

CHARTER REVIEW



C O M M I S S I O N

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CHARTER REVIEW SUBCOMMITTEE

DAYTONA BEACH INTERNATIONAL AIRPORT
VOLUSIA ROOM

Monday, January 4, 2016
Noon

A G E N D A

(Amended January 4, 2016)

- I. Call to Order/Roll Call**
- II. Public Participation**
- III. Volusia Growth Management Commission**
 - A. VGMC Rules of Procedures**
 - B. Charter Section 202.3**
 - C. Code of Ordinances (Chapter 90, Article II)**
 - D. Letter from Clay Henderson**
- IV. Discussion by Committee of matters not on the agenda**
- V. Adjourn – set next subcommittee date/time**

**VOLUSIA GROWTH
MANAGEMENT COMMISSION**

**Resolution No. 1987-6,
(as amended by
Resolution No. 1993-2, 2000-02, 2001-05, 2006-03, 2008-05, 2009-
03, 2010-05, 2010-08, and 2012-04)**

**Rules of Procedure
for
Meetings, Membership, and Operations**

**Adopted by the Commission on
June 24, 1987, and amended on
February 24, 1993, April 26, 2000,
April 25, 2001, April 26, 2006, August
27, 2008, February 25, 2009, March
24, 2010, November 17, 2010 and
November 28, 2012**

**Resolution No. 1987-6,
as amended by Resolution No. 1993-2,
Resolution No. 2000-02,
Resolution No. 2001-05,
Resolution No. 2006-03,
Resolution No. 2008-05,
Resolution No. 2009-03,
Resolution No. 2010-05,
Resolution No. 2010-08,
and Resolution No. 2012-04**

**VOLUSIA GROWTH
MANAGEMENT COMMISSION**

**RULES OF PROCEDURE
for
MEETINGS, MEMBERSHIP, AND OPERATIONS**

ARTICLE I. NAME AND PURPOSE

Section 1. Name. As specified in Section 202.3, Article II of the Volusia County Charter (the "Charter") this body shall be known as the Volusia Growth Management Commission (hereinafter, the "Commission").

Section 2. Purpose. Pursuant to the Charter, the purposes of this Commission shall be to:

- (a) Determine the consistency of the comprehensive plans, the elements thereof, and the amendments thereto of the county and all municipalities in the county.
- (b) Perform such other directly related duties as the Commission from time to time deems necessary.

ARTICLE II. MEETINGS

Section 1. Open Meetings. All meetings of the Commission, including all meetings of its committees and subcommittees, shall be open to the public in the manner prescribed by Section 286.011 of Florida Statutes (the "Government in the Sunshine" law).

Section 2. Frequency, Time, and Place of Meetings. Regular meetings of the Commission will be held at a time and location to be specified in the annual meeting schedule described in Section 6 of this Article II, unless such time or location is changed (i) by a weighted majority vote of the Commission or (ii) by order of the Commission Chairman after reasonable notice to Commission members.

Section 3. Special and Emergency Meetings; Annual Meetings. Special meetings may be held either (i) by order of the Chairman after at least 7 days written or verbal notice to members of the Commission or (ii) by order of the Commission by motion approved by a weighted majority vote at a previous meeting. Emergency meetings may be held as necessary with reasonable notice to all Commission members, but any action taken at an emergency meeting shall be void unless subsequently ratified by the Commission at its next regular meeting. Special and emergency meetings will be limited to the matters of business for which the meeting is called. The Commission may also establish an annual meeting under such circumstances as it deems appropriate.

Section 4. Continuation of Meetings. The Commission may continue a meeting if all agenda items cannot be completed at the meeting.

Section 5. Cancellation of Meetings. Upon written or oral notice to all members at least 48 hours before the meeting, a Commission meeting may be canceled by the Chairman when there is no substantial business to be conducted. The meeting may also be canceled without prior notice when there has been a death of a Commission member or a natural disaster, or when there exists severe weather or the threat of severe weather.

Section 6. Public Notice of Meetings. The Commission will publish its annual schedule of regular meetings on the Commission website. The Commission will also file annually a schedule of its regular meeting dates with Volusia County, each municipality in Volusia County, and in a newspaper of general circulation in Volusia County. The schedule shall include the date, time and location of each regular meeting and shall constitute full and adequate public notice of regular meetings. However, if the date, time or location of any regular meeting is changed by either the Commission or its Chairman pursuant to Sections 2 or 3 of this Article II, notice of the change shall be given to the public in a manner complying with the Government in the Sunshine Law.

The Commission will provide the county and municipalities with written or verbal notice of all special and emergency meetings. The Commission will advertise the day, time, place and purposes of any special meeting at least 7 days prior to the meeting in a newspaper of general circulation in the county. Emergency meetings may be held with reasonable notice to the public.

The Commission shall notify Volusia County and all municipalities in Volusia County of any cancellation of a meeting. Notice of cancellation of any regular meeting will also be published on the Commission website.

Section 7. Hearing Documentation.

- a. All documentation required for a Commission public hearing shall be received by the Commission office at least twenty (20) working days prior to the hearing/meeting date.

Section 8. Agenda for Regular Meetings. Unless otherwise modified by the Commission Chairman, the agenda for regular meetings of the Commission shall include the following:

1. Call to order
2. Roll Call
3. Citizen Comments on matters other than scheduled hearings
4. Approval of minutes of previous meeting
5. Public hearings
6. Reports from Planning Consultant
7. Reports from Legal Counsel
8. Reports from Commission Coordinator
9. Reports from Commission Chairman
10. Unfinished business
11. New business
12. Commissioner Requests or Remarks
13. Adjournment

Section 9. Recording of Minutes. Following each meeting, minutes will be prepared by the Secretary and distributed to Commission members for approval at a subsequent meeting. All records of the Commission shall be available to the public in the manner provided by Chapter 119 of Florida Statutes.

ARTICLE III. QUORUM AND VOTING

Section 1. Voting/Non-voting Members. The Commission shall be composed of voting and non-voting members as provided in the Charter.

Section 2. Weighted Votes. Voting members of the Commission shall have weighted votes initially according to the percentages set forth in Commission Resolution 87-2 and thereafter as the Commission may determine for each calendar year.

Section 3. Quorum. No action may be taken by the Commission unless a quorum is present. A quorum shall exist only when there is present both (i) a majority of the currently serving voting members of the Commission without regard to the weight of votes and (ii) voting members representing more than 50% of all weighted votes of currently serving voting members.

Section 4. Majority Rule. Except where otherwise provided in these rules, an affirmative vote of a majority of the voting members present at a meeting and an affirmative vote of more than 50% of the total weighted votes of the voting members present at a meeting shall be necessary for the Commission to take any action.

Section 5. Proxy Voting. No Commission member shall have the power to vote by proxy. Only those members present at a meeting may vote.

Section 6. Conflict of Interest. Voting members shall vote on all actions except as provided in Section 112.3143(3) of Florida Statutes or other applicable law.

ARTICLE IV. CONSISTENCY DETERMINATIONS

The rules of procedure for the Commission's consistency review and the manner in which Section 202.3 of the Charter is to be enforced, including guidelines and criteria to be used by the Commission in determining consistency of comprehensive plans, are contained within the Volusia County Ordinance known as the "Volusia Growth Management Commission Comprehensive Plan Consistency Certification Rules."

ARTICLE V. COMMISSIONER REQUESTS

Section 1. Commissioner Requests.

- (a) A request from a Commissioner outside of a Commission meeting shall be directed to the Coordinator.
 - (i) A request for an information item shall be responded to by the Coordinator and provided to the Commissioner.
 - (ii) A request for an item requiring research shall be forwarded by the Coordinator to the Chairman for determination on how to proceed in accordance with Article VII, Section 3(g), (h) or (i), as appropriate, of this Resolution, as amended.
- (b) A request from a Commissioner for information, research or a proposal may be made at any regular Commission meeting in accordance with Article II, Section 8.11 of this Resolution, as amended. Upon approval by the Commission to proceed with the request, the written response shall be presented to the Commission at a future meeting.

ARTICLE VI. COMMITTEES

Section 1. Committees Generally. The Commission may from time to time create such standing or ad hoc committees as are deemed necessary or desirable. Standing committees may have subcommittees appointed by the chairman of the respective committees.

Section 2. Committee Terms. Except when provided otherwise in these rules, the chairmen and members of all standing committees will be appointed by the Commission Chairman no more than 30 days after the annual election of the Commission Chairman. The term of the members and the chairmen of all standing committees shall be one year. In the event of a vacancy in the membership or chair of a standing or ad hoc committee, the Commission Chairman shall appoint a replacement for the unexpired term.

Section 3. Creation of Certain Standing Committees.

(a) Personnel, Operations and Procedures Committee. There is hereby created the Personnel, Operations & Procedures Committee to consist of 7 voting members, to be chaired by the Vice Chairman of the Commission, and to perform such functions as assigned by these rules or from time to time by the Commission.

(b) Budget Committee. There is hereby created the Budget Committee to consist of 7 voting members, to be chaired by the Secretary of the Commission, and to perform such functions as assigned by these rules or from time to time by the Commission. Budget Committee will meet a minimum of four times during a calendar year.

Section 4. Committee Attendance. Attendance at all standing or ad hoc committee meetings by the committee members is mandatory. If a committee member fails to attend three committee meetings during any calendar year ending December 31, the committee member shall be deemed removed from the committee appointment and the Committee Chairman shall provide notice of such removal to the committee member and the Chairman of the Commission. The vacancy shall thereafter be filled by the Chairman of the Commission.

Section 5. Committee Authority. All recommendations voted upon by committees shall serve as a motion and second for consideration and final action by the full Commission at a regular meeting of the Commission.

ARTICLE VII. OFFICERS

Section 1. Officers. The Commission shall elect a Chairman, Vice-Chairman, and Secretary.

Section 2. Term of Office. The election of Commission officers shall be conducted at the first regular meeting in September of each year. If no regular meeting of the Commission is scheduled in September, the election of Commission officers shall occur at the first regular meeting scheduled thereafter. Officers shall be determined by a weighted vote of a majority of the Commission and shall serve for terms of one year, or until a successor is elected. No officer shall serve more than 2 consecutive full or partial terms in the same office.

