

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

MINUTES FOR
MEETING HELD
Tuesday, June 9, 2009

City of Orange City
City Council Chambers
201 N. Holly Avenue
Orange City, FL

The meeting was called to order at 10:10 a.m. by Committee Chair, Gerald Brandon.

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

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

Committee Chair Brandon stated that committee member Sandy Jones submitted a letter to the committee as she was not able to be in attendance at this meeting (see Exhibit A).

OLD BUSINESS – Procedures Review

1) The process by which the rules amendments will be further reviewed – Mr. Chipok referred the committee to the Issue Review Tentative Timeline which was in the agenda packet. He stated the issues listed on the timeline represented what seemed to be the general issues of concern raised at the May 27, 2009 hearing, adding that there was a suggestion to look at the issues in smaller segments rather than the entire amendment package as a whole. Mr. Chipok stated that the three big issues raised at the May 27th hearing related to VGMC members, standing, and presumption of consistency/burden of proof. He then reviewed the proposed tentative timeline for reviewing the issues and asked if anyone had any comments.

Commissioner Walters suggested that the POP committee recommend the commission approve the draft rules amendments dated August 29, 2008 so that they could be implemented, and then continue to look at the other issues. Mr. Brandon stated that we may want to look at the draft amendments and identify those changes where a full consensus cannot be reached. This way, he stated, all of the other amendments where there is agreement can be approved at one time, and the other issues could be looked at individually.

VGMC Chair Spinney commented that any items that are in the proposed rules amendments that are not consistency related be removed. Specifically, she stated membership is an internal issue and does not belong in the consistency certification rules, but rather in the commission's internal operating rules. Mr. Chipok stated that since membership is specifically referenced in the charter and we have rules adopted by ordinance, it is the County Attorney's opinion that membership should be adopted by ordinance in the consistency certification rules as opposed to adopting by

VGMC resolution as part of the procedural rules. He added that rather than debating the issue, the easier way to handle was to basically reiterate the language in the charter and reference back into the consistency rules. Mr. Chipok stated the whole process has been a series of give and take in an attempt to reach consensus.

2) Discussion of membership issues – Ms. Spinney suggested that if the last line of the proposed membership language which would allow appointing jurisdictions to remove their member with or without cause is removed, perhaps language should be included indicating that each individual jurisdiction may have their own method of removing a member if they so choose. She asked if an acknowledgement in our rules would be appropriate rather than not addressing it at all. Mr. Chipok stated that member removal for cause is already in our operating procedures and so that is not a change. He stated that the background and history on the proposed language that would allow an appointing jurisdiction to remove its member without cause was that the individual jurisdictions were concerned that with a three-year term of office and many of the jurisdictions on two-year election cycles, that there would be a leftover VGMC member who is not carrying out the will of the current local officials. Mr. Chipok stated that based on case law, if there are no rules, then there is no right to remove. However, if there is a rule in the VGMC rules adopted by ordinance, or a rule adopted by an individual jurisdiction, he stated that would prevail. Mr. Chipok stated that if an individual jurisdiction wants to address how people are appointed and removed from boards within their own rules, they already have the power to do so.

Mr. Chipok stated that the language in the proposed amendments could be modified to state that members can be removed with or without cause unless the jurisdiction has rules that state otherwise. Or, he stated the last sentence can be deleted entirely and it has the same effect. Essentially, the VGMC would not have a rule that specifically authorizes removal without cause, but the local jurisdiction always has the right on its own accord to adopt an ordinance that would allow that in that jurisdiction.

Commissioner Lewis commented that once the rules amendments are approved by the VGMC that they are passed onto the Volusia County Council who has the authority to amend them. Mr. Chipok stated that point is debatable. He stated the charter states that the VGMC creates the rules and regulations and forwards them to the County Council who has to adopt by a two-thirds vote. Mr. Chipok stated whether the County Council can take the VGMC recommendation and either vote it up or down, or whether they can amend it or simply adopt what they want, is a matter of debate. Mr. Chipok stated if the County Council were to adopt with minor, word-tinkering changes, as legal counsel to the VGMC he would advise not to make an issue of it. On the other hand, he stated if there are wholesale changes from what the VGMC approved to what the County Council adopted, he stated the VGMC would need to seriously consider challenging that power under the charter.

