

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

MINUTES FOR
MEETING HELD
Wednesday, March 25, 2009

County Council Chambers
Thomas C. Kelly Administration Center
123 W. Indiana Avenue
DeLand, FL 32720

The meeting was called to order at 6:00 p.m. by Committee Chair, Gerald Brandon.

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

Also in attendance: VGMC Chair Joan Spinney, VGMC Legal Counsel Paul Chipok, VGMC Planner Barry Wilcox, and James Miller of the Daytona Beach News Journal

NEW BUSINESS

Approval of minutes of the October 21, 2008 workshop - Mr. Chipok pointed out that on page 2 of the minutes outline, #13, second line from the bottom, that it reads "the County submit...". He stated that should be more generic to read "the applicant jurisdiction submit...".

Dwight Lewis made a motion to approve the minutes of the October 21, 2008 workshop as amended; seconded by John Heaphy. Motion carried unanimously.

Ms. Walters arrived at approximately 6:05 p.m.

Performance Evaluation of the VGMC Coordinator – Mr. Brandon reported that Merry Smith was hired as the coordinator for the VGMC on December 14, 2004 at a pay rate of \$15/hour. In May, 2005 following her probationary period, she was evaluated and received a \$3/hour increase. On August 26, 2006, she received an increase to \$19.44/hour and in September 2007 a 5% increase to \$20.41/hour was approved. Mr. Brandon reminded the committee that she is not entitled to benefits such as insurance and retirement. In 2008, Mr. Brandon stated that the commission approved holiday pay consistent with the County's holiday schedule, with the exception of holidays that fall on Friday's as she is not scheduled to work on Friday's.

Mr. Brandon stated that he has worked very closely with Ms. Smith since she was hired and commented very favorably on her performance. He stated that the County's standard for increase this past year was 2% and noted that she did not get an increase in 2008. Mr. Brandon suggested the committee consider an increase somewhere in line with what the County has in place for their employees. Ms. Jones asked if there was a reason why she did not get an increase in 2008 and whether or not performance evaluations are done. Mr. Brandon stated it was essentially an oversight in 2008 and that when he was POP Chair in the past the committee has evaluated her performance. Mr. Lewis commented favorably on her performance in the short time he has been a member and suggested looking at the same standards for increase as the

county has in place. Mr. Heaphy suggested an increase of 2% retroactive to 2008. Ms. Walters commented favorably on her performance, adding that the County Council recently passed a resolution encouraging vendors or those that deal with the county to limit the raises to their employees to what the county has established. Mr. Kerr also commented favorably on Ms. Smith's performance and supported up to a 3% increase, but suggested a written performance evaluation be completed before implementing an increase. Ms. Jones concurred considering a 3% increase, but also strongly encouraged that a written performance evaluation be completed. Mr. Griffiths stated he was just appointed to the commission and other than a brief telephone conversation, had just met Ms. Smith this evening. Chair Spinney commented that a 3% increase would be appropriate but also stated that a performance evaluation should be completed.

There was a consensus of the committee for Mr. Brandon to prepare a performance evaluation to bring back for review at the next committee meeting, at which time they will vote on an increase and whether or not it should be retroactive.

Re-Draft of Rules Amendments: Mr. Brandon stated that since the last POP meeting of March 3, 2009, Paul has met with the various attorneys and prepared a redraft of the rules amendments. Referring to the draft dated 03/17/2009, Mr. Chipok stated he prepared this based on comments received from the committee at the last meeting as well as comments he received at the subsequent attorneys meeting.

Mr. Chipok stated that one of the more significant changes includes defining a unit of local government, and to include the Volusia County School Board as a unit of local government. With respect to standing, Mr. Chipok stated that one of the attorneys commented that the purpose of the VGMC per the charter is for the VGMC to review the comprehensive plan amendment of the applicant jurisdiction to the comprehensive plan of the adjacent and other jurisdictions within the county. He indicated it was stated that individual citizens do not have comprehensive plans, their jurisdictions do. Mr. Chipok stated the thought is that the parties to the VGMC hearings should be the other jurisdictions in the county and not individual citizens. To further that thought, if a citizen has an issue, the proper recourse for them is to go to their elected officials and raise the issue that the proposed amendment is in conflict with their jurisdiction's comprehensive plan and request that the city take it up with the VGMC. Mr. Chipok agreed that this thought process has merit. He also stated if the jurisdiction chooses not take the matter up with VGMC on behalf of the citizen, the citizen still has whatever rights they would otherwise have under the 163 process, as well as whatever rights they have against their commission for not taking the action they requested. Mr. Chipok commented that he felt this was a fair compromise position and asked if anyone had any comments on this theory.

With respect to the 03/17/2009 draft, Mr. Chipok stated that standing is addressed. He stated under 90-35(c), the public notice provision has been amended so that only an affected or aggrieved unit of local government can request a public hearing and a member of the public is to address that concern with his respective elected body. Section 90-37(c)(6) states that only the substantially affected local governments and the applicant jurisdictions are parties to an interlocal agreement. Mr. Chipok stated there has been a lot of discussion of whether or not an individual can be a party to an interlocal agreement, but by definition an interlocal agreement is between two or more jurisdictions. Section 90-38 has been amended to state that only a unit of

local government may seek to intervene in the VGMC public hearing. He stated that members of the public can speak at the public hearing, however, they would not be granted party status.

With respect to the completeness review, he stated section 90-35(c) was amended to codify the administrative completeness review which is currently performed by the coordinator, and clarifying that the clock starts when the application is date stamped. Mr. Chipok reiterated that the completeness review is not a substantive review but rather an overview of the information submitted with the application.

