

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

MINUTES FOR
MEETING HELD
Tuesday, April 14, 2009

Room #116
Daytona Beach City Hall
301 S. Ridgewood Avenue
Daytona Beach, FL 32114

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

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

Also in attendance: VGMC Legal Counsel Paul Chipok, VGMC Planner Barry Wilcox, and Robert Merrell of Cobb Cole.

NEW BUSINESS

Approval of minutes of the February 25, 2009 workshop

Dwight Lewis made a motion to approve the minutes of the February 25, 2009 workshop as written; seconded by James Kerr. Motion carried unanimously.

OLD BUSINESS

1) VGMC Coordinator Performance Evaluation – Mr. Brandon distributed a copy of a performance evaluation he prepared, and he reviewed the performance standards and justification utilized in the evaluation. The committee members commented favorably on Ms. Smith's performance and concurred with the evaluation presented by Mr. Brandon. With respect to an increase, Mr. Brandon stated at the last meeting the committee discussed an increase between 2% and 3%, and also discussed making it retroactive to August, 2008. Mr. Lewis commented that the county's standard of increase for last year was 2% and suggested the increase remain consistent with the county's. He also suggested it be retroactive to August, 2008 when the evaluation should have been done. There was general agreement from the committee.

Mr. Kerr made a motion to approve a 2% increase retroactive to August, 2008; seconded by Mr. Heaphy. Motion carried unanimously.

2) Continued review of Draft Amendments to the Consistency Certification Rules -- Mr. Chipok stated that since the March 25, 2009 POP meeting, he met again with the attorney group. He stated the 04/02/2009 draft before the committee today represents all recommended changes to the existing rules based on direction previously given by the committee, as well as the recommendations resulting from the recent attorney meeting. Mr. Chipok stated that he had also circulated the 04/02/2009 draft to the county and city attorneys and that the only comment he

received back was from Mr. Simpson requesting the addition of a concept, which Mr. Chipok stated was already addressed in another provision of the rules. With that, he stated he felt we are very close to reaching a consensus draft, subject to the POP committee and full commission review.

Mr. Brandon asked the committee if they had any questions relating to the 04/02/2009 draft. Mr. Griffiths raised a question regarding the ability to request a public hearing at the same time as a request for additional information. Mr. Chipok reviewed the present rules relating to when a public hearing can be called, and stated that after 30 days you lose the ability to call for a public hearing unless there is a request for a 21-day extension from an adjacent jurisdiction. He also stated if staff issues a request for additional information (RAI), they also request a public hearing at the same time. He added, however, there is standard language in the RAI which states if upon receipt of the additional information it is determined that a public hearing is not required, the commission may withdraw the request for public hearing. Mr. Griffiths asked what occurs if we do not receive the requested information before the public hearing occurs. Mr. Chipok stated the jurisdiction has the option to state they will not be providing the additional information and request we move to public hearing immediately, or if we are running into timing issues, a public hearing will be scheduled. Mr. Griffiths suggested that our goal is to have all of the information in advance of a hearing. Mr. Chipok concurred, but added that if a jurisdiction does not submit the additional information, it does not hold up the process and we still move forward with the information we do have. He added in that situation, it would likely result in a recommendation of denial since we do not have all of the necessary information to give it a positive response.

Mr. Chipok stated he and Ms. Smith are currently working on a summary of changes that includes a reference to each change, a short synopsis of what the change is for, and also referencing the source of the change. He stated a lot of the changes have a long history and there's been a lot of debate over the past year and one-half which has resulted in the direction the draft has taken. Mr. Brandon suggested this may a good tool for use by the commission.

Utilizing his outline as reference, Mr. Chipok began reviewing the 04/02/2009 draft amendments.

Section 90-31 Definitions

Mr. Chipok stated that the definition of adjacent jurisdiction has been amended for clarity. He stated this is consistent with the committee's prior discussions and the modification is to clarify that an adjacent jurisdiction means they physically touch.

He stated the modification to the definition of certification and certificate is a minor change for clarity purposes.

