

**Personnel, Operations & Procedures Committee
Volusia Growth Management Commission**

MINUTES FOR
MEETING HELD
Thursday, January 21, 2016

City of Daytona Beach
Room #149A
301 S. Ridgewood Avenue
Daytona Beach, FL

The meeting was called to order at 10:30 a.m. by Committee Chairman, Gerald Brandon.

The following POP Committee Members were present: Committee Chairman Gerald Brandon, Robert Lovelace, Don Romanik, Robert Storke and Rich Walton. Also in attendance were VGMC Chairman James Wachtel, VGMC Legal Counsel Paul Chipok, VGMC Planning Consultant Jim Sellen, Deanie Lowe, and VGMC Operations Manager Merry Smith.

NEW BUSINESS

Mr. Brandon asked everyone at the table to introduce themselves. He stated he invited Deanie Lowe, former County Chair and Supervisor of Elections, to attend the meeting since she was very involved in the initial charter which established the VGMC. He also stated she is a strong proponent of the VGMC and has attended the Charter Review Commission (CRC) meetings in support of the VGMC.

Mr. Brandon stated there have been two CRC meetings thus far where the VGMC was discussed. At these meetings, there were varying opinions on the future of the VGMC. He stated there is a strong push from the business development community to abolish the VGMC, and also 13 of the local municipalities have taken the position to either abolish or modify the commission. Others have spoken in support of keeping the VGMC, but modifying the rules and regulations in terms of how the VGMC operates. He explained that the CRC has appointed an ad hoc committee to look specifically at the VGMC. Mr. Brandon attended the 1st meeting of the ad hoc committee on January 4, 2016 along with Ms. Lowe, and the committee has asked the VGMC to submit proposed rules amendments to the CRC for review. He stated if the VGMC can propose changes to the rules that would resolve some of the issues raised, there's a possibility this could keep any measure to change the charter off of the ballot.

Mr. Brandon discussed the upcoming timeline. He stated the ad hoc committee of the CRC is meeting again on Monday, January 25, 2016 and he's been asked to attend. He would like to orally present what changes to the VGMC rules the POP committee would recommend to address some of the issues that have been raised, and to get feedback from the CRC on the proposed recommendations. At that point, the POP committee would meet again to formalize any proposed amendments to the rules which would then be presented for consideration by the full VGMC. Any changes to the VGMC rules would ultimately have to be approved by ordinance of the Volusia County Council.

Mr. Walton asked for clarification in terms of who decides what does or does not go on the ballot with respect to charter changes. Ms. Lowe explained that the Charter Review Commission, not the County Council, decides what proposed charter changes will go on the ballot.

Mr. Chipok discussed the process for amending the VGMC rules in accordance with the charter. He explained his interpretation of the charter is that the VGMC proposes amendments to the rules via resolution which then goes to the Volusia County Council for approval by ordinance. He added that the charter gives no authority for the County Council to unilaterally amend the VGMC rules without input from the VGMC. Mr. Wachtel commented that likewise, the VGMC cannot unilaterally amend the rules without approval by ordinance of the Volusia County Council. He also suggested that since the effectiveness of any proposed changes to the rules ultimately lies with the County Council, that we should engage the County Attorney's office at some point in this process to garner support of the proposed amendments. There was general agreement amongst the committee members.

Discuss proposed amendments to the VGMC Rules

Mr. Brandon reviewed what was in the agenda package which included a chart summarizing various comments and recommendations raised to the CRC, comments that were submitted to the ad hoc committee on January 4, 2016, and a summary of the positions recently taken by the local municipalities regarding the VGMC. He reiterated an earlier point that 13 of the cities in Volusia County recently went on record to recommend either eliminating or modifying the VGMC.

Mr. Brandon stated he would like the committee to review the comments individually to determine if any changes can be recommended that may be amicable to all of the parties. Prior to beginning the discussion relating to the comments raised, Mr. Chipok suggested going around the table to hear what perspective the attendees have concerning the VGMC and its process.

Mr. Chipok began by stating the power of the VGMC stems from the charter. He stated the language in the charter requires the VGMC to look at all comp plan amendments, however, we may be able to establish certain thresholds within the rules for amendments that do not create additional impacts so they may be deemed consistent without VGMC review. As an example, Mr. Chipok stated a property which has a county land use designation allowing up to 4 units per acre that is being annexed with a city land use designation that also allows up to 4 units per acre, would not create additional impacts.

Mr. Chipok also stated that the VGMC rules have been in place since inception, however, the nature of growth management and the state has changed. He added that he does not see a problem with revising the rules to create certain thresholds for review, so long as the commission still provides protection for the local governments to comment or object if they feel they will be impacted by a comprehensive plan amendment proposed by another local government.