Mr. Chipok stated that Section 90-42 has been amended to change the waiting period for reapplication from 12 months to 6 months and that an application can be withdrawn without penalty as per prior discussions of the committee.

Mr. Chipok stated that Section 90-45 regarding the appointment and removal of commission members has been added pursuant to discussions at the March 3, 2009 POP workshop. Additionally, Section 90-46 relating to rehearings has been added pursuant to the direction at past POP meetings.

POP Chair Brandon asked if any of the members had comments or if they wished to make a motion to accept the 03/17/2009 draft. Mr. Chipok commented that one item that came up out of the standing discussions is that we don't hold a public hearing on every case and that letter certifications are issued by the VGMC Chair on many cases. He stated the current language in Section 90-37(j) states that "When no public hearing is held, the commission chairman shall issue by letter a certificate of plan consistency as provided in section 90-35(e)." Mr. Chipok stated he would like to add language to read "When no public hearing is held, the commission chairman as an administrative official shall act in an executive capacity and issue a letter of certificate of plan consistency as provided in section 90-35(e)." By adding that language, he stated if we ever receive suit on a letter certification, we can state it is not a petition for writ and the time frame is the same as the 30-days of issuance of the order.

Mr. Brandon stated that the draft amendments will be presented to the full commission at the April meeting, but reminded the commission that we are still in a working draft stage and that these changes are not final.

Mr. Lewis raised a question on page 5, subsection (c) of the 03/17/2009 draft relating to the five day timeframe for the completeness review. Mr. Chipok stated it is intended to be five calendar days. Several members questioned whether that should be five business days. Mr. Chipok stated that changing it to five business days would result in added time to our process and that we are trying to keep it within the jurisdiction's adoption timeframe through the DCA process and time requirements. After further discussion of the completeness review process, the committee was comfortable with five calendar days.

Mr. Chipok stated that this is a composite draft and feels we've come a long way in the work that the committee has done over the past two years, together with the comments from the attorneys group and VCOG. He stated we are moving more towards a center for a consensus draft and in his opinion, it is a workable document. Mr. Chipok stated he felt it was important prior to the

public hearing that it is reviewed by the local jurisdiction planners as they are the ones that will use it on a daily basis.

Ms. Jones asked what the feedback has been with the rehearing provision, adding that she is concerned that every time someone is unhappy with the outcome of a hearing they will request a rehearing. Mr. Chipok stated that the rehearing provision is based upon the county standards for their historic preservation commission and is consistent with case law. He added that if it is the commission chooses to allow rehearings, then procedures need to be included to address how it will be handled. However, if the commission chooses not to allow rehearings, a statement needs to be made in the procedures that they are not allowed.

Mr. Kerr asked about the addition of the provision on page 13, subsection (d) which states "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." Mr. Chipok stated this is to clarify that we do not look at internal consistency, but rather whether or not a comprehensive plan is consistent with neighboring jurisdiction's comprehensive plan. He added that reviewing internal consistency is not our task.

Ms. Walters asked if the public will have a chance to comment on the draft amendments prior to the public hearing. Mr. Chipok stated that we currently have a draft and he will be meeting with the attorneys group tomorrow. Following that, he anticipates bringing those comments back before the POP committee. At that point, he would like to get a consensus draft from POP so that it can be presented to the full commission at the April meeting if possible. Thereafter, we would publish a copy of the draft amendments with notice that we will be holding a public hearing, hopefully at the May meeting. Once the public hearing takes place, he stated the full commission will consider a final draft and vote on a resolution to forward to the County Council, which is expected to occur in June.

The committee then discussed a draft of the amendments dated 03/24/2009 which was prepared by Scott Simpson. Mr. Chipok stated that he had distributed a copy of the 03/17/2009 draft to the attorneys, which covered all of the issues that were discussed at the attorney meeting with the exception of the issue raised regarding burden of proof. Mr. Simpson recommended that language be added to specifically state that when an application comes in there is a presumption that it is consistent and anyone challenging it has the burden of showing how it is inconsistent. Mr. Chipok stated that our present rules consider an application to be neutral when it is received and it is reviewed against the criteria in Section 90-37. If staff finds there may be an issue, then a public hearing is called and the commission reviews by a preponderance of the evidence that it is either consistent, can be consistent with conditions, or if no conditions can make it consistent will deny it. Mr. Chipok stated as a practical matter, he is not sure that adding this language would change anything in terms of what happens at the public hearing.

With that background, Mr. Chipok reviewed the proposed changes in the 03/24/2009 draft prepared by Mr. Simpson for further direction when he meets with the attorneys tomorrow.

On page 1 under the definition of adjacent jurisdiction, Mr. Simpson suggests changing the timeframe for adjacent jurisdictions to file comments or objections to 21 days from the date the

notice is advertised. Mr. Chipok explained that adjacent jurisdictions do not work from newspaper advertisements, but rather actual notice and complete applications from the applicant jurisdiction. He stated that occurs at the same time that VGMC receives notice, which is prior to the noticed advertisement. He suggested that the 30 day time period from receipt of the application be retained for consistency purposes. The committee concurred to leave the timeframe at 30 days.

On page 2, under the definition of unit of local government, Mr. Simpson recommends deleting the Volusia County School Board as a unit of local government. Mr. Chipok stated that the commission has already committed that the school board will be a player at the table. The committee concurred.