Mr. Chipok stated the definition of unit of local government has been added for clarity and fits into a larger theme of who can call for a public hearing. He stated the thought process is that the purpose of the VGMC is to review comprehensive plans against the neighboring jurisdiction's comprehensive plans, and that the parties to the hearings should be the units of local government

who have comprehensive plans. Mr. Chipok stated part of this change is that the Volusia County School Board is included as a unit of local government and would have the ability to call for a public hearing. He stated that the school board earlier issued a letter to the VGMC indicating they wished to continue to be a part of the VGMC process, and he commented that they are actually called out in the charter as part of the process as an ongoing member of the board. Mr. Chipok added that although the school board does not have a specific comprehensive plan of their own, they have a similar master planning process for schools and that the local jurisdictions are required to have a school element in their comprehensive plan.

Mr. Chipok stated that he recently received a letter from Michele Moen on behalf of the Volusia Soil and Water Conservation District requesting they also be considered a unit of local government for comprehensive planning purposes. Mr. Chipok stated his initial response is that they are an independent district created by statute, however, for our purposes they do not have a comprehensive plan. He stated Ms. Moen explained in her letter that the Volusia County comprehensive plan states that agriculture interests shall be preserved and given some deference under the comprehensive plan. However, Mr. Chipok stated that if the comprehensive plan amendments are of the county, the VGMC does not review amendments for internal consistency. He stated if they have an issue with a proposed amendment, their recourse would be the same as any other third party where they could submit their concerns to staff for consideration under the consistency criteria, or they could bring it to the Volusia County Council and request they take the issues of inconsistency up with the VGMC. Mr. Chipok stated they do have an avenue to address those comments, however, to give them specific standing is not warranted.

Mr. Chipok asked the committee for direction in terms of responding to Ms. Moen's letter. The committee was in agreement with Mr. Chipok's recommendation and directed him to send a response in that manner.

With respect to the definition of written or in writing, Mr. Chipok stated this has been added to provide clarity and codify that correspondence must be received in writing. He added that an email in itself is not sufficient and must be backed up with a written document to the VGMC office. Mr. Kerr asked about signed documents that are pdf'd and sent electronically to the office. Mr. Chipok responded that if it is an official document, it needs to be a hard copy delivered by either US mail or courier service so that we have the physical document in hand. Mr. Griffiths asked if it would benefit us to use the language in Chapter 162 which states "provide good service". Mr. Chipok stated that is used more in a public hearing context and not necessarily applicable for our purpose.

Section 90-32 Interpretation of article

Subsection (4) on page 2 which reads "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" has been added pursuant to discussion at the March 25, 2009 POP meeting. Mr. Chipok stated this is a true statement and something that has always been practiced.

Section 90-33 Findings, purpose and intent

Subsection (5) on page 3 has been modified to delete the terms "several" and "create incentives" for clarity pursuant to prior discussions of the committee.

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

On page 5, under subsection(c), a completeness review has been added to codify what is presently practiced when an application is received. Mr. Chipok reiterated that the completeness review is an objective review of the application to make sure the critical information is submitted, and that it is not a substantive review of the quality of the information supplied. Additionally, he stated that clarification has been added to reflect the date stamps is considered the receipt date, since an application is not date stamped until after the completeness review.

Mr. Kerr suggested adding a comma following the word "provided" in the sentence which begins on line 12 of subsection (c), "Once all application information is provided, administrative staff shall...". The committee concurred.

Beginning on page 6, subsection (c)(4), Mr. Chipok stated these changes amend the newspaper notice requirements to provide that only a unit of local government may request a public hearing before the VGMC. Also, he stated that subsection (c)(4)d. has been added to provide that a 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 their unit of local government. Mr. Chipok stated he suspects that this recommendation will likely be the flashpoint of discussion at our public hearing in that it would condense the process so only units of local governments are the parties to the proceedings before the VGMC. The change would allow for staff, adjacent jurisdictions and any other unit of local government to call for a public hearing. He stated the citizens are not removed from the process, but rather would have to address their issues through their local government to take action on their behalf. Additionally, Mr. Chipok stated if a public hearing is held nothing precludes members of the public from speaking at the hearing.

Mr. Chipok asked if the committee was comfortable with the changes to subsection (c)(4) and the committee concurred. Mr. Chipok stated he would expect this matter to garner considerable discussion. He added that as legal counsel to the commission, he feels this is a reasonable approach to address the situation because the true statement is that the VGMC compares comprehensive plans of the adjacent jurisdictions to the applicant's comprehensive plan amendment.