Robert Storke commented that he supports the existence of the VGMC and feels there is room for change within the rules.

Deanie Lowe commented on the force behind the cities adopting resolutions to eliminate or modify the VGMC. She also stated that the CRC is aware that the measure on the ballot in 2006 to eliminate the VGMC was overwhelmingly defeated because people did not want to get rid of growth management.

Ms. Lowe emphasized that one of the biggest issue raised to the CRC is the issue of standing. She stated in 1986 she was on the subcommittee which developed the ballot language to create the VGMC. At that time, the main focus was for all of the local governments to have a level playing field, however, under the rules the VGMC has the ability to grant standing to parties other than the local governments. She stated this is a big issue with Team Volusia and an issue the CRC wants the VGMC to deal with. Ms. Lowe briefly discussed other issues which have been raised such as weighted voting and the broad "catch-all" language in the charter which allows the commission to "perform such other directly related duties as the commission from time to time deems necessary". She also stated the CRC realizes that a measure on the ballot to abolish the VGMC has a good chance of failing, and therefore, they are anxious to work with the commission to come up with modifications to the rules to reach a happy medium for all parties.

John Duckworth, who provides administrative support to the CRC, stated he was present primarily to observe. Mr. Walton asked Mr. Duckworth what the timeframe was for the CRC in determining what, if anything, will go on the ballot. Mr. Duckworth responded their deadline is the May meeting.

Jim Sellen commented that he believes the VGMC has done a good job over the years based upon the charge from the charter. He stated the VGMC has always tried to be a conflict resolution group that doesn't look to deny applications, but rather looks for solutions to approve the amendments. From a pragmatic standpoint, Mr. Sellen stated that VGMC staff gets a lot of applications that really don't require staff review. He mentioned small scale amendments specifically, and that he doesn't recall the last small scale amendment they reviewed in which they had an issue.

Mr. Sellen felt there are a lot of amendments that could be eliminated from VGMC staff review. While he does not agree with the recommendation made that the VGMC not review *any* amendment unless an objection is raised by another jurisdiction, he did suggest the committee look hard at some of the provisions and find that under certain guidelines the VGMC would presume an application is consistent without staff review, unless someone raises an objection. This would significantly reduce the number of applications that are reviewed by VGMC staff. With respect to the recommendation that VGMC only look at adjacency issues, Mr. Sellen stated there are issues that can extend beyond adjacent jurisdictions, such as environmental issues with the Mosquito Lagoon or the Intercoastal waterway, storm water management, water, and transportation issues with arterial roads that run through multiple jurisdictions.

Rich Walton stated he has been on the VGMC since 2008, and as the Planning Director for the City of Daytona Beach he is also a user of the VGMC process. He commented on the current process and working with the VGMC administrative staff, as well as his experience working with individuals in the business community relating to development proposed within the City.

Mr. Walton stated when the small scale amendment process was changed at the state level several years ago, the VGMC process was not updated which has resulted in extra time and additional process for an applicant. He explained that under the state process the jurisdictions can go ahead and adopt a small scale amendment and then send it to the state. However, under the VGMC rules the amendment has to be reviewed and certified by the VGMC prior to adoption, so the processing time is extended by the VGMC review process before it can be adopted by the jurisdiction and then sent to the state. Mr. Walton suggested that small scale amendments could be submitted to the VGMC after adoption, consistent with the state process, and the amendments don't become effective until the 30 day timeframe following submittal to the state and VGMC. Mr. Sellen commented that unless someone objects to a small scale amendment, VGMC staff doesn't need to review them.

Don Romanik stated that he firmly believes in the VGMC, he feels the VGMC has done a good job, and he commented on the political motivation behind the attention the commission is presently getting. He also stated he feels the commission is about conflict resolution and implementation, and not trying to stop development. Mr. Romanik commented on the lack of notification to the Canaveral National Seashore in the Oak Hill matter, and stated he felt that affected parties can extend beyond parties adjacent to a proposed development. He added that not everyone is attuned with what each jurisdiction is doing within the county and feels the VGMC provides a forum for those individuals that aren't necessarily represented to object. Overall, Mr. Romanik commented that there may be tweaks that could be made to the present rules, but generally feels the VGMC process is sound and anyone proposing to dismantle it is making a mistake.

Robert Lovelace stated if the facts are that the decision by Space X to go to Brevard County was weighted on factors unrelated to the VGMC, and if the business development community continues to use this matter to thrust opposition to the VGMC, then we should be prepared to present factual information to the public if a measure gets put on the ballot. He also commented that the issue of standing is important and expressed concern if standing were limited to local governmental jurisdictions only.

