

The Personnel, Operations & Procedures (POP) Committee met for over 3 hours on Thursday, January 21, 2016 to discuss various recommendations and comments which have been recently raised to the Charter Review Commission, and possible revisions to the VGMC Consistency Rules and Regulations which may address some of the issues.

In attendance were:

- 1) Five members of the POP Committee, including myself.
- 2) VGMC Chairman Jim Wachtel.
- 3) VGMC Legal Counsel Paul Chipok of the law firm of GrayRobinson.
- 4) VGMC Professional Planning Consultant Jim Sellen of the planning firm VHB.
- 5) Deanie Lowe

John Duckworth from the County was also present.

The VGMC members present expressed their belief that the VGMC continues to serve a valuable intergovernmental coordination role in Volusia County and support the continued existence of the commission. We agreed that the commission has operated in accordance with the charter, however, also agreed that updates and revisions to the VGMC Consistency Certification Rules could be established to not only conform with current growth management laws, but also to improve efficiency with changes to the review guidelines, timing and other areas of the rules.

The committee was generally opposed to recommending changes to the charter which would require a ballot question. The committee felt that most of the issues raised could be addressed through rules changes which could be proposed by the VGMC and approved by ordinance of the Volusia County Council.

Following are proposed revisions to the VGMC Consistency Rules that the POP Committee members present and VGMC Chair unanimously support:

Standing:

- 1) Revise the rules to limit standing to “units of local government”.
- 2) Add a provision to the rules defining a “unit of local government” as “Volusia County, each municipality within Volusia County, the School Board of Volusia County, and any state or federal agency who is an adjacent property owner to a proposed comprehensive plan amendment”.
- 3) Add a provision to the rules which would refer any person who believes they are affected by a proposed amendment to address their concern with the local government in which they reside.

Draft language to this effect was proposed in 2009 in a collaborative effort of several local government attorneys including Scott Simpson and Jamie Seaman, and VGMC Attorney Paul Chipok. The recommendation died when it was determined through a poll of the local governments that less than ½ of them supported eliminating citizen standing, and there was also not a perceived abuse at the time.

With 13 of the local governments recently adopting resolutions supporting the elimination or modification of the VGMC citing reasons which included that the VGMC has been used as a forum for growth opponents, it is apparent many of the local governments have changed their position on this matter since 2009.

The proposed revisions are intended to in part address the following comments raised to the CRC:

- 1) Narrow definition of VGMC authority -- Limit mission to determination of consistency between adjacent local governments
- 2) Define “substantially affected or aggrieved party” -- the term “party” would be replaced by “unit of local government” which would be defined within the rules
- 3) The VGMC has been used as a forum for opponents opposed to growth

Thresholds for VGMC Review

1) All Small Scale Amendments:

- a) The local governments will submit small scale amendments to the VGMC office *after* adoption. This process is consistent with state requirements.
- b) Small scale amendments will not be reviewed by VGMC staff and they will be presumed consistent within 30 days of receipt, *unless* there is an objection filed by a unit of local government within the present 28 day time frame. If an objection is filed by a unit of local government, a hearing will be held within 60 days of the date the objection is filed.

2) Amendments not considered small scale:

- a) Any amendment relating to an annexation involving property located within a joint planning area will not be reviewed by VGMC staff and presumed consistent within 30 days of receipt, *unless* there is an objection filed by a unit of local government within the present 28 day time frame.
- b) The local governments will continue to submit the amendments to the VGMC office – the interlocal agreement establishing the joint planning area should be part of the VGMC record.

3) All other amendments not meeting the criteria of small scale or joint planning area properties will continue to be reviewed by VGMC staff per current procedures.

The proposed revisions are intended to in part address the following comments raised to the CRC:

1) Create minimum thresholds for VGMC review and deem certain amendments as consistent

Minimum thresholds are proposed

2) VGMC should not review amendments unless an objection is filed by a municipality or the County

Establishing thresholds as described, as well as limiting standing to a “unit of local government”, would substantially reduce the number of applications that are subject to review by VGMC staff. For those applications that do not fit the proposed thresholds, the POP committee maintains VGMC staff should continue to review those to ensure consistency, and also compliance with any prior conditions of approval.

- 3) Language in the charter which states the VGMC has the “duty” to determine consistency

The proposed rules revisions can address this without the need for a charter change by defining certain situations when amendments would be presumed/deemed consistent without VGMC review, and those that require VGMC review. Either way, it’s met the “duty” to determine consistency.

- 4) Amend rules to expedite process

By deeming certain amendments consistent, the processing time for the majority of amendments will automatically fall within the 30 day state review time.

- 5) Allow local governments an exemption to VGMC review by creating interlocal agreements

The proposed rules changes would allow those properties that are the subject of a joint planning agreement through an interlocal agreement would be exempt from VGMC staff review, *unless* an objection is raised by a unit of local government.

Now I would like to address other specific recommendations and/or comments raised to the CRC:

Membership

Concern has been raised that the appointed members can deny what local elected officials have approved.

Sections 90-51, 90-52 & 90-53 of the VGMC Consistency Rules and Regulations address member appointments. These sections relating to membership were proposed by the VGMC and adopted by ordinance of the Volusia County Council in October 2012.