On page 7, subsection (d) has been modified to clarify the number of printed copies of the application that are required at submission. Mr. Chipok stated this has been discussed at great length and both the VGMC office and planning staff need a printed copy, while other copies can be submitted on disk. This will cut out a considerable amount of paper that has to be submitted by the applicant jurisdiction.

Discussion ensued as to whether or not this should be further clarified to state that one of the two required written copies should be the original. The committee concurred to modify subsection (d) on page 7 to read: "The original application and five copies of each application and supporting documents shall be filed with the commission's administrative staff. The original application and at least one copy of the application and supporting documents must be a hard copy in writing."

Also on page 7, subsection (e), clarifies the application has a presumption of consistency that must be refuted at public hearing. Mr. Chipok stated this is something that VCOG very strenuously wants included. He stated this was not really addressed in our original set of rules, however, following his discussions with the attorneys and also after speaking further with Mr. Wilcox, he stated that as a practical matter, when an application comes in we presume it is consistent and compare it to our criteria. Mr. Chipok stated if it meets the criteria we move it forward and that staff doesn't look for ways to find it inconsistent. He stated that inherently there was a presumption of consistency and he is comfortable adding this language.

In subsection (e)(1)a. on page 7, the time frame for staff review has been extended from 30 to 35 days. Mr. Chipok stated that our present rules require staff to issue an RAI and request for public hearing within the same 30 day period that adjacent jurisdictions have to comment. As a result, staff is often forced to issue an RAI on the same day that comments are received from an adjacent jurisdiction. He stated that allowing an additional five days makes practical sense and ease the administrative burden on the planning staff.

This subsection also clarifies that only a unit of local government can request a public hearing which goes along with the theme previously discussed, and also clarifies the RAI process.

Pages 8 & 9, section (e)(1)d., Mr. Chipok stated that standards have been created for the RAI process based on extensive prior discussions with the committee.

The committee discussed the wording in section e.(i) on page 8, and concurred to delete the words "or only that related to" on line 5. There were no further comments relating to section (e)(1).

On page 9, subsection (e)(2)a. clarifies that the clock starts with the date stamp of the application. Subsection (e)(2)c. adds a provision that the adjacent jurisdiction is deemed to be a substantially affected or aggrieved party in a public hearing. Mr. Chipok stated the standard for affected or aggrieved is based on case law which heavily weighs on proximity to the issue being discussion. In conversations with the attorneys, Mr. Chipok stated they could not foresee any circumstance where an adjacent jurisdiction wouldn't be granted standing and rather than going through the process at hearing it made sense to administratively put the provision in the rules.

Also on page 9, subsection (e)(3), Mr. Chipok stated there have been changes and additions to clarify the language related to the timing of the public hearing, the unit of local government's right to request a public hearing, and the presumption that the application is consistent.

On page 10, subsection(f), Mr. Chipok stated the change clarifies the timing on VGMC comments to FDCA and also the timing on professional staff comments to the applicant (35 days) which was previously established in another subsection. He added that if professional staff wishes to comment on the application to DCA, we must follow the 30 day timeframe established under Chapter 163.

With respect to subsection (g) on pages 10 & 11, Mr. Chipok stated the changes clarify the application review timing, adds an automatic tolling provision for force majeure, emergency or natural disaster, and also adds a provision that one 90 day extension to the 90 day rule may be administratively granted by the chairman with any longer extensions requiring commission approval at a noticed hearing.

On page 11, subsection (i), Mr. Chipok stated this amendment adds standards and procedures for determining party status as a substantially affected or aggrieved party. He stated the language is based on case law and is also representative of the process the commission has followed in the past. Mr. Chipok also stated it is limited to units of local government requesting party status, adding that party status would give them the right to appeal to circuit court if they did not like the outcome of a particular matter.

Section 90-36 on page 12 adds standards for ex parte communications consistent with Volusia County Code Section 2-3. Mr. Chipok stated the judge in the Partin case raised the issue that the commission does not have rules relating to ex parte communications and stated even if the rules addressed this issue, the judge felt that ex parte communications are a violation of due process. Mr. Chipok stated the legislature has addressed this issue and created a standard by which ex parte communications will occur if they are allowed.

Mr. Chipok stated he had received communication from Chair Spinney that she is not in favor of ex parte communications. He stated when this comes before the full commission, if it is decided that ex parte communications shall be allowed, the proposed standard will cover the commission. However, if the commission decides not to allow ex parte communications, he stated we still need a definitive statement in the procedures indicating they are not allowed.