Mr. Lovelace asked if there is any mechanism in the state's review process to assure consistency in amendments between jurisdictions. Mr. Walton stated there may be some provisions within the state's process for this, however, his experience has been that unless there is clearly a major state interest in an amendment, the departments of the state do not raise issues. Mr. Chipok added that's the way the state statute reads now, unless there is a major state interest they cannot raise an objection.

General discussion ensued relating to the requirements of the intergovernmental coordination element in the comprehensive plan. Both Mr. Sellen and Mr. Chipok stated that most of the jurisdictions in Volusia County reference the VGMC process as their means of meeting the requirements of intergovernmental coordination.

Mr. Lovelace asked if it would be reasonable to think since the creation of the VGMC that the cities and county's comprehensive plans have evolved to a point where there is some form of built in consistency with each other's plans. Mr. Chipok responded that the VGMC deals with amendments to the comprehensive plans so you won't know if or how an amendment may impact a neighboring jurisdiction until such time as it is proposed. He also commented that one of the greatest impacts of the VGMC is the very existence. He stated that many of the jurisdictions address the issues that would come through the VGMC process up front and early on to avoid conflict with a neighboring local government.

There was brief discussion concerning the Oak Hill amendment process, timing and outcome.

Mr. Walton stated the county believes they have authority over environmental regulations within the cities. He discussed a county ordinance that is presently being circulated which establishes environmental rules within the cities.

VGMC Chairman James Wachtel stated he has heard criticism that the VGMC is not accountable to anyone. He commented in disagreement, stating that he is accountable to Volusia County as their appointee, although he's never been asked by them to provide a report or given direction in terms of the desires of the County Council. Mr. Wachtel stated he believes the accountability factor lies between the member and their appointing jurisdiction. Additionally, he commented the commission may have been set up the way it was so that it would be an independent board, separate from politics or pressures from any one entity. He stated if an appointing jurisdiction is not satisfied with their appointee, they can replace them. Mr. Chipok clarified that under VGMC rules, once a member is appointed to their term, they have a right to the appointment term unless the appointing jurisdiction has specific language in their regulations stating their appointees serve at the will of the jurisdiction.

Mr. Brandon spoke briefly relating to his appointment, and also discussed the meeting he attended recently at the City of Ormond Beach in which the city considered the resolution relating to the VGMC. He stated the Mayor of Ormond Beach supported eliminating the VGMC, but the commission adopted the resolution recommending the VGMC either be eliminated or modified.

At this time, Mr. Brandon stated he would like to begin discussing the individual comments and issues raised to the CRC which are outlined in the chart contained in the agenda package. Mr. Wachtel commented that the VGMC does not want to change the charter and he suggested the committee focus on those items that would not require a charter change. There was general agreement from the committee members. Mr. Chipok also pointed out that some of the comments made to the CRC that would require a charter change, could potentially be addressed

through changes to the rules without the need for a change in the charter. For example, Mr. Chipok stated the recommendation to eliminate the language in the charter that gives the VGMC the “duty” to determine consistency could potentially be addressed by establishing minimum thresholds where an application would require VGMC staff review. Mr. Brandon stated the chart was prepared for the benefit of the committee to get an understanding of the nature and tone of the various comments raised to the CRC.

Mr. Brandon suggested beginning with the issue of standing, adding that this was one of the major concerns raised to the CRC.

Mr. Wachtel stated when the VGMC rules were originally crafted, they were likely prepared to coordinate with state rules which allows individuals to be granted standing. He stated just because state rules allow standing to individuals, doesn't necessarily mean the VGMC rules have to. Mr. Wachtel commented his feeling is that neighbors to a proposed amendment have an opportunity to object to the change at the local government level, and the VGMC shouldn't be involved with internal consistency. As an example, he cited the recent public hearing held on the City of DeLand application that came before the VGMC when residents of the City of DeLand petitioned for hearing. Mr. Wachtel also stated that Roy Walters spoke at a recent CRC meeting regarding a situation that involved property in an adjacent jurisdiction, and the inability to have any influence at the local government level since they were not residents of the local government considering the amendment. He stated there may be some validity to granting standing to individuals of an adjacent local government.

In response to a question from Mr. Brandon, Mr. Chipok stated that standing before the VGMC is a creation of our rules and we have flexibility on how we wish to deal with it. He added, however, the concern he has from a legal perspective is if standing is limited, the VGMC has to be mindful of general due process concerns. Mr. Chipok stated during the 2009 rules amendment, he and a coalition of local city and county attorneys developed language that would limit standing to just units of local government. Additionally, the definition of unit of local government was expanded to include the Volusia County School Board, and there was a provision also added stating that if an individual had a concern with a proposed amendment that they should contact the unit of local government in which they reside to express their concern and request their local government raise an objection to the VGMC. In response to a question raised, Mr. Chipok stated the draft language was recommended by the POP Committee to the full VGMC in 2009, however, a polling of the local governments on this issue at the time found there was no champion to move it forward, and the proposed revisions to limit standing were not recommended further.