Section 3. Duties of Chairman. The Chairman shall:

- (a) preside at all meetings of the Commission;
- (b) execute correspondence and documents on behalf of the Commission;
- (c) act as Commission spokesperson on behalf of the Commission, or may delegate representation on behalf of the Commission to a member or other appropriate individual;
- (d) approve and execute expenditures, but only those expenditures budgeted and approved by the Commission;
- (e) appoint all committee members and, except as otherwise provided in these rules, the chairmen of all committees;
- (f) shall carry out the duties of the Vice Chairman as described in Article VII, Section 4.(c) in the absence of the Vice Chairman;
- (g) shall carry out the duties of the Secretary as described in Article VII, Section 5. in the absence of the Secretary;
- (h) representation on behalf of the Commission can be delegated;
- (i) upon receipt of a proposal not directly related to review of an application, including but not limited to specific projects and study requests, forward such proposal to the Budget and the Personnel, Operations and Procedures Committees for review in accordance with Article IX, Section 5, of this Resolution, as amended;
- (j) upon receipt of a request for activities within the scope of being directly related to review of an application, review such request and, if warranted in the Chairman's judgment, authorize such request for action by forwarding such request to the Planning Consultant or Legal Counsel, as appropriate; and
- (k) upon receipt of a procedural issue, review such issue and, if warranted in the Chairman's judgment, forward such issue to Legal Counsel for a response.

Section 4. Duties of the Vice-Chairman. The Vice-Chairman shall:

- (a) assume all duties of Chairman in his or her absence or inability to act; and
- (b) serve as acting Chairman in the absence of a Chairman.

- (c) act as personnel officer for the Commission, with such authority as granted to him by these rules or as specified from time to time by the Commission, and serve as Chairman of the Personnel, Operations and Procedures Committee.

Section 5. Duties of Secretary. The Secretary shall:

- (a) prepare and attest minutes of the meetings, and other documents and certificates of the Commission;
- (b) receive and sign for evidence and documents presented to the Commission;
- (c) prepare and mail agenda and copies of documents to members of the Commission;
- (d) serve as records custodian;
- (e) prepare all required public notices;
- (f) maintain and update Commission membership list; and
- (g) serve as Chairman of the Budget Committee.

The above duties of the Secretary may be supervisory in nature and consequently, except for execution of the Commission minutes and serving as Chairman of the Budget Committee, the Secretary may delegate any or all of the above duties to the staff. The Secretary shall make all minutes and other Commission records available for public inspection as required by Chapter 119 of Florida Statutes.

Section 6. Vacancies of Offices. In the event a vacancy occurs in one of the elected offices, the vacancy shall be filled by the majority vote of the Commission members present at the meeting at which the vacancy occurs or at the next regularly scheduled meeting.

ARTICLE VIII. STAFFING

Section 1. Commission Staff; Executive Director; Contracting for Clerical Work. The Commission staff shall consist of such personnel or consultants determined from time to time by the Commission to be needed to implement and administer Commission directives and policies or organization. At its discretion, the Commission may hire a person to be known as the Executive Director, who is employed solely by the Commission, has no conflicts with the Commission, and has substantial land use planning experience. The Executive Director shall be the Commission's senior employee responsible to the Commission for the performance of all staff functions. The Executive Director shall be hired by the Commission upon the recommendation of the Personnel, Operations and Procedures Committee. The Commission may also contract with an organization which has no conflicts with the interests of the Commission to perform ministerial, office functions.

Section 2. Employees. Employees shall be hired by the Executive Director, if one exists. If an Executive Director does not exist, persons shall be hired for any position, based upon the approval of a majority vote of the Personnel, Operations and Procedures Committee and the approval by a majority weighted vote of the Commission.

Section 3. Staff Duties. A staff report shall be presented to the Commission every thirty days. The Commission's staff shall otherwise perform such duties as the Commission assigns from time to time.

The Commission currently has only one (1) staff member: the Commission Coordinator. To avoid confusion, "Staff Reports" and "Final Staff Report" by persons other than salaried Commission employees shall be designated as "Commission Planning Consultant Report" or "Commission Legal Counsel Report".

Section 4. Commission Offices. The offices of the Commission, where the Commission's staff shall be located, where the Commission's records shall be kept, and where the Commission shall accept deliveries, mail and application for consistency determinations, shall be at locations as deemed appropriate by the Commission from time to time.

Section 5. Executive Director; Authority. In the event that the Commission decides to hire an Executive Director the following shall apply:

- (a) EXECUTIVE DIRECTOR. The Executive Director, meeting the qualifications specified above, shall be hired by a majority vote of the Commission upon the recommendation of the Personnel, Operations and Procedures Committee. The Executive Director will be responsible to the Commission for:
 - (i) the performance of all staff functions, except the hiring and performance of consultants, who shall be selected by the Commission, and;
 - (ii) hiring, supervising, evaluating and terminating all other employees. Staff positions can only be created by a majority vote of the Commission.
- (b) EMPLOYEE SALARIES AND POLICIES. The Personnel, Operations and Procedures Committee will recommend salary ranges for all employees. Salaries will be approved by an un-weighted majority vote of the Commission as part of the approval of the budget for each fiscal year. Personnel policies will be prepared and revised as necessary by the Executive Director and recommended to the Commission by the Personnel, Operations and Procedures Committee. An un-weighted

majority vote of the Commission will be required for adopting and revising the Personnel Policies.

Section 6. Clerical Service Requirements. In the event that the commission decides to contract with an organization for clerical service, the following shall apply:

- (a) The organization cannot at any time have a conflict with the interest of the Commission.
- (b) The organization will agree to comply with all reasonable requests for assistance to the Commission, including supervision.
- (c) Compensation for the organization, staff, supplies, and expenses shall be budgeted during the regular Commission process. Any excesses in expenditures by category will be reported to the Budget Committee within five working days and scheduled for review at the next regular or special meeting of the Budget Committee.
- (d) The organization shall designate the responsible staff person from within the organization that will work directly with the Commission and its staff and consultants.
- (e) All employees will work for the organization and the organization will be responsible for all employee compensation, benefits, insurances, and other costs. The organization will have sole authority to hire, discipline, evaluate, and fire its employees.

ARTICLE IX. BUDGET

Section 1. Fiscal Year. The Commission's fiscal year will be the same as for Volusia County.

Section 2. Preparation of Budget. The Budget Committee will present a proposed budget to the Commission at the first regular meeting of each calendar year for the purpose of soliciting comments from the Commission members. Thereafter, the Budget Committee will finalize the proposed budget and present it to the Commission for final approval prior to the established deadline for submission to Volusia County. Pursuant to Section 202.3 of the Volusia County Charter, the annual budget must be approved by a two-thirds vote of the Commission.

Section 3. Financial Reports. A budget use report (that is, a report on revenue and expenditures) will be presented to the Commission each quarter during the budget year.

Section 4. Deviations. Any budget deviation exceeding 10% of any material line item shall be reported by the Executive Director (or otherwise by the Commission's senior employee) to the Chairman of the Budget Committee within ten days of discovery.

Section 5. Proposals.

- a. All proposals, including special projects and study requests, will include a comprehensive, itemized budget.
- b. All proposals, special projects and study requests must be found to be reasonable and necessary by the Commission. The Budget and Personnel and Operations Committees shall provide a recommendation to the full Commission prior to presentation for review and approval/disapproval by the Commission.
- c. All unsolicited proposals, special projects and study requests must be presented as separate entities and considered for the fiscal year's budget.

Section 6. Reimbursements and Billing.

- a. No itemized budgets, statements, billings, or requests for reimbursements from the Commission consultants will be approved for any billing category labeled "Commission General Administration," "General Administrative Work" or any similar title duplicating the responsibilities of the Commission office.
- b. The scope of work shall include meetings of contracted Commission consultants with Volusia County and county municipalities. Other, non-Commission meetings are not reimbursable expenses.
- c. Travel will be reimbursed at the hourly rate of pay approved for contracted staff. Travel costs for mileage will be limited to the then current rate approved by Florida Law.
- d. All reimbursable expenses for consultants will be paid in accordance with the total approved budget. No expenses shall be considered reimbursable that have not been either pre-authorized or specifically requested by the Commission.
- e. Invoices for reimbursable expenses will correspond to and include services rendered during that billing period.
- f. Invoices will include an itemized justification that clearly indicates the Commission case number for each service rendered, including: individual consultant staff performing each service, service/work performed and time spent on each activity.
- g. All invoices/billings shall be submitted during the fiscal year in which the services were rendered.

- h. Consultants will use E-mail and FAX to expedite documents to the Commission office unless specifically requested on a case-by-case basis by a Commission officer or the Commission Coordinator.
- i. All invoices/billings are to be first reviewed by the Commission Coordinator. The Commission Coordinator is authorized to correct, return as incomplete, return with questions of justification, or return with questions regarding compliance with billing procedures.
- j. All invoices/billings receive final review and authorization for payment by at least one (1) Commission officer. Such Commission officer may correct, return as incomplete, return with questions of justification, return with questions regarding compliance with billing procedures, or refuse payment on any portion of an invoice.

Section 7. Reimbursement. The members of the Commission shall not receive compensation for the performance of their duties hereunder, but a member shall be paid his or her necessary expenses incurred on behalf of the Commission as approved by an officer of the Commission.

ARTICLE X. MISCELLANEOUS

Section 1. Amendments. These Rules of Procedure may be amended by a weighted majority vote of the Commission during any regular meeting. The meeting in which the vote is taken regarding the amendment must be immediately preceded by a regular meeting in which the amendment is included as an agenda item for discussion.

Section 2. Suspension of Rules. A rule may be suspended at anytime upon approval by a weighted majority vote of the members present. However, no more than one rule may be suspended at any one meeting, no one rule may be suspended at two consecutive meetings, and in no event may the rules in Article III ever be suspended at any meeting.

Section 3. Review of Rules. Rules will be reviewed no less than every two years.

Section 4. Roberts Rules of Order. In those circumstances in which these Rules of Procedure do not address a procedural situation, the commission shall refer to Roberts Rules of Order for guidance.

Section 5. Effective Date. These rules shall be effective immediately upon their approval by a weighted majority vote of the Commission.

Adopted this 28th day of November, 2012.

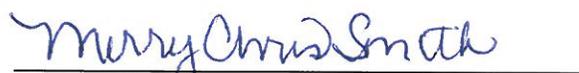
VOLUSIA GROWTH MANAGEMENT COMMISSION

By: 
Steven D. Katz, Chair

ATTEST:


James M. Wachtel, VGMC Secretary

FILED WITH THE SECRETARY THIS 29th DAY OF November, 2012.


