



## Volusia Growth Management Commission

---

TO: Charter Review Commission Subcommittee

FROM: Gerald Brandon, VGMC Vice Chairman *GB*

DATE: February 5, 2016

RE: VGMC Personnel, Operations & Procedures (POP) Committee  
Recommendations

---

The Personnel, Operations & Procedures (POP) Committee of the Volusia Growth Management Commission (VGMC) met again on February 4, 2016 to further discuss comments and recommendations relating to proposed rules revisions.

POP Committee members in attendance included: Don Romanik, Robert Lovelace, Robert Storke, Rich Walton, Sid Vihlen and myself. Also in attendance on behalf of the VGMC were: Chairman Jim Wachtel, VGMC Legal Counsel Paul Chipok, and VGMC Planning Consultant Jim Sellen. Members of the community in attendance included: Deanie Lowe, Jim Cameron, Beth Lemke, Steve Sather and John Duckworth from Volusia County.

Following is a summary of the POP Committee discussion. All of the recommendations were unanimously supported by the VGMC members present. Keep in mind, the recommendations being proposed by the POP Committee have not yet been brought forward to the full VGMC. We expect to schedule a workshop discussion on these issues at the February 24, 2016 regular meeting of the VGMC.

### Summary of Discussion and Recommendations – February 4, 2016 POP Meeting

- 1) Standing – POP agreed to delete federal and state agencies from the proposed definition of “Unit of Local Government”, but keep the VC School Board as unit of local government.

Also, there was a question raised relating to the proposed provision which directs individuals to address consistency concerns to their local governments. This provision is part of the published “notice of application”. It is not intended that

staff of the VGMC or the local governments have the responsibility of notifying members of the public. The committee is including this provision in their recommendation.

- 2) Thresholds for Review – The committee agreed to leave the proposed changes as previously recommended. Specifically, all small scales and any applications that are properties being annexed that are located in an area subject to a JPA, shall be deemed consistent without VGMC staff review 30 days after receipt, unless an objection is filed by a unit of local government. Historically, amendments of this nature are generally consistent as submitted and rarely raise objections or require a public hearing. It should be noted that the majority of applications submitted to the VGMC fit into these two categories.

The committee concluded that all other “large scale amendments” (referred by the state as “expedited state review process” and “state coordinated review process”) should continue to be reviewed by VGMC staff per current procedure. The committee agreed that we are operating within the present charter which states the commission has the duty to “determine consistency”. We have proposed a streamlined process for all small scales and those large scales which are part of a JPA based upon our historical review of applications of this nature, and we feel this meets the requirement to determine consistency. However, consistency on all other applications must be determined by the VGMC and the committee agreed that those applications should not have a blanket presumption of consistency as submitted. Keep in mind, these applications represent a smaller number of all amendment applications, and they are often certified by letter, either as submitted, or through VGMC staff coordinating with the local governments to clarify any areas of concern, without the need for public hearing

- 3) Membership – There has been question raised about members serving at the will of their appointing government. It has been the VGMC’s position that if an appointing jurisdiction has specific rules in their governing documents that appointed members serve at the will of the appointing body, then this would apply to VGMC members. Otherwise, the member has a right to the appointment for the term of appointment specified in the rules. The VGMC can only remove a member for misfeasance, malfeasance, or not meeting attendance requirements.
- 4) Burden of Proof/Presumption of Consistency – The issue of presumption of consistency has been addressed, in part, by the proposed threshold for small scale and large scale annexation/JPA reviews. Again, the committee will not be

recommending “all” applications are presumed consistent without VGMC staff review as described earlier.

With respect to “burden of proof” – The commission must weigh all evidence presented at a public hearing. The POP Committee is proposing revisions to Sections 90-37(e) and 90-37(j) to neutralize the burden of proof requirements and clarify the commission will make their determination based upon the preponderance of evidence presented at the hearing.

- 5) Appeals – It has been recommended that a provision be added to the rules which would provide for appeal of a VGMC decision to the County Council. The committee disagrees. Volusia County is an adjacent jurisdiction to all municipalities in the county and in many cases could be a party to an application. The VGMC creates a level playing field for all of the local governments, and it simply would not be practical to appeal a decision to the Volusia County Council.
- 6) Weighted Vote – The question of weighted vote continues to be raised. The POP Committee doesn’t see a particular problem with the weighted vote, except that if the CRC recommends a change to the charter eliminating the weighted vote, and the intent is for each jurisdiction to have an equal vote, then the County should have only one member as opposed to the 5 appointees provided in the present charter.

A question has also been raised about whether a voting conflict exists for an appointed member whose jurisdiction is a party to an application, either as the applicant or objecting jurisdiction. An Attorney General Opinion (AGO 2008-61) issued in 2008 found that members of the VGMC serve as “officers” for purposes of dual office holding. Additionally, pursuant to state statutes, officers are required to vote unless they have a financial interest in the subject matter.

- 7) “Other Directly Related Duties” in the Charter – We’ve been asked by the CRC to propose more defined duties relating to the provision in the charter which states: “The commission may perform such other directly related duties as the commission from time to time deems necessary.”

As communicated to the CRC previously, the POP Committee does not advocate changes to the charter which would require a ballot question, nor do we recall there being a specific use or abuse of this provision by the VGMC. However, if the CRC chooses to amend this provision in the charter, the POP Committee recommends the following language: “The commission may perform such other directly related analysis to pending applications and other administrative duties

as the commission from time to time deems necessary.” The committee raised concern that crafting individual, specific duties within the charter language could unintentionally limit and thereby hamper the ability of the VGMC to perform necessary duties in the future.

The revisions to the rules as proposed by the POP Committee are presently being drafted and a copy will be forwarded to you upon completion. In the meantime, please let us know when the CRC sub-committee plans to meet next as we would like to be present to address any questions or concerns.