Mr. Chipok stated if it was the desire of the committee to move in that direction, then the draft language proposed in 2009 would provide a good starting point since it would address a lot of the issues that are back on the table presently. Ms. Lowe agreed and stated she felt a revision limiting standing to units of local government as described by Mr. Chipok may be acceptable to those who've raised concerns recently regarding standing.

Mr. Romanik commented that in his mind, adjacency is significant to standing. Brief discussion ensued relating to the parties granted standing in the Oak Hill application.

Ms. Smith distributed several copies of the April 23, 2009 draft revisions which included the limitation of standing to units of local governments and other provisions that Mr. Chipok referenced earlier. Mr. Walton commented that this same draft contained a number of changes to other sections of the rules and we could utilize this draft as a source for any changes being proposed to those sections as well.

With respect to including the school board as a unit of local government, Ms. Lowe stated that Clay Henderson pointed out in his recommendation that the school board has their own amendment in the charter that allows them to have a say on any proposed development. Mr. Wachtel supported including the school board as a unit of local government. He also commented that he disagreed with the commission granting standing to the Audubon Society in the Oak Hill hearing, adding that a society or group such as this could literally have standing on any amendment within the county.

Mr. Brandon asked if everyone was in agreement with the language that was proposed in 2009 defining a unit of local government to the county, the municipalities within the county, and the school board. Mr. Storke raised concern that the federal government didn't get notice of the Oak Hill amendment and they were a neighbor to the subject property. Several other members concurred. Mr. Chipok asked if the committee wished to add language that included a state or federal agency who is an adjacent property owner would be considered a unit of local government as well. The committee was in general agreement to add this language.

Ms. Smith summarized the recommendation from the POP Committee is to draft language limiting standing to units of local government, and add a definition of unit of local government to include the county, the municipalities within the county, the school board, and any state or federal agency who is an adjacent property owner to a proposed comprehensive plan amendment. The committee concurred.

Ms. Smith stated another provision relating to standing drafted in 2009 stated any individual who felt they would be affected by a proposed amendment should direct the concern to their local government. Mr. Wachtel asked if that provision is necessary. From a legal standpoint, Mr. Chipok recommending including the language to avoid a due process argument, adding that we would not be eliminating the individuals from the process and have directed the individuals how they should access the process. The committee agreed to include this provision in the draft rules revisions.

Mr. Brandon called for a brief recess at 11:58 a.m. and the meeting reconvened at 12:13 p.m.

On the issue of standing, Mr. Brandon individually asked each of the VGMC members if they concur with the recommendation to direct Mr. Chipok to draft language that would: 1) Limit standing to units of local government; 2) Define units of local government as the county, the

municipalities within the county, the school board and any state or federal agency who owns property adjacent to a proposed comp plan amendment; and 3) Add a provision to direct individuals who feel they may be affected by a comp plan amendment to contact their local government. All members present concurred with the recommendation.

Mr. Brandon stated he would like to look at the next item for discussion – the possibility of creating minimum thresholds in which an amendment application would be reviewed by VGMC. He added that Clay Henderson, in his recent recommendation, supports creating minimum thresholds, particularly with respect to the VGMC not reviewing small scale amendments. Mr. Brandon asked Mr. Chipok and Mr. Sellen to provide comment and guidance on this issue.

With respect to small scale amendments, Mr. Sellen commented that provided it meets the criteria in state statutes, and there is no objection raised from an adjacent jurisdiction, he has no problem with the VGMC not reviewing those amendments. Mr. Chipok concurred, reiterating that would be only if there were no objection raised by another jurisdiction. Mr. Sellen stated the only gap is how to ensure the other jurisdictions are notified of the amendment to allow the opportunity to object. Mr. Wachtel commented that one of the roles the VGMC provides is notification to the jurisdictions that an amendment is being proposed and provides the opportunity for them to comment or object. Whether or not VGMC staff reviews the amendment is a separate issue, but the VGMC process provides the opportunity to ensure intergovernmental coordination.

General discussion ensued regarding the process if small scale amendments were not reviewed by VGMC staff. Mr. Chipok suggested the applications still be submitted to the VGMC and other local governments per the current application process, but the amendments would be presumed consistent without VGMC staff review 30 days from receipt, unless an objection was filed by a local government. Mr. Walton asked if the local governments would submit the applications as they do now, prior to adoption of the amendments, or if they would submit them to VGMC after adoption which is consistent with the state process. Following brief discussion, there was general agreement the jurisdictions would follow the state process and submit the small scale amendments to the VGMC after adoption, and the amendment would be deemed consistent in 30 days if no objections were raised. Mr. Walton commented this would reduce the current timeframe on the small scale amendment review process since VGMC certification would not be required prior to adoption.

