

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

MINUTES FOR
MEETING HELD
Wednesday, January 11, 2012

1st Floor Training Room #116
City of Daytona Beach
301 S. Ridgewood Avenue
Daytona Beach, FL 32114

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

The following POP Committee Members were present: Committee Chairman Gerald Brandon, Richard Walton, James Wachtel, Kenneth Kuhar, Robert Storke and Joan Spinney. Also in attendance: Paul Chipok, VGMC General Counsel and Merry Chris Smith, VGMC Coordinator.

OLD BUSINESS

Discuss Procedural Changes to the VGMC Consistency Certification Rules

Chairman Brandon commented that he felt the commission should be cautious with lengthy wording changes to the rules to avoid adding complication or confusion to the jurisdictions, particular those jurisdictions that have turnover in planning staff. He suggested keeping the language simple.

Mr. Chipok began discussing the 12/28/11 draft, focusing on the changes from the previous draft. Beginning on page 5, subsection (c), he stated that at the prior POP meeting, there was concern raised over the minimum period of time for the completeness review and the committee recommended two business days for the completeness review. In the interim and at the request of the Commission Chairman Steve Katz, Mr. Chipok stated he met with Chairman Katz, Jerry Brandon and Merry Chris Smith at a noticed meeting to review the recommendations of the POP committee. With respect to the completeness review, Mr. Chipok stated it was the opinion of Chairman Katz that adding two days would only lengthen the process and not necessarily add assurance to the process. As a result, he stated the recommendation to add two business days to the completeness review was not included in the 12/28/11 draft.

In this same subsection, Mr. Chipok stated he added clarity that once the completeness review is completed, the applicant jurisdiction would be directed to forward copies of the completed application, if different from the submitted application, to all adjacent jurisdictions. This practice would ensure that all parties would be reviewing the same document.

With respect to the first sentence in subsection (c) relating to the number of application copies the jurisdictions need to submit, Mr. Brandon raised concern that two copies of the application is not sufficient. Following further discussion, the committee concurred that the language should be modified to require 1 original and 5 copies – two of which need to be hard copies in writing -- which is also more consistent with the VGMC application.

Mr. Wachtel commented that the addition of the two business day completeness review is for the purpose of providing assurance to the applicant jurisdiction that the application will not sit for an uncertain period of time. Mr. Walton also commented that the applicant jurisdictions need to be able to determine the timeline for processing the application and the 2 business day completeness review will allow them to do that. Mr. Wachtel recommended the language requiring the completeness review to be completed within two business days be added and the committee concurred.

On page 7, subsection (e)(1)a., Mr. Chipok stated the language was clarified to reflect that a "written" request for additional information tolls the time on the application. He stated that in many cases when the planners complete their review and find something is lacking, they will call or email the jurisdiction to obtain the information. In those cases, Mr. Chipok stated that is an informal request for additional information and does not toll the time. He added the intention is that a formal request for additional information would go out on the last day to comment and time would be tolled, while general discourse between staff and the applicant during the initial 30 days would not cause time to be tolled. Mr. Walton commented that this is how it seems to generally work currently.

On page 8, subsection (e)(2)c., Mr. Chipok stated the change in language is to clarify that an adjacent jurisdiction may request a 21-day extension to respond to the application, the Chairman acknowledges the request in writing, that the extension tolls all the time periods and applies to the other adjacent jurisdictions as well. Mr. Chipok stated the previous language made it appear there could be potentially multiple 21-day extensions which is not the intent.

Page 12, subsection (d), Mr. Chipok stated that in the 2009 rules amendments recommendations, a provision was added to this section which stated that we do not look at internal consistency. In previous discussions with Chairman Katz, he raised a point that if we are stating that we don't review for internal consistency, then the jurisdictions should acknowledge in their application that it is internally consistent. Mr. Chipok commented that it may be inconsistent to make a statement that we do not look at internal consistency, but then require the applicant to establish that the application is internally consistent. He stated the simplest way to handle the discrepancy would be to leave out any reference to internal consistency, adding that the only downfall would be that we would not have a rule to cite when third parties from within the applicant jurisdiction oppose a proposed amendment.

Page 13, subsection (j) provides clarification that the plan certification by letter is the final administrative action by the commission. Mr. Chipok stated by operation of law, the final administrative action by the commission can only be appealed to the court, and not back to the commission.

Mr. Walton stated that when an adjacent jurisdiction has a concern on an application, the parties often agree on modifications or conditions. He asked if there is a way to modify an application or approve it with a condition via letter certification, without the need to schedule a public hearing. Mr. Chipok responded that the way this has been addressed is to reduce the time frame for reapplication from one year to six months, and also allow the applicant jurisdiction to withdraw an application and resubmit without a waiting period. He stated this would allow the

application to be withdrawn, resubmitted with the agreed upon changes, and in all likelihood be eligible for letter certification.

Mr. Brandon asked about Section 90-39 and wanted to be sure the committee covered that. Mr. Chipok stated at the previous POP meeting, the committee's feeling was the certificate is not a vested right in the certificate holder and that it is an important concept. He stated in speaking with Chairman Katz that he felt the current proposed language accomplishes the same thing.

