come to the VGMC with the same arguments. Mr. Lewis concurred that the commission owes the public access, however, the commission needs to be very careful in reviewing the criteria to determine whether they are substantially affected and a party to the proceeding. He cautioned that this that could ultimately bring the process back to where it gets into issues of zoning.

Mr. Chipok stated if a petitioner raises points that deal with issues within the jurisdictional boundaries of the proposed amendment, VGMC does not address those issues. He reiterated that our board should be dealing with issues of consistency with neighboring jurisdictions. Mr. Wilcox added that the VGMC is not tasked with reviewing compatibility, which is a very subjective matter. He added that our six criteria are very specific and measurable, and our scope is much narrower than that of the local jurisdiction and DCA. Mr. Wilcox also stated that we get caught up as an appeals board and get issues brought before the commission that are outside of our scope.

Ms. Walters commented concerning property rights. She stated if the VGMC decides that a person is a substantially affected party, it's most likely because they live so close to a proposed amendment that their property rights are affected, whether it be traffic, environment, quality of life or whatever our criteria is. Ms. Walters further stated that this is America, and who is going to raise their hand and say that we need to limit the public from this process and disregard someone's property rights. She stated that the public is paying the light bills when we hold hearings, they pay the salary of staff, they ratified the VGMC in 2006 on the ballot and doesn't believe they did so to cut them out of the process. Ms. Walters stated the VGMC rules are not a matter for VCOG to determine and the public should have the right to ask for access to the system.

Ms. Spinney commented with respect to the commission dealing with property rights. She stated she is looking for a way to give the members of the public a heads up when they apply for a hearing as to what the commission reviews, and that the VGMC is not some sort of appeals board. Mr. Chipok responded that in his opinion the issue of property rights falls within the

zoning level at the local jurisdiction and that our review is for a limited purpose. The applicant jurisdiction has a comprehensive plan and neighboring jurisdictions have a comprehensive plan. He stated our scope of review is to ensure that the proposed changed does not negatively affect the neighboring jurisdiction.

Ms. Spinney commented that this is a hot issue with VCOG and the local jurisdictions and they want to eliminate the possibility that individuals will come to VGMC to voice the complaints of their local jurisdiction decisions. She suggested we try to put something together to send out to individuals who request a public hearing that outlines the parameters of VGMC's review, something similar to what Mr. Chipok reads into the record at the public hearings. Ms. Spinney stated that such a communication to the individual requesting a public hearing would not be for the purpose of telling them they do or do not qualify as a substantially affected party, but rather to inform them of what the commission does and what they should expect at the hearing. Several committee members commented in favor of this idea and suggested the committee visit it at another time since it is an issue separate from the matters before the committee today.

Mr. Chipok reviewed the current advertised notice which states what is required of the affected party to petition for public hearing. Additionally, he stated if we deny public access through our rules, their recourse is to challenge our rules through the court to say our rules are denying them access to the system and request through the court to have access to the system with a public hearing.

Mr. Chipok then reviewed the issue of party status. Specifically, he stated if party status is granted, it allows the petitioner to appeal a decision through the circuit court. If party status is denied by the VGMC, our rules still say that any member of the public can participate in any public hearing provided it is relevant to the hearing and no one is suggesting this be changed or denied. However, if they do not like the outcome of the hearing and party status was denied by the commission, they would still have the ability to file a lawsuit in the circuit court where the first order of business would be to determine if that person has standing to bring the lawsuit. The VGMC would be forced into the position to contest the standing of the person bringing suit. Mr. Chipok stated there is a case out of Orange County that says that the legislative branch cannot create rules to address court proceedings. Therefore, Mr. Chipok stated that just because we have the standing provision that says only those that are recognized by the VGMC as having standing have the right to appeal a VGMC decision, the court does not have to abide by the VGMC decision and they can look at it independently. As a result, a person who was denied standing by the VGMC can still file with the court and the court could say according to the Orange County case your rules don't apply and we are going to look at it independently to determine whether that person has standing.

There was a consensus of the committee to keep the notice provisions as presently written, including the addition of (i) addressing party status.

With respect to the addition of a completeness review, Mr. Chipok stated this is a good idea, however, it should not be a substantive review. The language proposed in Mr. Simpson's draft suggests that it be more of a substantive review. Mr. Chipok stated the committee reviewed this previously and agreed to include an administrative completeness review at the coordinator level

upon receipt of the application, however, the sufficiency review is done by staff during their review period. Mr. Chipok stated he will provide Mr. Simpso with a copy of what the committee has proposed with the completeness review.

With respect to the recommendation which adds a provision that only adjacent jurisdictions are allowed to request a public hearing and the associated provisions relating to timing and limits on issues which can be raised in the VGMC staff report, Mr. Chipok stated the committee has already discussed this and determined that the VGMC shall review all comprehensive plan amendments, have the ability to request a public hearing, and that the public should have some form of access to the system.

With respect to the recommendations relating to RAI's, Mr. Chipok stated that staff has the ability to raise issues that may not necessarily have been raised by an adjacent jurisdiction through an RAI. Additionally, he stated we have drafted language which states that once a response to an RAI is received, if there are additional issues which come out of the RAI response, we have a right to issue a 2nd RAI for further clarification. However, after the initial 30 day review, no new issues can be raised. Relating to multiple RAI's, Mr. Chipok stated that some of the more complicated issues may require more than one RAI for clarification purposes, and the our draft codifies the ability for the applicant jurisdiction to request a public hearing be scheduled without further response to an RAI.

With respect to the recommendation relating to standards for the admission of evidence at a public hearing, Mr. Chipok stated he has legal objections to this because VGMC does not and should not have specific rules for admissibility of evidence at a hearing. He added that to his knowledge, there are no administrative boards that have standards for admission of evidence. Mr. Chipok stated the quality of the evidence goes to the weight of the evidence in an administrative hearing, and it is up to the Chair to ask how the evidence is germane to the issues and up to the commission to weigh whether it is valid and has an impact on the issue before them.

There was a general consensus not to adopt the recommendations proposed in subsection (e).

With respect to subsection (f) which deletes the ability of the commission staff to comment on an application has already been discussed and determined to be in conflict with the charter.

Related to subsection (g) which deletes the commission's ability to impose conditions for a conditional certification, Mr. Chipok stated that in his opinion, this is too limiting and we need the flexibility to apply conditions in order to structure the amendment to be consistent. Without this ability, Mr. Chipok stated that the findings would have to be either to find the amendment consistent or not. In the cases where the jurisdictions are not intending to develop under the maximum allowed by the proposed amendment, yet there would be adverse impacts on adjacent jurisdictions based on the maximum allowable analysis, would result in a recommendation of denial. Mr. Wilcox also added that under the proposed rules which would allow withdrawal of an application, if there are issues identified that could be addressed with changes to the amendment, the jurisdictions would have the ability to withdraw and resubmit with the changes, potentially avoiding the need for a conditional certification.

General discussion ensued relating to eliminating conditional approvals and the affect on the jurisdictions and the VGMC with respect to monitoring conditions and the perception of the VGMC getting into zoning issues. Comments were made that it would likely result in a considerably higher amount of cases being denied, yet possibly eliminate the need to monitor conditions and get away from the suggestion that VGMC is acting in a zoning capacity. Other comments in favor of allowing conditional approvals suggested it is a means of assisting the jurisdictions in moving forward with an amendment and not be held up by issues that can be addressed by conditions.

Mr. Wilcox commented that the jurisdictions may make more effort on the front end to resolve intergovernmental coordination issues prior to submitting an application if the VGMC decision was either a yes or no versus a conditional approval. Ms. Walters commented that comp plan amendments are a big deal and that the jurisdictions should have their ducks in order before they decide to propose the amendment.

