

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

MINUTES FOR
REGULAR MEETING HELD
Wednesday, August 11, 2008

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

The meeting was called to order at 9:30 a.m. by POP Committee Chair, Gerald Brandon.

The following POP Committee Members were present: Terry Griffiths, Sandy Jones, James Kerr, John Heaphy, Dwight Lewis and Sandy Walters.

Also in attendance: VGMC Chair Joan Spinney, VGMC Legal Counsel Paul Chipok, VGMC Planner Barry Wilcox, Helen LaValley of the Volusia County School Board and VGMC Coordinator Merry Smith.

OLD BUSINESS – Procedures Review Issues

1) Discussion of Standing Issues

Committee Chair Brandon reminded the members of the audience who have spoken at prior meetings that their position on standing has been documented. He asked that once the committee completes their discussion, that only individuals who have something new to add on this issue address the committee.

Mr. Brandon commented that standing has clearly been a hot issue with the committee and commission. He provided an update on those jurisdictions who had responded to our request for their position on this issue. Mr. Brandon stated that five jurisdictions support citizen standing, seven jurisdictions oppose citizen standing, and five have not yet provided an official position on the matter.

Paul Chipok, VGMC legal counsel, addressed the committee relating to the issue of standing. Mr. Chipok stated that the responses from the jurisdictions have been mixed on this issue and no firm consensus has come out of it. He referred the committee to a worksheet summary dated 5/22/09 prepared by the coordinator which provides analysis on cases that have gone to public hearing back through 2005. In the 13 cases that have gone to hearing, Mr. Chipok stated that only one of the cases was a citizen only petition. He stated in his opinion, the system of allowing citizens to request a public hearing has not been abused.

Mr. Chipok stated that given the fact that the jurisdictions appear to be split on the issue, coupled with the thought that there has not been an over-abuse on the part of citizens under the present system, he brought forward the idea of leaving the rules as presently written which would allow

citizens to request a public hearing. He stated this would take some of the controversy out of the present draft rules amendments, and he also reminded the committee if they find down the road there is an abuse of the system by citizens or groups to utilize the VGMC in a manner in which it was not intended, then the commission could always go back and revisit the issue. Mr. Chipok also stated that the liberalization of our proposed rules allowing a jurisdiction to withdraw their application without penalty provides the opportunity for the jurisdictions to back and work with the citizens at the jurisdictional level and then resubmit their applications.

Mr. Chipok asked for direction from the committee on this issue in terms of how staff should proceed in preparing the draft rules amendments. Mr. Brandon reminded the committee that any request for standing must come before the full commission to either grant or deny the request. Mr. Chipok then reviewed the process for a citizen to request a public hearing and the standing review process by the full commission. He stated even if standing is denied by the commission, the public hearing still goes forward. If standing is granted by the commission and the party who is granted standing does not like the decision, they have the ability under our rules to petition the circuit court for an appeal of the VGMC decision.

Mr. Chipok also stated that under our rules, a request for public hearing goes together with a request for standing. VGMC Chair Spinney commented that she does not want standing to become an extended avenue for zoning related issues, such as height limits, set backs, neighbors not liking the proposed development, etc. Mr. Chipok stated that although the proposed change in language relating to burden of proof will not change how staff reviews an application, it will put people on notice that this is a comprehensive plan amendment and it is presumed consistent. Mr. Chipok stated if they feel it is not consistent, they will have to show how it is inconsistent with neighboring comprehensive plans.

Chair Spinney asked if there is anything that we can present to citizens to clarify the difference between consistency among plan amendments and consistency with their neighborhood. She stated that people are asking the commission to review and make decisions on matters that are not within the VGMC authority to address, adding that this needs to be made clear to the citizens. Barry Wilcox commented that he believes there is a process in place, however, there is no way to address it until it is already at a public hearing. Mr. Chipok reviewed the standards used by the commission when considering standing and also stated that staff does not make an administrative determination on standing. When a request for public hearing is received, the hearing is scheduled and the commission determines whether or not to grant standing.

General discussion ensued relating to the rules relative to requesting a public hearing. Mr. Wilcox commented that our rules require us to have a public hearing if one is requested and there is no way for staff to do a qualitative review of the petition to determine if a hearing should be held. Mr. Chipok stated that the determination of competent and substantial evidence is a function of the full VGMC, and not a determination made by administrative staff. He added that staff will review and make a recommendation, however, the actual determination is made by the commission.

Chair Spinney commented that there is no language in our rules which informs citizens and commission members that zoning issues are not within the purview of the VGMC. Mr. Chipok responded that it goes back to the scope of the VGMC and the limits of the scope of authority as per the Charter language.

Committee Chair Brandon asked the individual committee members for their comments on the issue of standing.

Commissioner Kerr commented that he has been opposed to standing but is keeping an open mind. He stated that Mr. Chipok has raised some interesting points, but he also shares the same concerns raised by Chair Spinney.

Commissioner Heaphy commented that the commission needs to come up with something to clarify the issue of standing.