As I've mentioned in earlier meetings and has been the case since the inception of the commission, all members are appointed by their respective jurisdictions. VGMC does NOT appoint nor select its members. Some members report they have ongoing open dialogue with their jurisdictions, while others have indicated they've never been asked to report to their local government on VGMC matters. We encourage members and their appointing local government to maintain an open line of communication relating to pending and anticipated VGMC matters.

It's true that a member is not required to vote a certain way, and I'll point out in the Annotations to the proposed charter language in 1986 on page 28 of your agenda package, the second sentence in paragraph 3 states "These representatives are to be able to vote on all matters without obligation to receive prior approval from their appointing governmental bodies". This emphasizes the need for an open dialogue between each of the local governments and their appointed member.

In this same paragraph farther down, the annotations in part state "All voting and non-voting members may be either elected officials or lay citizens." The VGMC, on at least one occasion in the past, has had a member who was also an elected official. In 2008, however, the Florida Attorney general issued an opinion (AGO 2008-61) which determined that membership on the VGMC constitutes an office for purposes of dual office-holding. As a result, elected officials and other individuals who hold another "office", would be prohibited from being appointed to the VGMC as it would be a violation of dual office-holding.

Presumption of Consistency/Burden of Proof

Scott Simpson has recommended language be added to the rules which would presume an amendment was consistent as submitted by the local government, and the burden of proof that the amendment is inconsistent should be on the objecting part.

The earlier recommendation which would deem amendments as consistent under certain circumstances are essentially presumed consistent. However, in those cases where objections are filed, the committee feels strongly that the burden of proof to show the amendment is consistent lies with the applicant local government. As an example, if

an application is submitted for a land use change that a local government feels could potentially adversely affect the transportation network, yet no transportation analysis is provided, it should not be up to the objecting local government to prepare a transportation study to show that the amendment is not consistent.

Appeals & Accountability

It has been recommended that the rules be amended to provide for VGMC accountability and to include an appeal mechanism to the Volusia County Council.

The committee feels it is important for the VGMC to remain an independent board and to maintain a level playing field for all of the local governments. Under the present charter rules, the appeal of a VGMC decision is to the courts. Establishing an appeal mechanism where the Volusia County Council, or another local elected body, would consider an appeal to a VGMC decision takes the level playing field off the table and could very likely cause a challengeable conflict, particularly if the amendment in question involves an application submitted by, or objected to, by Volusia County.

Let's say for example the County submits objections to an application submitted by the City of Port Orange. The amendment goes to public hearing before the VGMC and the VGMC rules in favor of Port Orange. The County then could appeal the decision to its own County Council which could then overturn the decision. That process seems neither practical nor fair.

The committee recommends leaving the appeal process as it presently is.

As I mentioned earlier, the committee is opposed to changes to the charter. However, should the CRC decide to move forward in that direction, we offer up the following:

Weighted Vote

It has been recommended that the weighted vote requirement be deleted so that each jurisdiction has an equal vote. We don't particularly see a problem with the weighted vote system. Its intention may have been established to avoid the smaller populated jurisdictions from "ganging up" to oppose or stop a development proposed in a larger populated jurisdiction. Should the CRC chose to recommend this change in the charter, and the intent is for each local government to have an equal vote, we would suggest the number of Volusia County members be changed from 5 to 1.

Other Directly Related Duties

It has been recommended to delete the language in the Charter which reads "The commission may perform such other directly related duties as the commission from time to time deems necessary." (Referred to the "catch-all" provision.)

At the last CRC committee meeting, Pat Drago asked how many times the "additional duties" clause may have been used by the VGMC. The POP committee discussed this and other than possibly administrative or operational related functions, the committee does not recall a specific situation outside of the course of the normal consistency review process.

Rules

It has been recommended that the provision in the Charter where the VGMC "proposes" the rules be deleted, and that the rules are adopted by a majority vote of the County Council.

Under the present Charter, the VGMC proposes the rules and must be adopted by ordinance approved by a 2/3 vote of the County Council.

We don't see a problem with this. Again, we feel a level playing field needs to be maintained. In this case, neither the VGMC nor the County Council can unilaterally change the rules. Who better to "propose" rules or amendments than those who work most closely with the users and process. When proposed amendments are being considered by the VGMC, it's done at a noticed public hearing. Once approved, the amendments are then submitted to Volusia County in the form of a recommendation to adopt.

Budget & Funding Language in Charter

The charter currently requires the VGMC to adopt a budget which may provide independent staff and which shall be funded by the County. It also states the budget may be amended upon two-thirds vote of the full County Council.

Each year, the VGMC adopts a proposed budget and submits it to the County. The submitted budget goes to the Budget Department and follows the same the budget process as the county departments. During this process, negotiations do occur and often the proposed budget originally adopted by the VGMC is not what ultimately comes to the County Council for approval during the County budget hearings.

The VGMC has historically been very good stewards of the budget. Any monies that are not utilized by the commission are returned to the County. Last year, our total expenses were less than \$140,000 and I believe we returned somewhere around \$160,000 to the County at the end of the fiscal year.

If the proposed changes discussed earlier that would significantly reduce the number of applications reviewed by VGMC staff are ultimately implemented, the VGMC annual expenses would also be significantly reduced.

As far as funding is concerned...so long as the Charter requires the existence of the VGMC, funding will have to be provided. If county funding is eliminated from the Charter, another source of funding will need to be established.