Discussion ensued concerning members speaking with their appointing jurisdictions on matters. Mr. Chipok stated on a strict reading, if a commission member communicates with a party outside of the scope of a public hearing on a subject matter which is going to come before the VGMC, it is considered an ex parte communication.

Section 90-37, subsection (a) on page 12 clarifies that an application comes with a presumption of consistency and also clarifies for the members that the standard of review at a public hearing is based on a preponderance of competent, substantial evidence presented at the hearing.

Subsection (c) starting on page 12, Mr. Chipok stated this clarifies the review factors and mitigation measures. He stated this section has historically been referred to as the 6 criteria, however, in looking at it, there are really 2 review criteria and 4 mitigation measures. Mr. Chipok stated that the draft has not changed any of the original 6 criteria, but rather rearranged

them. He stated that the change includes defining infrastructure, which are those items subject to concurrency, and combined them as part of the first criteria item. Criteria #2 is the same as our current criteria #4. Mr. Chipok stated those two items would be the review criteria, and a subsection (3) has been added to address the mitigation measures which incorporates language currently included in criteria #5 and #6 of the current procedures. He stated it also deletes the term "substantially affected parties" from the provision relating to existing agreements. Overall, Mr. Chipok stated this section has been modified to reflect that the original 6 criteria are now the 2 review criteria and 4 mitigation measures.

Subsection (d) on page 13 has been modified to clarify that the VGMC does not review an application for internal consistency with an applicant's own comprehensive plan. Mr. Chipok stated that VCOG had asked for that change, adding that it is a true statement and it is not the charge of the VGMC to review applications for internal consistency.

Subsection (e) also on page 13 clarifies that an application comes in with a presumption of consistency. Mr. Chipok stated this request was also requested by VCOG, adding that inherently the presumption has always been there, and with this change it would now be stated.

Subsection (f) on page 14 clarifies the reference to the date stamp.

Subsection (g) also on page 14 deletes potentially inconsistent language in the provision relating to waiver of rights.

Subsection (i), page 14, clarifies that the period for VGMC to reopen a decision due to additional information ends upon FDCA final determination on an application. Mr. Chipok commented he felt this was consistent, and stated that if we discover we received inaccurate or misleading information in which we based our analysis on, then we can go back and request a public hearing. He added, however, that window of opportunity terminates when DCA has issued its final determination on that application. This subsection also corrects the reference to 'certificate of completeness' to properly read 'certificate of consistency'.

Subsection (j), page 15, clarifies that the letter certification, which means without a public hearing, is an administrative act. Mr. Chipok stated those changes are important because by declaring it an administrative act, if someone wants to appeal the decision, there is case law that says when it is an administrative act without a public hearing there is a process to appeal it but the standard is different and we are not in a petition for writ in that situation.

This section also clarifies that an application has a presumption of consistency which must be refuted at a public hearing. Mr. Chipok stated that is consistent with the theme the commission has used all along.

Section 90-38 on pages 15 & 16 clarifies that only a unit of local government may intervene in a hearing as a party, and also clarifies that a request to intervene must be in writing.

Section 90-40, subsection (a) on pages 16 & 17, clarifies that only a unit of local government which is a party to the VGMC hearing may appeal the decision.

Section 90-42 on page 17 amends the waiting period for reapplication for certificate to six months and also adds a provision for withdrawal of an application without penalty.

Section 90-45 on pages 18 & 19 is a new codification addressing membership. Mr. Chipok stated the provision states that commission members shall not be elected officials or dual-office holders which is consistent to the attorney general opinion (2008-61) obtained earlier, it sets the member term limits at 3 years, and states the appointing governing body has the right to remove and replace its member with or without cause. Mr. Chipok stated this issue has come up in the past, including the DeBary matter. He stated that our rules do not specifically address removal, other than for cause. In looking at case law, Mr. Chipok stated it says the rules for appointment will control in those situations. The way we currently have it written, he stated members can only be removed for cause, unless the appointing jurisdiction has something in its rules indicating the member serves at the pleasure of the jurisdiction and can be removed without cause. Mr. Chipok stated in the DeBary matter where they wanted to remove one of their members, the city did not have such a provision in their rules and, therefore, VGMC responded that their member had what was akin to a property right in his term, and so once appointed cannot be removed except consistent with what applicable rules there are.