Mr. Chipok's overview of the 12/28/11 draft was concluded and he recapped the recommendations made by the committee:

- 1) Page 5, subsection (c) – Clarify that one original application and five copies of the application need to be submitted and that two of the copies must be in writing but others may be electronic; and
- 2) Page 5, subsection (c) – Add the concept that the completeness review will be completed within 2 business days.

Mr. Chipok raised one further issue dealing with Section 90-35(g) starting on Page 9. He read aloud how the rules presently read, which states that if an application is not approved, conditionally approved or denied within 90 days as set forth in the section, that the application shall be deemed approved. Mr. Chipok stated this provision puts an affirmative obligation on the VGMC to act within the 90-day rule timeframe. Under the proposed rules, the provision that states the application shall be deemed approved if the VGMC fails to take action within the required timeframe has been stricken and there is no affirmative duty for the VGMC to act on an application within any particular time period. Mr. Chipok commented that this may be in conflict with the interlocal agreement from May, 2000 between Volusia County, the VGMC and the Florida Department of Community Affairs (now called the Florida Department of Economic Opportunity). He stated there are two statements in the interlocal agreement, specifically sections 2.2 and 3.2, in which the County and the VGMC acknowledge that if the VGMC fails to take timely action on an application it is deemed approved. Mr. Chipok stated he is concerned that if we remove the 90-day rule requirement from our consistency certification rules, then we will then be inconsistent with the interlocal agreement. Mr. Wachtel asked if the term "timely" was defined in the interlocal agreement. Mr. Chipok responded that it was not defined, however, it was based on the fact that there was an affirmative statement in the rules that we had to act within a certain time period.

Mr. Brandon stated he felt that the rules need to remain consistent with the interlocal agreement. Following further discussion and review of the present rules as it relates to this section, the committee concurred that the proposed rules amendments still obligate the commission to act within the 90-day timeframe established in the section, however, by removing the language that the application is deemed approved if no action is taken removes the affirmative obligation to act timely. Ms. Spinney recommended amending Section 90-35(g) of the proposed rules to include the language that if the commission fails to take action within the timeframe specified in the section, the application would be deemed approved. The committee members concurred.

The committee then approved the 12/28/11 draft rules with the three cited revisions to be specifically reviewed at the next POP committee meeting scheduled for 6:30 p.m. on January 25, 2012, and the final POP recommendation will be presented to the full commission at the January 25, 2012 regular meeting. It is anticipated that following the presentation to the full commission on January 25th, a resolution will be drafted and a vote on the amendments by the commission will occur at the next regular meeting. Mr. Chipok stated he will prepare the revisions to the draft and forward them to the coordinator for distribution to the POP committee and full commission.

General discussion ensued regarding the process of sending it to the County for approval once the VGMC approves the recommended changes. Mr. Walton suggested looking at the timeline of when the VGMC sends the recommendation to the County Council and how long it will take for the County to schedule a public hearing, relative to their election coming in November 2012. Based on the anticipated date the VGMC will submit the recommendations to the County Council, Mr. Walton suggested contacting the County to determine the likelihood of the recommendations being considered by the County Council prior to the election. Mr. Wachtel asked if it would be appropriate to contact the County Attorney's office in advance of submitting the recommendation to the County in order to let them know there are administrative, non-controversial procedural changes forthcoming and to determine if the Council will consider the changes prior to the election. If that is the desire of the committee, Mr. Chipok suggested the POP committee make that part of their recommendation to the full commission to direct/authorize the Chairman to meet with the County legal staff. Mr. Wachtel added that possibly the County appointees should contact the Council member who appointed them to let them know the amendments are forthcoming and we'd like to have them considered by the County Council prior to the election.

NEW BUSINESS

1) Approval of the minutes from the December 13, 2011 POP Committee meeting

Richard Walton moved for approval of the minutes of the December 13, 2011 POP Committee meeting as presented; seconded by Joan Spinney. Motion carried unanimously.

2) Annual performance review of the VGMC Coordinator

Mr. Brandon collected the evaluations completed by each of the committee members and stated that each evaluation rated the Coordinator as outstanding in every category. Several committee members commented favorably on her performance. Mr. Brandon pointed out that Ms. Smith had not accepted a raise in the past several years and also stated that the County recently approved a 3.5% standard raise for the County employees. Further discussion ensued pertaining to a recommended salary increase, with several members pointing out that Ms. Smith does not get the benefits, such as paid vacation and health insurance, that the County employees are afforded. James Wachtel made a motion to recommend a 5% increase for the Commission Coordinator; seconded by Kenneth

Kuhar. Motion carried unanimously. The recommendation will go to the Budget Committee for consideration and then presented to the full commission at the January 25, 2012 regular meeting.

OTHER BUSINESS

A copy of the VGMC Rules of Procedure was distributed to the committee members. Ms. Smith stated there were several sections that the Commission Chairman wanted the committee to review. The committee deferred discussion on the Rules of Procedure to a future POP meeting so they have the opportunity to review the current rules. It is anticipated that the committee will look at the Rules of Procedure at a February POP meeting.

ADJOURNMENT

The meeting was adjourned at 7:12 p.m.


Gerald Brandon, POP Committee Chairman