Merry Chris Smith, VGMC Coordinator

Section 202.3. Volusia Growth Management Commission.

There is hereby created the Volusia Growth Management Commission (hereafter commission). The commission shall have the power and the duty to determine the consistency of the municipalities' and the county's comprehensive plans and any amendments thereto with each other. The commission may perform such other directly related duties as the commission from time to time deems necessary.

The determination by the commission shall be binding on the submitting government. No plan, element of a plan, or amendment of a plan adopted after the date this article becomes law shall be valid or effective unless and until such plan, element of a plan, or amendment has been reviewed by the commission and has been certified as consistent. The review of any such determination of the commission shall be by certiorari.

The commission shall be composed of voting and non-voting members. There shall be one voting member from each municipality within the county and five voting members from the unincorporated area of the county. The appointment of each voting representative shall be made by the governing body of each respective jurisdiction. The Volusia County School Board, the St. Johns River Water Management District, and the Volusia County Business Development Corporation shall each designate one non-voting member to serve on the commission. The term of office of the commission members shall be fixed by the Rules of Procedures of the commission but shall not exceed four years.

Each voting member shall have a weighted vote. Each municipality represented shall have a vote equal to the percentage of its population with the overall county population. The unincorporated area representatives' combined vote shall not exceed the percentage of the unincorporated area's population with the overall county's population, and the individual vote of each unincorporated area representative shall be equal to the other. The determination of the weight of each vote shall be determined annually.

Rules of procedure for the commission's consistency review and for the manner in which this section is to be enforced and implemented, and amendments thereto, 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.

The commission, by a two-thirds vote, shall adopt an annual budget which may provide for independent staff and which shall be funded by the county. The budget may be amended upon two-thirds vote of the full council. (Res. No. 86-136, Amend. No. 2, 9-18-86; Res. No. 96-121, Amend. No. 1, 6-20-96)

ARTICLE II. - VOLUSIA GROWTH MANAGEMENT COMMISSION CONSISTENCY CERTIFICATION RULES AND ORGANIZATION

DIVISION 1. - DEFINITIONS AND INTERPRETATION OF ARTICLE

Sec. 90-31. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adjacent jurisdiction means a local government whose territorial boundaries are physically contiguous to the land to be affected by a comprehensive plan or amendment thereto for which an applicant jurisdiction has applied to the commission for a certification or certificate. Notwithstanding any other provision of this article, which requires the commission to publish notice of receipt of an application pursuant to subsection 90-35(c), an adjacent jurisdiction, as defined in this subsection, shall have 28 days after receipt of an application by the commission to file any objections or comments on or request that a public hearing be held to consider an application.

Applicant jurisdiction means a local government which has applied to the commission for a certification or certificate regarding a comprehensive plan or amendment thereto.

Area and area of jurisdiction mean the total area qualifying under the provisions of F.S. § 163.3171, as amended from time to time, whether this be all of the lands lying within the limits of an incorporated municipality, lands in and adjacent to an incorporated municipality, unincorporated lands within the county, or areas comprising combinations of lands in incorporated municipalities and unincorporated areas of the county.

Certification and certificate mean a letter, resolution or other written document from the commission determining consistency or inconsistency of a comprehensive plan, element, plan amendment or portion thereof with other applicable plans.

Charter means the county Home Rule Charter, as amended.

Commission means the Volusia Growth Management Commission, a governmental entity created by the Charter.

Comprehensive plan means a plan that meets or is intended to meet the requirements of F.S. §§ 163.3177 and 163.3178.

Large scale comprehensive plan amendment means any plan amendment that requires a transmittal and adoption hearing and does not qualify for adoption pursuant to F.S. § 163.3187, as amended from time to time.

Small scale comprehensive plan amendment means any plan amendment that only requires an adoption hearing and qualifies for adoption pursuant to F.S. § 163.3187(1)(c), as amended from time to time.

Written or in writing means a piece of correspondence or document, as context dictates, that must be provided on paper and delivered by either hand delivery, U.S. Mail or courier service. Electronic transmissions by themselves are not sufficient to be deemed "written" or "in writing" and must be followed up with a hard copy transmittal delivered by hand delivery, U.S. Mail or courier service.

(Ord. No. 87-24, § 2, 7-23-87; Ord. No. 92-87, § 1, 10-8-92; Ord. No. 93-13, § 1, 5-20-93; Ord. No. 2007-05, § I, 2-22-07; Ord. No. 2012-16, § I, 10-4-12)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 90-32. - Interpretation of article.

In the interpretation and application of this article, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the commission;
- (3) Deemed not to limit or repeal any other powers granted by other state statutes, the Charter, county ordinances or commission resolutions; and
- (4) Interpreted in a manner consistent with Section 202.3 of the Volusia County Charter and the Community Planning Act (F.S. § 163.3161 et seq.).

(Ord. No. 87-24, § 14, 7-23-87; Ord. No. 2012-16, § I, 10-4-12)

DIVISION 2. - VOLUSIA GROWTH MANAGEMENT COMMISSION CONSISTENCY CERTIFICATION RULES

Sec. 90-33. - Findings, purpose and intent.

In adopting this article, the county council makes and expresses the following findings, purpose and intent:

- (1) In accordance with section 1303 of the county Charter, the 1985-1986 county Charter review commission was formed to prepare necessary amendments to the Charter.
- (2) In consideration of the rapid growth of the county in recent years and the adoption of landmark comprehensive planning legislation in the state, the Charter review commission determined that growth management was a top priority among its objectives.
- (3) As a result of information, evidence and testimony received at numerous public meetings and hearings, the Charter review commission proposed the creation of the Volusia Growth Management Commission to determine the consistency of the municipalities' and the county's comprehensive plans and any amendments thereto with each other.
- (4) The citizens of the county voted at a referendum held on November 4, 1986, to adopt Charter amendments creating the commission and granting certain powers to the commission.
- (5) The main purpose of the commission is to provide an effective means for coordinating the plans of municipalities and the county, in order to provide a forum for the several local governments in the county to cooperate with each other in coordinating the provision of public services to and improvements for the citizens of the county, and create incentives to foster intergovernmental cooperation and coordination.
- (6) The commission held an organizational meeting on February 25, 1987, and then, through its committee on growth management related issues, duly noticed and held further public hearings on May 18, 1987, and May 21, 1987, and held commission hearings on June 10, 1987, and June 24, 1987, to develop rules of procedure for and enforcement of the commission's consistency review within the time provided for under the Charter amendment.
- (7) On June 24, 1987, the commission adopted Resolution No. 87-5, which recommended that county council adopt this article, which contains the rules of procedure for consistency review and enforcement as required by the Charter amendment.
- (8) Since the Volusia County Council adoption of Ordinance No. 87-24, the commission has undertaken a diligent process with numerous public hearings to consider amendments to the commission's certification rules as codified in Volusia County Code Chapter 90, Article II. The commission has addressed revisions to the procedures for submitting and processing

applications and has acknowledged advances in technology recognizing the use of electronic communications in defined circumstances.

(Ord. No. 87-24, § 1, 7-23-87; Ord. No. 2012-16, § I, 10-4-12)

Sec. 90-34. - Certificate of plan consistency required.

A certificate of consistency is hereby established. No comprehensive plan, element of a comprehensive plan or amendment of a comprehensive plan adopted after November 4, 1986, shall be valid or effective unless and until such comprehensive plan, element of a comprehensive plan or amendment has been reviewed by the commission and has been certified consistent in accordance with this article. This certificate of consistency will be required in addition to any other necessary licenses, permits and/or approvals applicable to land development.

(Ord. No. 87-24, § 3, 7-23-87)

Sec. 90-35. - Application for certificate; procedure for issuance; public hearing requirements.

- (a) After November 4, 1986, all local governments who desire to adopt or amend a comprehensive plan or element or amendment thereof, in accordance with this article, shall submit an application on forms as the commission may prescribe, and shall submit such information as the commission may require. The commission may require such local government to submit any additional information reasonably necessary for proper evaluation of the application.
- (b) An applicant jurisdiction shall, at a minimum, submit the following information and documents with any application filed with the commission:
 - (1) Information required by rule or order of the commission, which shall include, at a minimum, a detailed inquiry into:
 - a. The extent to which any plan, element, or plan amendment submitted proposes to create adjacent, incompatible land uses and the manner in which the adverse impact of these incompatible uses may be eliminated or mitigated; and
 - b. The extent to which any plan, element, or plan amendment proposes policies and/or physical improvements which may adversely impact the objective of promoting the coordination of infrastructure affecting more than one area of jurisdiction.
 - (2) An application shall, at a minimum, contain the following information in addition to that required in subsection (b)(1) of this section:
 - a. The application shall contain a list of all adjacent governments and units of local government.
 - b. For each entity listed in subsection (b)(2)a of this section, the application shall indicate the following:
 - 1. Existing coordination mechanisms used in preparation of the plan, element, or plan amendment being submitted.
 - 2. Any recommendations contained in the proposed plan, element, or plan amendment which affect the plans for land use or infrastructure contained in the plans of adjacent local governments within the county.
 - 3. The facts supporting the recommendations contained in subsection (b)(2)b.2 of this section and the identification of recommended measures which may be used to mitigate or eliminate any adverse impacts resulting from these recommendations.

