

Minutes Outline

POP Committee Workshop, February 25, 2009, 6:00 p.m.
Discussion of Amendments to VGMC Policies & Procedures
City of Daytona Beach, Room #116, 301 S. Ridgewood Ave., Daytona Beach, FL

In Attendance: POP Committee Chair Gerald Brandon; Committee Members Stephan Dembinsky, John Heaphy, James Kerr, Dwight Lewis and Sandra Walters.

Also in attendance: VGMC Chair Joan Spinney, VGMC Legal Counsel Paul Chipok, VGMC Planner Barry Wilcox, and VGMC Coordinator Merry Smith

The committee discussed comments received by VCARD and the VC School Board, as well as the Attorney General Opinion, rehearing procedures, adding completeness review language and modifications to the VGMC application. The workshop recessed to allow the members to attend the 7:00 p.m. regular VGMC meeting and the POP workshop reconvened at 8:15 p.m. The committee also agreed to schedule another workshop as soon as possible to discuss the comments and draft submitted by Scott Simpson. The workshop concluded at 9:05 p.m.

The committee discussed the following issues:

- 1) The committee will look at third party participation when they discuss Scott Simpson's comments;
- 2) VCARD Comment #1 – The committee concurred that pursuant to the charter, VGMC shall review all comp plan amendments to determine consistency;
- 3) VCARD Comment #2 – The committee has previously addressed the issue of application requirements and concur with VCARD;
- 4) VCARD Comment #3 – The committee has previously addressed this issue and will not be recommending a reference to NRMA be made on the application;
- 5) VCARD Comment #4 – The committee will be discussing substantially affected parties at the next scheduled workshop;
- 6) VCARD Comment #5 – The committee concurred that most applications are certified within the DCA timeframe, however, by adding a policy whereby the applicant jurisdiction can withdraw their amendment without penalty in those situations where there are larger issues that need to be addressed, will provide them the ability to address the issues and resubmit in a future cycle;
- 7) VCARD Comment #6 – The committee concurred that the jurisdictions are already under obligation to provide additional documentation, such as the ORC report, and the prehearing checklist is intended only for those cases

- scheduled for public hearing. They agreed that clarification of this with VCARD is in order;
- 8) VCARD Comment #7 – The committee has previously addressed this issue and will not be recommending any fees be charged back to the jurisdiction or developer;
 - 9) VCARD Comment #8 – The committee reported that planning staff was bid out within the past several years. This is an issue the commission considers periodically;
 - 10) VC School Board Comments – The committee concurs that the VC School Board is a valid part of the VGMC process and should be designated as a unit of local government for participation purposes;
 - 11) Attorney General Opinion – Mr. Chipok reported that a VGMC member is subject to dual office holding and also that if a member is present, they must vote unless there is a statutory conflict of interest;
 - 12) Rehearing Procedures – The committee agreed to recommend option #2 language allowing rehearings;
 - 13) Completeness Review Procedures – The committee agreed to recommend including language to codify the completeness review process;
 - 14) Proposed Changes to the Application – The committee agreed to recommend proposed changes to the application.

**MINUTES OUTLINE APPROVED BY THE POP COMMITTEE AT THEIR
REGULAR MEETING OF April 14, 2009**


**Gerald Brandon, Chairman
POP Committee**

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

MINUTES FOR
WORKSHOP MEETING HELD
Wednesday, February 25, 2009

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

The meeting was called to order at 6:05 p.m. by Committee Chair, Gerald Brandon.

The following POP Committee Members were present: Stephan Dembinsky, John Heaphy, James Kerr, Dwight Lewis, and Sandra Walters.

Also in attendance: VGMC Chair Joan Spinney, VGMC Legal Counsel Paul Chipok, VGMC Planner Barry Wilcox, and VGMC Coordinator Merry Smith.