Commissioner Walters commented that as a private citizen she has been on the outside looking in, and as a member on the inside looking out. She stated she has not seen or heard any reason to change the rules or procedures relating to standing.

Commissioner Lewis commented that the commission has gotten beyond its charge, responsibility and authority. He stated he spoke with one of the original participants in the creation of the VGMC and found that the intent was for the commission to look at consistency review and promote inter-governmental coordination. Mr. Lewis commented that he believes there is a perception out there that the VGMC is trying to keep the public from having a bite at the apple. He stated that is not the case, that citizens have a bite at the apple at least twice at the local jurisdiction level, as well as through DCA. Mr. Lewis stated he believes the VGMC has a very unique responsibility and the public has a right to come and speak at hearings, but he doesn't feel standing is appropriate in the VGMC process.

Commissioner Jones concurred with Commissioner Lewis' comments and stated she believes that the commission sometimes looks beyond what it is charged with doing. She added that members of the public have opportunities at their local planning agencies and commissions, and the VGMC is here to look at consistency issues.

Commissioner Griffiths commented that the six consistency criteria contained in our rules are what the commission is charged with reviewing. He stated that since becoming a member of the commission, he has heard in various matters that the commission has looked at things that are not within the powers and duties of the VGMC and should not have been looked at. With respect to the issue of standing, he stated that the public has a good deal of opportunity to get involved both before and after the applications come to the VGMC. Mr. Griffiths stated the commission has a very limited scope of review and we need to stay focused with that.

Mr. Brandon asked if there were any members of the audience who had not previously addressed the committee or commission that would like to speak.

Claudia Roth from the League of Women's Voters read a letter into the record opposing the removal of citizen standing.

Suzanne Steiner commented in opposition of removing citizen standing.

Phil Klema raised questions relating to standing and the appeal process. Mr. Chipok responded. Mr. Klema also commented on the funding of the VGMC.

Aiden Magee, Volusia Flagler Environmental Action Committee, commented on the original intent on the issue of standing when the commission was created.

Dave Castagnacci asked if the minutes from the original discussions were reviewed. Mr. Chipok stated that the historical data he has reviewed shows that similar to the discussion we are presently having on the issue of standing, many of the core issues dealt with at the creation of the VGMC had varying opinions.

Commissioner Lewis stated that the commission seems split on this issue and suggested that the POP committee move the issue forward to the full commission without a recommendation from POP. Mr. Chipok stated that the present 04-23-2009 draft limits standing to units of local government and asked Mr. Lewis if he was suggesting keeping the draft language as it presently is in the 04-23-2009 draft. Mr. Lewis made a motion to keep the language in the 04-23-2009 draft and move it forward for debate by the full commission without a recommended from POP; seconded by Sandy Jones. Motion carried unanimously.

2) Discussion of consistency review criteria, Section 90-37(c)

Mr. Brandon invited Helen LaValley from the Volusia County School Board to join the table for the discussion.

Barry Wilcox, VGMC Planning Consultant, discussed the proposed changes which are intended to provide clarity. Mr. Wilcox stated that the original six criteria were somewhat overlapping and the proposed draft simply rewords them into five criteria, while including all of the original criteria and specifically calling out schools.

Mr. Chipok stated that the consistency review criteria is the heart of what the VGMC does and if the committee votes to recommend the proposed changes presented by Mr. Wilcox, he would plan to forward a copy of the draft to the city attorneys/managers/planners to see if they have any feedback.

Sandy Jones made a motion to recommend the commission accept the proposed change to Section 90-37(c); seconded by Sandy Walters.

General discussion ensued pertaining to the criteria relating to the review of capital improvements.

Ms. LaValley asked if there was a conflict in wording in this section where the term “determine” is used while “presumption” is used in the balance of the draft. Mr. Chipok responded that the way the draft is currently written, there is a presumption that the application is consistent. He stated this particular section goes toward how we review the application, and that we have to apply these factors to determine whether that presumption will hold up. Mr. Chipok also stated that section 90-37(c)(5) relates to the existence of an interlocal agreement which he stated comes to us with the presumption that it is valid and addresses the intergovernmental coordination element, unless there is evidence that overcomes that presumption.

The motion to recommend the commission accept the proposed changes to Section 90-37(c) carried unanimously.

NEW BUSINESS

1) Approval of Minutes – June 9, 2009 POP Meeting

James Kerr made a motion to approve the minutes of the June 9, 2009 POP Meeting as presented; seconded by Dwight Lewis. Motion carried unanimously.

2) Approval of Minutes – July 28, 2009 POP Meeting

Mr. Brandon suggested placing these minutes on the next POP Meeting agenda for approval to allow everyone the opportunity to review them.

OTHER BUSINESS

Mr. Brandon stated the next POP meeting will be scheduled one-half hour prior to the regular meeting on August 26, 2009.

ADJOURNMENT

The meeting was adjourned at 10:45 a.m.

Gerald Brandon, VGMC Chairman