

**CHARTER REVIEW COMMISSION
VOLUSIA COUNTY, FLORIDA**

**MINUTES OF THE MEETING OF
March 14, 2016**

CALL TO ORDER

Chair Brown called the meeting to order at 5:30 p.m. in the Dennis R. McGee Room at the Daytona Beach International Airport, 700 Catalina Drive, Daytona Beach, Florida.

ROLL CALL

Members present included Chair Hyatt Brown, Frank Bruno Jr., Patricia Drago, Ambassador Stanley Escudero, Dr. Phillip Fleuchaus, David Haas, James Morris, Patricia Northey, Mark Watts, and Lisa Ford Williams. Also present were County Attorney Dan Eckert, County Manager, Jim Dinneen, county support staff and members of the public. Chair Brown informed the Commission that Dr. Bailey, Glenn Ritchey Sr., Frank Darden and Peter Heebner would not be attending; and Derek Triplett was excused.

APPROVAL OF MINUTES

James Morris made a motion to approve the minutes of the February 1, 2016 meeting. The motion was seconded by Mark Watts. The motion was approved unanimously.

CORRESPONDENCE RECEIVED

Chair Brown mentioned that the correspondence received was included in the agenda packet and asked if anyone wished to comment on the correspondence. Patricia Northey indicated the correspondence was a report forwarded by the former County Manager and that there may be items within the report that should be discussed. Chair Brown stated that receipt of the correspondence will be acknowledged, and that anyone who wanted to read the report could do so, but there was no needed discussion. Chair Brown asked for additional comments and there were none.

PUBLIC PARTICIPATION

Chair Brown opened the floor to public participation and there was none.

VOLUSIA GROWTH MANAGEMENT COMMISSION DISCUSSION

Chair Brown indicated that during the last commission meeting Dan Eckert was asked to determine if (Volusia Growth Management Commission) changes that are being

discussed could be made without making changes to the Charter. Chair Brown asked Dan Eckert to comment on that prior to receiving the subcommittee report.

Dan Eckert indicated that upon review of the proposed draft from the Volusia Growth Management Commission (VGMC), a charter amendment would be necessary to accomplish the changes. Mr. Eckert provided a Charter draft amendment for the consideration of the commission.

Chair Brown stated that the information was a little different than expected. He also indicated that the VGMC did not want a charter change and although that had been discussed, it appears that an amendment is necessary. Chair Brown concluded that the suggested amendment includes some of the logic that has been followed by the VGMC POP committee and what the subcommittee discussed the previous Monday. He reviewed language that of power and duty objection of county or municipality the commission shall have the power. Parties to any commission proceedings limited to county and municipalities. The VGMC includes the School Board.

Mr Eckert stated that the inclusion of the School Board was different from the inclusion language. You can include the school board as a non-voting member even with that language. To include the school board as a party may be necessary if you adopt ROP which say that there will be consistency with the SB 20 year facilities plan. The facilities plan is not a local comprehensive plan, which would also be a review of the Council.

Chair Brown stated that he wanted everyone to be clear that when the commission decides to adopt the changes, it will have to be approved by the electorate.

Dan Eckert responded by stating that it is all dependent on the changes adopted and that it should be recommended to the voters. Mr. Eckert concluded with a conforming change that would be necessary if non-voting members are removed.

Chair Brown clarified that to implement changes to the VGMC rules, there would likely be a change to the charter. Chair Brown asked if there were any questions or comments.

James Morris asked if Mr. Eckert agreed with that statement.

Dan Eckert responded by stating that the rules that have been proposed cannot be implemented without a charter change.

James Morris followed by asking if any of the rules could be changed without a charter change. Would any change be authorized by the charter if the charter was not changed?

Dan Eckert stated you can't dispense with review under the existing text.

Chair Brown followed by stating the proposed changes of the VGMC Rules of Procedures, which have been discussed, cannot be effectuated without changes to the charter.

Dan Eckert agreed.

GUEST SPEAKER – VGMC PLANNING CONSULTANT

Chair Brown invited Jim Sellen to speak to the commission about why the VGMC should have standing in addition to the County and cities.