Mr. Kerr commented that he likes the way the VGMC has worked over the years and that some of the Orange City amendments could have been stopped without the way it has worked through the VGMC process. From an intergovernmental coordination standpoint, he also stated he sees the VGMC as the entity working with the local jurisdictions in the county to move the comp plans forward.

Mr. Heaphy commented that there has been situations in the past where jurisdictions have moved forward implementing items without adhering to existing conditions of approval, however, overall he feels the VGMC has done a service to address items of conflict and that this is a workable situation.

Mr. Lewis commented in favor of having the flexibility to impose conditions, adding that a yes or no vote could cause bottlenecks which would not create goodwill.

Ms. Walters commented that she does not believe the VGMC's mission is to make something consistent, but rather to decide under the charter whether it is or is not.

Ms. Spinney commented that both the VGMC and the jurisdictions need that flexibility.

There were a majority of committee members in favor of keeping the ability to impose conditions of approval.

At 12:17 p.m., the committee took a brief break and reconvened at 12:27 p.m.

With respect to the addition of subsection (i) recommending that the time periods for the commission to take action on an application are jurisdictional, Mr. Chipok stated that our rules state the commission has 90 days to take action on an application and suggested the proposed language not be included in the rules. There was a general consensus of the committee not to include the language.

Section 90-37 Criteria for issuance of certificate:

Mr. Chipok stated the recommendation provides substantial revisions to subsection (a). The committee already concurred not to delete the ability of the commission to impose conditions. The recommendation also deletes the standard of review that the applicant must provide substantial competent evidence that the application is consistent with adjacent local governments and substantially affected and aggrieved local governments. It also adds provisions that the application has a rebuttable presumption of consistency and the burden of proof is on the challenging party to show by clear and convincing evidence that the application is not consistent. Mr. Chipok stated that when an application is received, staff independently reviews it against our criteria and if there are issues identified they will issue an RAI and request for public hearing. He also stated that the typical standard for review in these situations is based on the preponderance of the evidence, and not clear and convincing evidence. There were comments made that this recommendation would make it more difficult for a party to object to the amendment. Mr. Wilcox commented that when he receives an application, he doesn't begin his review with the assumption that there is something wrong with it.

There was a general consensus of the committee not to include the recommendations in 90-37(a) in Mr. Simpson's draft.

With respect to the recommendation in subsection (c) which limits the application of review criteria to the extent relevant to an objection raised by an adjacent jurisdiction, Mr. Chipok commented that the draft was basically written solely with the idea that only adjacent jurisdictions could review. He stated that is too limiting and inconsistent with the intent of the charter. The committee discussed the proposed language in subsection (c) and concurred that the language suggesting only adjacent jurisdictions can review is too limiting. There was general agreement to keep the 90-37(c) as currently written.

The recommendation in Subsection (c)(6) suggests that interlocal agreements be limited to only the applicant and adjacent jurisdictions and also changes the standard of presumption of validity of interlocal agreement from 'rebuttable' to 'irrefutable'. Several members of the committee commented that limiting the participants of the interlocal agreement to applicant and adjacent jurisdictions is too limiting as impacts can extend beyond. Mr. Chipok stated that when an interlocal agreement exists it is generally presumed to be consistent, however, the jurisdictions need to be prepared to substantiate the agreement. He also indicated that the recommendation requiring the commission to issue a certificate of consistency without a public hearing if an interlocal agreement exists is inconsistent with the intent of the charter. There was general agreement to leave section (c)(6) as it presently reads.

General discussion ensued relating to interlocal agreements. Mr. Chipok stated if two jurisdictions enter into an interlocal agreement, it is not up to the VGMC to decide whether it was a good decision or bad decision. He stated this shows that the jurisdictions have reached accord and the VGMC should respect that. Mr. Chipok stated that the rebuttable presumption of the interlocal agreement deals with whether or not it was properly adopted by the jurisdictions. Ms. Walters asked if our consistency criteria (6) relating to the existence of an agreement carries more weight than the other 5 criteria. Mr. Wilcox commented that an interlocal agreement

amongst affected parties is representative of the goal of promoting intergovernmental coordination as intended by the role of the VGMC. Ms. Walters stated the existence of an interlocal agreement does not necessarily make an amendment consistent under the other 5 consistency criteria. Mr. Chipok stated that would be an issue that the individual citizens would have to take up with their elected officials. Ms. Walters asked where it is stated in our rules that one criteria has more weight than the others. Mr. Chipok responded that our rules state that if an agreement exists it shall be rebuttably presumed that said application does not adversely affect intergovernmental cooperation and coordination. He stated that if an agreement is presented to the commission, provided the applicable jurisdictions participated in the agreement and they have reached accord on the answer, the commission should respect that answer unless there is some evidence presented that shows that they are not. Ms. Walters commented that if two jurisdictions say they aren't hurting wetlands, but yet there is testimony or evidence showing that they are, that would obviously be a factor to consider in the rebuttable presumption. Mr. Chipok responded that the commission would need to determine if the impacts are found to be within or outside the applicant jurisdiction, adding that the commission does not have the ability to deal with internal jurisdictional impacts. Ms. Spinney commented that the VGMC has never been charged with the responsibility of deciding upon the desirability of a plan amendment.

The committee discussed the recommendations as proposed in subsection (d) and concurred that the existing provision that the commission may deny an application if the applicant fails to establish by a preponderance of the evidence its entitlement to a certificate of consistency should not be deleted from the procedures. They also agreed that it is a true statement that the commission does not evaluate or determine whether an amendment is consistent with the applicant jurisdiction's comprehensive plan and recommend adding the suggested language.

With respect to the proposed language adding a provision that the commission shall not evaluate or make determinations on rezonings or development permits, Mr. Chipok stated that we do not look at rezonings unless it is required by a prior certification condition. He added that this is the commissions means of monitoring compliance and suggested that the recommended provision is too limiting. The committee concurred.

Mr. Chipok stated he has strong legal objections to the recommendation to add a provision that prior certificates of consistency which require commission review of rezonings or development permits are null and void. He also stated is inconsistent with section 90-44.

There was a general consensus that the only change to section 90-37(d) should be to add the recommended provision that the commission does not evaluate or determine whether an amendment is consistent with the applicant jurisdiction's comprehensive plan.

With respect to subsection (f) which deletes the provision relating to timing of review of applications, Mr. Chipok suggested this provision be left in place. The committee concurred.

The committee also concurred that subsection (g) also remain in the rules and not be deleted as recommended.

The recommended changes in subsection (i) deletes the provision for the commission to reopen or reconsider a certificate of consistency upon discovery of additional information. Mr. Chipok stated if this is removed, it would eliminate the commission's enforcement power. Several committee members commented that they believe the commission needs the ability to reopen a case if necessary. Mr. Chipok stated the commission has never really taken advantage of the provision, however, it is there in case it is ever needed. The committee concurred to leave section 90-37(i) as presently written in the rules.

With respect to subsection (j) which deletes provisions related to the ability to have a public hearing called by the commission or a substantially affected or aggrieved party, Mr. Chipok stated that we have already determined that the charter clearly states the commission will review all comprehensive plan amendments. As far as the substantially affected or aggrieved parties, Mr. Chipok stated that this is a policy issue in terms of how third parties will have access to the system and any change to this section would dovetail from the earlier discussions relating to section 90-35.

Also in subsection (j), it is recommended that the provision requiring the applicant jurisdiction to establish competent substantial evidence that the application meets the certification criteria be deleted. Several committee members commented that the commission exists for the purpose of ensuring that the amendments are consistent with the criteria. Ms. Walters commented that this recommendation may be another way to sneak in a JPA as a substitute for the criteria and she opposes this recommendation. The committee was in agreement that the language should be left in.