On page 4, section 90-35(b)(2)a., Mr. Simpson suggests deleting the provision that requires the application to include a list of units of local government. Mr. Chipok stated he feels this should be left in. While the adjacent jurisdictions receive the full application, other units of local government receive summary notice and if they have an interest in the amendment they can request a copy of the full application. The committee concurred.

On page 5, subsection (c), Mr. Simpson suggests deleting the provision requiring staff to send notice of application to "such other persons and in such other manner as may be prescribed by the commission". Mr. Chipok commented that the commission needs that flexibility and the committee concurred to keep the language in.

On page 6, subsection c.v., Mr. Simpson suggests changing the provision to read "A detailed statement outlining all reasons why the proposed amendment violates the criteria for evaluating compatibility in Sec. 90-37". Mr. Chipok stated that this basically accomplishes the same as the current provision which reads "A statement of which rules require denial of the application", however, the present provision provides more flexibility. The committee concurred to keep the language as currently written.

On page 7, subsection (e)(1)a., Mr. Chipok stated that the change from "receipt" to "date stamped" is correct. He also stated he believes we need to keep the language "which may be substantially affected or aggrieved as defined in this article" needs to be left in for clarity. With respect to Mr. Simpson's recommendation deleting the provision for the commission's professional staff to determine whether the applicant jurisdiction has addressed conditions of prior resolutions, Mr. Chipok stated this should remain as it is an enforcement tool to ensure compliance to prior approvals.

Going back to subsection (e) which recommends adding language that the commission shall determine "whether the presumption of consistency has been refuted...", Mr. Chipok stated this relates to the concept that the application is presumed consistent. He again stated that when an application is received it is considered to be neutral and suggested leaving the language as is presently written. The committee concurred.

With respect to the balance of the recommendations on page 7, the committee concurred to keep the language as presently written.

On page 8, subsection b., the recommendation deletes the provision that the commission can call for a public hearing if staff determines that the applicant jurisdiction is not in compliance with conditions of a prior approval. He reiterated that our conditions of approval are the commission's method of enforcement and our review is at the time a new application comes in. The committee was in agreement.

Also on page 8, subsection d.(i), Mr. Chipok suggested that the language remain at 30 days after receipt since the date stamp is for reference to the initial application and runs the 90-day clock, not subsequent documentation that is received. The committee concurred.

Page 8, subsection d.(ii), Mr. Chipok stated that this essentially rewords the present provision and stated he has no objections to it, adding that it may provide more clarity. The committee concurred to modify the language as proposed by Mr. Simpson.

On page 9, subsection (2)a., Mr. Chipok stated this is another reference to change the timeframe from 30 to 21 days from the date the notice is published for an adjacent jurisdiction to take action. Mr. Chipok again stated that the adjacent jurisdictions receive actual notice and complete applications and do not work from the newspaper advertisement.

Also on page 9, subsection(3), Mr. Chipok suggests leaving in the language that is recommended to be stricken in the first sentence as it provides clarity. Further down, he stated the term "date stamp" in place of "date of receipt" is correct. He stated he will discuss the change from "less" any time tolled to "plus" any time tolled to make sure we have the wording correct. Mr. Chipok stated the change to include language to the "presumption of consistency has been refuted..." goes back to the concept that an application is presumed consistent as earlier discussed. He suggested leaving the language as currently written.

On page 10, subsection (f), Mr. Chipok stated that if the commission is going to comment to DCA on an application, Chapter 163 states it has to be within 30 days of receipt. Our internal rules work from the date stamp, however, if we are going to comment to DCA we have to stay within DCA's timeframe so we need to keep the term "received" in this instance.

Also on page 10, subsection (g), Mr. Chipok stated changing the term to "date stamp" is appropriate. With respect to the recommendation relating to "the tolling is stopped" in place of "the application is deemed complete", he stated that he doesn't have a strong opinion on that and needs to speak further with Mr. Simpson on that.

On page 11, subsection (g), Mr. Chipok stated he is in agreement to delete the term "full".

Also on page 11, subsection (i), Mr. Chipok indicated he does not have any real issues with the change as our review is based on the criteria set forth in Section 90-37. Mr. Wilcox commented in favor of the suggested change. The committee was in general agreement with the change.

On page 12, Section 90-36(a), Mr. Chipok stated that the change from "his" to "its" is fine.

Also on page 12, Section 90-37, Mr. Chipok stated he has issues with the changes recommended and suggested keeping the language as written. The committee concurred to keep the language as is currently written.

On page 14, subsection (e), Mr. Chipok recommended leaving the language as presently written. In subsection (f), he stated the change to "date stamp" is fine. Under subsection (g), Mr. Chipok stated he does not have an issue with the deletion of the first sentence. He also stated he feels that the addition of language in subsection (i) is acceptable as it provides a definitive endpoint for when our review period ends.

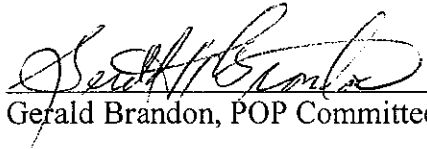
On page 15, subsection (j), Mr. Chipok stated he would prefer to keep the current language but would discuss it further with Mr. Simpson.

That being the end of the Mr. Simpson's comments, Mr. Chipok stated that he feels that good progress is being made in reaching a consensus draft.

Ms. Walters asked if there was going to be a vote on the draft. Mr. Brandon stated that this is not a final recommendation and there was a consensus from the committee to move forward.

ADJOURNMENT

The meeting was adjourned at 7:08 p.m.