Mr. Chipok stated this proposed codification basically says that the members are those of their appointing jurisdiction, the VGMC is not going to intervene with their personal business, and the jurisdictions have the right to appoint and remove with or without cause. He also clarified that adding this provision does not remove the commission's ability to remove a member for cause, such as malfeasance, misfeasance or lack of attendance as outlined in the rules of procedure.

Section 90-46 is a new section to provide standards and procedures for consideration of rehearings. Mr. Chipok stated this has been discussed previously at great length and stems from the judge's findings in the Partin matter.

This concluded the overview of the proposed draft amendments.

Rob Merrell of Cobb Cole and chair of the VCARD committee that was formed to monitor the VGMC rules amendment process asked to address the committee. Mr. Merrell stated he had distributed the 04/02/2009 draft to the VCARD members and although he had not spoken with them, he felt he could safely state that this draft represents a good compromise amongst the various parties that have been involved in the process and commended the committee on their efforts.

Mr. Merrell asked how the proposed rules will affect pending VGMC applications once a change in rules is adopted. From a timeline standpoint, Mr. Chipok stated the draft rules are expected to go before the full VGMC at the April meeting for discussion. Following the April meeting, Mr. Chipok stated he would anticipate the draft will be widely distributed and a public hearing would be held at the May meeting to take further public input. Depending upon the outcome of

the May public hearing, he would anticipate a final draft to be presented to the VGMC, along with a resolution requesting it be forwarded to the Volusia County Council for adoption, at the June meeting of the VGMC. Thereafter, it would go to the Volusia County Council for action which may occur in the July timeframe, depending on their schedule.

Mr. Merrell commented that he understands the County Council would be anxious to schedule the VGMC resolution for consideration rather quickly, and suggested that the VGMC consider having the resolution available for VGMC consideration and action at the May meeting, concurrent with the public hearing.

Mr. Merrell asked if there would be a provision in the resolution relating to applications already pending before the VGMC. Mr. Chipok stated that issue has not yet been addressed. General discussion ensued relating to pending applications and how a change in rules would affect their process. Mr. Chipok stated he will give this issue further thought and look at addressing pipeline applications in the resolution.

Dwight Lewis made a motion to accept the changes on page 5, 7 & 8 of the draft amendments as earlier discussed; seconded by John Heaphy. Motion carried unanimously.

John Heaphy made a motion for the POP committee to forward the amended draft rules amendments as a recommendation to the full commission for presentation at the April VGMC meeting; seconded by James Kerr. Motion carried unanimously.

Mr. Kerr commented that the committee and/or staff have worked on these amendments for approximately 18 months with the anticipation that the proposed amendments will work better. He asked Mr. Chipok how he sees the draft amendments benefiting not only the VGMC, but the local governments as well. Mr. Chipok responded that other than the issue of who can call a public hearing, the majority of the changes are a codification to the procedures and policies used by the commission over the years. He added that the bottom line is the VGMC has a charge under the charter to review the consistency of a comprehensive plan amendment against the neighbors comprehensive plans. Mr. Chipok stated that the draft stays true to that charge and hopefully it codifies and streamlines the process for how we go about doing that.

Mr. Kerr stated for the record that although there have been a lot of people involved in this process, Mr. Chipok has done a great job pulling all of this together. The committee and other members of staff concurred.

Ms. Smith stated that a POP meeting had been scheduled for 30 minutes prior to the April 22, 2009 regular meeting in case there was any further discussion necessary by the committee. She asked if the committee wished to keep the meeting scheduled or if it should be cancelled. Following discussion, the committee concurred to cancel the meeting.

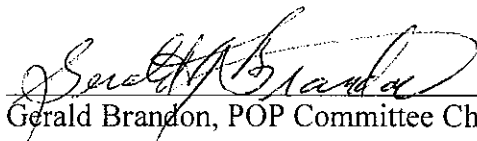
Mr. Chipok asked if the committee wanted to have a resolution drafted for consideration by the full commission at the May public hearing. The committee concurred to have a resolution drafted for the full commission to consider at the May public hearing, with the intent that if there

are only minor changes following public input the commission could take action on the resolution, but if there were changes that would necessitate a redraft requiring further POP review, the resolution would then be rolled over for consideration by the commission at the June meeting.

Mr. Brandon again thanked everyone for their time and effort.