4. Identification of specific problems and needs within the comprehensive plans of said adjacent governments which would benefit from improved or additional intergovernmental coordination, and recommended solutions for resolving these potential problems and needs.
- (c) The applicant jurisdiction shall submit one original and five copies of each application. The original application and two copies of each application and all supporting documents filed with the commission's administrative staff must be a hard copy in writing; the remaining copies may be in either hard copy or electronic format. The commission shall process all applications and shall cause public notice of receipt of all applications to be given as provided in this article. When the commission receives an application for approval of a comprehensive plan or amendment thereto, its administrative staff shall date-stamp the application. Within two days on which the commission office is open for business, the administrative staff shall conduct a completeness review of the application to ensure: the application is completely filled out; required signatures are present and notarized; required number of copies are included; notification to required jurisdictions and agencies as indicated on application has been accomplished; summary of amendments(s) is provided; verification of the acreage and location for map amendments; verification that staff reports, and current and proposed land use maps, where applicable, are included. If any of the foregoing information is incomplete, the administrative staff shall contact the applicant jurisdiction to obtain the necessary information. An application shall be deemed complete once all information is provided, either at the initial submission of the application or after receipt of all the minimum requirements described in this subsection (c) based upon the determination of the administrative staff and such application shall have placed upon the written application an additional date designating such application as a complete application (the "complete application"). The administrative staff shall thereafter send a dated cover letter and a notice of the complete application to the applicant jurisdiction and direct that electronic version of the complete application be sent by the applicant jurisdiction to all adjacent jurisdictions, and to such other persons and in such other manner as may be prescribed by the commission. The administrative staff shall also send a copy of the complete application to the commission's professional staff, and, within ten days of the date of the complete application, shall cause notice of receipt of the complete application to be published one time only in a newspaper of general circulation in Volusia County. Such notice shall be in substantially the form provided below:

VOLUSIA COUNTY
VOLUSIA GROWTH MANAGEMENT
COMMISSION
Notice of Application

- (1) The type of application (e.g., adoption of or amendment to a comprehensive plan);
- (2) A description and location of the subject matter or activity covered by the action, and the commission's case number, and the name and address of any person at the applicant jurisdiction to whom comments should be directed;
- (3) A copy of the complete application and accompanying material are available for public inspection at the commission's offices at (commission's address);
- (4) The notice shall contain paragraphs which read substantially as follows:
 - a. Any substantially affected or aggrieved party shall have a right pursuant to the Volusia Growth Management Commission Comprehensive Plan Consistency Certification Rules to petition for a public hearing on the application. The petition must contain the information set forth below and must be received by the commission at the address set forth above within 21 days of publication of this notice with such date being [insert date]. A copy of the petition must also be mailed at the time of filing with the commission to (the named contact person at the address indicated to whom comments should be directed at the applicant jurisdiction).
 - b. Failure to file a petition within 21 days of publication of this notice, that date being [insert date], constitutes a waiver of any right any person may have to a public hearing pursuant

to the Volusia Growth Management Commission Comprehensive Plan Consistency Certification Rules and to participate as a substantially affected or aggrieved party. Any subsequent intervention will only be as allowed pursuant to section 90-38 of the Volusia County Code which codifies the Volusia Growth Management Commission Comprehensive Plan Consistency Certification Rules.

- c. The petition shall contain the following information:
 - i. The name, address and telephone number of each petitioner; the commission's case number and the location of the proposed activity;
 - ii. A statement of how and when each petitioner received notice of the application;
 - iii. A statement of how each petitioner's substantial interests are affected by the proposed application;
 - iv. A statement of the material facts disputed by each petitioner, if any;
 - v. A detailed statement outlining the reasons why the proposed amendment violates the criteria for evaluating compatibility in section 90-37; and
 - vi. A statement of relief sought by the petitioner, stating precisely the action the petitioner wants the commission to take with respect to the pending application.
- (d) All applications received by the commission shall be processed and all determinations of consistency shall be made as provided in this subsection unless a public hearing is held on an application. If the commission holds a public hearing on an application as allowed pursuant to this subsection, the commission shall determine consistency pursuant to the criteria provided in section 90-37.
 - (1) Review by commission.
 - a. Within 30 days after the date of the complete application, the commission's professional staff shall examine the complete application; determine whether any adjacent jurisdiction or any other person, including a substantially affected or aggrieved party as defined in this article, has commented or requested a public hearing; notify the applicant jurisdiction of any apparent errors or omissions; request any additional information pertinent to the application; and determine whether the applicant jurisdiction has addressed the conditions of approval of past commission resolutions and whether the application meets the consistency test as set forth in this article. If the commission's professional staff needs additional information to review the application, a request for additional information (RAI) shall be forwarded in writing to the applicant jurisdiction. A written request for additional information shall toll the running of the time provided by this article for the commission to act on the application until either: (i) the RAI response is deemed complete by the commission's professional staff; or (ii) the applicant jurisdiction provides written notice that no further information in response to the RAI will be provided and that the applicant jurisdiction desires to proceed to public hearing on the application. An applicant jurisdiction's failure to supply additional information shall not be grounds for denial of certification unless the commission's professional staff timely requests the additional information from the applicant jurisdiction in writing within 30 days after the complete application date on the application.
 - b. If the commission's professional staff determines that the applicant jurisdiction has not addressed the conditions of approval of outstanding commission resolutions, the commission shall hold a public hearing.
 - c. If the commission's professional staff determines that an application may be inconsistent under the test set forth in section 90-37, the commission shall hold a public hearing.
 - (2) Adjacent jurisdictions. Within 28 days after the date of the complete application, any adjacent jurisdiction may:
 - a. Submit written comments regarding the merits or the sufficiency to the commission regarding the complete application;

- b. Request a public hearing; or
- c. Request, for good cause shown in writing and submitted to the chairman of the commission with a copy to the applicant jurisdiction, one 21-day extension of time to comment on the complete application.

The chairman of the commission shall acknowledge in writing such 21-day extension requested by an adjacent jurisdiction. Once one adjacent jurisdiction has requested a 21-day extension, that extension shall apply to all adjacent jurisdictions and no additional extensions of time by any other adjacent jurisdiction to comment on the pending application shall be honored. However, once one request for an extension of time has been made, that request shall toll all time periods provided in this subsection.

- (3) When a public hearing is requested by either the commission's professional staff or by the applicant jurisdiction pursuant to subsection (d)(1)a. of this section or by an adjacent jurisdiction or a substantially affected or aggrieved party, the commission shall hold a public hearing on the complete application within 60 days after the public hearing is requested but in no event more than 90 days from the date of the complete application (less any tolled time), unless the commission shall not have a regular meeting scheduled or a quorum of the members of the commission shall not be obtained for the regular meeting, which shall by necessity extend the date of the public hearing beyond 90 days. At any public hearing held by the commission to determine whether the adoption of a comprehensive plan or amendment thereto is or can be made to be consistent through conditions, the commission shall comply with the criteria of section 90-37.
- (4) Unless a public hearing is otherwise required pursuant to this article, no public hearing shall be held on any complete application received by the commission unless timely requested by the staff, by an adjacent jurisdiction or by a substantially affected or aggrieved party. If no public hearing is requested by any adjacent jurisdiction, it shall be presumed that all adjacent jurisdictions approved the adoption of or amendment to the comprehensive plan of the applicant jurisdiction.
- (5) Nothing in this section shall be construed to prohibit the submission of relevant evidence to the commission at any time up to and including a public hearing called by the commission pursuant to this article.
- (e) Nothing contained in this article shall preclude the concurrent processing of applications for certification and the state's related review pursuant to the Community Planning Act (F.S. § 163.3161 et seq.), as amended from time to time. For large scale comprehensive plan amendments the application for certification by the commission shall be submitted to the commission simultaneously with, or prior to, transmittal of a proposed plan amendment to the Florida Department of Economic Opportunity ("DEO"). For small scale comprehensive plan amendments the application shall be submitted by the local government concurrent with the forwarding of the recommendations of the local planning agency to the local governing body pursuant to F.S. § 163.3174(4)(a) as amended from time to time. The commission shall have 30 days from receipt of any application to make comments to the DEO. The commission shall have 30 days from the date of the complete application to make comments to the applicant local government. The commission certification shall be a prerequisite to any final public hearing on a comprehensive plan amendment by the applicant local government. The applicant local government's response shall be to both the commission and DEO and shall occur simultaneous with or prior to the applicant local government's response to the objections, recommendations and comments report by the DEO for the comprehensive plan amendment, if applicable.
- (f) Every application shall be approved, conditionally approved, or denied within 90 days after the date of the complete application by the commission unless either: (i) the 90-day time period on a complete application has been tolled pursuant to subsection (d)(1) of this section or extended pursuant to subsection (d)(3), in which case the 90-day time period does not include that period from the date of commencement of the tolling until the tolling is stopped; or (ii) an extension is requested and granted as provided in subsection (d)(2) of this section; or (iii) if anytime on or after 60 days from the date of

the complete application there occurs a force majeure event/emergency/natural disaster which disrupts normal governmental functions within any part of the county then there shall be an automatic extension of the 90-day time period for an additional 30 days. The chairman of the commission shall provide written notice to the applicant of implementation of an automatic extension under subsection (3) above. Within 15 days after the conclusion of a public hearing held on the complete application, the applicant jurisdiction shall be notified if the complete application is approved, conditionally approved or denied. Failure of the commission to approve, conditionally approve or deny an application within the time period set forth in this subsection shall be deemed an approval of the application. For every conditional approval, the applicant local government shall comply with the requirements set forth in the conditional approval including, but not limited to, incorporating into the proposed comprehensive plan amendment referenced in the application those changes recommended by the commission. Failure to incorporate the commission's recommended changes shall result in automatic revocation of the certificate thereby rendering both the complete application and the proposed comprehensive plan amendment of the applicant local government invalid and ineffective. For those conditional approvals granted prior to the effective date of this ordinance, revocation where provided shall occur in accordance with the terms of the resolution of certification. Continuances of hearings may be granted upon a request for a waiver by the applicant jurisdiction of the 90-day period referred to in this subsection, for up to an additional 90-day period as determined by the chairman of the commission. Any requests for continuances totaling longer than 90 days may only be granted by the commission at a noticed hearing.

- (g) Within 30 days after final adoption pursuant to state law of any plan, element, or plan amendment previously certified by the commission, the local government adopting said plan, element, or plan amendment shall transmit a true and correct copy of said plan, element, or plan amendment to the commission.

(Ord. No. 87-24, § 4, 7-23-87; Ord. No. 89-39, § 1, 9-7-89; Ord. No. 91-39, § 1, 11-21-91; Ord. No. 92-87, § 2, 10-8-92; Ord. No. 93-13, § 2, 5-20-93; Ord. No. 98-17, § I, 9-3-98; Ord. No. 99-16, §§ 1—3, 5-13-99; Ord. No. 2007-05, § II, 2-22-07; Ord. No. 2012-16, § I, 10-4-12; Ord. No. 2013-20, § XXI, 12-12-13)

Sec. 90-36. - Consultation with commission regarding application for certificate.

The applicant or his representative may consult with the staff of the commission concerning the application for certificate under this article. However, any representation by the staff of the commission shall not relieve any person of any requirement of applicable special acts, general laws, articles, the Charter, this article or any other commission rules, regulations or standards, or constitute approval, express or implied.

(Ord. No. 87-24, § 5, 7-23-87)

Sec. 90-37. - Criteria for issuance of certificate.