Gerald Brandon, POP Committee Chairman

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 30 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~~for other written document from 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.

Unit of local government means Volusia County, each municipality within Volusia County and the School Board of Volusia County.

Written or in writing means a piece of correspondence or document, as context dictates, that must be provided on paper and delivered by either hand delivery, U.S. Mail or courier service. Electronic transmissions by themselves are not sufficient to be deemed "written" or "in writing" and must be followed up with a hard copy transmittal delivered by either hand delivery, U.S. Mail or courier service.

(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, § 1, 2-22-07)

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~~
- (3) Deemed not to limit or repeal any other powers granted by other state statutes, the Charter, county ordinances or commission resolutions; and
- (4) 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.

(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 require. 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) An application shall, at a minimum, contain the following information in addition to that required in subsection (b)(1) of this section:

- a. The application shall contain a list of all adjacent 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 as soon as possible, and in no event later than five (5) days after receipt, conduct completeness review of the application to ensure: the application is completely filled out; required signatures are present and notarized; required number of copies are included; notification to required jurisdictions and agencies as indicated on application has been accomplished; summary of amendment(s) is provided; verification of the acreage and location for map amendments; verification that staff reports, and current and proposed land use maps, where applicable, are included. If any of the foregoing information is incomplete the administrative staff shall contact the applicant jurisdiction to obtain the necessary information. Once all application information is provided administrative staff shall date-stamp the application and send a dated cover letter and a notice of the application to the applicant jurisdiction, 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 10 days of ~~receipt~~the date stamp on the application, 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~~unit of local government 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 (b) at the address indicated).

b. Failure to file a petition within 21 days constitutes a waiver of any right any ~~person~~unit of local government 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~~90-38 of the Volusia County code which codifies the Volusia Growth Management Commission Comprehensive Plan Consistency Certification Rules as Chapter 90, Article II of the Volusia County Code.

c. The petition shall contain the following information:

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

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

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

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

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

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

d. Any person who believes the unit of local government in which they reside could be substantially affected or aggrieved by the application is directed to address that concern with the elected governing body of the unit of local government in which they reside.

(d) Five copies of each application and supporting documents shall be filed with the commission's administrative staff. At least two copies of the application and supporting documents must be a hard copy in writing.

(e) 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) Review by commission.

a. Within ~~30~~35 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~~unit of local government which may be 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; 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 the commission's professional staff needs additional information to review the application, a request for additional information (RAI) shall be forwarded in writing to the applicant jurisdiction in accordance with subsection (e)(1)d. below. A request for additional information shall toll the running of the time provided by this article for the commission to act on the application until the RAI response is deemed complete. 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~~35 days after the commission receives the application.

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.]~~

d. Any request for additional information (RAI) made by the commission's professional staff shall be subject to the following criteria:

(2i) Within 30 days after receipt of each submittal of additional information by the applicant jurisdiction, the commission's professional staff shall review it and may either deem it complete or request, through a subsequent RAI, only that information needed to clarify such additional information or to answer new questions raised by or only that related to such additional information.

(ii) An application shall receive a recommendation of denial and proceed to public hearing if the applicant jurisdiction fails to provide additional information to the commission's professional staff within sixty (60) days after a written request for such information has been sent to the applicant jurisdiction. However, if the applicant jurisdiction can demonstrate that it has been actively working on collecting or developing the requested information, and that additional time will be required to complete their response to the RAI, the applicant jurisdiction may request up to two (2) thirty (30) day extensions which may be granted administratively by the chairman to submit their response. Thereafter, any further requests from the applicant jurisdiction for additional time to submit their response must be approved by the commission.

(iii) Upon the issuance of an RAI, the running of time provided by this article for the commission to act on the application shall be tolled until the RAI response is deemed complete by either the commission's professional staff in accordance with subsection (e)(1) d.(i) above or by written notice from the applicant jurisdiction that no further information will be provided and the applicant jurisdiction desires to proceed to public hearing on the application.

(iv) Each submittal of additional information by the applicant jurisdiction or notice from the applicant jurisdiction that no further information will be provided and request to proceed to public hearing shall be made in writing and delivered by either hand delivery, U.S. Mail or courier service to the VGMC coordinator's official office street address. Electronic

transmissions by themselves are not sufficient and must be followed up with a hard copy transmittal delivered to the VGMC coordinator's official office street address.

(2) Adjacent jurisdictions.

a. Within 30 days after the date stamp on the application by the commission, any adjacent jurisdiction may:

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

~~b.~~ (ii) Request a public hearing; or

~~c.~~ (iii) 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.~~ b. 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.

c. The adjacent jurisdiction shall participate as a party and is deemed to be substantially affected and aggrieved either upon requesting a public hearing or, if a public hearing is held by the commission as requested by another source, upon the adjacent jurisdiction filing a petition for leave to intervene pursuant to Section 90-38 to participate in the public hearing.

(3) When the application is deemed complete and a public hearing is requested by ~~the~~ either the commission's professional staff or by the applicant jurisdiction pursuant to subsection (e) of this section or by an adjacent jurisdiction or a substantially affected or aggrieved ~~party~~ unit of local government, the commission shall hold a public hearing on the application within 60 days after the public hearing is requested but in no event more than 90 days from the date of receipt of the application (less 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.

(4) Unless a public hearing is otherwise required pursuant to this article, 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~~ unit of local government. If no public

hearing is 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.

(5) 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 by the commission pursuant to this article.