Section 90-38 Intervention:

Mr. Chipok stated this recommendation deletes the ability of substantially affected and aggrieved parties to move for party status, and also adds a provision that provides that only a landowner or contract purchaser of the property which is the subject of an application shall have the right to intervene as a party. The committee was in agreement that the issue of third party intervention is an all or nothing proposition and it goes back to the discussions relating to section 90-35.

Section 90-39 Revocation of certificate:

Mr. Chipok stated this recommendation limits revocation of a certificate to a 60 day window following the adoption of the amendment by the applicant jurisdiction. Current rules state that certificates of consistency shall be effective until revoked and provide a process for revocation. Mr. Lewis commented that the jurisdictions rely on the certification in order to move forward and that the commission should be timely if it intends to revoke a certification. He added that he is in favor of establishing some form of timeframe for the commission to revoke a certification. Mr. Chipok stated that under current rules, basically the only way a certificate can be revoked is if we find that false or inaccurate information was provided with the application, or if the jurisdiction failed to continue to give notice on the required matters. Additionally, he stated revocation is not automatic and a pubic hearing is required. Mr. Chipok stated it is a lengthy process, but also adds assurance that if a certificate of consistency is issued, a jurisdiction cannot disregard it in their adoption process. He also stated that the commission has never revoked a

certificate and suggested the language be left as currently written. There was a consensus of the committee to leave section 90-39 as presently written.

Section 90-40 Appeals:

Mr. Chipok stated that this recommendation limits the ability to appeal to the applicant jurisdiction, an adjacent jurisdiction and a landowner or contract purchaser who timely intervenes. He stated this is too limiting, and added that this recommendation is consistent with Mr. Simpson's prior recommendations which the committee does not necessarily agree with. The committee concurred to leave section 90-40 as presently written.

Section 90-42 Waiting period for reapplication for certificate:

This change recommends that the waiting period be changed from 12 months to 6 months and the committee already agreed with that.

Section 90-45 Appointment & Removal of Commission Members:

Mr. Chipok stated there has been a recurring theme from early on that membership criteria be included in the certification rules. He stated this recommends adding a new section to the certification rules codifying membership consistent with the charter, that it provides for prohibition of dual-office holding for appointees, establishes a 4 year term and also establishes that appointees serve at the will of the appointing jurisdiction and may be replaced at the will of the appointing jurisdiction. Mr. Chipok stated that our rules o procedure do not presently address the issue of serving at the will of the appointing jurisdiction. He stated his opinion is that if the rules are silent to that as they currently are, there is a property right to the appointed position and you cannot be removed except for cause as stated in the rules. He further stated if the rules said that the appointees serve at the will of the appointing jurisdiction and can be removed with our without cause, that would be the controlling factor. Again, he stated our present rules of procedure are silent to that except that a member could be removed for malfeasance or misfeasance. He added that our present rule applies to the VGMC removing an appointee, not the appointing jurisdiction.

Mr. Brandon stated he feels the commission should still have the ability to remove a member for missing 3 consecutive meetings as under our present rules of procedures. Mr. Chipok concurred that this would not change the VGMC rules relating to removal of a member, but the recommendation is not inconsistent with the fact that the local jurisdictions appoint and this would give them some indication that their appointee serves at their pleasure and can be removed with or without cause by the appointing body. Mr. Brandon commented that he concurs that the appointing jurisdiction should be able to recall their appointee.

General discussion ensued relating to the recommended 4 year term and the thought process which may have prompted that change. The members generally concurred that the terms should not be based on the timeframe of political elections at the jurisdiction level. Mr. Chipok commented that he received a question asking if members are expected to vote at the will of their electing body, or are they independent to vote as they choose. He stated he responded that the

VGMC does not dictate that, and that is an issue between the member and their appointing commission. Ms. Spinney commented that the reluctance to have employees of the jurisdiction as members of the commission was due to the dependency of their jobs, however, she stated if a jurisdiction wishes to remove their member for whatever reason, they should have the right to do so. Mr. Chipok stated again that our rules do not address that issue and there is prevailing case law that states the appointee has a property right to the position to continue the full term if the rules are silent the issue.

Ms. Walters commented in disagreement, stating she has a copy of the minutes from the Charter Review Commission from of August 14, 1986 which states that 'these representatives are able to vote on all matters without obligation to receive prior approval from their appointing governmental bodies'. Ms. Walters requested this be put in the record. Mr. Lewis commented that he believes you always vote without prior approval, however, that the appointing jurisdiction would expect you to have some type of consistency in your vote with the jurisdiction you are representing. He also suggested that the jurisdictions should do more in terms of interviewing their members in advance of appointment in order to discuss philosophies.

Moving back to the recommendations made in section 90-45:

The committee was in agreement that the member terms should remain at 3 years.

With respect to members serving at the will of the appointing jurisdiction, Mr. Heaphy commented that he was neutral on this issue. Ms. Spinney commented that you don't necessarily want the jurisdictions pulling their members, however, they deserve the opportunity to make the appointments and recalls, and she is in favor of adding this provision. Mr. Kerr stated he feels the governing bodies have the right to appoint, reappoint or remove their members and is in favor of adding the provision. Mr. Lewis stated he is also in favor of adding the provision. Ms. Walters commented in opposition of this provision, stating that she feels it will be really bad publicity if we vote that any member on the commission can be yanked at any time for no reason. She added that the members are required to vote according to section 90-37 criteria and not consistency. Ms. Walters also stated that the members are sworn to follow the six criteria and it is the members who hear the evidence and testimony at the hearings, and that the people sitting on the local commissions do not have that benefit. She stated the members are the decision makers and to be able to remove them for no cause would make the commission look like a fluff commission.

Based on the comments, the majority of the committee was in agreement that the provision which states members serve at the will of their appointing jurisdiction be included in section 90-45.

Mr. Chipok confirmed that the other language proposed in the first four sentences in section 90-45 is consistent with the charter and the AGO findings. Based on the discussions of the committee, it is recommended that section 90-45, appointment and removal of commission members, be added to the consistency certification rules with the member terms amended to 3 years.

Mr. Kerr asked about our own current draft which already added a section 90-45 for mediation services. They agreed there will now be sections through 90-46.

There being no further comments relating to the rules amendments, Mr. Brandon thanked the committee and staff for all of their time and efforts.

ADJOURNMENT

The meeting was adjourned at 1:30 p.m.

Gerald Brandon, POP Committee Chairman

Submitted into record by Sandra Walters, 3/3/09 POP Workshop

including but not limited to, the goals of eliminating or mitigating impacts of incompatible, adjacent land uses and promoting coordination of infrastructure which affects more than one governmental jurisdiction. No comprehensive plan of any municipality or of the county is to be superior over other plans; all are to be considered on an equal basis. To accomplish its duties, the commission may conduct studies and perform such other, directly-related tasks as it deems necessary to arrive at its determinations.

The intent of the second paragraph is that every comprehensive plan within the county, including that of the county itself, must be reviewed by the commission and certified as consistent before it can be put into effect. The comprehensive plans and any amendments thereto must pass this approval stage prior to starting through the state approval process. Appeals to the determinations of the Commission shall be ~~through the court system~~ by certiorari. (Amendment by Mr. Monaco).

The intent of the third paragraph is that the voting membership of the commission shall be made up of one representative from each municipality and five representatives from the unincorporated areas of the county; each shall be appointed by their respective governmental bodies. These representatives are to be able to vote on all matters without obligation to receive prior approval from their appointing governmental bodies. Three non-voting members of the commission shall be appointed by the Volusia County School Board, the St. Johns River Water Management District and the Volusia County Business Development Corporation. all voting and non-voting members shall be appointed no later than February 1, 1987, and may be either elected officials or lay citizens. Term of office is to be fixed by the commission, not to exceed four years.

