Volusia Growth Management Commission

MEETING MINUTES FOR
REGULAR MEETING HELD
Wednesday, April 22, 2009

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

MEMBERS PRESENT		REPRESENTING
Joan Spinney, Chair		South Daytona
Gerald Brandon, Vice Chairman		Ormond Beach
Steve Katz, Secretary		DeLand
Richard Walton		Daytona Beach
Terry Griffiths	Excused	Daytona Beach Shores
Danny Allen		DeBary
Sandy Lou Gallagher		Deltona
Sandy Jones		Edgewater
John Heaphy		Holly Hill
Roger Sonnenfeld		Lake Helen
Rick Tresher		New Smyrna Beach
James Kerr		Orange City
Patricia Heller-Jackson	Excused	Ponce Inlet
Bobby Ball		Port Orange
Sandra Walters	Excused	Volusia County
Rachel Sieg		Volusia County
Dwight Lewis		Volusia County
John Nelson		Volusia County
Kenneth Kuhar		Volusia County

NON-VOTING MEMBERS		REPRESENTING
Sara Lee Morrissey	(not present)	Volusia Co. School Board
Peter Brown	(not present)	SJRWMD

OTHERS PRESENT

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

CALL TO ORDER

VGMC Chair Joan Spinney called the meeting to order at 7:03 p.m.

ROLL CALL

Roll call was taken and it was determined there was a quorum present. Ms. Smith noted that Saralee Morrissey could not be present at the meeting, however, Helen LaValley from the Volusia County School Board was present in the audience.

Chair Spinney announced the resignation of Billy Carter from the Town of Pierson, adding that we are awaiting a new appointment from Pierson.

APPROVAL OF MINUTES

There were no minutes presented for approval.

PUBLIC HEARING

There were no scheduled public hearings.

REMARKS OF INTERESTED CITIZENS

None

REPORTS OF OFFICERS

None

REPORTS FROM CONSULTANTS

Legal Update: Mr. Chipok provided an update on the Partin matter. He indicated there was a stipulated settlement and the case was dismissed by the 5th DCA on April 14, 2009. Mr. Chipok stated that the stipulation specifically states that the conditions of VGMC Resolution #2008-02 are incorporated by reference into the stipulated settlement.

Planning Update: There were no questions for Mr. Wilcox relating to any pending cases.

REPORTS OF COMMITTEES

POP Committee: POP Committee Chairman Gerald Brandon stated the POP Committee has evaluated Merry Smith's performance as coordinator for the commission. He stated the committee unanimously agreed that her performance has been outstanding and are

recommending a 2% increase retroactive to August, 2008 when the performance review should have been completed. He stated the 2% increase is consistent with what the county has in place.

Mr. Katz asked if the increase would impact the budget. Mr. Brandon stated there should be sufficient funds in the current budget to cover the increase.

The recommendation from the POP committee serves as a motion and second, which carried unanimously by the commission.

Budget Committee: Budget Committee Chairman Steve Katz stated at the last meeting the commission voted on the proposed 2009-10 budget and while it passed by a simple majority, the charter requires a 2/3 vote of approval. As a result, the budget committee met again prior to the regular meeting to revisit what was recommended at the last meeting. Mr. Katz stated the committee reconsidered the discussions relating to the reduction of member travel reimbursements to $25/meeting, and are currently recommending it be reinstated to $35/meeting.

Additionally, Mr. Katz stated Ms. Smith had commented to the committee concerning the recommendation to reduce the postage and legal ad budgets. He stated that both the cost of postage and legal ads will be increasing, and also pointed out that we not only advertise the public hearings, but we are also required to advertise every application that is received. As a result, the committee is also recommending the postage budget be reinstated to $2,500 and legal ads be reinstated to $25,000.

Mr. Katz also pointed out that we now have a separate line item for the $25,000 litigation contingency.

With the changes noted to the member travel reimbursements, postage and legal ad budgets, Mr. Katz stated the motion and second by the budget committee is to approve a total 2009-10 budget of $349,617.

Commissioner Allen asked if the proposed POP recommendations relating to the rules amendments are approved, couldn't the local jurisdictions agree that there would be no advertising of the applications and that the commission would contact the local governments without the cost of having to advertise. Mr. Chipok stated under the proposed rules, the thought process is that the applications would still be published in order to provide notice to the general population of the county, with the concept that if an individual feels an amendment proposed by a jurisdiction is inconsistent with the comprehensive plan of their jurisdiction, the individual could raise that issue with their local government officials and request they take it up with the VGMC on their behalf. He added that in an abundance of caution to provide as much notice as possible, the newspaper notice provides the broadest dissemination of information.

The motion to approve the 2009-10 proposed budget of $349,617 carried unanimously.

UNFINISHED BUSINESS

None

NEW BUSINESS

1) Presentation of Draft Amendments to the Consistency Certification Rules:

POP Chairman Gerald Brandon commended the committee and staff for all of the work which has gone into this process. He stated the draft before the commission tonight is a result of the efforts put forth and the committee is looking for a consensus from the commission to move forward. Mr. Brandon stated the commission would not be voting on the entire draft tonight, as a public hearing still needs to be scheduled.

