

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

MINUTES FOR
REGULAR MEETING HELD
Wednesday, August 27, 2008

Room #291
Daytona Beach City Hall
301 S. Ridgewood Avenue
Daytona Beach, FL

The meeting was called to order at 6:00 p.m. by VGMC Chair, Gerald Brandon.

The following POP Committee Members were present: James Kerr, Steve Katz, Suzanne Steiner, Tony Cole and Sandra Walters.

Also in attendance: VGMC Legal Counsel Paul Chipok, VGMC Planner Barry Wilcox, and VGMC member Rick Tresher.

OLD BUSINESS

1) Discussion of Rehearing Procedures

Mr. Chipok stated that VGMC rules do not currently address rehearings, and the commission has the option to either allow or not allow rehearings. He reviewed proposed language for each of these options, noting that the procedure drafted for allowing rehearings was based on Volusia County Code Section 62-9 which pertains to rehearings by the Historic Preservation Board and is being presented as a guideline for the committee's review.

Commissioner Kerr commented in favor of allowing rehearings. Commissioner Katz stated if we allow rehearings, perhaps we should require the petitioner to lay out in advance what it is they wish to address at the rehearing and limit the rehearing to those issues. Mr. Chipok responded that it is a 2-tier process. The first is for the board to determine if they meet the short list of items that you could hold a rehearing for, such as mistakes, surprise, etc. If the commission determines that has been met, then it is scheduled for a noticed public hearing. Mr. Chipok also stated that it is up to the commission to determine whether they would want to open up the rehearing to all issues, or limit it to the specific item(s). He noted that section (d) of the draft policy language addresses that.

Mr. Chipok stated that one of the advantages of a trial de novo is that the members present at the second hearing would hear all of the evidence, which would eliminate the concern that a member present at the second hearing who was not present at the first hearing does not have the benefit of all of the testimony.

Commissioner Steiner commented in opposition of allowing rehearings, stating that it is very subjective and that all parties should be fully prepared to present at the initial hearing.

General discussion ensued relating to various voting scenarios if rehearings were allowed.

Chairman Brandon stated the committee needs to first determine whether or not they wished to recommend allowing rehearings. If the answer to that is yes, Chairman Brandon stated then they would have to determine how the language in the procedures would read. He also recommended that the committee vote on a recommendation to the full commission this evening as to whether or not rehearings should be allowed, and the committee could discuss draft procedural language at a future meeting.

Commissioner Katz asked if the commission should look at the guidelines used for determining party status. There was a general consensus there should be no change in how the commission addresses that.

Commissioners Steiner and Cole both commented in opposition of allowing rehearings. Commissioner Kerr indicated he is in favor of allowing rehearings. Commissioner Walters commented in favor of allowing rehearings, adding that she was also in favor of the language proposed in option #2 of legal staff's write-up which mirrors what is being utilized on other county boards. Commissioner Katz stated the commission should look at drafting procedures to allow rehearings and then determine if that is the direction they wish to move.

Mr. Chipok suggested that prior to spending additional time discussing what the procedures should be to allow rehearings, that the committee take their recommendation to the full commission for determination as to whether or not they wish to allow rehearings.

Chairman Brandon commented in favor of allowing rehearings with appropriate and definitive procedures in place.

Commissioner Steiner made a motion to recommend to the full commission not to allow rehearings; seconded by Commissioner Cole. The motion failed with a 2-4 vote, Commissioners Walters, Kerr, Brandon and Katz voting in opposition.

Commissioner Katz made a motion to recommend to the full commission that we develop procedures to allow rehearings; seconded by Commissioner Kerr. The motion carried with a 4-2 vote, Commissioners Steiner and Cole voting in opposition.

With respect to the proposed option #2 language which would allow rehearings, Mr. Chipok stated the language is very sound and consistent with case law.

2) Discussion of Ex-parte Communications

Chairman Brandon stated this is another issue that Judge Parsons had in the matter relating to the Lady Godiva amendment and that VGMC rules do not address ex-parte communications.

Commissioner Walters stated she had downloaded the agenda from the Volusia County Planning and Land Development Regulation Commission for their August 12th meeting and she stated

they have an agenda item requiring the commission members to disclose the substance of any ex-parte communications that have occurred before or during the public hearing. Commissioner Walters commented that she was sorry the VGMC had not been doing this for the past 20 years, and feels that the VGMC should begin doing so. Mr. Chipok stated that according to Volusia County rules which are based on Section 286 of the Florida Statutes, in the situation of a land use hearing, disclosure of ex-parte communications is not required. Mr. Chipok quoted from Section 2-3(e).

Mr. Chipok stated that if the commission chooses to allow ex-parte communications and adopts the language provided in Section 2-3 of the Volusia County Code, the commission is covered. He further stated under those rules, if ex-parte communications have occurred, it is presumed not to be prejudicial and disclosure is not required. Mr. Chipok added, however, that the decision and vote made by that member must be based on the record and the evidence presented at the public hearing.

Commissioner Steiner commented that she is in favor of allowing ex-parte communications, however, feels that it should also require disclosure of the substance of the communication. Mr. Chipok stated the rule, if adopted, would not prohibit the member from disclosing that, however, based on an Attorney General Opinion in another matter, Mr. Chipok stated if we are going to adopt language from Section 286 of the Florida Statutes, then it should be adopted exactly as written which is what the County has done in Section 2-3 of the Code. By doing so, Mr. Chipok stated our rules would be consistent with the County regulations which are consistent with State regulations.

Commissioner Cole made a motion to recommend adopting option #2 relating to ex-parte communications which would create a new section 90-36(b) in the VGMC Consistency Certification Rules; seconded by Suzanne Steiner. Motion carried unanimously.

3) Discussion of Correspondence Distribution to Members

VGMC Coordinator, Merry Chris Smith, discussed the various sources of communications that come into the VGMC office, including newsletters and announcements from groups like VCARD and VCOG, correspondence from VGMC members and members of the public on issues that are not VGMC specific, as well as requests from individuals or groups to distribute their opinions on issues not VGMC specific.

Following discussion, there was general agreement to recommend that correspondence related to VGMC or issues that deal with land use in Volusia County should be distributed to the general membership. Mr. Chipok commented that if correspondence comes in that is case specific, the Coordinator forwards that to the planning staff for their review and if it is pertinent, it becomes part of the staff report.

Additional discussion ensued concerning communications from non-governmental agencies such as VCARD, versus those from governmental agencies such as VCOG.

Commissioner Walters made a motion that the Coordinator only forward communications relating to the VGMC, or Volusia County government organizations to the general membership; seconded by Commissioner Cole. Motion carried unanimously.

The VGMC Coordinator asked the committee how they wanted to handle communications that come in after an agenda has been published but prior to the scheduled hearing. Several of the members commented that they would like that correspondence forwarded to them when it is received in the office. Mr. Chipok commented that we do have a 20-working day rule in place and correspondence received prior to that date is referred to staff for their consideration in preparing the staff report. He further asked if the committee wanted to give deference to those materials which arrive after the 20-day cut off, in that they would be given to the members without the benefit of the staff analysis. Mr. Chipok added that nothing prohibits an individual from attending a hearing and presenting documentation at that time. Chairman Brandon commented that he feels the information should be filtered through staff first, however, he stated we need to be sure any documentation germane to the hearing is provided to the members.

Chairman Brandon stated that the regular meeting of the VGMC is scheduled to start and the issue relating to correspondence received after the 20 working day rule can be discussed further at a future meeting.

ADJOURNMENT

The meeting was adjourned at 7:00 p.m.



Gerald Brandon, VGMC Chairman