The intent of the fourth paragraph is that the vote of each voting member shall be weighted to correspond to the percentage of the overall county population represented by that member, with the five representatives from the unincorporated areas of the county equally sharing the weight corresponding to the percentage of the overall county population located in the unincorporated areas. It is not the intent that the representatives of the unincorporated areas be required to vote in a block. The percentages and corresponding weights of votes shall be adjusted annually to reflect changes in population statistics.

The intent of the fifth paragraph is that the commission shall hold an organizational meeting by March 1, 1987, after which it will be given 120 days to develop proposed rules of procedure for performing its duties. Such rules shall include

cont'd.....

ARTICLE II. GROWTH MANAGEMENT COMMISSION CONSISTENCY CERTIFICATION RULES

Sec. 90-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adjacent jurisdiction means a local government whose territorial boundaries are physically contiguous to territorial boundaries of the ~~land to be affected by a comprehensive plan or amendment thereto for which an~~ applicant jurisdiction that has applied to the commission for a certification or certificate. Notwithstanding any other provision of this article, which requires the commission to publish notice of receipt of an application pursuant to section 90-35(c), an adjacent jurisdiction, as defined in this subsection, shall have 40 days after receipt of an application by the commission to file any objections or comments on or request that a public hearing be held to consider an application.

Applicant jurisdiction means a local government which has applied to the commission for a certification or certificate regarding a comprehensive plan or amendment thereto.

Area and *area of jurisdiction* mean the total area qualifying under the provisions of F.S. § 163.3171, as amended from time to time, whether this be all of the lands lying within the limits of an incorporated municipality, lands in and adjacent to an incorporated municipality, unincorporated lands within the county, or areas comprising combinations of lands in incorporated municipalities and unincorporated areas of the county.

Certification and *certificate* mean a ~~formal~~ letter, resolution or other written document from ~~of~~ the commission determining consistency or inconsistency of a comprehensive plan, element, plan amendment or portion thereof with other applicable plans.

Charter means the county Home Rule Charter, as amended.

Commission means the Volusia Growth Management Commission, a governmental entity created by the Charter.

Comprehensive plan means a plan that meets or is intended to meet the requirements of F.S. §§ 163.3177 and 163.3178.

Large scale comprehensive plan amendment means any plan amendment that requires a transmittal and adoption hearing and does not qualify for adoption pursuant to F.S. § 163.3187(1)(c) as amended from time to time.

Small scale comprehensive plan amendment means any plan amendment that only requires an adoption hearing and qualifies for adoption pursuant to F.S. § 163.3187(1)(c) as amended from time to time.

(Ord. No. 87-24, § 2, 7-23-87; Ord. No. 92-87, § 1, 10-8-92; Ord. No. 93-13, § 1, 5-20-93; Ord. No. 2007-05, § I, 2-22-07)
Cross references: Definitions and rules of construction generally, § 1-2.

Sec. 90-32. Interpretation of article.

In the interpretation and application of this article, all provisions shall be:

~~(1) Considered as minimum requirements;~~

~~(2) Liberally construed in favor of the commission; and~~

(1~~3~~) Deemed not to limit or repeal any other powers granted by other state statutes, the Charter, county ordinances or commission resolutions; and

(2) Interpreted in a manner consistent with Section 202.3 of the Volusia County Charter and the Local Government Comprehensive Planning and Land Development Regulation Act (F.S. § 163.3161 et seq.).

(Ord. No. 87-24, § 14, 7-23-87)

Sec. 90-33. Findings, purpose and intent.

In adopting this article, the county council makes and expresses the following findings, purpose and intent:

(1) In accordance with section 1303 of the county Charter, the 1985-1986 county Charter review commission was formed to prepare necessary amendments to the Charter.

(2) In consideration of the rapid growth of the county in recent years and the adoption of landmark comprehensive planning legislation in the state, the Charter review commission determined that growth management was a top priority among its objectives.

(3) As a result of information, evidence and testimony received at numerous public meetings and hearings, the Charter review commission proposed the creation of the Volusia Growth Management Commission to determine the consistency of the municipalities' and the county's comprehensive plans and any amendments thereto with each other.

(4) The citizens of the county voted at a referendum held on November 4, 1986, to adopt Charter amendments creating the commission and granting certain powers to the commission.

(5) The main purpose of the commission is to provide an effective means for coordinating the plans of municipalities and the county, in order to provide a forum for the several local governments in the county to cooperate with each other in coordinating the

provision of public services to and improvements for the citizens of the county, and ~~create incentives~~ to foster intergovernmental cooperation and coordination.

(6) The commission held an organizational meeting on February 25, 1987, and then, through its committee on growth management related issues, duly noticed and held further public hearings on May 18, 1987, and May 21, 1987, and held commission hearings on June 10, 1987, and June 24, 1987, to develop rules of procedure for and enforcement of the commission's consistency review within the time provided for under the Charter amendment.

(7) On June 24, 1987, the commission adopted Resolution No. 87-5, which recommended that county council adopt this article, which contains the rules of procedure for consistency review and enforcement as required by the Charter amendment.

(Ord. No. 87-24, § 1, 7-23-87)

Sec. 90-34. Certificate of plan consistency required.

A certificate of consistency is hereby established. No comprehensive plan, element of a comprehensive plan or amendment of a comprehensive plan adopted after November 4, 1986, shall be valid or effective unless and until such comprehensive plan, element of a comprehensive plan or amendment ~~has been reviewed by the commission and~~ has been certified consistent in accordance with this article. This certificate of consistency will be required in addition to any other necessary licenses, permits and/or approvals applicable to land development; ~~-~~ however, in the event that the commission does not timely hold a hearing or reach a formal determination regarding consistency within the time period provided in this article, the application shall be deemed approved and no certificate of consistency shall be required.

(Ord. No. 87-24, § 3, 7-23-87)

Sec. 90-35. Application for certificate; procedure for issuance; public hearing requirements.

(a) After November 4, 1986, all local governments who desire to adopt or amend a comprehensive plan or element or amendment thereof shall, in accordance with this article, shall submit an application on forms as the commission may prescribe, and shall submit such information as ~~the commission may~~ required by this article. ~~The commission may require such local government to submit any additional information reasonably necessary for proper evaluation of the application.~~

~~(b) An applicant jurisdiction shall, at a minimum, submit the following information and documents with any application filed with the commission:~~

~~(1) Information required by rule or order of the commission, which shall include, at a minimum, a detailed inquiry into:~~

~~a. The extent to which any plan, element, or plan amendment submitted proposes to create adjacent, incompatible land uses and the manner in which the adverse impact of these incompatible uses may be eliminated or mitigated; and~~

~~b. The extent to which any plan, element, or plan amendment proposes policies and/or physical improvements which may adversely impact the objective of promoting the coordination of infrastructure affecting more than one area of jurisdiction.~~

~~(2)~~(b) The applicant jurisdiction shall submit five (5) copies of an application and its required supporting documentation with the commission's administrative staff. An application shall~~, at a minimum,~~ contain the following information:~~ in addition to that required in subsection (b)(1) of this section:~~

(1) The proposed comprehensive plan or plan amendment;

(2) All documentation considered or to be considered by the applicant jurisdiction concerning the proposed comprehensive plan or plan amendment; and

~~a~~(3)~~.~~ ~~The application shall contain a~~A list of all adjacent jurisdictions~~governments and units of local government~~.