Mr. Lewis commented that the VGMC are appointed members and the County Council are elected officials. He suggested that if the commission cannot come to consensus on some of the issues, that we move it forward to the County Council for them to decide. Chair Spinney stated that the VGMC is not a department of the county, but rather an independent commission. Mr. Lewis commented that he understands that, however, he believes there is some form of

jurisdictional power since all of the VGMC members are appointed by the jurisdictions and not elected by the people. Mr. Chipok commented that the debate goes back to the VGMC is an entity created by the charter and the charter was voted on by the people. He then read from the charter which states "Rules of procedure for the commission's consistency review...shall be proposed by the commission and shall not become effective until adopted by ordinance approved by a two-thirds vote of the entire membership of the council." Mr. Chipok stated that a strict reading of that is that VGMC proposes the rules, and the County Council votes them up or down by a two-thirds vote. He stated one way to interpret that is if there is something they don't like in the proposed rules, they would vote it down and send it back to the VGMC to address it and bring it back. The other extreme, Mr. Chipok stated, is that they look at it, toss it out, and adopt something different. In the latter situation, he stated he does not believe it is consistent with the verbiage of the charter amendment which was approved by the people and gave the authority for the creation of the board and the creation of the rules of procedure.

Mr. Brandon suggested shifting the focus of the discussion back to the membership issues.

Mr. Chipok distributed draft language that the committee may want to consider adding to the currently proposed membership language (see Exhibit B). He stated that this would recognize that we have standard rules regarding appointments, however, if the local jurisdiction wants to have a different rule on that particular issue that they are entitled to do so. Mr. Chipok added that he spoke with the County Attorney's office and they feel it is consistent with Section 1305 of the county charter which says that municipal ordinances shall control over county ordinances on the same subject matter.

Mr. Chipok stated another way to approach this would be to delete the last sentence. He stated without the language of the last sentence it would be a three year term. However, the local government(s) have the authority and may choose to create rules on how they wish to appoint and remove members.

Sandra Walters made a motion to approve the first draft of Section 90-45 deleting the last sentence which reads: "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)."

General discussion ensued relating to the language which would remain in the proposed rule.

Joan Spinney seconded the motion.

Mr. Lewis asked for confirmation from Mr. Chipok that it is his opinion the jurisdiction's already have the legal right to create their own rules relating to appointment and removal. Mr. Chipok responded affirmatively, adding that the jurisdiction's can remove their member without cause if the individual jurisdiction has an adopted ordinance which addresses that.

Motion carried unanimously.

From a procedural standpoint, Mr. Chipok asked if the POP committee liked the format of the issue sheet and for the purpose of bringing the issues back to the full commission, he could add an additional statement to the issue sheet(s) to include the recommendation made by the POP. The committee was in general agreement.

Mr. Brandon also suggested adding an item #13 to the issue review timeline in case something different comes up later that needs to be addressed. The committee was in agreement. He also clarified that this is a tentative timeline and we need to allow for flexibility.

Dwight Lewis made a motion to accept the tentative issue review timeline, including the addition of item #13 for other issues; seconded by James Kerr. Motion carried unanimously.

Mr. Chipok commented that he was pleased the committee had worked through the membership issue. He stated he had previously spoken to Scott Simpson on the concept discussed and that Mr. Simpson felt that would be acceptable to the jurisdictions he represents.

3) Discussion of standing issues – Mr. Chipok stated that the issue is whether citizens as well as the County and the municipalities should be permitted to request a hearing before the VGMC on an application and seek party status. He stated this matter is a policy issue and he is looking for direction from the committee prior to redrafting any language in the rules amendments. Mr. Chipok stated he felt there is a strong legal argument to defend whichever position the commission decides to take.

Mr. Brandon stated this was probably one of the hottest issues at the May 27th public hearing, particularly from members of the public. He stated he looks at this as two sides of a coin. One side being more cut & dry which is the presently drafted amendments limiting this to local units of government. He stated on the other side of the coin, the commission over the years has allowed the public standing.

Mr. Chipok stated that under our present rules, once the application is noticed in the paper anyone can request a public hearing within 21 days of publication. Additionally, he stated we have a section for intervention which basically states that if you did not file a public hearing and one is called, you have up to 5 days prior to the scheduled public hearing to file a petition to intervene.