Mr. Chipok addressed the commission relating to the draft amendments. He stated that the April 14, 2009 draft before the commission tonight has been reviewed and commented on by the POP committee. Mr. Chipok stated he refers to this as a consensus draft, following all of the work that has been put into it, including meetings with representatives of VCOG, the county and city attorneys and VCARD. He also pointed out that Scott Simpson, an attorney who represents several cities and worked on the VCOG committee, as well as Rob Merrell of Cobb Cole who prepared the comments on behalf of VCARD, are in the audience.

Mr. Chipok began reviewing the draft amendments in outline format.

Page 1, Section 90-31 Definitions, Mr. Chipok stated the definitions for adjacent jurisdiction and certification and certificate have been amended for clarity.

Page 2, Mr. Chipok stated a definition has been added to define a unit of local government, which includes the Volusia County School Board as a unit of local government. He added that the POP Committee has discussed this and feels very strongly that the school board is an important part of the VGMC process.

Also on page 2, Mr. Chipok stated a definition for written or in writing has been added to clarify that in order to be an official document, it must be delivered to the VGMC office in a written format.

Section 90-32 Interpretation of article on page 2, Mr. Chipok stated a reference has been added in subsection (4) that the rules are to be interpreted consistent with the Volusia County Charter and Florida Statutes 163. He stated this is inherently what the commission has done all along, however, now it would be specifically stated in the rules.

Section 90-33 Findings purpose and intent, Mr. Chipok stated subsection (5) on page 3 has been amended for clarity.

Section 90-35 Application for certificate; procedure for issuance; public hearing requirements – On page 5, subsection (c), Mr. Chipok stated the introductory paragraph has been amended to include a completeness review to the application which is presently performed by the coordinator. Additionally, he stated this subsection has been amended to clarify that the date stamp is the receipt date for which the 90 days begins.

Commissioner Sieg stated that this subsection also indicates that a copy of the notice of application is sent to all members of the commission, however, she doesn't recall ever receiving the notices. Mr. Chipok stated it is available for the individual commission members, however, years ago the commission determined that it was not necessary to send them out to all members. There was discussion suggesting that the requirement stating that the members of the commission shall receive notice be deleted from the rules.

James Kerr made a motion to remove 'to all members of the commission,' from Section 90-35(c); seconded by Rachel Sieg. Motion carried unanimously.

Going back to page 2, definition of written or in writing, Commissioner Allen suggested that language be added requiring the documentation be sent certified mail or another form of delivery which requires a signature documenting when it is received. Mr. Chipok commented that it would impose added cost to the jurisdictions and general citizenry of the county, adding that US Mail is a generally accepted practice for delivery. He also stated that the option is available for jurisdictions to use certified or express mail, however, to require that would create a burden on the jurisdictions. Commissioner Brandon commented that even if an application is delivered and signed for via certified mail, the application is reviewed for completeness and if something is missing, the coordinator immediately contacts the applicant jurisdiction and the date stamp does not occur until the additional information is received.

On page 6 & 7, subsection (c)(4), Mr. Chipok stated this section amends the newspaper notice requirements to provide that only a unit of local government may request a public hearing before the VGMC. Mr. Chipok stated this has been a recurring theme that has come out of the committee meetings and various local jurisdictions. He stated the concept is that going back to the charter, the charge of the VGMC is to compare the applicant jurisdiction's proposed comprehensive plan amendment with the adjacent jurisdiction's and other comprehensive plans within Volusia County. Mr. Chipok stated that the municipalities and the county have comprehensive plans, and not individual citizens. Therefore, the proper parties to the VGMC process should be other local governments. Mr. Chipok added that members of the public would not lose their ability to speak on a matter at a public hearing, however, the ability to request a public hearing would be limited to the units of local government.

Mr. Chipok stated that subsection (c)(4)d. has been added to state specifically that if an individual thinks there is an issue of intergovernmental coordination, the proper recourse would be to go to their elected officials to advise they believe their comprehensive plan is being compromised or there are issues of inconsistency with the proposed amendment from another jurisdiction, and request their jurisdiction to take it up with the VGMC.

Mr. Chipok then discussed standing and party status. He stated under our present rules, if a substantially affected party is determined under the Renard standard to be a proper party to our proceeding then they are granted party status. Mr. Chipok explained that being granted party status means that 1) they can participate in the hearing, which they can as a member of the public regardless; and 2) they would have the right to appeal the VGMC decision under our rules to circuit court. He stated the proposed rules amendments change this so that the only parties are the local jurisdictions. Mr. Chipok further stated that if a member of the public does not like our decision, they still could appeal it to circuit court. He stated that we cannot create a rule under Volusia County authority that is inconsistent with the court rules. Mr. Chipok added that as long as they want to file in circuit court and they file in the proper manner and in the proper time, they have the ability to appeal the VGMC decision to the circuit court. Whether or not the individual has proper standing would determined on a case-by-case basis and that would be an issue which would be raised in any response to a petition that was filed by a citizen.

Overall, Mr. Chipok stated by changing the rules to remove the citizen standing in our proceedings does not take the citizens rights away to appeal our decisions to circuit court.

Commissioner Tresher commented relating to the Daytona Beach Shores Lady Godiva matter indicating that the residents petitioned the VGMC for relief because there was a JPA between the city and the county and they were not given notice. He stated in theory the residents are represented by the county, however, they were not represented by the county on this issue. Commissioner Tresher stated the residents ultimately got relief through Judge Parsons and the 5th DCA and if the proposed rules amendments are adopted, this process would be completely eliminated.