(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 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 application to make comments to the DCA. The commission shall have 35 days from the date stamp on 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 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 unless ~~one either:~~ (i) the 90-day time period on an application has been tolled pursuant to subsection (e)(1) of this section, in which case the 90-day time period does not include that period from the date of commencement of the tolling until the application is deemed complete; or (ii) one-21-day extension is requested and granted as provided in this section subsection (e)(2) of this section; or (iii) if anytime on or after 60 days from the date of receipt by the commission of the application there occurs an act of God/emergency/natural disaster which disrupts normal governmental functions within any part of the county then there shall be an automatic extension of the 90-day time period for an additional 30 days. The VGMC coordinator shall provide written notice to the applicant of implementation of an automatic extension under subsection (iii) above. Any application which is not approved, conditionally approved or denied within such time period set forth in this section, or within 15 days after conclusion of a public hearing held on the application, whichever is later, shall be deemed approved. 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 request for a waiver by the applicant jurisdiction of the 90-day period referred to in this subsection- for up to an additional 90-day period by the commission chairman. Any requests for continuances totaling longer than 90 days may only be granted by the full commission at a noticed hearing.

(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) For any unit of local government, other than an adjacent jurisdiction, asserting that it is a substantially affected or aggrieved party pursuant to section 90-35(c) or 90-38, as the first item of business at the public hearing pertaining to the certificate of consistency of a comprehensive plan or element or amendment thereof, the commission shall render a determination of such unit of local government's status as a party to the public hearing based upon the contents of the required petition under section 90-35(c) or 90-38, as applicable and testimony and evidence presented at the hearing. In the event party status is denied by the commission, the unit of local government denied party status shall be entitled to be heard at the public hearing as a member of the public. As used in this section, the term "substantially affected or aggrieved party" means any unit of local government that will suffer an adverse effect to an interest protected or furthered by its comprehensive plan when compared to the applicant jurisdiction's local government comprehensive plan, element or amendment thereof including interests related to health and safety, police and fire protection service systems, densities or intensities of development, transportation facilities, health care facilities, equipment or services, and environmental or natural resources. The alleged adverse interest may be shared in common with other members of the community at large but must exceed in degree the general interest in community good shared by all persons.

(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, § 2, 2-22-07)

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

(a) 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.

(b) Ex parte communications with voting members of the commission concerning an application for Certification of Consistency under this article shall be governed by Volusia County Code Section 2-3, Access to county officials. For the limited purposes of application of Section 2-3, each voting member of the commission is deemed to be a "county official."

(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.

(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 adjacent and substantially affected comprehensive plans when all such plans are construed as a whole. 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 comprehensive plans. 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 affects intergovernmental cooperation and coordination.

(c) In determining whether a plan, element, or plan amendment adversely affects intergovernmental cooperation and coordination, the commission may, in its sole discretion, consider one or more of the following factors:

- (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 local governments, ~~substantially affected parties (if any)~~ and the applicant which provides for all said governments' consent to the application. If the commission determines that such an agreement exists for any given application, then it shall be rebuttably presumed that said application 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 policies in the plans. 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.
- (e) 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.
- (f) Any small scale comprehensive plan amendment which meets the review by commission requirements of ~~Section~~section 90-35(e)(1)(a) 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~~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~~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) 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) 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 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~~consistency. 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) 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). When no public hearing is held, the commission chairman shall issue by letter a certificate of plan consistency as provided in section 90-35(e). 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, § 3, 2-22-07)

Sec. 90-38. Intervention.

~~Persons~~Units of local government 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 may petition the commission for leave to intervene. Petitions for leave to intervene must be filed in writing 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~~intervening unit of local government, and an explanation of how ~~his~~its substantial interests may be substantially affected by the commissions determination;
- (2) If the ~~intervenor~~intervening unit of local government 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~~intervening unit of local government deems ~~himself~~itself entitled; and
- (4) Other information which the ~~intervenor~~intervening unit of local government contends is material and relevant.

Furthermore, the petition shall include allegations sufficient to demonstrate that the ~~intervenor~~intervening unit of local government is entitled to participate in the proceeding as a matter of constitutional or statutory right, or that the substantial interests of the ~~intervenor~~intervening unit of local government 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.

Sec. 90-39. Revocation of certificate.

Certificates of consistency shall be effective until revoked Certificates shall not become a vested right in the certificate holder. 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 a local government as required by this article.

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) Any substantially affected and aggrieved unit of local government ~~or other substantially affected and 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~~unit of local government 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. However, the applicant jurisdiction has the right to withdraw, without the penalty of the six (6) month waiting period, an application at any time up to fourteen (14) days before either (i) the issuance of a letter of certificate of plan consistency pursuant to section 90-37(j) or (ii) the date of the scheduled public hearing on the application pursuant to section 90-35(e). Such withdrawal of the application shall be made in writing and delivered by either hand delivery, U.S. Mail or courier service to the VGMC coordinator's official street address. Electronic transmissions by themselves are not sufficient and must be followed up with a hard copy transmittal delivered to the VGMC coordinator's official office street address.

(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)

Sec. 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 (if such entity is in existence) shall each designate one nonvoting member to serve on the commission. The term of office of the commission members shall be three (3) 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.

Section 90-46. Rehearings.

(a) If it is alleged that the commission has overlooked or misapprehended some facts or points of law a rehearing of any decision of the commission may be granted by the commission upon the request of any substantially affected and aggrieved unit of local government which has previously timely intervened pursuant to Sections 90-35 or 90-38. That request for rehearing shall be in writing, shall be filed with the VGMC coordinator within ten working days after rendition of the decision by the commission and shall state its grounds.