Jim Sellen, 225 E. Robinson Ave., Orlando, thanked the commission for the opportunity to speak. Mr. Sellen stated that while reviewing the procedures there have been a number of questions including why their planners and input is needed. He cited the criteria for the VGMC indicate review of an area wide impact or solution. Mr. Sellen stated that the VGMC serves to fill a gap that exists when considering impacts outside of a community. Citing an example in Orange City, Mr. Sellen stated the impacts are rarely land use compatibility and more closely related to infrastructure impact. In his example, Orange City proposed a plan that had significant impact on the transportation system. VGMC recognized that the solution was going to require collaboration of Orange City, DeLand, Volusia County, and the state as opposed to a single condition imposed on Orange City. Mr. Sellen also addressed the question of why the VGMC asks for additional information by stating that they only ask for additional information when the necessary information to make a decision is not included. In regards to why the VGMC calls a hearing, Mr. Sellen indicated that there are typically two reason to call a hearing. First, there are occasions where they are addressing existing VGMC resolutions with conditions. Citing another example in Orange City where the VGMC was asked to waive a condition, Mr. Sellen indicated the VGMC called the hearing because they did not feel they had the ability to simply waive an existing condition. A second reason to call a hearing would be when the impact is not agreed upon. Addressing the question why call a hearing when one jurisdiction doesn't object, Mr. Sellen indicated that sometimes, the jurisdiction doesn't see the impact or may be reluctant to interfere. In conclusion, Mr. Sellen pointed out that VGMC would likely be okay if the ability to call a hearing was removed, but questioned if the municipality planners would be comfortable calling a hearing or would they pass it on and ultimately generate more work for the VGMC.

Chair Brown asked for clarification on why input from VGMC planners is necessary when there is no conflict.

Mr. Sellen responded by stating that a particular issue may not be recognized because the focus may be on the (municipality's) community and not impacts to the surrounding area. The VGMC brings a perspective that includes a long term focus with the comp plan that affects multiple jurisdictions. Mr. Sellen stated that his experience as a local government planner was that the focus of the planner does not necessarily include impact on the adjacent jurisdictions.

Chair Brown questioned if the adjacent jurisdictions planners would be unaware of the conflict upon reviewing the plans.

Mr. Sellen cited Farmton as an example of land use change. Initially there were no objections. Upon the VGMCs review based on six categories, they identified many impacts including improvements and environmental standards that had to be put in place.

Chair Brown stated that the initial purpose of the original amendment was put in place to resolve conflict. He cautioned that non-elected staff are assuming the responsibilities of elected officials and although it may happen for many reasons, it was necessary to thoroughly review the process. Chair Brown then asked the commission if there were any questions.

Mr. Morris stated that he understood Mr. Sellen's comments but it seemed as if staff performed more than the Charter charged the VGMC with doing. Based on comments Mr. Morris has heard from many sides of the issue, the suggested changes that have been proposed reflect that same perception from cities, staff and elected officials. Mr. Morris commented on Mr. Sellen's reference to a DRI in his example and offered that there may have been other opportunities to resolve the situation.

Mr. Sellen stated that there was not going to be a DRI. It was only a plan amendment and a condition that was worked out between the VGMC and County.

Mr. Morris acknowledged the statement and pointed out the (Farmton) case was a good outcome, but to his earlier concern, the widespread perception is the driving force behind those trying to advocate change.

Mr. Sellen agreed that he is not an advocate, but hired help and he will continue to perform as required. Mr. Sellen referenced Sec. 90-37.c.1-6 Criteria for issuance of certificate and stated upon review of the six criteria, there was no way they could say there would not be a problem in the Farmton example. If the VGMC did not have that criteria to follow, and the VGMC was only be responsible for resolving conflict, then it would be handled accordingly.

Mark Watts thanked Mr. Sullen for speaking to the commission and stated that he has worked with his staff in the past and has also found them to be very professional. Mr. Watts stated the VGMC was a unique situation for the county and asked Mr. Sullen to compare Volusia to other counties he works with.

Mr. Sellen stated that the VGMC is not only unique to Volusia, but unique to the state of Florida. He stated that Pinellas, Brevard and Volusia were the three original counties that had an entity like VGMC. Pinellas and Brevard counties changed to a (Comprehensive) Plan.

Mark Watts asked what other counties, without the entity that reviews inner jurisdiction consistencies, do to cooperate and plan, and how does it happen?

Mr. Sellen referenced a project in Orange County where two of the cities objected the project and appealed. If Volusia did not have the VGMC, cities or those with standing would appeal until a joint planning agreement could be reached or go to court. Court cases have occurred on annexations, infrastructure impacts and schools, etc. Mr. Sellen confirmed his example was of West Orange when asked by Mr. Watts and went on to say that the case lasted for three years in court. He stated that the same could happen in Volusia or any major urban county because the biggest issues will be infrastructure and the cost of government. The concerns are often who will pay and how will it affect existing rates. Mr. Sellen cited conflict has been in transportation, schools, and thinks water is next. He questioned how the conflicts are identified and resolved; would be at a comp plan level? He created an example of municipality 1 with a consumptive use permit adjacent to municipality 2. Municipality 2 does not want 1 to change their permit because it would prevent 2 from being able to do it. That situation could restrict growth for municipality 2. Mr. Sellen also stated that without the presence of VGMC, all local governments would need to adjust their inter-governmental elements.