Mr. Chipok responded in disagreement, stating that the function of the VGMC has always been intergovernmental coordination between the jurisdictions. Additionally, he stated if a citizen has an issue to say that there is not intergovernmental coordination, they have the right to appeal the VGMC decision.

Mr. Tresher stated the proposed change would eliminate a citizen's right to request a public hearing before the VGMC, which he stated is something they've had the ability to do since the existence of the commission. He also commented that the addition of the language in 90-35(c)(4)d. on page 7 which addresses the citizens right for redress is misleading as they would be limited by the 21-day timeframe from the date of publication to take the matter up with their local jurisdiction and then have their jurisdiction raise the issues with the VGMC. Mr. Tresher added that the 21 days could pass before they could schedule to appear before their local government, and he stated a more reasonable timeframe would be 45-60 days.

Mr. Chipok responded that the VGMC is trying to work within the 120 day timeframe established by Chapter 163. He stated when an application comes into the VGMC, it is generally submitted concurrent with the jurisdiction's transmission to DCA. Under Chapter 163, DCA has 60 days to issue the ORC report and the local government then has 60 days to adopt, adopt with

changes, or not adopt, and then submit back to DCA so they can prepare a notice of intent. Our timeframe is set up so that a certificate of consistency can be issued within the same 120 day time period.

Mr. Tresher commented that it is a heavy burden on the public to accomplish what is needed during a 21-day timeframe as proposed. Mr. Chipok commented that most local governments have an item on their agenda for members of the public to speak on any issue before the commission, and stated that is where he would anticipate the citizenry should take these issues. Mr. Wilcox commented that currently, if a local jurisdiction wishes to comment or request additional information on an application, it is typically an administrative action by their planning staff. Therefore, he stated if a member of the public has a concern with intergovernmental coordination issues on an application, they could contact their local planning staff and they would not necessarily be required to go to before their commission.

Commissioner Allen commented that when a comprehensive plan amendment is proposed, there are generally two public hearings before the local government, and also that the citizens can challenge it at the DCA level. Mr. Chipok stated our rules are written for the limited focus of looking at intergovernmental coordination and consistency and that VGMC is a small part of the overall 163 process. He stated if a citizen has a concern with a comprehensive plan amendment on its face and not that it necessarily conflicts with a neighboring comprehensive plan, that is a local government issue, not a VGMC issue, and they would need to take it up with their local government or DCA. Mr. Chipok stated there are many other avenues for citizens and those are not affected by the proposed rules amendments.

Commissioner Sieg commented that she strongly opposes the proposed change to citizen standing. She stated if a member of the public feels there is conflict and their local jurisdiction does not necessarily agree there is a conflict, the proposed rules amendments would eliminate their ability to have standing before the VGMC. Ms. Sieg stated that the people voted to keep the VGMC because they knew they could come before the commission in basically their last stand, and would have a chance to be heard by the commission and be granted party status. She stated the proposed change would not allow them to do so and she is opposed to the change.

Chair Spinney commented that the commission has never been charged with the authority of being the last chance for citizens. Ms. Sieg stated she has worked for the county and also is a resident of the county, and a member of the public may not necessarily agree with county staff's position that there is no conflict. She added they should have the ability to come before the commission and be granted party status. Commissioner Brandon stated they will still have the ability to come before the commission and speak at a public hearing, and stated the proposed changes are intended to follow the guidelines of the charter.

Mr. Chipok added that the comprehensive plan amendments come to us from the jurisdictions, however, in most map amendments, the jurisdiction is not the property owner. Through various committee meetings, Mr. Chipok stated there was considerable discussion as to whether the property owner should be able to have party status, and the consensus reached was that the

applications come to VGMC from the local governments and our review is limited to determining consistency with neighboring jurisdictions comprehensive plans. As a result, the proposed amendments do not provide standing for the general citizenry or the property owner of a subject amendment. Mr. Chipok reiterated that it does not prohibit anyone from appealing a VGMC decision to the circuit court, either with or without a public hearing.

Commissioner Walton commented if a citizen does not agree with their planning staff findings, the appropriate recourse is with their elected officials.

With respect to public notice requirements, Commissioner Katz asked if we have the authority within the body of the VGMC application to require the jurisdictions to describe what they've done in terms of public notice prior to the application coming to VGMC. Mr. Chipok stated that the notice provisions for adoption of a comprehensive plan amendment are clearly laid out in Chapter 163, including specific provisions on how it has to be advertised before a local government can take action. Mr. Chipok stated on large scale amendments, there are minimally two public hearings held prior to adoption. He went on to discuss the various steps involved at the local government level in the comprehensive plan process from the time of proposal to the time of adoption, including local planning board hearings. Mr. Chipok stated that all of the hearings he mentioned require notice, adding that the proposed amendments are well noticed by the time the application reaches the VGMC.

Mr. Katz stated that there have been occasions at public hearings where members of the public have stated they did not receive notice at the local government level, and he was suggesting if the applicant jurisdiction provides information with the application on what notice was provided, the information would be available to the members at the public hearing if an issue of notice is raised.