NEW BUSINESS - Discussion of comments received since October 21, 2008 meeting

Scott Simpson Comments - Mr. Chipok reported that VCOG met on February 23, 2009 at which time they tabled any further review of the resolution which adopted Scott Simpson's proposed changes. Additionally, they recommended that the County Attorney, Paul on behalf of VGMC, Scott Simpson on behalf of several cities, and the School Board get together to review the drafts to determine where there may be common ground. Mr. Chipok pointed out that one of the recommendations of Scott Simpson is that VGMC does not review a comp plan amendment unless there is a request by an adjacent jurisdiction. He stated this is in conflict with the Charter which specifically states that the VGMC shall look at every application and once it is found consistent by the VGMC, the local government can move forward with adoption. Mr. Chipok stated he sent a letter to all of the local jurisdiction attorneys, mayors and planning managers with respect to this issue.

Mr. Chipok stated he is looking for feedback and direction from the POP committee prior to making contact with the various attorneys.

Mr. Brandon reminded the committee that depending upon how long they needed to discuss the comments, the committee may reconvene following the 7:00 p.m. regular meeting. From a POP agenda standpoint, Mr. Chipok suggested the committee move forward with the balance of the items on the agenda during this first hour, and then come back to the Scott Simpson comments when the committee reconvenes. The committee concurred.

VCARD Comments - Mr. Chipok stated the comment indicating that only affected local governments, and not VGMC, should be able to request a public hearing is in conflict with the Charter which again states that the VGMC shall review all comp plan amendments to determine its consistency with adjacent jurisdictions. That being the case, Mr. Chipok stated that VGMC is one of the parties who needs to review the amendment applications. He also stated that historically, the VGMC schedules no more than five or six public hearings each year, and the

majority of the applications are letter certified. Mr. Chipok further stated that the issue relating to citizens and other third parties requesting public hearings is a policy discussion that he would look to the POP committee for direction on.

With respect to including other affected parties, Mr. Chipok stated he spoke with Tom Cloud and found the historical intent was to avoid additional litigation. Currently, Mr. Chipok stated our rules allow for other affected parties such as members of the public and non-adjacent jurisdictions to request a public hearing through the public notice process. If we eliminate other affected parties, he stated one of two things could happen – the affected party can go to their local jurisdiction and raise the issue with their elected officials and try to get the elected officials to act on their behalf, or they can immediately go to court and claim they have been denied access to the system. Mr. Chipok stated it is uncertain how the court would rule, however, by having the ability for other affected parties to go to VGMC and request a public hearing as currently in our rules, we've cut down on that litigation aspect. He added there's never been a lawsuit filed to hold a public hearing, because if a public hearing has been requested, it has been scheduled.

Chair Spinney commented that the access should be locally at the front-end, rather than the back-end at VGMC. Mr. Chipok stated that the VGMC has a narrow scope of review and that we only review whether or not a comprehensive plan amendment is consistent with an adjacent jurisdiction's comprehensive plan. Ms. Spinney stated her concern is that the citizens don't come to the VGMC questioning that, but rather for other reasons that are not related to consistency. Mr. Chipok responded that at each public hearing he standardly advises the commission that they are not here to determine whether it is a good amendment or bad amendment, but to determine whether it's consistent with the adjacent jurisdiction's comprehensive plan. Mr. Brandon commented that the problem is that people will come in with a zoning issue and think the commission can get them relief, which we cannot.

Relative to zoning issues, Mr. Chipok stated from a comprehensive planning standpoint, an amendment must be reviewed on the basis of maximum impact created by the proposed amendment. Often, the jurisdictions will advise that they are not intending to develop the property to the maximum allowed and will request limitations in order to address comprehensive plan impacts, which are generally enforced through conditions of approval and typically address zoning type issues. Mr. Chipok also discussed situations which involve mixed use districts in several of the jurisdictions.

Chair Spinney commented that one of the primary troubling issues deals with the granting of party status. Mr. Chipok stated the original intent was to allow access to the system and avoid people from suing to get a writ to force a public hearing before any action could be taken on the amendment. Mr. Chipok stated that since the rules were written in 1987, if someone requests a public hearing, the first order of business is for the commission to determine whether or not to grant party status. He further explained that party status is not to determine whether or not they are allowed to participate in the hearing, but rather to determine if party status should be granted in the event they appealed the decision of the commission. Subsequently, Mr. Chipok stated that in the case of Splash and Ski of Orange County, the judge ruled that the only people who can restrict access to the court and limit how a case can be brought, are the courts. He added that the

legislature and governmental agencies do not have the ability to limit access to the courts through their own rules. Mr. Chipok stated that under the Splash and Ski case, if the VGMC denied standing, they could file a writ and argue that the commission does not have the ability to deny standing and request that the courts determine that. At the end of the day, Mr. Chipok stated that the standing provision does not necessarily accomplish any legal purpose and if it was deleted from our rules, it would not change the playing field in the big picture. At this point, he stated if party status is granted by the VGMC, legal staff knows we will not contest their right to appeal. If they were denied standing and they appealed the decision, based on case law it is likely we would probably lose in that circumstance.