~~b. For each entity listed in subsection (b)(2)a of this section, the application shall indicate the following:~~

~~1. Existing coordination mechanisms used in preparation of the plan, element, or plan amendment being submitted.~~

~~2. Any recommendations contained in the proposed plan, element, or plan amendment which affect the plans for land use or infrastructure contained in the plans of adjacent local governments within the county.~~

~~3. The facts supporting the recommendations contained in subsection (b)(2)b.2 of this section and the identification of recommended measures which may be used to mitigate or eliminate any adverse impacts resulting from these recommendations.~~

~~4. Identification of specific problems and needs within the comprehensive plans of said adjacent governments which would benefit from improved or additional intergovernmental coordination, and recommended solutions for resolving these potential problems and needs.~~

(c) The commission shall process all applications and shall cause ~~public~~ notice of receipt of all applications to be given as provided in this article. When the commission receives an

application for approval of a comprehensive plan or amendment thereto, its administrative staff shall date-stamp the application and send a dated cover letter and a notice of the application to all adjacent jurisdictions, to all members of the commission, and to such other persons and in such other manner as may be prescribed by the commission. The administrative staff shall also send a copy of the application to the commission's professional staff.~~, and, within ten days of receipt, shall cause notice of receipt of the application to be published one time only in a newspaper of general circulation in the county~~. ~~Such notice shall be in substantially the form provided below:~~

~~***~~

~~VOLUSIA COUNTY~~
~~VOLUSIA GROWTH MANAGEMENT COMMISSION~~

~~Notice of Application~~

~~(1) The type of application (e.g., adoption of or amendment to a comprehensive plan);~~

~~(2) A description and location of the subject matter or activity covered by the action, and the commission's case number, and the name and address of any person at the applicant jurisdiction to whom comments should be directed;~~

~~(3) Complete copies of the application and accompanying material are available for public inspection at the commission's offices at (commission's address);~~

~~(4) The notice shall contain paragraphs which read substantially as follows:~~

~~a. Any substantially affected or aggrieved party shall have a right pursuant to the Volusia Growth Management Commission Comprehensive Plan Consistency Certification Rules to petition for a public hearing on the application. The petition must contain the information set forth below and must be filed (received) in the commission's office at the address set forth above within 21 days of publication of this notice. A copy of the petition must also be mailed at the time of filing with the commission to (the persons named above in item (2) at the address indicated).~~

~~b. Failure to file a petition within 21 days constitutes a waiver of any right any person may have to a public hearing pursuant to the Volusia Growth Management Commission Comprehensive Plan Consistency Certification Rules and to participate as a substantially affected or aggrieved party. Any subsequent intervention will only be as allowed pursuant to section 7 of the Volusia Growth Management Commission Comprehensive Plan Consistency Certification Rules.~~

~~c. The petition shall contain the following information:~~

~~i. The name, address and telephone number of each petitioner; the commission's case number and the location of the proposed activity;~~

~~ii. A statement of how and when each petitioner received notice of the application;~~

~~iii. A statement of how each petitioner's substantial interests are affected by the proposed application;~~

~~iv. A statement of the material facts disputed by petitioner, if any;~~

~~v. A statement of which rules require denial of the application; and~~

~~vi. A statement of relief sought by petitioner, stating precisely the action petitioner wants the commission to take with respect to the pending application.~~

~~***~~

~~(d) Five copies of each application and supporting documents shall be filed with the commission's administrative staff.~~

(~~e~~d) All applications received by the commission shall be processed and all determinations of consistency shall be made as provided in this subsection.~~ unless a public hearing is held on an application. If the commission holds a public hearing on an application as allowed pursuant to this subsection, the commission shall determine consistency pursuant to the criteria provided in section 90-37.~~

(1) Sufficiency ~~R~~review by commission's professional staff.

~~a.~~ Within 10 days after receipt of an application, the commission's professional staff shall perform a sufficiency review of the application to determine whether the application is complete in accordance with requirements of subsection (b) and shall notify the applicant jurisdiction in writing of any apparent errors and omissions in the application and request correction thereof. Unless within 10 days after receipt of an application the commission's professional staff notifies the applicant jurisdiction in writing that the application is not complete, the application shall be deemed complete on the 10th day after receipt of an application.

~~Within 30 days after receipt of an application, the commission's professional staff shall examine the application; determine whether any adjacent jurisdiction or any other person, including a substantially affected or aggrieved party as defined in this article, has commented or requested a public hearing, notify the applicant jurisdiction of any apparent errors or omissions;~~

(2) Requests by adjacent jurisdictions. Within 30 days after receipt of the application by the commission, any adjacent jurisdiction may:

a. Request a public hearing on the application in writing. The written public hearing request shall include a specific explanation of the adjacent jurisdiction's position for why the application does not meet the consistency criteria of section 90-37 and supporting documentation for such position; or

b. Request, in writing and submitted to the commission chairman, a 21-day extension of time to request a public hearing and comment on the application. The commission chairman shall grant one such 21-day extension requested by an adjacent jurisdiction as a matter of right. However, the commission chairman shall not grant any further extensions of time for any adjacent jurisdiction to request a public hearing and comment on any pending application. A request for an extension of time shall toll all time periods provided in subsection 90-95(e).

(3) Certification without public hearing request. If no request for a public hearing is timely made by an adjacent jurisdiction pursuant to subsection (d)(2), the application shall be deemed certified as consistent with the criteria set forth in section 90-37 and the commission chairman shall, within 7 days after the expiration of the period of time for adjacent jurisdictions to request a public hearing, issue a letter to the applicant jurisdiction stating that the application has been deemed consistent.

(4) Commission's professional staff evaluation. If a request for a public hearing is timely made pursuant to subsection (d)(2) by one or more adjacent jurisdictions, the commission's professional staff shall thereafter evaluate the application for consistency with the criteria set forth in section 90-37 and make a recommendation to the commission on whether the application should or should not be issued a certificate of consistency. The commission's professional staff's evaluation and recommendation to the commission shall be limited to the issues raised by the challenging adjacent jurisdictions in their public hearing request pursuant to subsection (d)(2). The commission's professional staff's evaluation and recommendation concerning the application shall be completed and copies thereof sent to the applicant jurisdiction, adjacent jurisdictions and commission at least 15 days prior to the public hearing on the application. ~~request any additional information pertinent to the application; and determine whether the applicant jurisdiction has addressed the conditions of approval of past commission resolutions and whether the application meets the consistency test as set forth in this article .~~

If during the commission's professional staff's evaluation of the application it needs additional information to review the application, a single, written request for additional information (RAI) may be sent to the applicant jurisdiction any time between the 31st and 40th day from the receipt of the application if a public hearing was timely requested by an adjacent jurisdiction. A timely issued RAI by the commission's professional staff shall toll the running of the time provided by this article for the commission to act on the application~~. An applicant jurisdiction's failure to supply additional information shall not be grounds for denial of certification unless the commission's professional staff timely requests the additional information from the applicant jurisdiction in writing within 30 days after the commission receives the application.~~ and shall be subject to the following:

(i) To be valid and toll the running of time for the commission to act on the application, a request for additional information (RAI) must be issued by the commission's professional staff in writing and delivered by hand delivery, U.S. Mail, or courier service to the applicant jurisdiction. A RAI shall be issued for information gathering purposes only, reasonably identify the information sought, related to the specific application to which the RAI is directed and shall be related only to the issues raised by the adjacent jurisdictions in their public hearing request pursuant to subsection (d)(2).

(ii) Within 7 days of receiving additional information submitted by the applicant jurisdiction in response to a RAI, the commission's professional staff shall review such information and may either deem the RAI satisfied or request in writing information needed to clarify such additional information or to answer new questions raised by, or related to, such information; provided that if the commission's professional staff does not issue a written request to the applicant jurisdiction within 7 days after receiving additional information submitted by the applicant jurisdiction, the RAI shall be deemed satisfied.