Chair Spinney commented that the VGMC advertised notice is not the first notice of a proposed amendment and that prior to our notice giving 21 days to petition for public hearing, people have had a lot of notice and time to raise issues with the local governments. Mr. Chipok stated that before a large scale application comes to the VGMC, it will have already gone through the local planning agency and the local elected body, both of which require noticed public hearings.

Ms. Sieg stated as a point of information that adjacent property owners of comprehensive plan amendments in the county are not given direct notice, nor is the property posted, and they have to rely on seeing the legal ad in the paper or having the newspaper write a story on the proposed amendment in order to be aware of the proposed amendment. Mr. Walton commented that the ads contain a map of the subject property. Commissioner Kerr stated that the VGMC is not the last body to see the amendment, and reiterated Mr. Chipok's earlier statement that prior to the VGMC receiving a large scale amendment application, it would already have gone through the local planning agency and the local elected body, both of which are noticed in ¼ page ads. Additionally, after an amendment is certified by VGMC, it goes back to the local elected body for adoption at a noticed public hearing.

Commissioner Gallagher commented in opposition of taking away the right for a member of the public to have standing before the VGMC. She stated that the VGMC belongs to everyone and not the elected officials. Additionally, she stated the voters reaffirmed the VGMC in 2006 and they should not be cut out of the process.

Mr. Brandon stated that the VGMC needs to follow the charter and the draft before them was based on input from a variety of sources. Ms. Gallagher stated members of the public have had standing for 23 years. Chair Spinney commented that the original charter is what the VGMC is still working with, and the fact that we occasionally granted party status to individuals in error does not make it incumbent upon the commission to put it into our standard operating procedures and codify it against the charter. Mr. Tresher stated he does not agree that standing was previously given in error.

Commissioner Sonnenfeld stated that charter does not specifically address standing and this issue is based on an interpretation of the charter. Mr. Chipok stated that the effective language of the charter is that the commission shall have the power and duty to determine the consistency of municipalities' and county's comprehensive plans and any amendments thereto with each other. Additionally, it states rules of procedure for the commission's consistency review and for the manner in which this section is to be enforced and implemented and amendments thereto shall be proposed by the commission and shall not become effective until adopted by ordinance approved by two-thirds vote of the entire membership of the County Council.

Mr. Sonnenfeld stated he does not see where the charter excludes the public. Chair Spinney stated it is units of government and it does not stated members of the public. She further stated the charter does not give the VGMC a right to be any type of zoning board or the last word for the public, adding the commission was designed to address consistency between units of government.

Mr. Sonnefeld concurred with Mr. Tresher's comments and stated if the public was aware that the interpretation of the ordinance was going to change to exclude them, the meeting room would be full with members of the public. Mr. Chipok stated that tonight's review is for commission discussion and following the results of this discussion, the intent is to widely distribute a draft and schedule a public hearing at the May meeting.

Commissioner Lewis commented that the charter is very clear as to the authority of the VGMC, which is to look at consistency. He further stated that the rules codification and clarification enables the commission to operate and function as it was intended. Mr. Lewis stated that the commission was never intended to be a zoning board. He added that it has been clearly spelled out that the public has many opportunities to present their issues before their local governments, DCA, etc., and that the VGMC is not the board to do that. Mr. Lewis emphasized that this commission is to look at issues of consistency and not to operate beyond that. Mr. Sonnenfeld agreed with Mr. Lewis' statement, but added that the public should have a voice and if they see something inconsistent they should be able to have standing. Mr. Lewis responded that he doesn't believe the public should be cut out of anything and they should have the right to speak

for or against a comprehensive plan. He added, however, this is not the commission to do that, it is done at the county and city commission level and if they don't like that result, they have avenues through DCA, circuit court etc. Mr. Lewis stated the local governments have elected officials and if you don't like what they're doing, you vote them out.

Chair Spinney commented that not granting standing to individual members of the public does not cut them out of the process. She then stated that the meeting needs to move on and Mr. Chipok continued reviewing the draft amendments.

Page 7, subsection (d) has been amended for clarification.

Also on page 7, subsection (e), has been clarified to reflect that an application has a presumption of consistency that must be refuted at a public hearing. Mr. Tresher spoke in strong opposition of this proposed change, stating that it appears to shift the burden of proof throughout the whole process. He stated he does not understand how you can shift the burden of proof from the person bringing the application to the commission, to the status quo who then has to show that the amendment will be harmful to them.

Mr. Chipok stated from his perspective, there historically has been a presumption of consistency when an application is received. Mr. Chipok stated that the staff reports and resolutions are typically written to state that because of certain issues the amendment is found to be inconsistent, however, with certain conditions applied, it could be found to be consistent. From a practical standpoint, he stated that even with the change in language, he does not foresee any change to the way staff operates, the way resolutions are written, or the occurrences at the hearing. Mr. Tresher then asked why make the change. Mr. Chipok responded for the purpose of clarity and consensus of the majority of the municipalities. Mr. Tresher commented that New Smyrna Beach is concerned about that change.

Mr. Wilcox commented that this compares to whether you are guilty until proven innocent or innocent until proven guilty. He stated that when an application comes in, he typically takes the approach that it is consistent unless he finds something in his review which finds it not consistent. Mr. Wilcox stated he is concerned that if we take the guilty until proven innocent approach, that an objecting party could simply submit a letter stating they don't think an amendment is consistent and ask for proof that it is. He stated if an objector does not feel it is consistent, they need to tell us what it is about our criteria they find to be inconsistent. Mr. Wilcox stated the burden has always been on the objecting government to provide that information.