Chair Spinney commented that the only thing granting standing does is give them the right to sue which they already have. She added that standing is one thing, but there has been at least one instance, the Daytona Beach Shores amendment, where that carried forward and the commission acted as a zoning board. Ms. Spinney asked if there is anything in the proposed procedure revisions that would address that. Mr. Chipok responded that the three methods of bringing an issue to public hearing has not been addressed in the committee's rules revisions up to now, however, he added that this issue is at the heart of the comments raised by VCARD and Scott Simpson. He stated the committee will be looking at that when they further review Scott Simpson's draft. Ms. Spinney emphasized that this is an issue the jurisdictions are upset about.

Mr. Wilcox commented that in terms of third party participation, there are two topics -- one is granting standing once a hearing is called, and the other is being able to call for a hearing. Mr. Chipok stated that the issue has to do with how a matter gets to public hearing. He stated both the VCARD and Scott Simpson comments suggest that a public hearing be called only if an adjacent jurisdiction requests it. Mr. Chipok stated he agrees that an adjacent jurisdiction should have the right to call for a public hearing, however, he disagrees with the recommendation that VGMC does not have the right to review and call for a public hearing because the charter language states that we will review every application.

Mr. Chipok stated the big issue before the committee is how other third parties access the VGMC system -- whether access should be through their elected officials, or whether they should have the right to call for a public hearing. Mr. Wilcox pointed out that Scott Simpson's draft included the property owners/developers. In discussions with some of the local planning staff, Mr. Wilcox stated that they've commented that if you are going to limit it just to jurisdictions and the school board, then there should not be a caveat for other third parties. The committee agreed to address this further when discussing the comments received from Scott Simpson.

The committee began discussing the balance of the VCARD comments and other agenda items.

With respect to items 2 & 3 of the VCARD comments, Mr. Chipok stated the committee has already agreed to those at earlier POP meetings.

With respect to item 4 relating to substantially affected parties, Mr. Chipok stated the original rules amendments were drafted to codify what the commission has practiced. He stated that once the committee addresses the bigger issue, we will know whether or not that section needs to be further amended.

Relating to item 5, Mr. Chipok explained that VGMC has been cautious in its timeline and in most cases consistency certification is issued within the 120 day timeframe the jurisdictions have to adopt – 60 days for DCA to issue the ORC and 60 days for the jurisdiction to adopt. In some rare situations where there is a large issue that needs to be addressed such as regional traffic impacts, there is additional time necessary in order to resolve those issues. Mr. Chipok stated the commission should look closely at the current VGMC rule that does not allow a jurisdiction to resubmit an application for 12 months. He stated if we allow the opportunity for the jurisdictions to withdraw an amendment without penalty, they will have the ability to address the issues and resubmit in a future cycle.

Mr. Wilcox commented that in many cases, there has been no intergovernmental coordination prior to the application being submitted to the VGMC which can cause additional time to review and resolve any comments or objections. He suggests to the jurisdictions if they anticipate issues with neighboring jurisdictions that they attempt to address some of those issues prior to submitting to VGMC.

With respect to item 6, Mr. Chipok commented that VCARD may have misunderstood this issue and we may need to clarify. He stated the jurisdictions are already under obligation to provide any additional documentation, such as the ORC report, and the pre-hearing checklist is intended only for those applications that are scheduled to go to public hearing to ensure that the commission has all existing application documentation for the hearing.

Relating to item 7, Mr. Chipok stated that POP already reviewed this and will not be recommending any fees be charged back to the jurisdiction or developer.

With respect to item 8, Mr. Chipok stated it is a policy decision of the commission if they wish to solicit RFP's for consultant services. Mr. Brandon commented that the commission had solicited planning proposals within the past couple of years. Ms. Spinney added that several years ago there was a proposal prepared for putting staff services up for bid which required a change in staff every three years and that no company could keep the contract consecutively. She added that this would cripple the commission and we want to be sure not to do that.