Mr. Wachtel asked if the state's 30-day review/objection process on small scale amendments starts when they receive the adopted amendment. Mr. Sellen responded affirmatively, stating this timeframe would run concurrent with the local governments ability to review and object through the VGMC process under the proposed change.

Ms. Lowe asked if the proposed change that would deem the small scales consistent if no objections are filed meets the current charter requirement that states no plan element or amendment shall be valid or effective until it has been reviewed by the VGMC and certified as

consistent. Mr. Sellen and Mr. Chipok both stated if the rules deem the amendment automatically consistent under certain criteria, then it would meet the charter requirement.

Mr. Walton asked what the process would be if an objection was filed by another local government within the first 30 days. Mr. Chipok responded that another local government would have 28 days from receipt of the application to file an objection, and if an objection is filed, it would be scheduled for hearing within 60 days.

General discussion ensued relating to timing for filing an objection. Mr. Sellen reaffirmed that the state has 30 days to file an objection after receiving the adopted amendment, and this timeframe would run concurrent with the timeframe local governments have to object to an amendment.

Discussion also ensued relating to the process if an objection was filed. Mr. Walton stated an objection could be filed with the VGMC, with no objection filed with the state. Mr. Chipok stated if an objection is filed at the state level, an administrative hearing would be held no less than 30 days, and no more than 60 days, from the date the objection is filed. He stated this timeframe would be consistent with the timing a hearing would be held before the VGMC if an objection was filed by a local government. Mr. Sellen concluded if no objection is filed through the state process, but an objection is filed by another local government to the VGMC, it would delay the process.

Mr. Walton stated what may be proposed by other parties is that small scale amendments should have no threshold for VGMC review at all. Mr. Sellen and Mr. Chipok stated the proposed changes being discussed would automatically deem small scale amendments consistent with no VGMC review, unless an objection is raised by another local government.

Ms. Smith raised a specific example of a small scale amendment that went to hearing before the VGMC which involved an application from the City of Port Orange in which Volusia County objected. She stated there was a public hearing held before the VGMC which resulted in conditions being placed upon the approval in order to address the county's concerns. Using this example, Mr. Sellen stated under the proposed rules relating to small scale reviews, the application would come in, VGMC staff would not review it and it would have been presumed consistent, but Volusia County would have objected within the first 28 days, and a hearing would be held within 60 days. He stated this is a legitimate conflict between two governments and the very purpose of the VGMC's existence. Any delay under this scenario would be a result of a local government objecting, not the VGMC. Mr. Wachtel added that in a situation like this, rather than the county having to object through an administrative hearing at the state level, along with the time and cost associated with that process, it can be resolved at the local level through the VGMC process.

Mr. Chipok pointed out that under state statutes, a small scale amendment cannot be effective until 31 days from the date of adoption. Mr. Sellen stated that is for the purpose of someone objecting.

Mr. Brandon asked if the committee members agreed to direct Mr. Chipok to draft language that VGMC staff would not review small scale amendments unless there was an objection raised by another local government. The committee members concurred.

Mr. Sellen suggested another threshold the committee may want to consider are amendments that are a result of an annexation that do not result in increased density or intensity under the proposed land use. He stated this category of amendment could also be presumed consistent without VGMC staff review. Ms. Smith asked who would make the determination that there aren't increased impacts. Mr. Chipok stated if the property being annexed is part of a Joint Planning Area (JPA) Agreement, the applicant local government could file a copy of the agreement with the VGMC. Mr. Sellen and Mr. Chipok both agreed that any rules changes that would presume an amendment consistent without VGMC review, should include the caveat "unless another local government objects".

Following further discussion, the committee concurred that a threshold could be established in the rules that any plan amendment involving an annexation where the property is located within a JPA would be presumed consistent without VGMC staff review unless an objection is filed by another local government.

Mr. Sellen asked the committee if they would want to consider a threshold for properties in Volusia County that have been designated by the state as an area of critical economic concern. Mr. Walton commented there are areas in Daytona Beach that are designated brownfields or other economic designations but don't have the appropriate zoning or land use designation. Mr. Sellen cautioned that a provision providing a presumption of consistency threshold for designated areas could be misused unless we were very specific in the rules which designations would qualify. Mr. Chipok stated just because an area has some form of designation, the designation itself does not address intergovernmental coordination. For example, if an area is given a designation of economic redevelopment area, that doesn't necessarily mean the traffic and utilities have been addressed.