General discussion ensued relating to burden of proof issues. Mr. Tresher strongly stated he believes this is a significant change to the current rules. Chair Spinney stated it is not a change in what the commission currently does. Mr. Chipok stated in his opinion that the proposed change is a distinction without a difference in the way the commission functions.

Going back to page 7, subsection (e)(1)a., Mr. Chipok stated that the staff review time was extended from 30 to 35 days. Currently, staff review time runs concurrent with the same 30 day timeframe that adjacent jurisdictions have to file comments, as well as the timeframe for which responses to the newspaper advertisement must be received. Mr. Chipok indicated this will provide staff a buffer to receive, review and prepare a request for additional information or public hearing without staff having to immediately react to comments that come into the VGMC late on the last day.

In this same subsection on page 7, language has been amended to clarify that only units of local government can request a public hearing. Mr. Chipok stated this is a change for consistency in following the theory that only units of local government can request a public hearing. Chair Spinney asked for confirmation that staff will still have the ability to call for a public hearing. Mr. Chipok responded affirmatively, stating that language is still in there pursuant to the charter.

Beginning on page 7 and continuing to page 9, Mr. Chipok stated that subsections (e)(1)a. through (e)(1)d. have been amended to clarify and codify the RAI standards.

On page 9, subsection (e)(2)a. clarifies that the 30 days begins when the application is date stamped.

Also on page 9, subsection (e)(2)c. adds a provision that an adjacent jurisdiction is deemed to be a party if they request to be a party. Mr. Chipok stated that due to the proximity of an adjacent jurisdiction, he does not recall where an adjacent jurisdiction was not granted party status if they requested it. He stated there was a consensus to add that provision which states an adjacent jurisdiction has party status if they request it, rather than going through the process of determining status at a public hearing.

Ms. Sieg asked Mr. Chipok to explain a petition for leave to intervene. Mr. Chipok explained that a public hearing has to be called within the first 30 days and after that you waive your right to call for a hearing. If a public hearing has already been called, and a party who previously did not call for the public hearing determines that they have issues, they have a right to file a petition for leave to intervene meaning they want to join in the case.

Page 9, subsection (e)(3) has been amended to be consistent with the recurring themes relating to who can request a public hearing and the presumption of consistency.

On page 10, subsection (f), Mr. Chipok stated language has been added to clarify the timing on the VGMC comments to DCA, and timing of staff's comments to the applicant.

Subsection (g) on pages 10 and 11 provides clarification for the application review timing and also adds an automatic tolling provision for force majeure/emergency/natural disaster situations. Mr. Chipok stated the reason for adding this provision is to avoid missing the 90 day requirement during situations such as hurricanes or wildfires. This section also adds a provision allowing the commission chairman to authorize a jurisdiction's request for a waiver of the 90 day rule up to

an additional 90 days, thereafter, any further continuances would require full commission. Mr. Chipok stated this was added to avoid having to call a public hearing solely for the purpose of authorizing a waiver.

On page 11, subsection (i) has been added to codify the standards and procedures for determining party status.

Page 12, Section 90-36, Consultation with commission regarding application for certificate -- subsection (b) has been added to allow ex parte communications consistent with the guidelines in Section 2-3 of the Volusia County Code, which is also consistent with state standards. Mr. Chipok stated that one of the issues that came out of the Partin litigation was that the VGMC rules did not address ex parte communications. Chair Spinney asked if the standards state that a member must declare at the meeting who they had ex parte communications with and what was discussed. Mr. Chipok responded that is the better practice, however, the state statute is a bit strange on that. He then reviewed Section 2-3 of the county code which in part states that disclosure of such communication by a member of the decision making body is not required. Additionally, it states that disclosure shall not be presumed prejudicial to the decision of the decision making body. It further states that all decisions of the decision making body in a quasi-judicial proceeding relating to land use matters must be supported by competent, substantial evidence in the record pertaining to the proceeding irrespective of such communications. Mr. Chipok stated that Section 2-3 of the county code is verbatim to the state statute.

Beginning on page 12, Section 90-37, Criteria for issuance of certificate -- subsection (a) has been amended to clarify that an application comes with the presumption of consistency, and also clarifies that the standard of review at a public hearing is based on a preponderance of the competent, substantial evidence established at the hearing.

Page 13, subsection (c), clarifies the review factors and mitigation procedures. Mr. Chipok stated this deals with what was has been generally known as the six criteria. He stated that when looking at those criteria, there are actually 2 criteria and 4 mitigation factors and this subsection has been rearranged to reflect that. Mr. Chipok stated a definition for infrastructure has also been added and those items listed are concurrency items.

Commissioner Katz asked for an explanation as to why the item relating to the existence of an agreement is now grouped with the other items. Mr. Chipok responded that in looking at the existing six criteria, it essentially comes down to two items: 1) is there is an adverse impact on infrastructure; and 2) is there an adverse impact on natural resources. He stated if it is determined or if it is reasonably anticipated to cause adverse impacts on infrastructure or natural resources, there are the four mitigation measures which may be considered as applicable on a case by case basis. Mr. Chipok stated the four mitigation measures are currently called out in the rules as criteria, however, they are more of a mitigation measure.