(iii) In the event the RAI is not satisfied within thirty (30) days from the issuance of the RAI, the tolling of time caused by the issuance of the RAI shall cease and the application shall proceed to public hearing. The application may receive a recommendation of denial from the commission's professional staff if the RAI is not timely satisfied and the unsatisfied RAI is pertinent to the commission's consistency determination.

(iv) The applicant jurisdiction shall, upon request be granted administratively by the commission chairman a thirty (30) day extension of the thirty (30) day RAI response period. In addition, upon request of the applicant jurisdiction, the commission by vote of its commission members may grant the applicant jurisdiction an additional extension of the RAI response period for up to sixty (60) days upon good cause shown. Such extensions if granted shall continue to toll the running of the time provided by this article for the commission to act on the application.

(v) If the applicant jurisdiction gives written notice to the commission's professional staff that no further information will be provided in response to the RAI, the tolling of time caused by the issuance of the RAI shall cease upon receipt of said notice.

(vi) Submittal of additional information by the applicant jurisdiction or notice from the applicant that no further information will be provided shall be made in writing and delivered by hand delivery, U.S. Mail, or courier service to the commission's coordinator's official office street address.

~~b. If the commission's professional staff determines that the applicant jurisdiction has not addressed the conditions of approval of outstanding commission resolutions, the commission shall hold a public hearing.~~

~~c. If the commission's professional staff determines that an application may be inconsistent under the test set forth in section 90-37, the commission shall hold a public hearing.~~

~~d. [Reserved.]~~

~~(2) Within 30 days after receipt of the application by the commission, any adjacent jurisdiction may:~~

~~a. Submit written comments regarding the merits or the sufficiency to the commission regarding the application;~~

~~b. Request a public hearing; or~~

~~c. Request, for good cause shown in writing and submitted to the commission chairman, one 21-day extension of time to comment on the application. d. The commission chairman shall grant one such 21-day extension requested by an adjacent jurisdiction as a matter of right. However, the commission chairman shall not grant any further extensions of time for any adjacent jurisdiction to comment on any pending application. A request for an extension of time shall toll all time periods provided in this subsection.~~

(~~3~~5) Public hearing. When the application is complete and a public hearing is requested ~~by the~~ pursuant to subsection (~~e~~d)(2) of this section ~~or~~ by an adjacent jurisdiction ~~or a substantially affected or aggrieved party~~, the commission shall hold a public hearing on the application within 60 days after the public hearing is requested but no more than 90 days from the date of receipt of the application not including any tolled time. At any public hearing held by the commission to determine whether the adoption of a comprehensive plan or amendment thereto is consistent the commission shall comply with the criteria of section 90-37. The scope of the public hearing shall be limited to those issues raised by the adjacent jurisdictions in their written public hearing requests made pursuant to subsection (d)(2).

(~~4~~6) ~~Unless a public hearing is otherwise required pursuant to this article, n~~No public hearing shall be held on any application received by the commission unless timely requested by ~~the staff, by~~ an adjacent jurisdiction ~~or by a substantially affected or aggrieved party~~. If no public hearing is timely requested by any adjacent jurisdiction, it shall be presumed that all adjacent jurisdictions approved the adoption of or amendment to the comprehensive plan of the applicant jurisdiction and the application shall be deemed certified as consistent with the criteria under section 90-37. If at any time prior to a public hearing all adjacent jurisdictions that timely requested a public hearing withdrawal their request for a public hearing, no public hearing shall be held on the application and the application shall be deemed consistent with the criteria of Section 90-37.

(~~5~~7) Nothing in this section shall be construed to prohibit the submission of relevant evidence to the commission at any time up to and including a public hearing ~~called~~ held by the commission pursuant to this article. To be admissible, evidence submitted shall be relevant to the issues raised by an adjacent jurisdiction in a public hearing request made pursuant to subsection (d)(2).

(8) If a public hearing is held, during the public hearing the commission may permit members of the public to speak or submit written comments related to the issues raised by an adjacent jurisdiction in a written public hearing request made pursuant to subsection (d)(2); provided however, such participation shall not give party status to members of the public nor give the right to contest the issuance, denial or revocation of a certificate of consistency.

(f) Nothing contained in this article shall preclude the concurrent processing of applications for certification and the state's related review pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act (F.S. § 163.3161 et seq.), as amended from time to time. For large scale comprehensive plan amendments the application for certification by the commission shall be submitted to the commission simultaneously with, or prior to, transmittal of a proposed plan amendment to the Florida Department of Community Affairs (DCA). For small scale comprehensive plan amendments the application shall be submitted by the ~~local government~~applicant jurisdiction concurrent with the forwarding of the recommendations of the local planning agency to the local governing body pursuant to F.S. § 163.3174(4)(a) as amended from time to time. ~~The commission shall have 30 days from receipt of any such application to make comments to the applicant local government and the DCA.~~ The commission certification shall be a prerequisite to any final public hearing on a comprehensive plan amendment by the applicant jurisdiction.~~ local government. The applicant local government's response shall be to both the commission and DCA and shall occur simultaneous with or prior to the applicant local government's response to the objections, recommendations and comments report by the DCA for the comprehensive plan amendment, if applicable.~~

(g) Every application shall be approved~~, conditionally approved,~~ or denied within 90 days after the date of receipt by the commission, not including any time that may have been tolled or extended pursuant to the RAI provisions of subsection (d)(4) and the ~~unless one~~ 21-day extension ~~is requested and granted as provided in this section~~provisions of (d)(2) of this section. Any application which is not approved~~, conditionally approved~~ or denied within such time period set forth in this section, or within ~~1~~five (5) days after conclusion of a public hearing held on the application, whichever is later, shall be deemed approved and shall not require a certificate of consistency. The commission does not have the authority to impose conditions of approval on any application. ~~For every conditional approval, the applicant local government shall comply with the requirements set forth in the conditional approval including, but not limited to, incorporating into the proposed comprehensive plan amendment referenced in the application those changes recommended by the commission. Failure to incorporate the commission's recommended changes shall result in automatic revocation of the certificate thereby rendering both the application and the proposed comprehensive plan amendment of the applicant local government invalid and ineffective. For those conditional approvals granted prior to the effective date of this ordinance, revocation where provided shall occur in accordance with the terms of the resolution of certification.~~ Continuances of applications and hearings may be granted by the commission upon a waiver by the applicant jurisdiction of the 90-day period referred to in this subsection.

(h) Within 30 days after final adoption pursuant to state law of any plan, element, or plan amendment previously certified by the commission, the local government adopting said plan, element, or plan amendment shall transmit a true and correct copy of said plan, element, or plan amendment to the commission.

(i) The time periods set forth in this article for the commission to take action on an application are jurisdictional in nature.

(Ord. No. 87-24, § 4, 7-23-87; Ord. No. 89-39, § 1, 9-7-89; Ord. No. 91-39, § 1, 11-21-91; Ord. No. 92-87, § 2, 10-8-92; Ord. No. 93-13, § 2, 5-20-93; Ord. No. 98-17, § I, 9-3-98; Ord. No. 99-16, §§ 1--3, 5-13-99; Ord. No. 2007-05, § II, 2-22-07)

Sec. 90-36. Consultation with commission regarding application for certificate.

The applicant or his representative may consult with the staff of the commission concerning the application for certificate under this article. However, any representation by the staff of the commission shall not relieve any person of any requirement of applicable special acts, general laws, articles, the Charter, this article or any other commission rules, regulations or standards, or constitute approval, express or implied.