Mr. Chipok stated that when a petition for public hearing is filed, staff does not administratively make a valid judgment on the petition, but rather it is scheduled for public hearing. At the public hearing, the first order of business is for the commission to review the petition for public hearing, run it through the Renard Test, and determine whether they meet the standard for standing. Mr. Chipok stated that any petitions to intervene would be run through the same analysis. He stated that this is what has been historically done and in the draft amendments, this process has been codified. Mr. Chipok stated this issue a two-part question: 1) Can anybody call for a public hearing?, and 2) Who can be the parties once the public hearing takes place?

Mr. Chipok stated the 04-23-2009 proposed amendments only allows the 16 municipalities, the county, and the school board to call for a public hearing. He stated this is one option for consideration, or the language could be changed back to the way it was where anyone could call for a public hearing.

Mr. Brandon reminded those present that whatever action the POP takes on this issue is only a recommendation for full commission consideration.

Mr. Chipok stated that the genesis of this issue came from discussions with VCOG and local jurisdiction's attorneys who participated in the discussions. He stated that at the May 27th hearing, Scott Simpson indicated that in his mind, and in the mind of some of the cities, that the 163 process exists and provides the avenue for the public. Mr. Simpson expressed concern that if a member of the public simply did not like the proposed comprehensive plan amendment, not that it was inconsistent with an adjacent jurisdiction's comprehensive plan, that the public can somehow use the VGMC process to override the local officials' decisions to adopt an amendment. Mr. Chipok stated that also was the position previously taken by VCOG, however, based on the testimony at the May 27th public hearing, there appeared to be a divergence of opinion among the members of VCOG as to whether or not that is truly the position they want to adhere to.

Mr. Chipok stated that staff has not done an independent count of the individual jurisdictions with respect to their position on citizen standing, and he suggested that the VGMC does not want to be the champion of removing citizen standing if there is not support from the jurisdictions that are affected by the rule.

Mr. Brandon commented that there has been criticism that the commission has gotten into zoning issues. He asked Mr. Chipok if the commission decided to continue to allow citizen standing, was there a way to draft language so that it clearly stayed within the purview of the VGMC. In other words, he stated if someone came in with issues of zoning, then the rules would not allow standing, but if they brought forward issues relating to consistency, then the commission would consider granting standing. Mr. Chipok responded that the commission looks at the applicant jurisdiction's amendment to ensure it is consistent with neighboring jurisdiction's comprehensive plans. He also explained that when conditions are crafted through resolutions in order to find an application consistent, the conditions can take on the look of a zoning issue which is where some of the criticisms lie.

Mr. Chipok briefly discussed Senate Bill 360 which in part adds a provision that upon asking, a landowner/applicant can run through the rezoning process concurrent with the comprehensive plan amendment process.

Mr. Wilcox commented that we need to keep in mind that we are tasked with looking at intergovernmental consistency, limited to the review criteria established in our rules. He stated that a petition for public hearing from a member or group from the public requires that they include details on what it is they are objecting to. He added that if the petition states the proposed amendment is not compatible to the surrounding area, compatibility is not something

the VGMC looks at. Mr. Wilcox stated when a request for public hearing is submitted, there is nothing in the rules that allows VGMC staff to evaluate the request and determine if it falls within the scope of VGMC review. Therefore, anytime a request for public hearing is received, a public hearing is held. As a result, a matter may go to public hearing on issues that are outside the scope of the VGMC, at which time it becomes the responsibility of the commission at the public hearing to determine that. Mr. Chipok confirmed that staff does not make any type of administrative decision on whether or not to hold a public hearing – if one is requested, it is held. He added that staff will address the objections raised in the request for public hearing in the staff report.

Mr. Brandon commented that we need to ensure that the members are better educated on the VGMC's role and understand where their responsibilities start and stop in terms of reviewing the consistency of an application.

Ms. Walters commented that it was unfair to pin the issues of zoning on the public, and she referenced a communication from the Mayor of Ponce Inlet relating to the VGMC being an avenue for redress. She stated the solution is education, not eliminating the public. Ms. Walters stated that a lot of this came from the cities who have had issues with the VGMC in the past. She suggested outreach and education is what needs to be done.

Chair Spinney commented that we have made efforts in the past to educate the commission members and unfortunately, many times people either don't listen or it did not conform with their own personal preferences. Ms. Spinney stated she is very much in favor of removing citizen standing, adding that the VGMC purpose has always been to foster cooperation and coordination amongst the jurisdictions. She stated we have never been charged with the responsibility to address zoning or to redress citizen's complaints against their own jurisdiction. Ms. Spinney stated that the VGMC's charge is clear and regardless of how often it has been restated, the same issues keep coming up again and again, both internally and externally. She also stated that there are many avenues outside of the VGMC for the public to address their concerns.