- (a) Consistency shall be determined and a certificate shall be issued to the applicant, upon such conditions as the commission may direct, if the applicant affirmatively provides the commission with reasonable assurance based upon competent, substantial evidence that the proposed plan, element, or plan amendment is consistent with the comprehensive plans of: (a) all other local governments which are adjacent to the land to be affected by the applicant's proposed plan, element, or plan amendment; and (b) all other substantially affected and aggrieved local governments whose substantial interests are or will be affected by issuance of the certificate.
- (b) For the purpose of subsection (a) of this section, a plan, element, or plan amendment shall be consistent if it is compatible with and in furtherance of such adjacent and substantially affected comprehensive plans when all such plans are construed as a whole. For purposes of this section, the phrase "compatible with" means that the plan, element, or plan amendment is not in conflict with

such adjacent and substantially affected comprehensive plans. The phrase "in furtherance of" means to take action in the direction of realizing the goals or policies of such adjacent and substantially affected comprehensive plans. In addition to such requirements, consistency shall not be deemed to exist if the commission affirmatively determines that the plan, element, or plan amendment adversely affects intergovernmental cooperation and coordination.

- (c) In determining whether a plan, element, or plan amendment adversely affects intergovernmental cooperation and coordination, the commission may, in its sole discretion, consider one or more of the following factors:
- (1) The extent to which the plan, element, or plan amendment provides for areawide or central utility service solutions;
 - (2) The extent to which the plan, element, or plan amendment provides for areawide or regional transportation solutions;
 - (3) The extent to which the plan, element, or plan amendment causes or may reasonably be anticipated to cause significant adverse impacts on infrastructure beyond the boundaries of one jurisdiction;
 - (4) The extent to which the plan, element, or plan amendment causes or may reasonably be anticipated to cause significant adverse impacts on natural resources which extend beyond the boundaries of one jurisdiction;
 - (5) The extent to which the plan, element, or plan amendment provides for the coordination of the timing and location of capital improvements in a manner to reduce duplication and competition; and
 - (6) The existence of an agreement among all substantially affected local governments, substantially affected parties (if any) and the applicant local government which provides for all said governments' consent to the application. If the commission determines that such an agreement exists for any given application, then it shall be rebuttably presumed that said application does not adversely affect intergovernmental cooperation and coordination.
- (d) For purposes of determining consistency under this section, the plan, element, or plan amendment and the comprehensive plans against which it is compared and analyzed shall be construed as a whole and no specific goal and policy shall be construed or applied in isolation from the other goals and policies in the plans.
- (e) The commission may deny certification where any applicant has failed to establish, by a preponderance of the evidence, its entitlement under this article to the certificate.
- (f) Notwithstanding the other provisions of this articles, for any small scale comprehensive plan amendment which meets the review by commission requirements of subsection 90-35(d)(1)a. shall be deemed consistent by the commission and a certification to this effect shall be issued within 40 days of the date of the complete application by the commission without the need to hold a public hearing, provided no written objections are timely issued or received by the commission. If a 21-day extension is requested pursuant to subsection 90-35(d)(2)c, then the small scale comprehensive plan amendment shall be deemed consistent by the commission if it meets the review by commission requirements of subsection 90-35(d)(1)a., and a certificate issued within 60 days of the date of the complete application without any need to hold public hearing, provided no written objections are timely issued or received by the commission.
- (g) Notwithstanding the other provisions of this article, for any small scale comprehensive plan amendment the failure to file a written objection to any such small scale comprehensive plan amendment shall be deemed a waiver of any right to intervene pursuant to section 90-38. If a written objection to any such small scale plan amendment is issued or received, then that plan amendment application shall be processed and reviewed in the same manner and subject to the same requirements as set forth in sections 90-35, 90-36 and 90-37.
- (h) Notwithstanding anything to the contrary contained in this article, any modifications to the capital improvements element of a comprehensive plan done pursuant to F.S. § 163.3177(3)(b), which

would otherwise be reviewable by the commission, and are not deemed to be amendments to the comprehensive plan pursuant to that statute, shall be exempt from further review by the commission.

- (i) Each applicant has a continuing affirmative duty to submit the objections, recommendations and comments (ORC) report and any and all additional correspondence, notices, documentation, orders, proposed orders, agreements or other information except adversarial administrative pleadings in formal F.S. § 120.57(1) proceedings (collectively referred to in this section as "additional information") prepared by, transmitted by, received from or agreed to by either the State of Florida Department of Economic Opportunity or the applicant, related to any comprehensive plan, element, or amendment previously certified as consistent by the commission. The commission shall have the right, power and authority to reopen and reconsider its decision to certify consistency and change or modify its conditions of certification applicable to any such plan, element, or amendment should the commission determine in its sole discretion that the additional information changes the facts and circumstances related to its prior certification until a final determination as to the validity of the plan, element of a plan, or plan amendment is made pursuant to the Community Planning Act (F.S. § 163.3161 et seq.), as amended from time to time. Should the applicant fail to submit to the commission a copy of any and all additional information within 30 days after receipt, transmittal, execution or creation (as applicable) by the applicant, the commission shall likewise have the right, power and authority to reopen and reconsider said certificate of consistency. The commission may initiate any such reconsideration proceeding by sending written notice to the applicant/certificate holder, shall schedule and advertise such reconsideration proceeding as a public hearing no less than 60 days after the date of said notice, and may consider any issue and receive such evidence in said public hearing and its subsequent decision that it deems relevant. The commission shall render a written decision by resolution within 30 days from the date of said public hearing. Appeal from said decision shall be in the manner provided in this article for appeal of certifications of consistency.
- (j) Notwithstanding any provision of this section to the contrary, an application for a certificate of plan consistency shall not be reviewed at a public hearing except as provided in subsection 90-35(d). When no public hearing is held, the chairman of the commission, based upon the recommendation of the professional staff of the commission, shall issue by letter a certificate of plan consistency as provided in subsection 90-35(d). This issuance of the certificate of plan consistency by letter is the final administrative action by the commission on the application. However, if a public hearing is called by the commission or is held pursuant to the request of an adjacent jurisdiction or a substantially affected or aggrieved party, the commission shall determine consistency pursuant to the criteria contained in this section; and the applicant jurisdiction shall be required to establish by competent, substantial evidence that its application meets the criteria specified in this section.

(Ord. No. 87-24, § 6, 7-23-87; Ord. No. 90-46, § I, 12-20-90; Ord. No. 91-39, § 2, 11-21-91; Ord. No. 92-87, § 3, 10-8-92; Ord. No. 93-13, § 3, 5-20-93; Ord. No. 2007-05, § III, 2-22-07; Ord. No. 2012-16, § I, 10-4-12)

Sec. 90-38. - Intervention.

Persons other than the original parties to a pending complete application under this article who are or may be substantially affected and aggrieved by the outcome of the proceeding may petition the commission for leave to intervene. Petitions for leave to intervene must be filed in writing at least five days before the date of the public hearing, and should, at a minimum, contain the following:

- (1) The name and address of the intervenor and an explanation of how its substantial interests may be substantially affected by the commission's determination;
- (2) If the intervenor intends to object to certification of consistency, a statement of all disputed issues of material fact, including specific objections to the pending application;
- (3) A demand for relief to which the intervenor deems itself entitled; and
- (4) Other information which the intervenor contends is material and relevant.

Furthermore, the petition shall include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right, or that the substantial interests of the intervenor are subject to determination or may be affected by the outcome of the proceeding. Nothing in this section shall be deemed to prohibit or prevent members of the public from being heard at the public hearing required by section 90-35.

(Ord. No. 87-24, § 7, 7-23-87; Ord. No. 2012-16, § I, 10-4-12)

Sec. 90-39. - Revocation of certificate.

If the commission's professional staff advises the commission that the applicant jurisdiction or its agent submitted false or inaccurate material information in its complete application or at a public hearing, the commission shall hold a public hearing and if the commission shall vote to revoke a certificate of plan consistency such action shall invalidate the plan, element, or plan amendment certified thereby.

(Ord. No. 87-24, § 8, 7-23-87; Ord. No. 2012-16, § I, 10-4-12)

Sec. 90-40. - Appeals.

- (a) Any substantially affected and aggrieved local government or other substantially affected and aggrieved party which has previously timely intervened pursuant to section 90-38 may contest the issuance, denial or revocation of a certificate of consistency by filing a petition for writ of certiorari along with a complete record of the proceeding(s) from which said certificate emanated so certified by the commission's records custodians, in the manner prescribed by the state appellate rules to the circuit court of the county, within 30 days after the date the commission's decision is filed with its secretary. The court shall not conduct a trial de novo. The proceedings before the commission, including the testimony of witnesses, and any exhibits, photographs, maps or other documents filed before them, shall be subject to review by the circuit court. The petition for writ of certiorari shall state how the commission erred and shall include all of the documents, papers, photographs, exhibits and transcripts constituting the record upon which the action appealed from was taken, or properly certified copies thereof in lieu of originals. The petition, along with the record, shall be filed in the circuit court within 30 days after the filing of the decision by the commission to which such petition is addressed. The court may extend the time for filing the record, including the transcript and exhibits, for good cause shown. The person filing the petition for certiorari shall be responsible for filing a true and correct transcript of the complete testimony of the witnesses.
- (b) The petition for writ of certiorari shall be furnished to the original applicant, the owner of record of the subject property, to each attorney at law appearing for any person at the hearing before the Volusia Growth Management Commission, and to the Volusia Growth Management Commission. The commission shall suspend the issuance of its permit until the court has ruled upon the petition.
- (c) The Volusia Growth Management Commission shall be a necessary and indispensable party to any appeal of its decisions. Any other person including but not limited to an adjacent local government may intervene, pursuant to Florida Rule of Civil Procedure 1.230, as a respondent in the certiorari proceeding authorized by this section.

(Ord. No. 87-24, § 9, 7-23-87; Ord. No. 99-16, § 4, 5-13-99)

Sec. 90-41. - Enforcement.

The commission may institute a civil action in a court of competent jurisdiction to seek injunctive relief to enforce compliance with this article or any certificate issued pursuant to this article.

(Ord. No. 87-24, § 10, 7-23-87)

Sec. 90-42. - Waiting period for reapplication for certificate.