Further discussion ensued regarding businesses moving into Volusia County that have all of their agreements in place with the state and/or local government(s), and are looking for a site. Mr. Sellen asked if we wanted to consider some type of threshold under those circumstances when an amendment is necessary. Mr. Wachtel pointed out the planning, land use and zoning for the area in Daytona Beach west of Williamson Boulevard along I-95 was established some time ago, which allows the City to attract businesses to a site that's ready.

Following further discussion, there was general agreement that if a business is looking at a site that requires a comprehensive plan amendment, the questions still need to be asked in terms of infrastructure, traffic, etc. and impacts on adjacent local governments still need to be determined.

Mr. Chipok summarized the recommendations of the committee with respect to establishing thresholds for VGMC review: 1) All small scale amendments will be presumed consistent

without VGMC staff review, unless an objection is raised by another local government; 2) Any amendment involving an annexation in an area which is part of a JPA will be presumed consistent without VGMC staff review, unless an objection is raised by another local government; and 3) All other amendments shall be subject to VGMC review per current procedure. With respect to #2 involving JPA's, Mr. Chipok suggested procedurally, the City should file a copy of the JPA with the VGMC when it is adopted, and then reference the JPA as they submit their applications to the VGMC. He also stated the VGMC should continue to receive notice of all applications, regardless of whether or not VGMC staff reviews, since they will still need to be noticed on the VGMC website, and a record of all amendments is maintained.

Mr. Storke asked how we would handle a situation if an annexation amendment is submitted that is part of a JPA, yet the VGMC had previously imposed conditions on the subject area. Mr. Chipok responded that most prior conditions of approval are development specific, and in an annexation situation, he doesn't recall any areas in the county that we have those types of conditions. Mr. Sellen concurred, stating the county has always been in a position to answer questions that were raised. Mr. Chipok discussed a recent specific annexation amendment involving property at SR 44 and I-95 in New Smyrna Beach. He stated the property was previously the subject of a VGMC hearing with Volusia County and PD conditions were placed upon the approval. He stated when the City of New Smyrna Beach annexed the property, they adopted the PD as part of the city's regulations, which from a VGMC review standpoint, was considered a wash since no new impacts were created.

Mr. Brandon individually asked the members present if they concurred with the proposed thresholds of review, all of whom responded affirmatively.

With respect to expediting the review process and conforming to timelines with the state review process, Mr. Chipok stated that our present rules require us to identify any issues within the first 30 days, and if a public hearing is necessary it must be held within the next 60 days. Whether it is an expedited or coordinated state review, he stated the jurisdiction cannot do anything within the first 30 days anyway because the state is still in their review process. Mr. Sellen stated he believes the concern is if the application requires a VGMC hearing and we are awaiting information from the applicant government to move forward in schedule the hearing, the time is tolled and can delay the process.

Discussion ensued regarding timeframes established for responses to VGMC requests for additional information (RAI). Mr. Chipok commented that the tolling of time when an RAI is issued is for the benefit of the local government to allow them time to gather necessary information to respond. He further stated the local governments really dictate the length of time involved based upon the amount of time it takes for them to respond to an RAI. Furthermore, he stated there is a provision in our rules that states a jurisdiction can advise us they will not be providing any further information and the public hearing is scheduled.

Ms. Lowe excused herself from the meeting at approximately 1:35 p.m.

There was general agreement that the current timelines and rules, along with the proposed thresholds for small scale and annexation reviews, are sufficient from a review process timeframe.

The committee began discussing the issue of presumption of consistency and burden of proof. Ms. Smith stated this issue was raised by Scott Simpson in 2009 and again more recently in which he stated that an objecting party should have the burden to prove an amendment is not consistent. She stated there was language drafted in 2009 to address this in the rules, however, it was not adopted.

As an example, Mr. Wachtel stated DeLand could propose an amendment that would add multi-family housing and Volusia County objects because of transportation issues. Under the proposed burden of proof shift, it would be up to Volusia County to have a traffic study done to show the amendment creates adverse impacts and inconsistency with their comprehensive plan, as opposed to DeLand having a traffic study to show there are no impacts. In this scenario, Mr. Wachtel didn't agree the burden of proof should be on the County. Mr. Lovelace stated in the Oak Hill situation, there were no studies submitted by the city and the commission was asked to believe there would be no impacts. He added that Mr. Wachtel's point relating to burden of proof is well taken. Mr. Wachtel felt the burden of proof should be on the applicant government to show their proposal is correct.

At the request of Mr. Brandon, Ms. Smith read from sections of the 2009 draft that related to changes to the burden of proof.

