

Volusia Growth Management Commission

**MEETING MINUTES FOR THE
JOINT MEETING OF THE BUDGET AND PERSONNEL, OPERATIONS &
PROCEDURES COMMITTEES HELD
Wednesday, November 20, 2013**

County Council Chambers
Thomas C. Kelly Administration Center
123 W. Indiana Avenue
DeLand, FL

The meeting was called to order at 6:05 p.m. by VGMC Chairman Gerald Brandon.

The following POP Committee members were present: POP Committee Chairman Jack Hayman, Sandy Lou Gallagher, Ken Kuhar, and Don Romanik. The following Budget Committee members were present: Budget Committee Chairman James Wachtel, Debbie Connors, Richard Kane, Jack Lenzen and Roger Sonnenfeld. Also present were VGMC Legal Counsel Paul Chipok, and Operations Manager Merry Chris Smith.

Chairman Brandon stated he originally anticipated a recommendation by the joint committee meeting would be brought forward to the full commission at tonight's regular meeting, however, based upon issues that transpired in the past 24 hours, he was not confident a recommendation would be ready for the full commission this evening.

Mr. Brandon thanked Jack Hayman for the time and effort he has put forth on this matter. Mr. Hayman had previously met with Paul Chipok, and also with the County Personnel Director Tom Motes, to develop a proposition to move forward for consideration. Since then, however, the matter was reviewed by the County Attorney's office and things have changed. Mr. Brandon explained that the VGMC employee position does not fit into the County's established guidelines and the County has recommended either making the position a Volusia County employee, or go through a staff leasing company. He further explained the general benefits provided under each scenario.

With respect to the position becoming a County employee, Mr. Brandon reported the County Attorney's office stated the title of Operations Manager was not appropriate for the position based upon County job classifications, and the position would have to be reclassified. The County suggested the position be classified as a Management Specialist, which Mr. Brandon stated he did not feel was a significant issue.

Mr. Brandon stated he originally objected to the position becoming a County employee since the VGMC is an independent commission established by the Charter and needs to remain autonomous. If the status is changed to a County employee, he's asked if the County would be willing to put in writing that the position belongs to the VGMC and the VGMC would have full control over all aspects of the employee, including hiring and firing.

Ms. Smith distributed copies of Paul's memorandum dated November 18, 2013 which was sent electronically to the commission members on November 19, 2013 (attached as Exhibit A to these minutes).

Mr. Chipok addressed the members and provided some history with respect to the commission and the position. He began by explaining that Section 202.3 of the Volusia County Charter states the VGMC has independent staff, and the County was not taking issue with that. In addition, the Charter states the County must pay the VGMC budget, including the employee position.

Mr. Chipok explained an agreement was reached with the County in 1996 that the VGMC would utilize the County for payroll services, however, the VGMC employee was considered by the County as a contract employee and not an employee of the County. More recently, the commission agreed to look at adding benefits for this position at which time we contacted the County to discuss options. Based upon discussions Mr. Hayman had with the County Personnel Director, the County indicated the VGMC employee could join the County's medical insurance plan.

With respect to retirement, Mr. Chipok explained that the VGMC employee is not an employee of the County subject to the County merit rules and regulations, however, the VGMC is a considered a dependent special district of Volusia County. Under the Florida Retirement System (FRS), Chapter 121 of the Florida Statutes, an employee is required to participate in the FRS. He restated that the VGMC employee is not an employee of the County, however, when you look at the terminology and definitions of the statute, since the VGMC is a dependent special district of Volusia County and we are utilizing the payroll services of the County, the position salary is ultimately paid by the County and under the definition, it makes the position a County employee under the FRS. Mr. Chipok stated that an employee is obligated to participate in the FRS. Since the position has not received benefits since Ms. Smith was hired in 2004, the County will have to make up the difference for the time that Ms. Smith has been employed and the contributions that have not been paid into the FRS. Mr. Chipok stated the County has acknowledged this and the situation will be rectified.