No local government shall have the right to file an application for certification pursuant to section 90-35 if the same plan, element, or plan amendment for which certification is applied has been the subject of an application before the commission within a period of six months prior to the filing of the application. However, the applicant jurisdiction has the right to withdraw, without the penalty of the six-month waiting period, an application at any time up to 15 days before either: (i) the issuance of a letter of certificate of plan consistency pursuant to subsection 90-37(i); or (ii) the date of the scheduled public hearing on the application pursuant to subsection 90-35(e). Such withdrawal of the application shall be made either electronically or in writing and delivered by either hand delivery, U.S. Mail or courier service to the commission. Electronic transmissions must be followed up by the applicant jurisdiction with a hard copy transmittal delivered to the commission as soon as possible.

(Ord. No. 87-24, § 11, 7-23-87; Ord. No. 2012-16, § I, 10-4-12)

Sec. 90-43. - Article not to affect preexisting rights.

Nothing in this article shall alter or affect rights previously vested or plans, elements, or plan amendments previously, finally and completely adopted in accordance with applicable state law prior to November 4, 1986.

(Ord. No. 87-24, § 12, 7-23-87; Ord. No. 2012-16, § I, 10-4-12)

Sec. 90-44. - Ratification of past agreements.

Notwithstanding anything to the contrary contained in this article, the following agreements are hereby ratified and confirmed and the plans, elements, and plan amendments involved therein are certified consistent for purposes of this article:

- (1) Agreement between the City of Daytona Beach, Florida, and Gerald Berson dated March 1987.
- (2) Agreement between the City of Port Orange, Florida, DSC of Newark Enterprises, Inc., and the county dated January 8, 1987.
- (3) Agreement between the City of Port Orange, Florida, S.C.B. Development, Inc., and the county dated January 8, 1987.
- (4) Agreement between the City of Edgewater, Florida, Radnor/Edgewater, Inc., and the county dated January 12, 1987.
- (5) Agreement between the City of Port Orange, Sandalwood, Inc., and the county dated January 5, 1987.
- (6) Agreement between the City of Port Orange, Jennie M. Krol and the county dated January 5, 1987.
- (7) County council Ordinance No. 87-19, approving, among other things, amending the county comprehensive plan amendments related to Mosquito Lagoon, Hontoon Island and the North Peninsula.

(Ord. No. 87-24, § 13, 7-23-87)

Secs. 90-45—90-50. - Reserved.

DIVISION 3. - VOLUSIA GROWTH MANAGEMENT COMMISSION ORGANIZATION

Sec. 90-51. - Member appointments.

There shall be one voting member from each municipality within the county and five voting members from the unincorporated area of the county. The appointment of each voting representative shall be made by the governing body of each respective jurisdiction. A voting member of the commission may be appointed to the commission so long as the voting member at such time of the appointment: (i) is not a candidate for elective office and does not hold elective office with respect to any municipality in Volusia County or Volusia County; (ii) would not violate the dual-office holding provision of the Florida Constitution; and (iii) maintains a residence within the boundary of the appointing jurisdiction or the unincorporated area of Volusia County. In the event clause (i) or (ii) shall apply to a voting member during the term of appointment, there shall be declared an immediate vacancy on the date such voting member officially files the paperwork as a candidate for elective office or the date the voting member assumes the position creating the dual-office. The Volusia County School Board and the St. Johns River Water Management District shall each designate one nonvoting member to serve on the commission. All members will serve until successors are appointed and qualified. Nonvoting members shall serve at the pleasure of their appointing authorities. Any voting or nonvoting member may be reappointed.

(Ord. No. 2012-16, § I, 10-4-12)

Sec. 90-52. - Membership term.

All terms of the current members appointed by a municipality and Volusia County shall expire based upon the original three-year term of appointment previously designated by the commission. For the period July 1, 2013, to and including July 1, 2015, the term for members of the commission appointed by a municipality and Volusia County shall be transitioned so that the terms shall expire on a bi-annual basis and the approximately one-half of the current weighted vote shall be subject to appointment on a bi-annual basis. Members appointed by a municipality to a term beginning on July 1, 2012, shall be appointed to a three-year term expiring on June 30, 2015. Members that are appointed by a municipality, other than the City of Deltona, for a term beginning July 1, 2013, shall be appointed for a four-year term, expiring on June 30, 2017. The member appointed by the City of Deltona for a term beginning July 1, 2013, shall be appointed for a two-year term expiring on June 30, 2015. Members that are appointed by a municipality for a term beginning July 1, 2014, shall be appointed for a three-year term expiring on June 30, 2017. All members that are appointed by a municipality for a term beginning on and after July 1, 2015, shall be appointed to a four-year term. The current terms for the two Volusia County members expiring on June 30, 2013, shall initially be for two years expiring on June 30, 2015, and thereafter shall for a four-year term. The current terms for the three Volusia County members expiring on June 30, 2014, shall initially be for three years expiring on June 30, 2017, and thereafter shall be for a four-year term.

(Ord. No. 2012-16, § I, 10-4-12)

Sec. 90-53. - Member removal, attendance and vacancies.

- (a) A member or officer may be removed by a weighted vote of two-thirds of the commission for the intentional failure to disclose a voting conflict of interest as required by F.S. § 112.3143, or other applicable law, for misfeasance or malfeasance. Misfeasance shall be any lawful action which is performed on behalf of or in connection with the commission which is found to have been done in an illegal or improper manner. Malfeasance shall be any action which is performed on behalf of or in connection with the commission which is found to be an act of wrongdoing or intentional misconduct.
- (b) In order for the commission to carry out its duties and responsibilities to the best of its abilities, attendance at all regular meetings of the commission is mandatory. If any member fails to attend three regularly scheduled commission meetings during any calendar year ending December 31, the

member's seat shall be deemed vacant. The commission chairman shall notify the member and appointing jurisdiction after two missed regular meetings. A vacancy on the commission shall also occur upon the death of the commission member, upon the member's resignation, upon the refusal of an appointee to accept a position as a member of the commission, upon conviction of a felony, upon adjudication of the member by a court to be mentally incompetent.

- (c) Upon such removal or vacancy, the member's seat shall be deemed vacant and the chairman of the commission shall send written notification of the vacancy to the member and their appointing jurisdiction. A member may be reappointed by their respective jurisdiction if the seat is deemed vacant due to the failure to attend meetings of the commission. Appointments to fill any vacancy shall be for the remainder of the unexpired term. The weighted vote apportioned to a vacant seat shall not be counted in determining whether or not a majority of the weighted vote is present and voting at a meeting of the commission.

(Ord. No. 2012-16, § I, 10-4-12)

Sec. 90-54. - Staff.

The commission may retain attorneys, planners and other experts only as independent contractors. The commission with the approval of the county manager may employ administrative staff who shall be employees of the county; otherwise any administrative staff of the commission shall be leased employees. Any such county employee shall serve at the direction and pleasure of the commission; shall be unclassified under the provisions of the merit system; shall be paid according to the county compensation and classification plan in a range designated by the county personnel director; shall receive only those pay increases to which other county employees would be entitled or eligible; shall accrue leave and benefits otherwise applicable to a county employee; and shall comply with all rules and policies applicable to county employees not inconsistent with the direction of the commission. The commission shall select any such county employee under a competitive application process administered by the county personnel director who shall approve the starting salary of the employee. The commission shall adhere to the advice of the personnel director regarding the law governing the county as an employer and rules and policies applicable to county employees.

(Ord. No. 2014-02, § I, 2-20-14)

Secs. 90-55—90-70. - Reserved.

To: CRC growth management subcommittee

From: Clay Henderson: Stetson Institute for Water and Environmental Resilience

Re: Volusia Growth Management Commission

December 31, 2015

At your December 14, 2015 Charter Review Commission meeting, we presented a white paper on the Volusia Growth Management Commission (VGMC). Chairman Brown asked series of questions relating to a comparison of the requirements of the Growth Management Act (1985) and the Community Planning Act (2011) as they relate to the local obligations under Sec. 202.3 of the Volusia County Home Rule Charter which established the VGMC.

As previously noted the VGMC was established by Sec. 202.3 Volusia County Charter upon recommendation of the Charter Review Commission to refine the concept of “consistency” under the Growth Management Act (Chapter 85-55 Laws of Florida). “Consistency” was a major requirement of the Act defined as internal consistency between elements of a comprehensive plan, consistency between state, regional, and local government comprehensive plans, and consistency between a comprehensive plan and land development regulations and orders. Members of the 1985-86 CRC were concerned that the Act did not spell out means to achieve “consistency” among the county and various local governments within the county. The VGMC was proposed as a means to create a “level playing field” amongst the county and local governments for consistency review of comprehensive plans. Their concern was that a city or county could establish levels of service for capital improvements or increase densities or intensities in land use which would have an adverse effect on an adjacent jurisdiction. There was also a concern that cities with aggressive annexation policies could essentially invite landowners to annex by lowering planning standards. Materials provided by the VGMC staff show that most of the VGMC hearings over life of the commission have been for these reasons.

Between 1985 and 2011, the Growth Management Act regulated all local government comprehensive plans. The Act spelled out required elements of a comprehensive plan and required levels of service, capital improvement funding, and requirements for concurrency for a range of infrastructure. Comprehensive Plans could only be amended twice per year and all plan amendments including “small scale” amendments were required to go through compliance review and approval by the Florida Department of Community Affairs. Local governments, applicants, and affected persons also had the right to review compliance determinations by an Administrative Law Judge. Under this process, the average time for approval of a comprehensive plan amendment was 18 months and also true that several comprehensive plan amendments in Volusia County took several years to achieve compliance at the state level.

The Volusia County Council adopted the consistency rules for the VGMC in 1987 as Ord. No. 87-24. These rules were designed to fit within the requirements and timeline of compliance review under the Growth Management Act. Because all comprehensive plan amendments required compliance review by DCA, all amendments were required to be reviewed by the

VGMC. The review by the VGMC staff generally took place during the same time frame as compliance review by the DCA staff in Tallahassee. With few exceptions, compliance review by the state was a longer process than VGMC review.

One of the impacts of “great recession” was the Florida Legislature’s review of the process of growth management in order to streamline the process. In 2011, the Legislature passed the Community Planning Act (Chapter 2011-139 Laws of Florida) which substantially re-wrote the process of growth management. Key provisions of the new law were the elimination of the Department of Community Affairs, repeal of Rule 9J-5, limitation of the scope of state review, elimination of the twice per year amendment requirement, and creation of a new “expedited review” and “coordinated state review” process. Under the new expedited process, state agencies have only 30 days to review a plan amendment and their review is limited to specific issues of statewide concern. Another change in the law authorizes zoning approval to run concurrent with plan approval also as a means of streamlining the process. Under the new law a comprehensive plan amendment can be filed, processed and approved within 75 days. Attached to this memo are “flow charts” prepared by DEO which illustrate the new process for comprehensive plan review.