ADJOURNMENT

The meeting was adjourned at 11:48 a.m.



Gerald Brandon, POP Committee Chairman

VGMC EVALUATION

EMPLOYEE

Merry C. Smith

DATE

14 April 2009

PERFORMANCE STANDARDS

Outstanding Very Good Below Average Unsatisfactory

1. Quality of Work Consider the quality of work and the promptness with which it is completed. (Outstanding)
2. Working Relationships Consider the willingness to produce quality work with and to help others, the ability to accept constructive criticism. (Outstanding)
3. Attendance Consider attendance records and punctuality. (Outstanding)
4. Productivity Consider the ability to produce quantity of acceptable work. (Outstanding)
5. Reliability and Dependability Consider the amount of supervision required, job performance regarding timely completion and follow up. (Outstanding)
6. Initiative Consider the extent to which new work assignments and additional duties are sought out. (Outstanding)
7. Adherence to Policies Follow policies and procedures. (Outstanding)
8. Job Knowledge Consider the knowledge of present job, And the equipment necessary to perform job functions. (Outstanding)
9. Creativity Consider the ability to offer suggestions and propose new and creative ideas and solutions. (Outstanding)

Merry C. Smith's performance as the VGMC Coordinator was exceptional in all respects. Her initiative and knowledge greatly assisted in the development of the VGMC's "self appraisal" process. She consistently displays a depth of perception and knowledge far beyond that is expected for this position.

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)~~contact person at the address indicated to whom comments should be directed at the applicant jurisdiction).

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-ef~~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 detailed statement ~~of which rules require denial of the application~~ outlining the reasons why the proposed amendment violates the criteria for evaluating compatibility in Sec. 90-37; 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 whether the presumption of consistency has been refuted, and, if so, determine consistency pursuant to the criteria provided in section 90-37.

(1) Review by commission.

a. Within ~~30~~35 days after ~~receipt~~ the date stamp of an application, the commission's professional staff shall examine the application; determine whether any adjacent jurisdiction or any other ~~person, including a substantially affected or aggrieved party as defined in this article,~~ unit of local government 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 applicant jurisdiction shall have sixty (60) days to respond to an 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. 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~~ the commission shall determine whether the presumption of consistency has been refuted, and, if so, determine whether the adoption of a comprehensive plan or amendment thereto is or can be made to be consistent through conditions. In making such determinations the commission shall comply with and utilize 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~~date stamp 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 tolling is stopped; or (ii) one-21-day extension is requested and granted as provided in this sectionsubsection (e)(2) of this section; or (iii) if anytime on or after 60 days from the date of date stamp by the commission of the application there occurs a force majeure event/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 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(c).

(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~~its 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~~presumed 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~~unless by a preponderance of the competent, substantial evidence established at the hearing that the proposed plan, element, or plan amendment is ~~consistent~~inconsistent with ~~the another jurisdiction's 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~~plan(s).

(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;~~ Such infrastructure shall include, but not be limited to, sanitary sewer, solid waste, drainage, potable water, parks and recreation, schools and transportation facilities.

~~(4)~~ (2) 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)~~(3) In the event significant adverse impacts as referenced in subsections (c)(1) and (c)(2) above are caused or may reasonably be anticipated to be caused then one or more of the following mitigating measures may be considered as applicable on a case by case basis:

a. The extent to which the plan, element, or plan amendment provides for areawide or central utility service solutions;

b. The extent to which the plan, element, or plan amendment provides for areawide or regional transportation solutions;

c. 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)~~ d. 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~~ the presumption of consistency has been refuted.

(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~~date stamp 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 until the Department of Community Affairs issues a final determination as to the plan, element of a plan, 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 ~~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, as an administrative official, shall act in an executive capacity and~~ 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~~unit of local government, the commission shall determine whether the presumption of consistency ~~pursuant to~~ has been refuted 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~~the application ~~meets~~fails to meet 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 is either the applicant jurisdiction, an adjacent jurisdiction which has requested a public hearing pursuant to section 90-35(e)(2)(a)(ii), or 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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Input:	
Document 1	interwovenSite://orldms01/Orlando1/639201/1
Document 2	interwovenSite://orldms01/Orlando1/2385649/2
Rendering set	standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	132
Deletions	84
Moved from	4
Moved to	4
Style change	0
Format changed	0
Total changes	224