Mr. Wilcox commented that if a JPA exists, most generally issues of adverse impacts have been addressed by the local jurisdictions through the JPA, adding that it would likely be a rare instance that these would come before the commission in the form of a public hearing.

General discussion ensued relating to the items defined as infrastructure and whether they should be specifically called out in the mitigation measures. Mr. Chipok explained that the items listed as infrastructure are all items requiring concurrency review. Additionally, he stated the consistency issues most often relate to water and traffic, and that the proposed language was drafted in an attempt to provide clarity without extensively modifying the current language. Mr. Katz suggested the term concurrency be included relating to schools.

Page 13, subsection 3)d. has been clarified to reflect that only units of local governments may be parties to an interlocal agreement.

Also on page 13, subsection (d) has been amended to clarify that the VGMC does not review the application for internal consistency with the applicant's own comprehensive plan. Mr. Chipok stated this is something the commission has never done, however, an affirmative statement to that effect will help clarify what our process is to the general public. Chair Spinney suggested the term "internal" be specifically stated in this section.

Commissioner Katz made a motion to add the word "internal" before the word "consistency" in the proposed language is subsection (d); seconded by Commissioner Kerr. Motion carried unanimously.

Page 14, subsection (e) clarifies that the application comes in with a presumption of consistency. Mr. Chipok stated in his opinion the proposed language will not have a functional distinction in how the commission will continue to operate. Subsection (f) clarifies the reference to date stamp as the receipt date. Subsection (g) deletes the potential inconsistency provision on waiving rights. Subsection (i) clarifies that the timeframe for the VGMC to reopen a decision due to additional information ends upon DCA's final determination on the application. Mr. Chipok stated there was no previous endpoint in the rules and the proposed language is a logical endpoint. Also in subsection (i) is an old reference to certificate of "completeness" and that has been corrected to read certificate of "consistency".

Page 15, subsection (j) clarifies that the letter certification, which are the certifications without 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 that the appeal right is not through a petition for writ of certiorari because the courts have held there is nothing for them to review as there is no record, but there is a right to appeal for some sort of declaratory or injunctive relief if someone disagrees with the decision.

Pages 15 & 16, Section 90-38, Intervention -- Mr. Chipok stated pursuant to the recurring theme, this proposed language clarifies that only a unit of local government can intervene in a hearing as a party. The proposed language also clarifies that a request to intervene must be in writing.

Pages 16 & 17, Section 90-40, Appeals – The proposed revised language in subsection (a) clarifies that only a unit of local government who is a party to the VGMC hearing may appeal the VGMC decision. With respect to granting party status, Mr. Katz asked for confirmation that party status is not automatic and VGMC still has to approve that. Mr. Chipok responded affirmatively.

Page 17, Section 90-42, Waiting period for reapplication for certificate – The proposed amendment reduces the waiting period from 12 months to 6 months and also provides the applicant jurisdiction the ability to withdraw an application without penalty anytime up to 14 days prior to a scheduled public hearing, which is when the public hearing would be advertised. Mr. Chipok stated we've seen instances where if there are major issues with a comprehensive plan amendment, the application has continued for 2-3 three years through the VGMC process while the issues are being addressed. He added that when the resultant application comes back in, it is essentially representative of a new application which addresses the issues raised in the original application. Mr. Chipok stated it makes sense to allow the original application to be withdrawn to avoid confusion on previous issues that may have been addressed with the new application. Mr. Wilcox added that this is more consistent with the way the local governments do business in terms of their applicants. Additionally, he stated under our present rules, even if the jurisdictions get together and work out the issues through modifications, it still would require a public hearing before the VGMC. By allowing the applicant jurisdiction to withdraw without penalty and resubmit with the agreed upon changes, Mr. Wilcox stated will allow the issues to be addressed without having to take the applications to public hearing and will also avoid cases remaining pending for extensive periods of time out of fear that they cannot resubmit for 12 months as required under our present rules.

Pages 18 & 19, Section 90-45, Appointment & Removal of Commission Members – Mr. Chipok stated that historically and through case law, if there are no rules addressing membership, a sitting commission member essentially has a property right to his term of office. He stated through various committee meetings, there was a consensus that the members of the commission are appointees of their local jurisdiction and that the VGMC should not have rules that would override the local government's determinations on who they wish to represent them. As a result, this is a proposed new section addressing membership which states that: 1) members shall not be elected officials or dual office holders which is consistent with the AGO; 2) member terms shall be three years which is consistent with the VGMC operating procedures; and 3) the appointing governing body has the right to remove or replace its member with or without cause.

Ms. Sieg commented that when we solicited comments to our rules, we received a substantial amount of public comment in opposition of city or county staff members serving as members of the commission due to conflict of interest. She stated that the AGO does not necessarily find this a problem, however, the citizens of Volusia County have clearly stated they do not feel

governmental employees should be allowed to serve on the commission. Mr. Chipok stated that through the various committee meetings, there were comments that supported that position, but there were also comments stating that planners are a valuable asset to the commission. He stated this is an issue that has good arguments on both sides and it basically comes down to a policy decision by the commission. Mr. Chipok stated the consensus reached by the POP committee is how the rule is currently proposed which states it is the local jurisdiction's determination on who they wish to appoint to the commission, provided it is not a dual office holder. Ms. Sieg responded that her comment is again, the commission is leaving out the public. Mr. Brandon reiterated that there was much discussion on this issue over several committee meetings and this is the recommendation of the POP.