While the new law made sweeping changes, there are still fundamental aspects of growth management that remain. All units of local government are required to adopt comprehensive plans and those plans as well as land development regulations and development orders must be consistent with the plan. Other key concepts such as data and analysis requirements, levels of service standards, compatibility, suitability, intergovernmental cooperation, and concurrency remain. Perhaps most important to this discussion is that a broadly defined “affected person” may still challenge a comprehensive plan amendment through an administrative hearing.

Consistency, compatibility, and intergovernmental cooperation remain key concepts of growth management. Key provisions of the Community Planning Act provide:

The several elements of the comprehensive plan shall be consistent. Sec. 163.3177(2), Fla. Stat.

Future Land Use plans shall “Provide for the compatibility of adjacent land uses,” Sec. 163.3177 (6)(a)2.g, Fla. Stat.

Intergovernmental cooperation elements “...must demonstrate consideration of the particular effects of the local plan, when adopted, upon the development of adjacent municipalities, the county, adjacent counties, or the region, or upon the state comprehensive plan, as the case may require,” Sec. 163.3177 (6)(a) 2.h.1, Fla. Stat.

The intergovernmental coordination element shall provide for a dispute resolution process, as established pursuant to s. 186.509, for bringing intergovernmental disputes to closure in a timely manner. Sec. 163.3177(6)(a) 2.h.1.b, Fla. Stat.

The adoption of the Community Planning Act does not eliminate the need for a VGMC but it does provide an opportunity to review the consistency rules to make sure they are consistent with the new process. In other words, the consistency rules of the VGMC are still designed under the process of the Growth Management Act and should be more closely conformed to the process of the Community Planning Act. Nevertheless, the VGMC remains an opportunity for complex, complicated, or controversial plan amendments to resolve differences and avoid far more costs of an administrative hearing. VGMC provides a neutral third party review and forces early discussion and collaboration when there is a conflict. It gives the county, neighboring cities, and substantially affected persons the opportunity to reign in an overly aggressive applicant or city with its own agenda. Because no one city or the county controls the process it forces parties to seek agreement.

The following are provisions of the consistency rules which could be considered for revision in light of the requirements of the Community Planning Act:

Sec. 90-30 uses the term “Large scale comprehensive plan amendment” which is no longer applicable. The new law refers to small scale amendments, expedited review, and coordinated state review.

Sec. 90-34 requires all comprehensive plan amendments be reviewed for consistency and a certificate of consistency is required to be issued in order for a comprehensive plan to be deemed effective. Rather than reviewing all comprehensive plans, the consistency rules could be amended to deem certain amendments as consistent. At the very least, small scale amendments could be deleted from this requirement. Further, the council and VGMC could deem other amendments slated for expedited review as consistent. For instance, applications for map amendments of 30 acres or less, or applications that did not increase residential density or overall intensity could be deemed consistent. If indeed, the real concern is recruitment of economic opportunity projects, then certain areas within the county could be planned for economic development in advance and these areas could be deemed consistent. The precedent for this is the Rural Areas of Critical Economic Concern which have long been available for “fast track” review. The Community Planning Act also encourages interlocal agreements for joint planning areas. By the same token, the VGMC could be required to review all land use changes associated with the coordinated state process and amendments to newly annexed lands which increase density or intensity. The latter would be consistent with Volusia County’s other unique charter revision which requires review for school concurrency for land use amendments which increase residential density.

Sec. 90-35(f) requires determination by the VGMC within 90 days. The timelines within the rules could be trued up to conform to the requirements of the Community Planning Act.

Sec. 90-37 sets forth standards for determining “consistency.” These standards could be revised to more closely track requirements of the Community Planning Act to include criteria for “suitability,” “compatibility of adjacent uses,” or factors which contribute to “urban sprawl.”

At the last CRC meeting there was significant discussion about citizen intervention in the process. The VGMC consistency rules provide: “Any substantially affected or aggrieved party shall have a right pursuant to the Volusia Growth Management Commission Comprehensive Plan Consistency Certification Rules to petition for a public hearing on the application.” The

rules do not define “substantially affected or aggrieved party” but that has been interpreted by legal staff and the commission as the Renard standard as defined by the Florida Supreme Court. *Renard v. Dade County* 261 So.2d 832 (1972). Therein, the court found:

An aggrieved or adversely affected person having standing to sue is a person who has a legally recognizable interest which is or will be affected by the action of the zoning authority in question. The interest may be one shared in common with a number of other members of the community as where an entire neighborhood is affected, but not every resident and property owner of a municipality can, as a general rule, claim such an interest. An individual having standing must have a definite interest exceeding the general interest in community good share in common with all citizens.

The Renard standard is a higher threshold than the right of an “affected person” to challenge a comprehensive plan amendment through the Division of Administrative Hearings. Sec. 163.3184(1)(a) Fla. Stat. defines an affected person as follows”:

“Affected person” includes the affected local government; persons owning property, residing, or owning or operating a business within the boundaries of the local government whose plan is the subject of the review; owners of real property abutting real property that is the subject of a proposed change to a future land use map; and adjoining local governments that can demonstrate that the plan or plan amendment will produce substantial impacts on the increased need for publicly funded infrastructure or substantial impacts on areas designated for protection or special treatment within their jurisdiction. Each person, other than an adjoining local government, in order to qualify under this definition, shall also have submitted oral or written comments, recommendations, or objections to the local government during the period of time beginning with the transmittal hearing for the plan or plan amendment and ending with the adoption of the plan or plan amendment.

Citizen standing has been a core principle of growth management since the original Growth Management Act and survives under the Community Planning Act. An “affected person,” which includes a local government, may challenge a comprehensive plan amendment through the Division of Administrative Hearings. As noted in the previous memo, the VGMC process has been used in several controversial comprehensive plan cases to correct deficiencies in a plan and/or reach agreement with substantially affected parties.

We continue to maintain that the VGMC has stood the test of time by improving the quality of comprehensive planning in our community. It is a good working example of intergovernmental cooperation and provides substantially affected citizens the opportunity to address planning conflicts locally rather than through the state administrative procedure process. The items set forth above are examples of how the current VGMC process could be tweaked through the consistency rules without the necessity of amendment to the Volusia County Charter.

As requested by Chairman Brown, I intend to be present at the subcommittee meeting on Monday to help address any of these issues.

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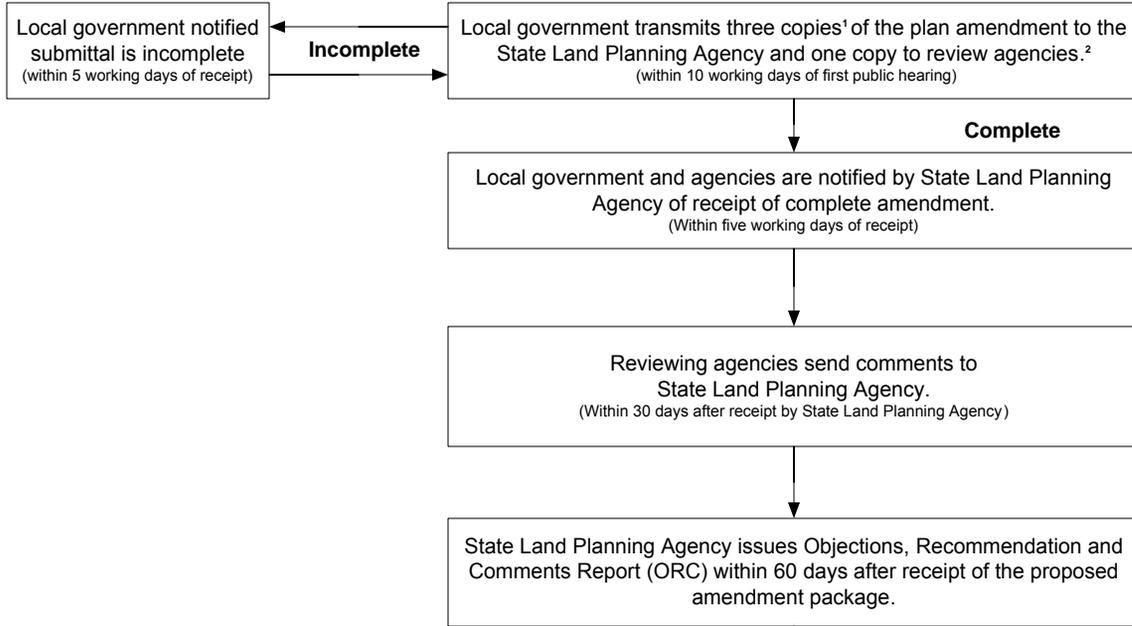
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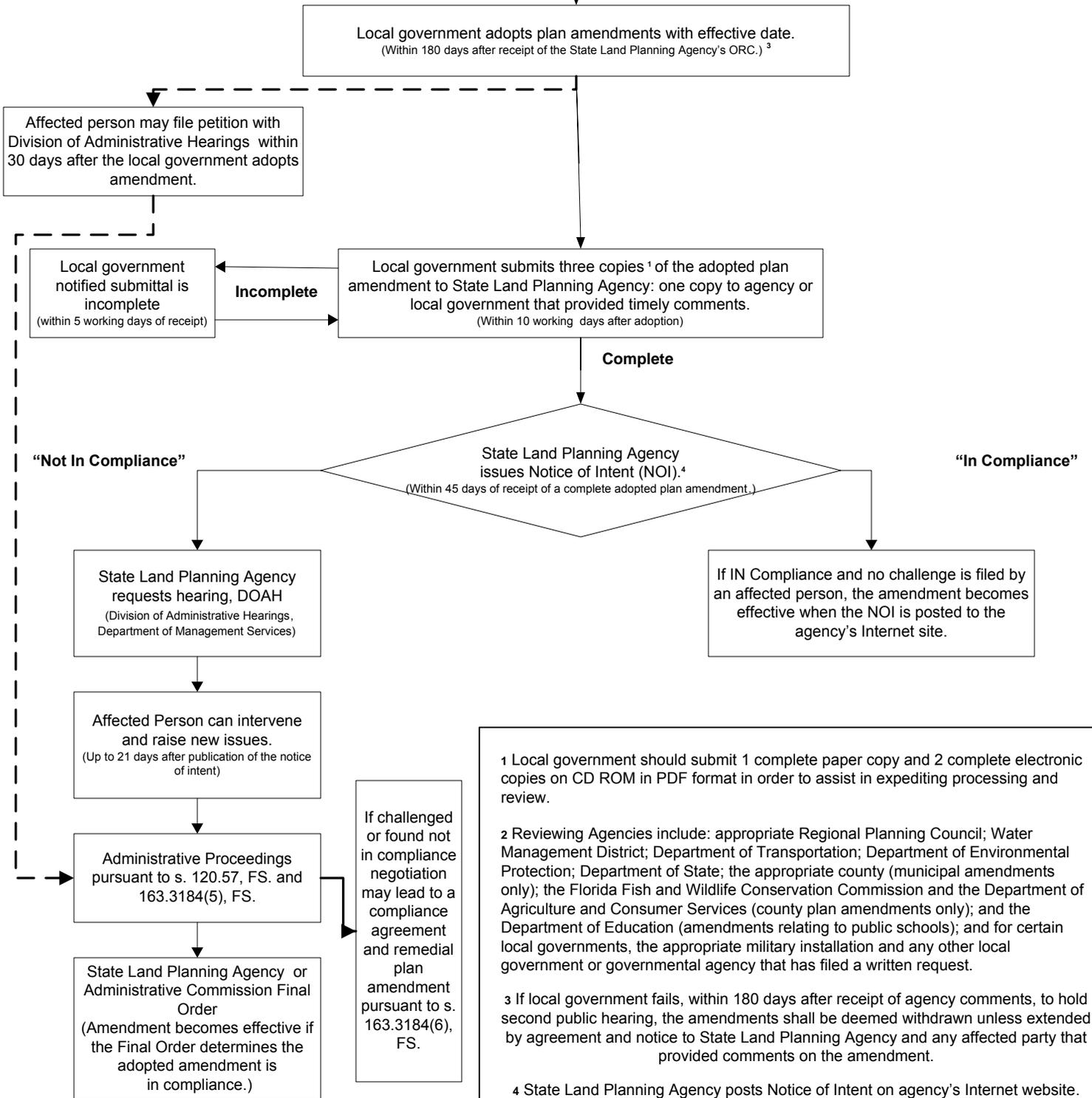
<http://www.stetson.edu/other/water-environmental-resilience/index.php>