Commissioner Lewis commented in agreement with Chair Spinney. He discussed the various and existing ways the public has to address their issues through local government process. Mr. Lewis stated that members of the public have plenty of places to go and that it is not our charge to look at those issues. He suggested the process be streamlined so that it is not so confusing.

Commissioner Kerr commented in agreement with Chair Spinney and Commissioner Lewis. He stated that the City of Orange City holds three public hearings before they adopt a comprehensive plan amendment, which is required by the state as well.

Commissioner Heaphy commented that the consensus of the POP committee has been consistent and that the committee wants to define what the responsibilities are, however, he was uncertain that it would pass through the full commission. He suggested that the committee look at some sort of compatible compromise that would be acceptable to the commission.

Mr. Brandon commented that the commission appears to be divided on this issue and he is not sure which direction the commission is leaning.

Mr. Lewis stated that he spoke with one of the writer's of the charter and asked about the intent of the VGMC, and the response he received is that the commission is only to be looking at consistency and that the commission has gotten way off track.

Chair Spinney commented that she does not believe the POP committee should recommend a watered-down version to the full commission. She suggested the committee needs to put it before the commission the way it is and then fight for it. Ms. Spinney stated the commission's review is jurisdictional, it is not zoning or reviewing something because someone doesn't like a decision made by their jurisdiction, adding that these are the types of requests we've received.

Mr. Heaphy responded that we are dealing with people who have the attitude of 'don't confuse me with the facts, my mind is already made up'. He agreed with Ms. Spinney and stated he'd like to take it back to the full commission, lay it all out and hope some of the minds come around to it.

Mr. Chipok stated that the critical path for moving this issue forward is to: 1) move it out of the POP committee; 2) get it through the full VGMC commission; and 3) ultimately it will be voted on by the Volusia County Council. He stated he understands the points raised by the committee members, but he asked if the committee wants to specifically champion getting it through the full commission and County Council, particularly if there is a split amongst the user jurisdictions. Mr. Chipok stated that based on the May 27th hearing, there was a divergence of opinions, some jurisdictions are in favor of citizen standing and others are not.

Mr. Chipok stated that part of the charge of the commission is to be a service organization back to the user jurisdictions. He stated the committee may want to consider contacting the jurisdictions to get some form of count as to who supports citizen standing and who does not. Mr. Chipok commented that if we find that the majority of jurisdictions favor citizen standing, and if the commission were to recommend removing citizen standing, it would not make for a good County Council meeting. He asked whether the VGMC as a commission wants to fight for the removal of citizen standing if it is only the minority of jurisdictions opposed to citizen standing. Mr. Chipok stated that ultimately, the VGMC service is to the user jurisdictions and we don't have a good handle on what specifically they want.

Mr. Brandon commented that he felt it was important for the VGMC to understand where the jurisdictions stand on this issue and suggested that we poll the jurisdictions and bring the information back to the POP committee at a later meeting.

Ms. Walters commented in disagreement, stating that we already have letters and resolutions from some of the jurisdictions. She also asked how much more in tax dollars we want to spend on this issue. Mr. Chipok commented that polling the jurisdictions would be a prudent step and the cost for doing so would be much less than if challenged in court. He suggested drafting a letter to each of the jurisdictions presenting the issue, and asking for a resolution back as to how

the individual jurisdiction stands on the issue. This way, he stated the VGMC could incorporate those findings in their thought process while considering this issue.

John Heaphy made a motion to send a letter to each of the jurisdictions asking for a resolution documenting their position on citizen standing; seconded by Dwight Lewis. Motion carried with a 4-1 vote, Commissioner Walters voting in opposition.

Mr. Chipok stated he will draft a letter for Chair Spinney's signature to go out to each of the Mayors, along with the City Managers, Attorneys & Planners. Mr. Kerr suggested the letter include a document or language explaining where this issue has been. Chair Spinney commented in favor of polling the jurisdictions and also suggested the letter quote specific parts of the Charter language. Mr. Chipok responded affirmatively to both.

Mr. Brandon stated that since the issue of standing would not be ready for discussion by the full commission at the June 24, 2009 regular meeting, nor are there any cases to be scheduled for public hearing in June, he suggested that the June 24, 2009 regular meeting be cancelled. Chair Spinney concurred.