- (b) The requesting party shall serve the request by certified mail or hand delivery upon the commission chairman and the VGMC coordinator, and the applicant jurisdiction if the requesting party is other than the applicant jurisdiction.
- (c) The VGMC coordinator shall place the request for rehearing on the next commission agenda for consideration of such request for rehearing together with a notice stating the date, time and place the request for rehearing will be orally presented to the commission. Notice of the hearing on the request for rehearing shall be mailed to all substantially affected and aggrieved parties who filed for intervention pursuant to Section 90-35 and 90-38 to the original commission hearing.
- (d) If the commission grants the request, it shall state its reasons for doing so, and set a date, time and place for another public hearing upon due public notice. The commission shall also state whether the rehearing public hearing shall be a trial de novo or limited to review of the specific issues designated by the commission based on the request for rehearing.

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Moved to	0
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Format changed	0
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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 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 30 21 days from the date the notice is advertised after receipt of an application being received 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 letter, resolution or other written document from 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.

**This 03/24/2009 draft was prepared by Scott Simpson following Paul's 3/17/09 draft.*

Small scale comprehensive plan amendment means any plan amendment that only requires an adoption hearing and qualifies for adoption pursuant to F.S. § 163.3137(1)(c) as amended from time to time.

Unit of local government means Volusia County, and each municipality within Volusia County, ~~and the School Board of Volusia County.~~

Written or in writing means a piece of correspondence or document, as context dictates, that must be provided on paper and delivered by either hand delivery, U.S. Mail or courier service. Electronic transmissions by themselves are not sufficient to be deemed "written" or "in writing" and must be followed up with a hard copy transmittal delivered by either hand delivery, U.S. Mail or courier service.

(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, § 1, 2-22-07)

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;
- (3) Deemed not to limit or repeal any other powers granted by other state statutes, the Charter, county ordinances or commission resolutions; and
- (4) 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 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 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.

(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 require. 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) An application shall, at a minimum, contain the following information in addition to that required in subsection (b)(1) of this section:

- a. The application shall contain a list of all adjacent 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 as soon as possible, and in no event later than five (5) days after receipt, conduct completeness review of the application to ensure: the application is completely filled out; required signatures are present and notarized; required number of copies are included; notification to required jurisdictions and agencies as indicated on application has been accomplished; summary of amendment(s) is provided; verification of the acreage and location for map amendments; verification that staff reports, and current and proposed land use maps, where applicable, are included. If any of the foregoing information is incomplete the administrative staff shall contact the applicant jurisdiction to obtain the necessary information. Once all application information is provided administrative staff shall date-stamp the application and send a dated cover letter and a notice of the application to the applicant jurisdiction, 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 10 days of the date stamp on the application, 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 unit of local government 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 (b)** at the address indicated). **(WHAT IS BEING REFERRED TO)**

b. Failure to file a petition within 21 days constitutes a waiver of any right any unit of local government 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 90-38 of the Volusia County code which codifies the Volusia Growth Management Commission Comprehensive Plan Consistency Certification Rules as Chapter 90, Article II of the Volusia County Code.

c. The petition shall contain the following information:

i. The name, address and telephone number of the petitioning unit of local government; the commission's case number and the location of the proposed activity;

ii. A statement of how and when each petitioning unit of local government received notice of the application;

iii. A statement of how the petitioning unit of local government's substantial interests are affected by the proposed application;

iv. A statement of the material facts disputed by the petitioning unit of local government, if any;

v. A detailed statement outlining all reasons why the proposed amendment violates the criteria for evaluating compatibility in Sec. 90-37; and ~~A statement of which rules require denial of the application~~

vi. A statement of relief sought by the petitioning unit of local government, stating precisely the action the petitioning unit of local

government wants the commission to take with respect to the pending application.

d. Any person who believes the unit of local government in which they reside could be substantially affected or aggrieved by the application is directed to address that concern with the elected governing body of the unit of local government in which they reside.

(d) Five copies of each application and supporting documents shall be filed with the commission's administrative staff. At least two copies of the application and supporting documents must be a hard copy in writing.

(e) 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 whether the presumption of consistency has been refuted based on pursuant to the criteria provided in section 90-37.

(1) Review by commission.

a. Within 35 days after date stamped receipt of an application, the commission's professional staff shall examine the application; determine whether any adjacent jurisdiction or any other unit of local government ~~which may be substantially affected or aggrieved as defined in this article;~~ has commented or requested a public hearing; notify the applicant jurisdiction of any apparent errors or omissions; 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 the commission's professional staff needs additional information to review the application, a request for additional information (RAI) shall be forwarded in writing to the applicant jurisdiction in accordance with subsection (e)(1)d. below. A request for additional information shall toll the running of the time provided by this article for the commission to act on the application until the earlier of the RAI response is deemed complete, the time for the applicant jurisdiction to respond has expired or the applicant jurisdiction notifies the commission that no response will be provided. ~~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 35 days after the commission receives the application.~~

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. Any request for additional information (RAI) made by the commission's professional staff shall be subject to the following criteria:

(i) Within 30 days after date stamp receipt of each submittal of additional information by the applicant jurisdiction, the commission's professional staff shall review it and may either deem it complete or request, through a subsequent RAI, only that information needed to clarify such additional information or to answer new questions raised by or only that related to such additional information.