Chair Brown interjected with a reminder that the conversation was not to eliminate the VGMC. Chair Brown cited an example of a city or county disagreeing and asked Mr. Sellen to confirm the VGMC would be involved the same as today: Mr. Sellen confirmed. However, if the VGMC was compelled to intercede (and no conflict was present between the involved municipalities), would the VGMC abstain if it were the pleasure of the Commission and the people of Volusia County: Mr. Sellen agreed.

Pat Drago asked if plans came through and there was no conflict between the local governments, would there be a review by the VGMC or professional staff.

Mr. Haas stated that there would be a review, and if a conflict or issues was determined, that information would be forwarded to the local jurisdiction. He also stated that when things work as described by Mr. Sellen, it works great, but that it does not always go that way. Mr. Haas was encouraged with the changes proposed in the amendment further stating that they solved a lot of problems.

Chair Brown provided his understanding as if a municipality objects, the VGMC will perform as designed and if there is no objection, no action will be taken by the VGMC.

Pat Drago said if the plans come in there is no review.

Mr. Haas stated that a review does occur, if a concern is identified, the VGMC would notify the jurisdiction. At that point, if the local jurisdiction wants to bring it forward, they can request a hearing, but VGMC will not call a hearing on an issue that local planners have already reviewed and approved.

Pat Drago pointed out that the VGMC was not created at the request of the local governments, but at the request of the public who recognized competing governments and unfunded infrastructure. The VGMC was to provide the overarching view. Ms. Drago indicated there have been situations in which the local governments have not called a review even though the scope, size, or impact of the project indicated a need. Ms. Drago also cited an example in which the school board used the VGMC to meet requirements for schools within a development because the schools had no land use authority. She just wanted to remind the commission that the VGMC is serving an overarching purpose in lieu of state agencies that no longer provide that type of oversight.

Mr. Morris stated that there is a concern for economic development as the VGMC can be used as a weapon by one person; adversely affecting those who invest and provide jobs in the county. He added that this is not caused by the VGMC, but that the VGMC is a component of the overall issue. Mr. Morris also added that the timeline is always an issue.

Ms. Drago stated that she was also agreeable to timeline and small scale review. She further stated that she was concerned that by some action they lose the overarching review as it was crucial to resolving conflicts and infrastructure deficits.

Pat Northey agreed strongly with Ms. Drago. She stated that she was unclear on the direction of the conversation and asked Mr. Sellen to walk the commission through the process based on the proposed changes.

Chair Brown clarified that Ms. Northey was asking what would happen if there was no conflict; no review.

Davis Haas stated that was not what was stated in the amendment changes. The review will still occur. What changes is VGMC staff's ability to call for a public hearing when there is no conflict. Currently, using an example of changing a road that is in a comp plan in a city, Mr. Haas stated that even after the city, council, county and other agencies approve the changes, the VGMC can still do a request for more information and call a public hearing.

Pat Northey clarified, based on the draft, the VGMC could not call a public hearing.

David Haas agreed based on the draft amendment, the VGMC would send a report to the local governments/jurisdictions who would then have the choice of calling a hearing.

Pat Northey stated you might as well eliminate the VGMC.

Chair Brown restated the process that Mr. Haas outlined and asked for confirmation from Mr. Sellen that if the VGMC reviewed a plan and found issue, based on the proposed draft, they would prepare a report and notify the local government, and the VGMC's actions would end there.

Mr. Sellen stated that the VGMC would review the plan based on the criteria and if they found issue it would be incumbent on the VGMC to make a compelling argument to the adjacent jurisdictions to encourage them to object. If that could not be achieved, then their process ends. If the adjacent jurisdiction agrees to object, it goes back to the VGMC for a public hearing.

Chair Brown stated that what it seems is that some feel that the public should have this thing (VGMC) and others feel the public is represented by elected officials.

Ms. Drago stated that she wanted to be clear that her comments were not related to public standing. Her comments were strictly based on local governments.

Chair Brown stated in the case being discussed, the VGMC can make a comment, but it is not binding. He asked Ms. Drago if she wanted it binding and the power to be with the non-elected group and she confirmed that she did.