Commissioner Sonnenfeld commented that he thought Ms. Smith was a County employee all along and was surprised to learn at the last meeting she was considered a contract employee. He asked for clarification as to whether this position is considered a contract employee or an employee of the VGMC. Mr. Chipok responded that the position is an employee of the VGMC and we utilize the County's payroll system. He stated that when VGMC & the County recently and collectively looked at the FRS in depth, the definitions clearly state that because the VGMC is a dependent special district, and because Ms. Smith is ultimately paid by the County as an employee, for the purpose of FRS, she is considered an employee of the County and mandatorily has to participate in the FRS.

Commissioner Hayman quoted several sections of the FRS Statute relating to required participation, and the definition of both an employee and employer. He also discussed the commission's need to remain autonomous, and asked if we knew the County Manager's position

relating to the present proposal as communicated by the County Attorney's office. Mr. Hayman recommended the VGMC discuss the matter collectively with County staff, including the County Manager, since according to the County's regulations, personnel matters are duties of the County Manager and Personnel Director. He also expressed concern with the VGMC employee becoming a County employee subject to the County merit system.

Mr. Chipok stated one of the questions raised to the County was whether medical and retirement benefits could just be added to the payroll services currently provided by the County. He reiterated that because the County provides the payroll services, the position is considered a County employee under the FRS guidelines and subject to mandatory participation in the FRS. Mr. Chipok stated in the County's view, since they are providing the payroll services, the benefits to this independent position of the VGMC have to be consistent with the duties of the position and also with the benefits provided to other County employees. Mr. Sonnenfeld asked where we currently fit in that respect. Mr. Chipok responded that a copy of the VGMC job description approved by the Commission at the August, 2013 meeting was sent over to the County. He stated the County Personnel office reviewed it and found it to fit the duties and salary range of the County position "Management Specialist" classification.

Mr. Chipok stated the reason that medical and retirement benefits cannot simply be added to the payroll services the County currently provides is that it creates a hybrid position where it is a County employee in some instances, and non-County employee in others, which creates a systematic problem for the County. Referring to the County merit rules and regulations guidelines, Mr. Hayman asked where the term "hybrid" came in and stated the County refers to the positions as "classified" and "unclassified". Mr. Chipok responded that the present VGMC position does not fit into the body or structure of the County's merit rules.

Mr. Chipok reviewed the options with respect to the VGMC position. If the commission chooses to make it a County employee, the position would be entitled to medical insurance, retirement and paid personal leave. He added that one caveat the County put on it is that the benefits would be prospective with the exception of the FRS which should have been paid since Ms. Smith's original date of employment in 2004. He stated the County acknowledges the FRS issue will be rectified. Commissioner Gallagher asked if the retroactive FRS contribution would count toward vesting in the FRS. Mr. Chipok responded affirmatively.

An issue raised to the County Attorney with respect to the position being made a County employee is that the VGMC would retain control of the position with respect to hiring, firing, etc. Mr. Chipok was advised by the County Attorney that the position would need to filter through the County system, advertised as a County position, and applicants filtered through ordinary County procedures, however, the VGMC would interview and have the final discretion with respect to hiring/firing its employee.

With respect to the "Management Specialist" position, Mr. Chipok stated the County considers this position as "classified", subject to the County merit rules and regulations. He stated the commission considers the VGMC employee an "unclassified" or "at-will" position not subject to

the County merit rules and regulations. In order to change the position to “unclassified” for VGMC purposes, it would have to be reviewed by the County Personnel Board to receive the “unclassified” status. Mr. Hayman reviewed the criteria for classified and unclassified positions from the County merit rules and regulations. Mr. Chipok stated under the current County scheme, the “Management Specialist” position is a “classified” position. Since we would want it to be “unclassified” so the hiring and firing ability solely vests in the VGMC, it would have to go before the County Personnel Board so they can make it an “unclassified” position. Mr. Hayman raised a question relating to the pay range associated with the County’s “Management Specialist” classification. Mr. Chipok stated the current VGMC employee rate of pay falls within the established pay range. Mr. Hayman raised concern of having to go before the Personnel Board for future pay raises. Mr. Chipok stated if this position becomes a County employee, the employee would be subject to the County system where he/she would be entitled to raises approved by the County. Chairman Brandon added that in the past, the commission generally followed what the County was providing its employees in terms of salary increases.