(ii) An applicant jurisdiction application shall have sixty (60) days to respond to a RAI. If a response is not received within said time period, the Commission's professional staff shall make a recommendation to the Commission based on the information previously provided. receive a recommendation of denial and proceed to public hearing if the applicant jurisdiction fails to provide additional information to the commission's professional staff within sixty (60) days after a written request for such information has been sent to the applicant jurisdiction. However, if the applicant jurisdiction can demonstrate that it has been actively working on collecting or developing the requested information, and that additional time will be required to complete their response to the RAI, the applicant jurisdiction may request up to two (2) thirty (30) day extensions which may be granted administratively by the chairman to submit their response. Thereafter, any further requests from the applicant jurisdiction for additional time to submit their response must be approved by the commission.

(iii) Upon the issuance of an RAI, the running of time provided by this article for the commission to act on the application shall be tolled until the RAI response is deemed complete by either the commission's professional staff in accordance with subsection (e)(1) d.(i) above or by written notice from the applicant jurisdiction that no further information will be provided and the applicant jurisdiction desires to proceed to public hearing on the application.

(iv) Each submittal of additional information by the applicant jurisdiction or notice from the applicant jurisdiction that no further information will be

provided and request to proceed to public hearing shall be made in writing and delivered by either hand delivery U.S. Mail or courier service to the VGMC coordinator's official office street address. Electronic transmissions by themselves are not sufficient and must be followed up with a hard copy transmittal delivered to the VGMC coordinator's official office street address.

(2) Adjacent jurisdictions.

a. Within ~~30~~ 21 days after the date the notice is published of receipt of an date stamp on the application by the commission, any adjacent jurisdiction may:

(i) Submit written comments regarding the merits or the sufficiency to the commission regarding the application;

(ii) Request a public hearing; or

(iii) Request, for good cause shown in writing and submitted to the commission chairman, one 21-day extension of time to comment on the application.

b. 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.

c. The adjacent jurisdiction shall participate as a party and is deemed to be substantially affected and aggrieved either upon requesting a public hearing or, if a public hearing is held by the commission as requested by another source, upon the adjacent jurisdiction filing a petition for leave to intervene pursuant to Section 90-38 to participate in the public hearing.

(3) When the application is deemed complete and a public hearing is requested ~~by either the commission's professional staff or by the applicant jurisdiction pursuant to subsection (e) of this section or by an adjacent jurisdiction or a substantially affected or aggrieved unit of local government~~, the commission shall hold a public hearing on the application within 60 days after the public hearing is requested but in no event more than 90 days from the date stamp date of receipt of the application (less plus any tolled time). At any public hearing held by the commission to determine whether the presumption of consistency has been refuted based on adoption of a comprehensive plan or amendment thereto is consistent the commission shall comply with the criteria of section 90-37.

(4) Unless a public hearing is otherwise required pursuant to this article, 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 unit of local government. If no public hearing is 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.

(5) 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 by the commission pursuant to this article.

(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 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 the date stamp receipt of any application to make comments to the DCA. The commission shall have 35 days from the date stamp on such application to make comments to the applicant local government. The commission certification shall be a prerequisite to any final public hearing on a comprehensive plan amendment by the applicant 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 date stamp receipt by the commission unless either: (i) the 90-day time period on an application has been tolled pursuant to subsection (e)(1) of this section, in which case the 90-day time period does not include that period from the date of commencement of the tolling the tolling is stopped, the application is deemed complete; or (ii) one-21-day extension is requested and granted as provided in subsection (e)(2) of this section; or (iii) if anytime on or after 60 days from the date of date stamp receipt by the commission of the application there occurs an act of God/emergency/natural disaster which disrupts normal governmental functions within any part of the county then there shall be an automatic extension of the 90-day time period for an additional 30 days. The VGMC coordinator shall provide written notice to the applicant of implementation of an automatic extension under subsection (iii) above.

Any application which is not approved, conditionally approved or denied within such time period set forth in this section, or within 15 days after conclusion of a public hearing held on the application, whichever is later, shall be deemed approved. 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 upon a request for a waiver by the applicant jurisdiction of the 90-day period referred to in this subsection for up to an additional 90-day period by the commission chairman. Any requests for continuances totaling longer than 90 days may only be granted by the full commission at a noticed hearing.

(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) For any unit of local government, other than an adjacent jurisdiction, asserting that it is a substantially affected or aggrieved party pursuant to section 90-35(c) or 90-38, as the first item of business at the public hearing pertaining to the certificate of consistency of a comprehensive plan or element or amendment thereof, the commission shall render a determination of such unit of local government's status as a party to the public hearing based upon the contents of the required petition under section 90-35(c) or 90-38, as applicable and testimony and evidence presented at the hearing. In the event party status is denied by the commission, the unit of local government denied party status shall be entitled to be heard at the public hearing as a member of the public. As used in this section, the term "substantially affected or aggrieved party" means any unit of local government that will suffer an adverse effect to an interest protected or furthered by its comprehensive plan when compared to the applicant jurisdiction's local government comprehensive plan, element or amendment thereof based on the review criteria set forth in Section 90-37, including interests related to health and safety, police and fire protection service systems, densities or intensities of development, transportation facilities, health care facilities, equipment or services, and environmental or natural resources. ~~The alleged adverse interest may be shared in common with other members of the community at large but must exceed in degree the general interest in community good shared by all persons.~~

(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, § 1, 9-3-98; Ord. No. 99-16, §§ 1--3, 5-13-99; Ord. No. 2007-05, § 2, 2-22-07)

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

(a) The applicant or ~~its~~ 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

(b) Ex parte communications with voting members of the commission concerning an application for Certification of Consistency under this article shall be governed by Volusia County Code Section 2-3, Access to county officials. For the limited purposes of application of Section 2-3, each voting member of the commission is deemed to be a "county official."