Mr. Lovelace asked Mr. Chipok if there is a logical, legal basis for whomever may advocate this concept. He added that presumption of consistency seems contrary to the reason the VGMC exists. Mr. Chipok responded that the VGMC is a conflict resolution board and in his opinion, it does not make much difference because if there are issues, the VGMC will suggest ways to resolve the issues in order to reach a finding of consistency. He stated if the burden of proof is shifted as suggested, it will not change the analysis and review by staff. He stated when staff reviews the application, they will still look at the criteria, and if something appears not to be consistent, staff will ask for clarification. Mr. Sellen added if there is no clarification, staff will recommend solutions to reach a consistency finding. Mr. Chipok asked Mr. Sellen if the burden of proof comes into play in their review. Mr. Sellen responded it does not, and our goal is to get it consistent first and foremost, which implies that the presumption is they are going to be consistent, either as submitted, or by finding a way to make them consistent.

Mr. Wachtel commented in his field, when he submits a project for a building permit, it's up to him to prove it meets the building code or he doesn't get the permit. Mr. Sellen commented that is a great point, and several others concurred.

Following further discussion, the committee concurred that the burden of proof initially belongs on the applicant. Mr. Romanik added that if the applicant provides information sufficient to VGMC staff and another party objects, the objecting party should show why it is inconsistent.

Mr. Chipok suggested leaving the language as it presently is in the rules. From a practical standpoint in implementation, Mr. Chipok stated we presume an application is consistent. If we find there is a question as to consistency, staff asks for clarification. If clarification cannot be provided, Mr. Chipok stated staff looks for ways or conditions to follow that. Mr. Chipok stated if they want to change the burden for VGMC, by preponderance of the evidence, to show that it is inconsistent first, that will change budgetary requirements because staff will need more studies and outside consultants to prove those items up. Additionally, Mr. Chipok stated if the role is changed where staff is spending time finding reasons for denial as opposed to creating solutions, it changes the tone of the basic function of the VGMC. Mr. Brandon concurred. Mr. Chipok stated our response to why we wouldn't recommend changing the language is that the VGMC is conflict resolution oriented and the present language in the rules allows us to do that. If the burden shifts to the VGMC to not seek solutions but rather find reasons for denial, Mr. Chipok stated it would be significantly more costly to the VGMC and defeats the purpose of the organization to begin with.

There was general agreement by the committee to make no changes to the rules that would shift the burden of proof.

The committee moved into discussing the recommendation made to the Charter Review Commission to provide an appeal mechanism in the rules that would allow a party to appeal a VGMC decision to the Volusia County Council. There was strong agreement that an appeal of a VGMC decision to the County Council would not be appropriate. Mr. Storke pointed out that in many cases, the county could very well be a party to the decision being appealed.

The committee agreed not to add language that would allow a VGMC determination to be appealed to the Volusia County Council.

Mr. Brandon asked if there were any other issues relating to the Charter Review Commission that needed to be discussed. Ms. Smith stated that in previous conversations with Mr. Brandon, there was discussion of possibly adding the 2009 proposed rehearing language to the appeals section of the current rules. Mr. Brandon stated the thought is to provide a second opportunity for an applicant jurisdiction to have the VGMC hear the application if they weren't in favor of the VGMC's decision. Mr. Romanik commented that if it was going to be the same argument as the original hearing, the VGMC decision wouldn't change. Referring to the Lady Godiva amendment heard by the VGMC several years ago, Mr. Brandon stated if new evidence is presented, the VGMC's decision could change. Mr. Romanik stated that scenario is different than a jurisdiction who simply doesn't like the VGMC's recommendation and decision.

Following further discussion, there was no recommendation made to add language to the appeals section of the rules relating to rehearings.

Mr. Wachtel suggested that once the POP Committee develops the rules revisions that will be proposed to the full VGMC, that we get feedback from the County Attorney's office, since the County Council will ultimately have to approve the changes through ordinance. Mr. Chipok explained his understanding of the process as it moves forward. Specifically, he stated POP will prepare its recommendation and bring forward to the full commission for discussion, at which time it would go back to the CRC subcommittee to gather further comment. Once consensus was reached with the CRC on the proposed rules revisions, the VGMC would move forward with implementation in terms of forwarding to the County Council for adoption. Mr. Romanik asked if the processes could run concurrently. In other words, bring both the CRC subcommittee and the County Attorney's office up-to-date on the POP recommendations simultaneously. Ms. Smith commented that Dan Eckert works with the CRC and attends the subcommittee meetings as well, so he will see the recommendations from POP the same time the CRC subcommittee does. Mr. Wachtel feels it would be a good idea to have dialogue with the County Attorney's office relating to the proposed rules revisions, prior to bringing it to the full VGMC, to get their thoughts and feedback on the proposed changes in case something may need to be readdressed.

Mr. Brandon stated he will be presenting today's POP recommendations to the CRC subcommittee on Monday, January 25th. Additionally, the full CRC meets again on February 1st and he's hoping to get further input from them to bring back to the next POP Committee meeting for further discussion.