State Coordinated Review Amendment Process Section 163.3184(4) and (5), Florida Statutes

Proposed Phase



Adopted Phase



¹ Local government should submit 1 complete paper copy and 2 complete electronic copies on CD ROM in PDF format in order to assist in expediting processing and review.

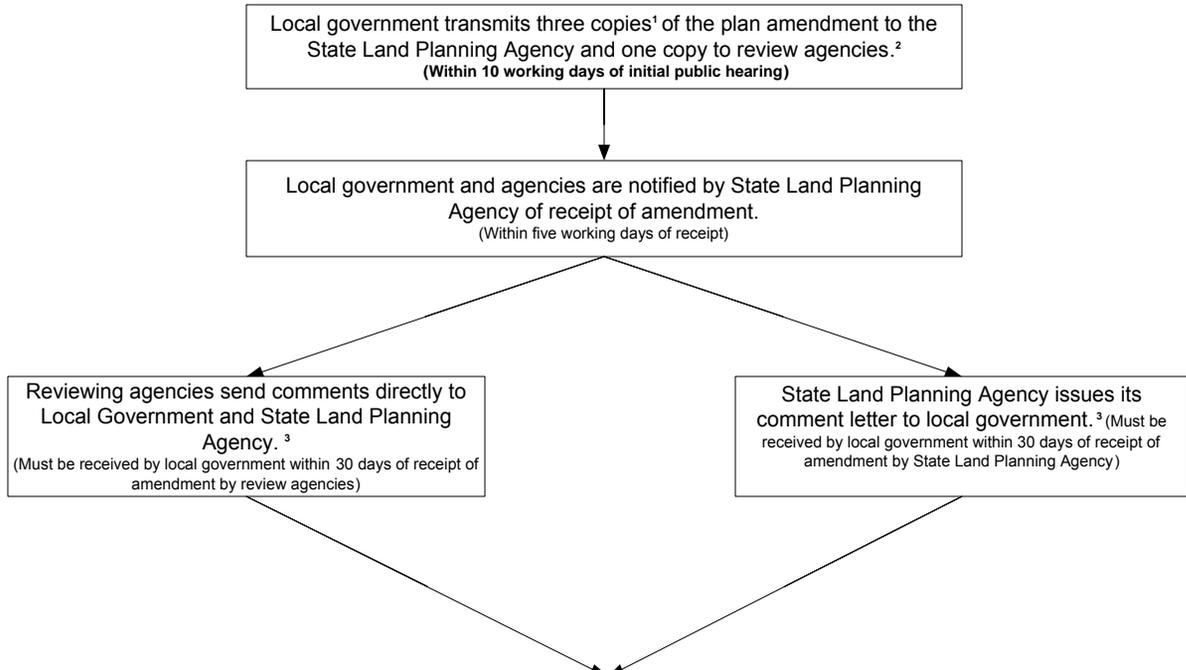
² Reviewing Agencies include: appropriate Regional Planning Council; Water Management District; Department of Transportation; Department of Environmental Protection; Department of State; the appropriate county (municipal amendments only); the Florida Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services (county plan amendments only); and the Department of Education (amendments relating to public schools); and for certain local governments, the appropriate military installation and any other local government or governmental agency that has filed a written request.

³ If local government fails, within 180 days after receipt of agency comments, to hold second public hearing, the amendments shall be deemed withdrawn unless extended by agreement and notice to State Land Planning Agency and any affected party that provided comments on the amendment.

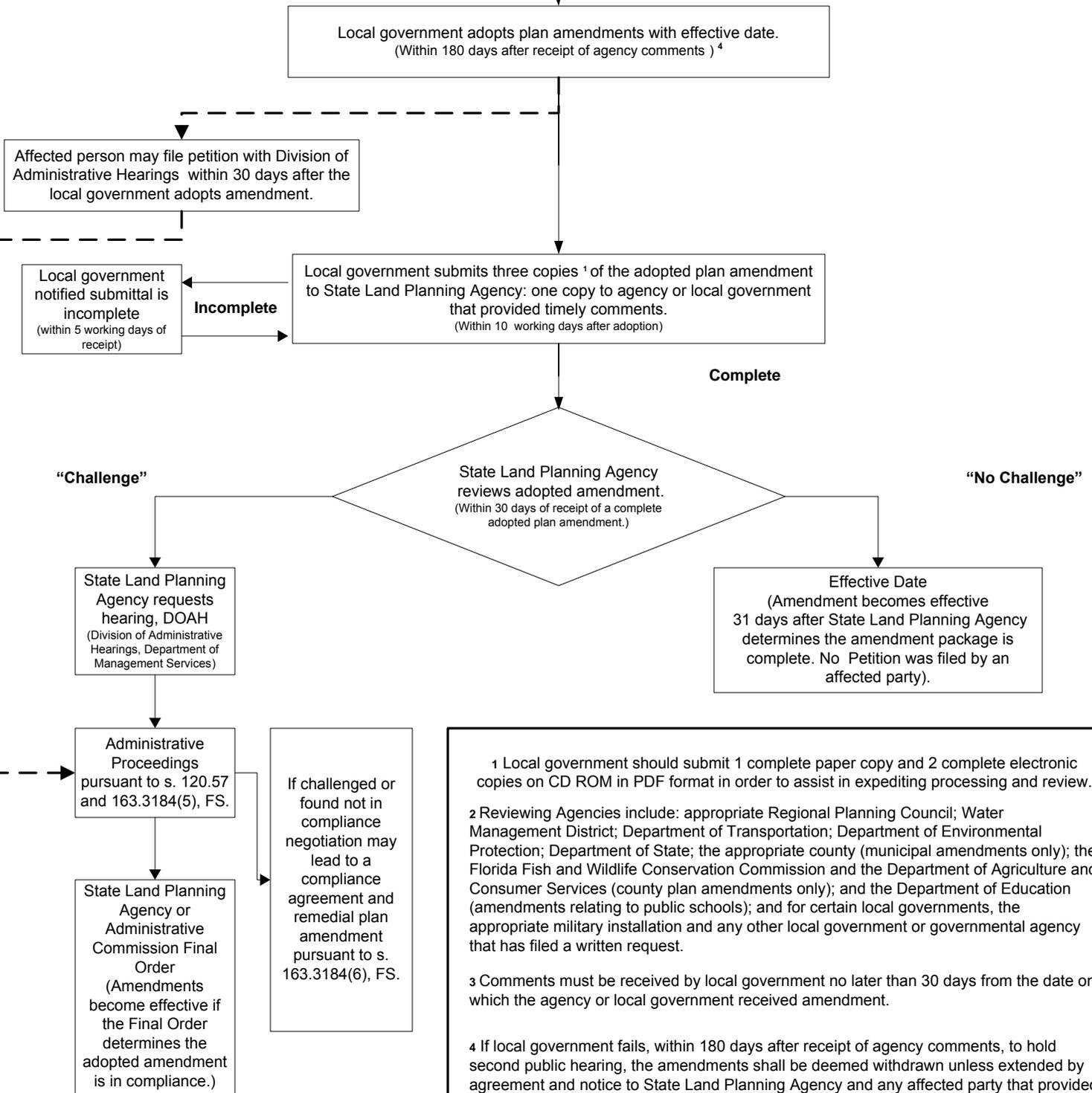
⁴ State Land Planning Agency posts Notice of Intent on agency's Internet website.

Expedited State Review Amendment Process Section 163.3184(3) and (5), Florida Statutes

Proposed Phase



Adopted Phase



1 Local government should submit 1 complete paper copy and 2 complete electronic copies on CD ROM in PDF format in order to assist in expediting processing and review.

2 Reviewing Agencies include: appropriate Regional Planning Council; Water Management District; Department of Transportation; Department of Environmental Protection; Department of State; the appropriate county (municipal amendments only); the Florida Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services (county plan amendments only); and the Department of Education (amendments relating to public schools); and for certain local governments, the appropriate military installation and any other local government or governmental agency that has filed a written request.

3 Comments must be received by local government no later than 30 days from the date on which the agency or local government received amendment.

4 If local government fails, within 180 days after receipt of agency comments, to hold second public hearing, the amendments shall be deemed withdrawn unless extended by agreement and notice to State Land Planning Agency and any affected party that provided comments on the amendment.