Volusia County School Board Comments: Mr. Chipok stated the school board's concern is that if the commission decides to limit the ability to request a public hearing to just the local governments, then they want to be designated as a unit of local government. He added that he has not heard any objections to this concept and it appears there is support that the school board is a valid part of the VGMC process.

OLD BUSINESS:

Attorney General Opinion – Mr. Chipok stated that the AGO opinion basically said that a VGMC member is considered an office and, therefore, is subject to dual office holding. Additionally, he stated that Section 286.012 of state regulations applies to VGMC members, therefore, if you are present at a meeting, you must vote unless you have a statutory conflict of interest which means you will have a direct pecuniary gain from that application.

Mr. Dembinsky stated he hadn't seen the AGO previously and he feels he may be holding dual offices since he is the Police Chief for the City of Daytona Beach Shores. He stated he will likely need to resign. Mr. Chipok stated that the VGMC will not dictate who the jurisdictions appoint and suggested that if he feels there is an issue, he should get with his city attorney and council.

Mr. Dembinsky excused himself from the remainder of the POP Committee workshop and was granted an excused absence from the regular meeting scheduled for that evening. Mr. Dembinsky will consult with his local city attorney regarding his appointment.

Committee Workshop Recess – Sandra Walters made a motion to recess the workshop at 6:57 p.m. to attend the regular meeting of the VGMC scheduled to begin at 7:00 p.m. and reconvene the workshop at the conclusion of the regular meeting or 7:30 p.m. whichever is later; seconded by Jim Kerr. Motion carried unanimously.

The workshop reconvened at 8:15 p.m.

Discussion of proposed rehearing language – Mr. Chipok stated at the October 21, 2008 POP workshop the committee agreed to selection Option #2 allowing rehearings, however, recommended changes to the policy language. He stated the draft before them reflects those changes.

John Heaphy made a motion to accept the language and include it in the next draft amendments to the procedures; seconded by Dwight Lewis. In the proposed Section 90-46(a), Mr. Kerr suggested that a comma (,) be inserted on line 2 following “some facts or points of law”. The committee concurred and included it in the motion. The motion carried unanimously.

Discussion of completeness review language – Mr. Chipok reported that our rules currently state that upon receipt of an application, the administrative staff shall date-stamp it. From a practical standpoint, Mr. Chipok stated that when an application is received by the coordinator, she reviews it for base information such as signatures, property addresses and other information needed to properly advertise the application. If any of the information is missing, Mr. Chipok reported that the coordinator immediately contacts the jurisdiction and generally receives the information within a day or two, at which time the application is date-stamped. He reminded the commission that a completeness review is not a subjective review of the application and contents of the application, but rather an objective review of whether or not the materials are included with the application. Mr. Chipok stated the proposed language is to codify this process. He also stated this will be an issue he will discuss with the jurisdictions to let them know we already do a completeness review, and to let them know that it is not a substantive review.

James Kerr made a motion to recommend accepting the proposed completeness review language; seconded by John Heaphy. Motion carried unanimously.

General discussion ensued concerning the Notice of Application and the language “substantially affected or aggrieved party”. Ms. Spinney commented that her concern regarding aggrieved

party and party status is that the individuals who come before the board don't understand it, and they think that granting party status allows them to argue their case before the VGMC and affect the outcome. She asked if there is something that could be drafted to clarify that for both the members of the public and the commission members. Mr. Chipok stated that at the beginning of each hearing he reviews with the commission what the scope of their power is, what the review process is, and that the commission is not voting up or down on the comprehensive plan that is before the local government, but rather looking at whether or not it is consistent with the comprehensive plans of adjacent jurisdictions. Ms. Spinney stated she felt this is one of the problems that VCOG and others have with the VGMC, where they imply that we routinely overstep our boundaries. Mr. Brandon commented that this is an issue that needs to be monitored by the Chair at the meetings, once it has been emphasized by legal at the onset.