Mr. Walton excused himself from the meeting at approximately 1:35 p.m.

Following further comment from Mr. Wachtel, there was general agreement that it would be worthwhile for Mr. Chipok to have a discussion with Mr. Eckert relating to the current direction of the POP recommendations and see if Mr. Eckert has any feedback or recommendations. Mr. Brandon asked Mr. Chipok if he would be available to attend the CRC subcommittee meeting scheduled on January 25th. Mr. Chipok responded he was available and would attend.

Mr. Wachtel excused himself from the meeting at approximately 1:40 p.m.

Ms. Smith recommended each of the committee members review the CRC agenda package for the January 25th subcommittee meeting as it includes minutes from the January 4th meeting, and also includes annotations from the original Charter Review Commission that established the VGMC.

Mr. Brandon stated the POP Committee has already agreed not to make any recommendations relating to changes that would require a change to the charter, however, suggested briefly discussing those for purposes of reporting back to the CRC subcommittee. Ms. Smith stated a recommendation was made to the CRC to delete the provision in the charter that the commission may perform such other related duties as the commission from time to time deems necessary. Pat Drago on the CRC subcommittee asked if the VGMC had any examples when the commission would have utilized that provision and what duties the provision would apply to.

Ms. Smith stated she is not aware of any specific use of this provision. Mr. Chipok stated it may possibly include the VGMC approving the mixed-use land use designation with the condition it be developed as a planned development with VGMC review since impacts cannot be measured at the time of the comprehensive plan amendment. Mr. Sellen disagreed that this would fall under "other duties". He stated the scenario described by Mr. Chipok is part of VGMC's job in finding an amendment application consistent. Mr. Chipok concurred. Mr. Sellen further stated he is not aware of any specific occasion when the VGMC utilized the "other duties" provision in the charter.

With respect to the budget language in the charter which states the commission shall adopt an annual budget which shall be funded by the county, Mr. Storke stated that's not how it works. He stated the VGMC submits a budget to the county and they have to approve it.

Under the current charter, the county is required to fund the VGMC. There's been a recommendation made to the CRC proposing to eliminate the language in the charter that states the VGMC shall be funded by the county. Mr. Sellen commented that if the VGMC is required pursuant to the charter, and the charter is changed to eliminate the funding from the county, then an alternative method of funding needs to be established.

Ms. Smith stated that a number of the CRC members have raised concern with the weighted vote system and have suggested each jurisdiction have an equal vote. She stated a change to the weighted vote would require a charter change and she understands the POP Committee is not making any recommendations relating to changes to the charter, however, she asked the committee's opinion on whether or not the county should have 5 appointees to the commission as prescribed in the current charter if the weighted vote is eliminated. The committee concurred if the CRC is recommending eliminating the weighted vote requirement in the charter, they should also consider changing it so the county has only one appointed member.

Mr. Brandon suggested when we address the CRC subcommittee, specifically tell them that we don't advocate changes to the charter that would require a ballot question, and therefore have made no recommendations to change the charter. If they want us to look at any specific provisions, they can let us know which charter provisions they would like the VGMC to address. Ms. Smith suggested we also be prepared to express the opinion of the committee on the recommendations made relating to charter changes.

Mr. Sellen excused himself from the meeting at approximately 1:50 p.m.

Mr. Brandon stated he will present the recommendations from today's POP Committee meeting to the CRC subcommittee on Monday, January 25th, and gather any feedback. Thereafter, Mr. Chipok will draft changes to the rules for review by POP when we meet again. Ms. Smith will prepare a summary of the POP recommendations for Mr. Brandon's use in presenting to the CRC subcommittee on Monday.

The committee discussed their availability for scheduling the next POP meeting the week of February 1st. It was determined that anytime on February 2nd would work, or after 2:00 p.m. on February 4th. Ms. Smith will coordinate the dates with the other POP members and will confirm the meeting date, time and location with the committee.

Mr. Brandon stated that Andrea Brandon has attended all of the CRC meetings with him, and asked if she had anything she would like to add. Mrs. Brandon suggested the VGMC emphasize to the CRC that the very existence of the VGMC causes the local governments to address intergovernmental coordination issues very early in the process, often before the applications even come to the VGMC.

Approval of Minutes from the September 9, 2015 POP Committee meeting

Robert Storke made a motion to approve the minutes of the September 9, 2015 POP Committee meeting as presented; seconded by Robert Lovelace. Motion carried unanimously.

OTHER BUSINESS

None

ADJOURNMENT

There being no further business, Mr. Brandon thanked everyone for attending, and the meeting was adjourned at 1:56 p.m.


POP Committee Chairman 2/04/16
Date