Mr. Chipok reminded the committee that they earlier voted on the proposed issue review timeline and suggested the motion be amended since the standing discussions will result in a modification of the timeline. Following general discussion of the proposed timeline, the committee concurred to move the presumption of consistency/burden of proof issue down to the third group with a tentative date of full VGMC discussion to be August 26, 2009. Additionally, the committee agreed that items (1), (2), (4), (5) & (6) of the 6-9-09 tentative timeline would be addressed by the full commission at the July 22, 2009 meeting, and the remainder of the items would come before the full commission at the August 26, 2009 meeting.

Ms. Walters asked that the draft letter going out to the jurisdictions be emailed to the POP committee members prior to it going out. Mr. Brandon stated we could do that. Mr. Chipok cautioned that we have to operate within the sunshine law and when the draft is distributed, we cannot have comments coming back in and then email discussions by the members.

Mr. Brandon stated that the VGMC Coordinator will email the POP committee to schedule the next POP meeting to discuss items (4) Senate Bill 360, (5) Municipal Home Rule Powers Act, and (6) Rehearings.

NEW BUSINESS:

None

OTHER BUSINESS:

Chair Spinney stated that she earlier seconded a motion made Ms. Walters in error as she is not a member of the POP committee. Mr. Brandon stated the committee needs to readdress the motion.

Sandra Walters made a motion to approve the first draft of Section 90-45 deleting the last sentence which reads: "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)."; seconded by Dwight Lewis. Motion carried unanimously.

Mr. Brandon asked if any of the members in the audience wished to comment.

Alice Jaeger, Ormond Beach, and a board member of the Volusia/Flagler Sierra Club, addressed the committee in opposition of removing citizen standing.

Suzanne Steiner also addressed the committee in opposition of removing citizen standing and questioned how many times it has been a problem in the past.

Larry French, Deltona, also commented in opposition of removing citizen standing.

In response to Ms. Steiner's question, Mr. Chipok stated that the VGMC Coordinator had prepared information relating to public hearings back to 2005. He stated the analysis found that since 2005, we've had 13 petitions for public hearing. Of those, he stated that 8 were requests from VGMC staff and/or a unit of local government, 2 were requests by staff and others petitioned to intervene, 2 were requested by staff or a unit of local government as well as another party, and one hearing was on a citizen petition only. The outcome of the hearings were that 9 were certified with conditions, 2 were certified without conditions and 2 were denied. With respect to party status determinations of the hearings, 8 individuals were granted standing, 2 were denied standing, and 3 requests were withdrawn before the commission took action on them. Mr. Chipok stated of the other party petitions for hearing, there were 3 that did not go to public hearing - 2 were withdrawn and 1 was resolved without the need for rehearing.

ADJOURNMENT

The meeting was adjourned at 11:40 a.m.



Gerald Brandon, POP Committee Chairman

VGMC 4-23-09

DRAFT RULES REVISION

SECTION 90-45

Appointment and Removal of Commission Members

Optional language regarding removal of members with or without cause by appointing jurisdiction. At the end of the last sentence insert the following:

“, unless such governmental entity has adopted rules by ordinance that are more restrictive on this subject, in which case the governmental entity’s ordinance shall apply.”

NOTE: Consistent with Volusia County Charter Section 1305 which states that when municipal ordinance covers the same subject matter as a county ordinance the municipal ordinance shall control.

Exhibit B
POP Committee Minutes
June 9, 2009 Meeting

June 7, 2009

To the POP Committee:

I am sorry I am unable to attend this committee meeting due to the time of day and place. I do however want to express my views from our last meeting on May 27, 2009.

I would like to offer the following input for this meeting:

As I listened very closely not only to public participation but other commission members concerning our rules change I still believe we have a very viable document (revised date 4/23/09). Our scope has always been as far as I can tell to determine consistency between comprehensive plans where changes affect contiguous governmental jurisdictions and as such to encourage coordination and cooperation where conflicts may occur.

As for the Public standing issue I believe that there are many platforms where they can express their opinions long before the process gets to the VGMC and should therefore use those venues.

Where member appointments are concerned I have no problem with being appointed by the jurisdiction or not as the case may be. If I were to change anything in this regard it would be to put term limits on these positions.

As stated earlier I believe the final draft of this document is a good one and we should let it move forward on its own merits. We will never have a perfect document where everyone will be happy with the outcome.

Respectfully,

Sandy Jones

Member V.G.M.C.