Mr. Wilcox stated the question raised by the Scott Simpson and VCARD comments relates to who can call for a public hearing. He stated those comments indicate they want the ability to call for a public hearing left to the discretion of the jurisdictions. Mr. Wilcox agreed that members of the public don't necessarily understand the purpose of the VGMC and tend to look at the commission as an extension of their local government planning board. Ms. Spinney again asked if there is something that could be drafted into the rules to address that. Mr. Chipok referenced the 8-29-08 draft amendments, page 10, item (i) which he stated was drafted in attempt to address and codify the process for determining who is a substantially affected or aggrieved party. Ms. Spinney commented that there is nothing in the language that gives the individuals a right to present zoning issues, nor does it give the commission the right to vote as a zoning board. Mr. Chipok responded affirmatively, stating that the commission is still limited to the same scope of authority within the charter. Ms. Spinney stated if an individual insists on being heard, the Chair has the right and responsibility to refuse. Mr. Chipok stated if there is testimony being given that is irrelevant to what is before the commission, the Chair has the right to advise that the testimony needs to be focused on the issues before the commission, which is limited to whether it is consistent with the adjacent jurisdictions' comprehensive plan.

Review proposed changes to the VGMC application

VGMC Coordinator, Merry Smith, reviewed the proposed amendments to the VGMC application based on prior POP committee recommendations. Mr. Brandon commented that he wanted to be certain all jurisdictions are receiving notice of the application. Ms. Smith confirmed that question 4 of the application requires the applicant jurisdiction to provide complete copies of the submittal package to adjacent jurisdictions, and question 5 of the application requires they provide a copy of the application and summary notice to non-adjacent jurisdictions and other agencies.

With respect to question 5) on the Exhibit, Mr. Kerr suggested rather than asking the question "Will the proposed amendment result in an increase in auto trips?", perhaps reword that to read similar to "Explain whether the proposed amendment will result in an increase in vehicle trips." Mr. Wilcox commented that in most cases, development of a property will result in more trips, and the question is whether or not it will result in enough trips to trigger a need for a traffic impact analysis (TIA). He stated the jurisdictions do not necessarily adopt the same guidelines for requiring a TIA and that he would look at the MPO guidelines. Following general

discussion, it was determined that Mr. Wilcox will work with Ms. Smith to look at rewording that question on the Exhibit and get back with the committee.

Mr. Brandon stated the only other item on the agenda is reviewing the draft submitted by Scott Simpson. It currently being 8:50 p.m., he asked the committee what their desire was in moving forward. Mr. Lewis asked Mr. Chipok when he anticipated meeting with the other attorneys and whether the committee's review should wait until that meeting occurred. Mr. Chipok stated he would like to get direction from the committee on Scott Simpson's comments prior to meeting with the attorneys. Mr. Brandon suggested that when Mr. Chipok meets with the attorneys to advise them to send their recommendation to VGMC, and not directly to the County Council, since it was the commission who requested their input. Additionally, he stated that the charter states that recommendations to changes in the procedures go to the County Council from the VGMC.

Ms. Spinney excused herself at 9:00 p.m.

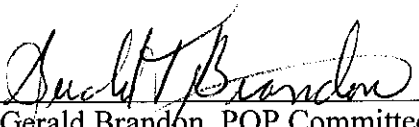
Mr. Brandon advised the committee that they need to give Mr. Chipok direction prior to his meeting with the attorneys and asked the committee if they wished to continue discussions tonight, or schedule another workshop. The committee concurred to schedule a continuation of the workshop as soon as possible. Ms. Smith will coordinate the workshop with the committee members and staff.

OTHER BUSINESS

Ms. Walters requested a copy of any POP committee member appointment letters which have gone out since January 1st, as well as any inquiries about being put on the POP committee, as well as a list of the current members and when they were appointed. Ms. Smith asked Ms. Walters to send her an email with the specific request. Ms. Walters stated if we had letters with appointments, she wanted copies of the emails or letters which would have triggered the committee appointments, similar to her prior email to the VGMC office requesting to be appointed to the POP committee. Ms. Smith advised there were vacancies on the committee which triggered the appointments. Mr. Brandon explained that the VGMC Chairman makes the committee member appointments for both POP and Budget.

ADJOURNMENT

The meeting was adjourned at 9:05 p.m.



Gerald Brandon, POP Committee Chairman