(Ord. No. 87-24, § 5, 7-23-87)

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

(a) Consistency shall be presumed ~~determined~~ and a certificate shall be issued to the applicant, upon such conditions as the commission may direct, unless a party to the hearing establishes by a preponderance of the evidence that the applicant clearly abused its discretion in determining 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.

ALTERNATIVE WORDING

(a) Consistency shall be presumed ~~determined~~ and a certificate shall be issued to the applicant, upon such conditions as the commission may direct, unless a party to the hearing establishes by substantial competent evidence if the applicant affirmatively provides the commission with reasonable assurance based upon competent, substantial evidence that the proposed plan, element, or plan amendment is inconsistent with the comprehensive plans of said unit of local government. ~~(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.~~

(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

adjacent and substantially affected comprehensive plans when all such plans are construed as a whole. 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 comprehensive plans. 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 affects intergovernmental cooperation and coordination.

(c) In determining whether a plan, element, or plan amendment adversely affects intergovernmental cooperation and coordination, the commission may, in its sole discretion, consider one or more of the following factors:

- (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 local governments and the applicant which provides for all said governments' consent to the application. If the commission determines that such an agreement exists for any given application, then it shall be rebuttably presumed that said application 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 policies in the plans. 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.

(e) ~~The commission may deny certification if a party to the hearing establishes by substantial, competent evidence that the proposed plan, element or plan amendment is inconsistent with a unit of local government's comprehensive plan based on the criteria set forth herein, where any applicant has failed to establish, by a preponderance of the evidence, its entitlement under this article to the certificate.~~

(f) Any small scale comprehensive plan amendment which meets the review by commission requirements of section 90-35(e)(1)(a) shall be deemed consistent by the commission and a certification issued within 40 days of date stamp 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) 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) 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 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 until the Department of Community Affairs issues a final determination as to the plan, element or plan amendment. 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 consistency. 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) 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). When no public hearing is held, the commission chairman shall issue by letter a certificate of plan consistency as provided in section 90-35(e). 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 unit of local government ~~substantially affected or aggrieved party~~, the commission shall determine whether the presumption of consistency has been refuted pursuant to ~~based on~~ the criteria contained in this section; and the applicant jurisdiction challenging party shall be required to establish by competent, substantial evidence that its application fails to meets the criteria specified in this section.

(Ord. No. 87-24, § 6, 7-23-87; Ord. No. 90-46, § 1, 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, § 3, 2-22-07)

Sec. 90-38. Intervention.

Units of local government 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 may petition the commission for leave to intervene. Petitions for leave to intervene must be filed in writing 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 intervening unit of local government, and an explanation of how its substantial interests may be substantially affected by the commissions determination;
- (2) If the intervening unit of local government 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 intervening unit of local government deems itself entitled; and
- (4) Other information which the intervening unit of local government contends is material and relevant.

Furthermore, the petition shall include allegations sufficient to demonstrate that the intervening unit of local government is entitled to participate in the proceeding as a matter of constitutional or statutory right, or that the substantial interests of the intervening unit of local government 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.

Sec. 90-39. Revocation of certificate.

Certificates of consistency shall be effective until revoked. Certificates shall not become a vested right in the certificate holder. 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 a local government as required by this article.

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) Any substantially affected and aggrieved unit of local government 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 unit of local government 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 six (6) months prior to the filing of the application. However, the applicant jurisdiction has the right to withdraw, without the penalty of the six (6) month waiting period, an application at any time up to fourteen (14) days before either (i) the issuance of a letter of certificate of plan consistency pursuant to section 90-37(j) or (ii) the date of the scheduled public hearing on the application pursuant to section 90-35(e). Such withdrawal of the application shall be made in writing and delivered by either hand delivery, U.S. Mail or courier service to the VGMC coordinator's official street address. Electronic transmissions by themselves are not sufficient and must be followed up with a hard copy transmittal delivered to the VGMC coordinator's official office street address.

(Ord. No. 87-24, § 11, 7-23-87)

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

Nothing in this article shall alter 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)

Sec. 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 (if such entity is in existence) shall each designate one nonvoting member to serve on the commission. The term of office of the commission members shall be three (3) 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.

Section 90-46. Rehearings.

- (a) If it is alleged that the commission has overlooked or misapprehended some facts or points of law a rehearing of any decision of the commission may be granted by the commission upon the request of any substantially affected and aggrieved unit of local government which has previously timely intervened pursuant to Sections 90-35 or 90-38. That request for rehearing shall be in writing, shall be filed with the VGMC coordinator within ten working days after rendition of the decision by the commission and shall state its grounds.
- (b) The requesting party shall serve the request by certified mail or hand delivery upon the commission chairman and the VGMC coordinator, and the applicant jurisdiction if the requesting party is other than the applicant jurisdiction.
- (c) The VGMC coordinator shall place the request for rehearing on the next commission agenda for consideration of such request for rehearing together with a notice stating the date, time and place the request for rehearing will be orally presented to the commission. Notice of the hearing on the request for rehearing shall be mailed to all substantially affected and aggrieved parties who filed for intervention pursuant to Section 90-35 and 90-38 to the original commission hearing.
- (d) If the commission grants the request, it shall state its reasons for doing so, and set a date, time and place for another public hearing upon due public notice. The commission shall also state whether the rehearing public hearing shall be a trial de novo or limited to review of the specific issues designated by the commission based on the request for rehearing.