Page 19, Section 90-46, Rehearings – This is a new section to provide standards for rehearing procedures. Mr. Chipok stated the POP committee is recommending that rehearings be allowed and the standards proposed present the parameters for which the commission would consider a request for rehearing.

Mr. Tresher commented in favor of allowing rehearings, however, he suggested the language which would allow it to be a trial de novo be deleted. He stated a trial de novo is a completely new trial and not a rehearing. Mr. Tresher stated it would be appropriate for the commission to consider new information or something that was misunderstood at the original hearing, however, he is not in favor of a trial de novo which would give someone a second shot just because they did not like the outcome of the original decision.

Mr. Chipok stated the language is in there for flexibility. He stated part of the concern is that this is a 21 member board where there is turnover and a member may attend one meeting but not another. Mr. Chipok restated the language was included to provide the commission the flexibility to make the determination on a case specific basis.

Mr. Tresher quoted case law from Diamond Cab Company of Miami v. King, stating a Florida Supreme Court opinion from 1962 stated that the purpose of a petition for rehearing is merely to bring to the attention of the trial court, or in this instance the administrative agency, some point which it overlooked or failed to consider when it rendered it's order in the first instance. It is not intended as a procedure for reargueing the whole case merely because the losing party disagrees with the judgment for the order. Mr. Tresher requested the language which would allow a trial de novo be deleted from the proposed provision.

Chair Spinney commented that we've had a problem in the past where it was said that if a member was not present at the original hearing they should not be allowed to vote at the rehearing. Mr. Chipok stated the AGO clarified that if a member is in attendance at a meeting, they must vote.

Commissioner Jones asked what recourse there would be if the commission does not allow rehearings. Mr. Chipok responded the recourse would be through the circuit court. Ms. Jones

suggested not allowing rehearings since it is subject to the interpretation of the 21 members of the commission and there is already recourse through the circuit court.

General discussion ensued relating to the absence of members at the initial hearing and the requirement of them to vote at the rehearing. Commissioner Nelson commented in favor of deleting the trial de novo option and stated that it would be incumbent upon the members absent at the initial meeting to review the minutes so they are informed prior to the rehearing.

Commissioner Tresher made a motion to delete the last sentence of Section 90-46(d) which references trial de novo; seconded by Commissioner Sieg. Following general discussion, the motion failed with a vote of 8-8 (see roll call vote list attached).

Commissioner Ball asked if a jurisdiction could reapply for the same comprehensive plan amendment in the future should they decided not to petition for a rehearing or appeal the decision of the commission. Mr. Chipok responded under the proposed rules they could reapply after six months.

This concluded the presentation of the proposed amendments.

Scott Simpson, an attorney who represents several of the cities and also worked with VCOG and several other attorneys in meeting with Mr. Chipok, addressed the commission. Mr. Simpson directed the commission to look at page 3, Section 90-33 subsection (5) which states 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 for forum for the local governments to work out comprehensive plans. He stated that the local governments and VCOG, with the exception of Lake Helen, conceptually supported moving forward to preserve the local governments' legislative authority with respective to comprehensive plan amendments. Mr. Simpson stated the role of the VGMC is to look at how a comprehensive plan amendment in one jurisdiction adversely impacts the comprehensive plan of another local government. He reiterated his statement that the VGMC provides the forum for the local jurisdictions to work out adverse impacts that extend beyond jurisdictional boundaries. Mr. Simpson also stated it is not within the VGMC's purview to question one jurisdiction's action not to challenge the comprehensive plan amendment of another jurisdiction if they have determined it will not adversely affect their own comprehensive plan amendment.

Mr. Simpson also stated the action of a local government is a legislative action and that if someone challenges that action, the law requires the challenging party to show the burden of proof which is why he stated that an application should be viewed with a presumption of consistency when it comes in. Mr. Simpson addressed Mr. Tresher's comments and stated that local governments are governed by Roberts Rules of Order.

Mr. Simpson stated that he became involved in the Lady Godiva matter at the appellate stage and the concern with allowing the public to have party status is that the discussion went beyond the VGMC's scope of review. He stated the issue is how to keep the commission's focus on the

limited role of reviewing how a plan amendment creates an inconsistency with the comprehensive plan of another jurisdiction. Mr. Simpson stated that if VGMC staff or any of the adjacent local jurisdictions do not find an inconsistency, by allowing a citizen to have party status to cause the VGMC to have a hearing is basically stating that the citizen has greater authority to interpret the comprehensive plan than the individual jurisdictions. He further stated that the commission does not make a determination on standing until the public hearing, so even if an individual is not granted party status by the commission, the public hearing has already been scheduled and goes forward.

Mr. Simpson stated that the main purpose for the redraft is to bring the commission back to focus on exactly what the charter says the commission is to focus on. He added that the focus is a very narrow review of the adverse impacts between comprehensive plans. Mr. Simpson stated that many citizens who come to meetings don't understand comprehensive plans; he stated they generally either like, or don't like, a proposed project.