(Ord. No. 87-24, § 5, 7-23-87)

Sec. 90-37. Criteria for issuance of certificate.

(a) ~~Consistency shall be determined and a certificate shall be issued to the applicant, upon such conditions as the commission may direct, if the applicant affirmatively provides the commission with reasonable assurance based upon competent, substantial evidence that the proposed plan, element, or plan amendment is consistent with the comprehensive plans of (a) all other local governments which are adjacent to the land to be affected by the applicant's proposed plan, element, or plan amendment, and (b) all other substantially affected and aggrieved local governments whose substantial interests are or will be affected by issuance of the certificate~~. There is a rebuttable presumption that the applicant jurisdiction's proposed comprehensive plan, element or plan amendment is consistent with the criteria for issuance of a certificate of consistency. The burden of proof is on the party challenging the applicant jurisdiction's application to show by clear and convincing evidence that the application is not consistent with the comprehensive plans of adjacent jurisdictions that are affected by the applicant's proposed comprehensive plan, element, or plan amendment.

(b) For the purpose of subsection (a) of this section, a plan, element, or plan amendment shall be consistent if it is compatible with ~~and in furtherance of such~~ affected adjacent ~~and substantially~~jurisdictions' ~~affected~~ comprehensive plans when all such plans are construed as a whole and no specific goal and policy shall be construed or applied in isolation from the other goals and polices in the plans. For purposes of this section, the phrase "compatible with" means that the plan, element, or plan amendment is not in conflict with such ~~adjacent and substantially~~ affected adjacent jurisdictions' comprehensive plans and does not~~. The phrase "in furtherance of" means to take action in the direction of realizing the goals or policies of such adjacent and substantially affected comprehensive plans. In addition to such requirements, consistency shall not be deemed to exist if the commission affirmatively determines that the plan, element, or plan amendment~~ adversely affect~~s~~ intergovernmental cooperation and coordination.

(c) In determining whether a plan, element, or plan amendment ~~adversely affects intergovernmental cooperation and coordination~~is compatible with affected adjacent jurisdictions' comprehensive plans, the commission ~~may , in its sole discretion,~~ shall consider one or more of the following factors to the extent relevant to an objection raised by an adjacent jurisdiction:

(1) The extent to which the plan, element, or plan amendment provides for areawide or central utility service solutions;

(2) The extent to which the plan, element, or plan amendment provides for areawide or regional transportation solutions;

(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;

(4) The extent to which the plan, element, or plan amendment causes or may reasonably be anticipated to cause significant adverse impacts on natural resources which extend beyond the boundaries of one jurisdiction;

(5) The extent to which the plan, element, or plan amendment provides for the coordination of the timing and location of capital improvements in a manner to reduce duplication and competition; and

(6) The existence of an agreement among ~~all substantially~~ affected adjacent jurisdictions ~~local governments, substantially affected parties (if any)~~ and the applicant jurisdiction which provides for all said governments' consent to the application. If ~~the commission determines that~~ such an agreement exists between all affected adjacent jurisdictions and the applicant jurisdiction for any given application, then it shall be ~~rebuttably~~irrefutably presumed that said application is consistent with criteria of this section and the commission shall issue a certificate of consistency on the application without holding a public hearing ~~does not adversely affect intergovernmental cooperation and coordination~~.

~~(d) For purposes of determining consistency under this section, the plan, element, or plan amendment and the comprehensive plans against which it is compared and analyzed shall be construed as a whole and no specific goal and policy shall be construed or applied in isolation from the other goals and polices in the plans.~~

(~~e~~d) ~~The commission may deny certification where any applicant has failed to establish, by a preponderance of the evidence, its entitlement under this article to the certificate.~~ The commission and its professional staff shall not evaluate or make consistency determinations on whether a proposed comprehensive plan amendment is consistent with the comprehensive plan of the applicant jurisdiction. The commission and its professional staff does not have the authority to and shall not evaluate or make determinations on proposed rezonings and other proposed development permits as defined in Section 163.3164(7), Florida Statutes. Any conditions of previously issued certificates of consistency issued by the commission requiring commission review of proposed rezonings or other proposed development permits are hereby rendered null and void without effect on the validity of such certificates.

~~(f) Any small scale comprehensive plan amendment which meets the review by commission requirements of section 90-35(e)(1) shall be deemed consistent by the commission and a certification issued within 40 days of receipt of the application by the commission without the need to hold a public hearing if no written objections are timely issued or received by the commission. If a 21-day extension is requested pursuant to section 90-35(e)(2)c, then the small scale comprehensive plan amendment shall be deemed consistent by the commission if it meets the review by commission requirements of section 90-35(e)(1)(a), and a certificate issued within 60 days of receipt of the application by the commission without need to hold public hearing if no written objections are timely issued or received by the commission.~~

~~(g) Failure to file a written objection to any such plan amendment shall be deemed a waiver of any right to intervene pursuant to section 90-38. If a written objection to any such plan amendment is issued or received, then that plan amendment application shall be processed and reviewed in the same manner and subject to the same requirements as set forth in sections 90-35, 90-36 and 90-37.~~

(~~h~~e) Notwithstanding anything to the contrary contained in this article, any modifications to the capital improvements element of a comprehensive plan done pursuant to F.S. § 163.3177(3)(b), which would otherwise be reviewable by the commission, and are not deemed to be amendments to the comprehensive plan pursuant to that statute, shall be exempt from further review by the commission.

(~~i~~f) During the commission certification process and until a certification of consistency has been issued or deemed issued by operation of law, ~~E~~each applicant has a continuing affirmative duty to submit the objections, recommendations and comments (ORC) report and any and all additional correspondence, notices, documentation, orders, proposed orders, agreements or other information except ~~adversarially~~adversarial administrative pleadings in formal F.S. § 120.57(1) proceedings (collectively referred to in this section as "additional information") prepared by, transmitted by, received from or agreed to by either the state department of community affairs or the applicant, related to any comprehensive plan, element, or amendment previously certified as consistent by the commission. ~~The commission shall have the right, power and authority to reopen and reconsider its decision to certify consistency and change or modify its conditions of certification applicable to any such plan, element, or amendment should the commission determine in its sole discretion that the additional information changes the facts and circumstances related to its prior certification. Should the applicant fail to submit to the commission a copy of any and all additional information within 30 days after receipt, transmittal, execution or creation (as applicable) by the applicant, the commission shall likewise have the right, power and authority to reopen and reconsider said certificate of completeness. The commission may initiate any such reconsideration proceeding by sending written notice to the applicant/certificate holder, shall schedule and advertise such reconsideration proceeding as a public hearing no less than 60 days after the date of said notice, and may consider any issue and receive such evidence in said public hearing and its subsequent decision that it deems relevant. The commission shall render a written decision by resolution within 30 days from the date of said public hearing. Appeal from said decision shall be in the manner provided in this article for appeal of certifications of consistency.~~

(~~j~~g) Notwithstanding any provision of this section to the contrary, an application for a certificate of plan consistency shall not be reviewed at a public hearing except as provided in section 90-35(~~e~~d). When no public hearing is timely requested or held, the commission chairman shall issue by letter a certificate of plan consistency as provided in section 90-35(~~e~~d). However, if a public hearing is ~~called by the commission or is~~ held pursuant to the request of an adjacent jurisdiction ~~or a substantially affected or aggrieved party~~, the commission shall determine consistency pursuant to the criteria contained in

this section~~; and the applicant jurisdiction shall be required to establish by competent, substantial evidence that its application meets the criteria specified in this section~~.