Mr. Sellen spoke to Mr. Northey's earlier discussion and pointed out that there is an exception that should be considered. If an application is submitted and there is no objection, however there is an existing resolution with requirements, Mr. Sellen stated that the VGMC could not make an amendment to the plan affecting a condition placed by the VGMC without a public hearing.

James Morris agreed with Mr. Sellen and added that there is no effective way to make a transition on those conditions if the VGMC does not have the ability to call a hearing.

Ambassador Escudero stated he appreciated the depth of the discussion and agreed that the entity creating the regulation should be involved in the removal or change. He further added that the broader issue was this entity (VGMC) is superior to elements of the elected offices and not subject to appeal. Ambassador Escudero stated that the powers to recommend changes lie within the Charter Review Commission. When asked if he would be in favor of eliminating the VGMC, Ambassador Escudero stated that the draft amendment changes seemed sufficient and should be considered; adding there needed to be a provision for appeal. Ambassador Escudero concluded by stating the impact of the VGMC on municipalities has been the lack of development; either a change to the charter or procedural changes of the VGMC is necessary to mitigate the issues.

Chair Brown stated the changes proposed in the draft amendment will require a change to the charter. Chair Brown asked for any additional questions.

James Morris asked if Mr. Sullen would have any issue working the language of the draft. Mr. Sellen stated he had no issue, but added that FS Sec. 163.3177.h needed to be considered and although disbanding the VGMC was not currently on the table, if such action was taken, based on the statute requirements, each municipality would end up having their own growth commission.

Pat Drago asked how many hearings had been initiated by the public over the last 30 years.

Mary Chris stated that she only had statistics for the last ten years and of 28 hearings, six were initiated by the public.

SUBCOMMITTEE REPORT

Chair Brown then opened the floor to the subcommittee report which was delivered by Frank Bruno in the absence of subcommittee Chair Glenn Ritchey.

Frank Bruno stated the subcommittee met on Monday, March 7th at noon at the Daytona Beach International Airport. Chair Glenn Ritchey, and subcommittee members Pat Drago, Ambassador Escudero and Frank Bruno Jr. were present. Mr. Bruno stated the February 4, 2016 meeting minutes were approved, the subcommittee received correspondence, and then reviewed the Volusia Growth Management Committee VGMC report provided by VGMC Vice Chair Gerald Brandon. Mr. Bruno stated that the subcommittee was excited about the recommendations provided by the VGMC Personnel, Operations, & Procedures (POP) committee, however there was some frustration expressed by Chair Ritchey on the amount of time it has taken. Mr. Bruno also stated that in the interest of time, a motion was made to forward the POP committee recommendations to the Charter Review Commission without recommendations from the subcommittee.

Chair Brown stated that of the recommendations provided by the POP committee, one established a limitation of VGMC standing when a complaint was not present. Chair Brown stated that Jim Sellen was not favorable of that restriction.

GUEST SPEAKER

Before further discussion, Chair Brown acknowledged Joyce Cusack, County Council At Large Member and invited her to speak to the commission.

Joyce Cusack greeted the members of the commission and spoke about the At Large position. She stated the benefit of establishing a Vice Chair for the County Council, pointing out that representation of the County as a whole is just as important as district representation. Ms. Cusack stated this change could encourage the recruitment of strong, capable candidates in future years and asked the commission to consider giving the citizens of Volusia County an opportunity to vote on it.

Dr. Fleuchaus stated that the At Large position has no benefit and suggested a change in term limit be evaluated by the commission.

Ambassador Escudero asked Ms. Cusack to state the current duties of the Vice Chair and the anticipated changes in responsibilities.

Ms. Cusack stated that the Vice Chair would continue to function in the absence of the Chair, the Vice Chair could serve as appointed by Council to committees including the canvassing board. She stated that there are numerous opportunities to represent the broader perspective and compliment the duties of the council.

PRESENTATION FROM COMMISSION MEMBER

Chair Brown opened the floor to commission member Mark Watts who provided three examples that will be analyzed under the current proposed rules of the VGMC. Chair Brown summarized three changes that were discussed by the subcommittee: standing; large and small scale; and “power and duty”; and asked Mr. Watts to apply those changes to his examples.

Mr. Watts reviewed cases that had previously gone through the VGMC. The first case cited was Anthen’s Commons 2, a small scale project in Deland with no objections or comments from local government. Although the justification was outside of the scope of the VGMC, based on the procedural rules, a neighborhood group was able to petition for a hearing. Mr. Watts stated that under the current proposed changes, this would be a small scale project and the neighborhood group would not have standing.

Chair Brown asked the commission if there were any questions. There were none.