Rob Merrell of Cobb Cole addressed the commission on behalf of VCARD. Mr. Merrell stated that VCARD spent a considerable amount of time reviewing the proposed amendments and had previously submitted comments to the VGMC relating to an earlier draft of the amendments. In the interest of compromise, Mr. Merrell stated that he spoke before the POP committee at their April 14, 2009 meeting and stated that VCARD is in favor of the currently proposed amendments.

Mr. Merrell stated that the thrust of what VCARD was looking to bring forward is exactly what Mr. Simpson was stating. He further stated in his view, what transpired with the Lady Godiva amendment is not what the individuals who were involved with the original establishment of the VGMC had envisioned. Mr. Merrell addressed Mr. Tresher's comments and his experience as a trial attorney, and stated that in the land use and comprehensive plan amendment arena it is very much a deferential standard that the courts look to the local governments and their decisions should they be challenged. In closing, Mr. Merrell stated that the rules review has been going on for some time and he encouraged the commission to make their decision following the upcoming hearing so the cases which will be coming to the commission might have the opportunity to have the guidance that the rules provide.

Mr. Chipok stated he had one additional comment on the rehearing provision, Section 90-46 on page 19 of the draft. In subsection (a), line four, Mr. Chipok read the present draft language as "...local government which has previously timely intervened pursuant to Sections 90-35 or 90-38." He stated the concept could arguably exclude the applicant jurisdiction and suggested the language be modified for clarity. Specifically, he suggested changing the words "previously timely intervened" to read "been deemed a party to the VGMC public hearing". Mr. Chipok stated this would capture the applicant jurisdiction under the umbrella as well.

Commissioner Walton made a motion to modify the draft language in Section 90-46(a), line 4, to read "...local government which has <u>been deemed a party to the VGMC public hearing</u> pursuant to Sections 90-35 or 90-38."; seconded by Commissioner Kerr. Motion carried unanimously.

Mr. Chipok stated that the recommended draft presently before the commission has not yet been widely distributed as it is has been a work in process through the committee. He suggested distributing the present draft with the amendments discussed at tonight's meeting and to schedule a public hearing at the May meeting to take further input. Mr. Chipok asked for direction from the commission on how they wished to proceed. Mr. Brandon clarified that the commission is not voting on the draft amendments, but rather reaching a consensus to distribute the draft and schedule a public hearing. There was no opposition raised to this course of action.

Mr. Chipok stated that he would amend the draft based on the several earlier motions that passed and get with the coordinator to widely distribute. The draft will be distributed to all of the mayors and the county chairman, all of the city attorneys and the county attorney, all of the city managers and county manager, all of the county and city local planning officials, and all other interested parties and members of the public who previously commented.

Commissioner Ball asked what the next step would be. Mr. Chipok explained that the final draft amendments which are recommended for approval by the commission will be attached to a resolution and forwarded to the county council with a recommendation to adopt pursuant to the charter. He stated he will have a draft resolution prepared for the commission at the May meeting, however, whether the VGMC takes action at the May hearing or defers it to a later meeting will likely depend on the public hearing. Chair Spinney commented that we'll need to make that determination at the May hearing.

REPORTS AND REQUESTS OF COMMISSION MEMBERS

None

REPORTS AND REQUEST OF COMMISSION CHAIR

None

ADJOURNMENT

The meeting was adjourned at 9:38 p.m.

Attest: Chairman

VGMC ROLL CALL VOTE Date: 4/22/09

MOTION made by Rick Tresher to delete the second sentence in proposed Sec. 90-46(d) which reads "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 hearing." Seconded by Rachel Sieg.

	Member	City Population	Percentage	Vote Yes	Vote No
DAYTONA BEACH	Richard Walton	64,927	12.71%		X
DAYTONA BEACH SHORES	Terry Griffiths	5,461	1.07%	--	
DeBARY	Danny Allen	18,913	3.70%	X	
DeLAND	Steve Katz	27,326	5.35%	X	
DELTONA	Sandy Lou Gallagher	85,921	16.82%	X	
EDGEWATER	Sandy Jones	21,618	4.23%	X	
HOLLY HILL	John Heaphy	12,944	2.53%		X
LAKE HELEN	Roger Sonnenfeld	2,871	0.56%	X	
NEW SMYRNA BEACH	Rick Tresher	23,716	4.64%	X	
OAK HILL	Vacant	1,978	0.39%	--	
ORANGE CITY	James Kerr	9,556	1.87%		X
ORMOND BEACH	Gerald Brandon	40,920	8.01%		X
PIERSON	Vacant	2,657	0.52%	--	
PONCE INLET	Patricia Heller-Jackson	3,299	0.65%	--	
PORT ORANGE	Bobby Ball	57,218	11.20%		X
SOUTH DAYTONA	Joan Spinney	13,765	2.70%		X
UNINCORPORATED AREA*		117,660	23.05%*		
	Dwight Lewis		4.61%		X
	John Nelson		4.61%	X	
	Rachel Sieg		4.61%	X	
	Kenneth Kuhar		4.61%		X
	Sandra Walters		4.61%	--	
	TOTAL:	**510,750**	**100.0%**	**8-Y**	**8-N**

Affirmative votes required: 9
Total weighted vote required: N/A

RESULT: Motion failed with a vote of 8-8

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 ~~of~~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.

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 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 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~~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.

(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:

(~~2~~i) 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 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 section~~subsection (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 polices 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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