(Ord. No. 87-24, § 6, 7-23-87; Ord. No. 90-46, § I, 12-20-90; Ord. No. 91-39, § 2, 11-21-91; Ord. No. 92-87, § 3, 10-8-92; Ord. No. 93-13, § 3, 5-20-93; Ord. No. 2007-05, § III, 2-22-07)

Sec. 90-38. Landowner Intervention.

A landowner or contract purchaser of land subject to a comprehensive plan amendment that is the subject of an application ~~Persons other than the original parties to a pending application under this article who are or may be substantially affected and aggrieved by the outcome of the proceeding~~ shall have the right ~~may petition the commission for leave~~ to intervene as a party in the proceeding. Petitions for leave to intervene must be filed with the commission at least five days before the date of the public hearing, and should, at a minimum, contain the following:

(1) The name and address of the intervenor;~~, and~~

(2) Proof of ownership of land or proof of contract purchaser status~~an explanation of how his substantial interests may be substantially affected by the commission's determination~~;

~~(2) If the intervenor intends to object to certification of consistency, a statement of all disputed issues of material fact, including specific objections to the pending application;~~

(3) A demand for relief to which the intervenor deems himself entitled; and

(4) Other information which the intervenor contends is material and relevant.~~ Furthermore, the petition shall include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right, or that the substantial interests of the intervenor are subject to determination or may be affected by the outcome of the proceeding. Nothing in this section shall be deemed to prohibit or prevent members of the public from being heard at the public hearing required by section 90-35.~~

(Ord. No. 87-24, § 7, 7-23-87)

Sec. 90-39. Revocation of certificate.

Certificates of consistency shall be effective ~~until~~ unless revoked; provided however, that certificates of consistency cannot be revoked after 60 days has expired from the application jurisdiction's adoption of the comprehensive plan, element or comprehensive plan amendment that is subject of the application. Certificates shall not become a vested right in the certificate holder. If prior to 60 days after the applicant jurisdiction adopts the comprehensive plan or comprehensive plan amendment that is subject of the application, an adjacent jurisdiction notifies the commission that any of the items under subsections (1) or (2) below occurred, the

commission shall hold a public meeting and give the applicant jurisdiction reasonable notice and an opportunity to be heard at the public meeting and at such public hearing the commission shall have the authority to revoke a previously issued certificate if the commission determines that one of the following occurred:~~After public notice and public hearing, the commission may revoke any certificate issued by it only if:~~

(1) The commission finds that the certificate holder or its agent submitted false or inaccurate material information in its application or at the public hearing; or

(2) ~~The applicant failed to notify an adjacent jurisdiction local government~~ An adjacent jurisdiction failed to get notice of the application as required by this article. ~~Revocation of a certificate shall invalidate the plan, element, or plan amendment certified thereby.~~

Revocation of a certificate shall invalidate the plan, element, or plan amendment certified thereby.

(Ord. No. 87-24, § 8, 7-23-87)

Sec. 90-40. Appeals.

(a) Only the applicant jurisdiction, an adjacent jurisdiction and landowner or contract purchaser which has timely intervened pursuant to Section 90-38 shall have the right to contest the issuance, denial or revocation of a certificate of consistency. The applicant jurisdiction, an adjacent jurisdiction ~~and A~~any ~~substantially affected and aggrieved local government or other substantially affected~~ and landowner or contract purchaser ~~aggrieved party~~ which has previously timely intervened pursuant to section 90-38 may contest the issuance, denial or revocation of a certificate of consistency by filing a petition for writ of certiorari along with a complete record of the proceeding(s) from which said certificate emanated so certified by the commission's records custodians, in the manner prescribed by the state appellate rules to the circuit court of the county, within 30 days after the date the commission's decision is filed with its secretary. The court shall not conduct a trial de novo. The proceedings before the commission, including the testimony of witnesses, and any exhibits, photographs, maps or other documents filed before them, shall be subject to review by the circuit court. The petition for writ of certiorari shall state how the commission erred and shall include all of the documents, papers, photographs, exhibits and transcripts constituting the record upon which the action appealed from was taken, or properly certified copies thereof in lieu of originals. The petition, along with the record, shall be filed in the circuit court within 30 days after the filing of the decision by the commission to which such petition is addressed. The court may extend the time for filing the record, including the transcript and exhibits, for good cause shown. The person filing the petition for certiorari shall be responsible for filing a true and correct transcript of the complete testimony of the witnesses.

(b) The petition for writ of certiorari shall be furnished to the original applicant, the owner of record of the subject property, to each attorney at law appearing for any person at the hearing before the Volusia Growth Management Commission, and to the Volusia Growth

Management Commission. The commission shall suspend the issuance of its permit until the court has ruled upon the petition.

(c) The Volusia Growth Management Commission shall be a necessary and indispensable party to any appeal of its decisions. Any other person including but not limited to an adjacent local government may intervene, pursuant to Florida Rule of Civil Procedure 1.230, as a respondent in the certiorari proceeding authorized by this section.

(Ord. No. 87-24, § 9, 7-23-87; Ord. No. 99-16, § 4, 5-13-99)

Sec. 90-41. Enforcement.

The commission may institute a civil action in a court of competent jurisdiction to seek injunctive relief to enforce compliance with this article or any certificate issued pursuant to this article.

(Ord. No. 87-24, § 10, 7-23-87)

Sec. 90-42. Waiting period for reapplication for certificate.

No local government shall have the right to file an application for certification pursuant to section 90-35 if the same plan, element, or plan amendment for which certification is applied has been the subject of an application before the commission within a period of ~~12~~ six (6) months prior to the filing of the application.

(Ord. No. 87-24, § 11, 7-23-87)

Sec. 90-43. Article not to affect preexisting rights.

Nothing in this article shall after or affect rights previously vested or plans, elements, or plan amendments previously, finally and completely adopted in accordance with applicable state law prior to November 4, 1986.

(Ord. No. 87-24, § 12, 7-23-87)

Sec. 90-44. Ratification of past agreements.

Notwithstanding anything to the contrary contained in this article, the following agreements are hereby ratified and confirmed and the plans, elements, and plan amendments involved therein are certified consistent for purposes of this article:

(1) Agreement between the City of Daytona Beach, Florida, and Gerald Berson dated March 1987.

(2) Agreement between the City of Port Orange, Florida, DSC of Newark Enterprises, Inc., and the county dated January 8, 1987.

(3) Agreement between the City of Port Orange, Florida, S.C.B. Development, Inc., and the county dated January 8, 1987.

(4) Agreement between the City of Edgewater, Florida, Radnor/Edgewater, Inc., and the county dated January 12, 1987.

(5) Agreement between the City of Port Orange, Sandalwood, Inc., and the county dated January 5, 1987.

(6) Agreement between the City of Port Orange, Jennie M. Krol and the county dated January 5, 1987.

(7) County council Ordinance No. 87-19, approving, among other things, amending the county comprehensive plan amendments related to Mosquito Lagoon, Hontoon Island and the North Peninsula.

(Ord. No. 87-24, § 13, 7-23-87)

Section 90-45__ Appointment & Removal of Commission Members. There shall be one voting member from each municipality within the county and five voting members from the unincorporated area of the county. The appointment of each voting representative shall be made by the governing body of each respective jurisdiction. Voting members of the commission shall not be elected officials or anyone who by serving on the commission would violate the dual-office holding provision of the Florida Constitution. The Volusia County School Board, the St. Johns River Water Management District, and the Volusia County Business Development Corporation shall each designate one nonvoting member to serve on the commission. The term of office of the commission members shall be four (4) years. The governing body for each governmental entity that appoints a member(s) to the commission shall at any time have the right to remove its appointed member(s) to the commission with or without cause and to appoint a successor member(s).

Secs. 90-45--90-70. Reserved.