Mr. Watts continued with the second case, Daytona Beach Shores, involving a proposed land use amendment. The project was submitted by a developer, approved by the city and objected by the County, based on citizen concerns. Even after the city and County reached an agreement, the VGMC conducted the hearing based on the request of neighboring residents. Mr. Watts stated that under the current proposed changes, the neighborhood group would not have standing. The amendment is unclear if a hearing would be required after an agreement is reached between municipalities; and revisions are recommended to clarify the process.

Pat Drago asked if there were any changes or conditions added after the hearing.

Mark Watts confirmed that there were no conditions resulting from the hearing. Discussion ensued over the amount of time that had transpired.

James Morris added that at this time, the property is being developed but not for the use it was petitioned for or agreed to.

Marks Watts stated that was correct and added it is eight years later.

Chair Brown invited Scott Simpson, Attorney, to speak to the commission. Mr. Simpson stated he was involved in the appeal of the VGMC. He stated the series of steps of the review, hearing, and appeal process as it occurred stressing the delay and negative impact on the project. Mr. Simpson discussed the administrative appeal process at the

level of the circuit court and stated that once a case has reached that level, there is no time limit.

Chair Brown asked what the impact of the proposed changes would have been on this case and discussion ensued.

Marks Watts referenced Oak Hill as the third example. Based on the proposed amendment, the two objections filed would not have been permitted. Mr. Watts went on to say that the charter is where the power and authority of the VGMC resides. Currently, the Charter language establishes obligation, power and authority, regardless of the VGMC Rules of Procedure, to certify comprehensive plan amendments. Mr. Watts stated that Mr. Eckert's draft addresses the concern and that in order to affectively adopt changes to the VGMC Rules of Procedure, the charter has to be amended.

Chair Brown reviewed the application of the proposed rules to Mark Watt's examples. Further discussion ensued to compare draft amendments proposed by the VGMC and Dan Eckert's draft Charter amendment and how each is applied. Chair Brown stated that he would like to schedule a meeting to discuss specific points within the VGMC recommendations and asked that staff generate a targeted list. Additional questions and conversation followed in regards to standing and time lines.

Chair Brown asked that Dan Eckert and staff review the proposed VGMC changes and identify how each revision would be effectuated. Chair Brown asked that Mark Watts work with Mr. Eckert on this project.

Dan Eckert asked for direction on preparing the draft to include small scale.

Chair Brown asked for clarification of the VGMC draft amendment language. Additional clarification was asked on why there are classifications for large scale and small scale, and whether there is a VGMC staff review on plans that are uncontested.

Heather Ramos, Attorney pointed out the streamlined review process to confirm that small scale plans without objection are not reviewed by VGMC staff - the process ends; large scale plans without objection are reviewed by VGMC staff, then reviewed by the commission to determine further action. Ms. Ramos stated that the only difference between large scale rules as they stand and those proposed is that under the proposed changes, the VGMC cannot call for a public hearing.

Chair Brown asked for any additional questions and there were none. He then asked to meet the following week to discuss Dan Eckert's proposed draft based on the VGMC draft amendments. A tentative date was set for 9:00 am Wednesday, March 23, 2016, pending availability.

WRITTEN CORRESPONDENCE FROM CHARTER COMMISSION

Chair Brown acknowledged receipt of Pat Drago's comments on the VGMC draft amendments and asked for additional comment or feedback. There was none.

CHARTER DRAFT AMENDMENTS

Chair Brown discussed the Charter amendments provided by Dan Eckert that provide repeal of obsolete provisions and the incorporation of suggested language.

Dan Eckert discussed the details of the revisions and noted that each change is accompanied by an endnote that provides additional information and references the associated Statute as it applies.

Chair Brown asked that the amendments be placed on the agenda for the March 23, 2016 meeting for a vote.

Dan Eckert offered additional review of the council confirmations draft. Conversation ensued on additional topics including the information provided by Ms. Cusack earlier in the meeting and Chair Brown agreed those issues would be discussed in a future meeting. Mr. Eckert addressed the changes proposed for the beginning date of the term of office outlining the timelines for elections and cited the effect that would be realized on the vesting period.

DISCUSSION BY COMMISSION OF MATTERS NOT ON THE AGENDA

Chair Brown asked if there were any other matters not on the agenda to discuss and there were none.

ADJOURNMENT

Chair Brown adjourned the meeting at 7:33 p.m. The next meeting will take place on March 23, 2016 at 9:00 a.m. in the Dennis R. McGee Room at the Daytona Beach International Airport, 700 Catalina Drive, Daytona Beach, Florida.