Overall, Mr. Chipok stated for ease of administration, the County feels it would be better to have the position become a County employee position with the understanding that it will be classified as an at-will position and the final hiring and firing authority lies with the VGMC. Mr. Hayman raised concern with the term “at-will” as it is not found in the County merit rules and regulations.

Commissioner Kane commented that he doesn’t see the VGMC employee as a County employee and it would go against the independence of the commission for the position to become a County employee. He stated we could look at another firm to provide payroll services. Mr. Chipok stated the alternative to becoming a County employee would be a leased employee. He stated at the end of the day, the County pays the personnel expenses, and how it is paid is the question we are trying to resolve. With the leased employee option, the County contracts with a leasing company and pays them directly. Currently, the County has a contract with the company ACH for leased employee services. The cost paid to ACH for their services is 21% of the annual salary, which is the administrative overhead cost and includes unemployment and worker’s compensation costs of the employee. Mr. Chipok stated the cost does not cover health care and retirement benefits. The County utilizes ACH with other independent employees at the present time, and by way of example, the County provides an additional stipend – and in the case of the Southwest Volusia Advertising Authority, they provide \$600/month per full time employee to offset health insurance and retirement costs. If the VGMC chooses the leased employee option, the stipend for the VGMC employee would need to be determined. Mr. Chipok stated ACH also offers the ability to sign up for health insurance coverage and 401(k).

Mr. Chipok stated the option of a leased employee moves it out from under the County umbrella and we are clearly an independent entity with an independent employee at that point in time. Mr. Kane suggested a third option is to keep the position as it is now, an employee of the VGMC with the commission setting the terms of employment and benefits. Mr. Brandon stated the County is already handling the payroll and will have to take care of the FRS contribution, he questioned why they cannot add the health insurance coverage while keeping this a VGMC position and not a County employee.

Commissioner Romanik commented that a leased or contract employee does not provide anywhere near the benefits the VGMC would like for this position. He also stated there is a pass-thru cost associated for their services, so the commission would be paying an additional cost and not getting the benefits we want for the position. With respect to the County, he stated their policies and procedures are set up, and all we need to do is find a way to get into the system and everything is there – retirement, health insurance and paid leave. Mr. Romanik stated the position has already been granted retirement benefits post-status, and commented in favor of the Personnel Department moving forward with providing health insurance and paid leave. He added that he feels the only issue the commission is asking for at this point is that it be an “at-will” or “unclassified” position with the commission retaining full control of the position.

General discussion ensued relating to County policies and the “at-will” designation. Mr. Hayman stated the term “at-will” is not a designation used in the County policy and suggested the County Manager needs to be involved in the discussion. Commissioner Lenzen asked if part-time County employees are eligible for benefits. Mr. Chipok responded affirmatively. Several members then commented it would not be an unusual request to provide benefits to the VGMC employee consistent with what the County employees are granted.

Chairman Brandon stated the regular meeting was scheduled to begin and asked the other members of the commission for another 5-10 minutes for the joint committee meeting to reach some form of direction for moving forward.

Jack Hayman made a motion to request a meeting between the Budget & POP Committee Chairs, Paul, the County Manager, County Personnel Director and County Attorney to further discuss the issues; James Wachtel seconded the motion.

Ms. Gallagher asked if it was possible to take the current job description to the County Personnel Director and request it be made an at-will position. Mr. Chipok stated that this issue has been raised to the County and the response was yes, it could be made an at-will position, but the authority to do so is vested in the Personnel Board.

Commissioner Wachtel asked if “at-will” was synonymous with “unclassified”. Mr. Chipok responded that he did not believe the term “at-will” was used in the County policy, but the definition of “unclassified” is that the employee works at the pleasure of the employer, which means the employee works at the will of the employer.

Mr. Kane asked if there is any issue of funding the retroactive contributions to the FRS. Mr. Chipok responded that through collective discussions with the County, there is agreement that the retroactive contributions to the original date of employment in 2004 are required. He added that regardless of how the commission chooses to move forward with the position as a leased or County employee, for reasons described earlier, the retroactive FRS contributions are necessary. Mr. Kane suggested this be confirmed at the meeting with the County Manager.

Mr. Sonnenfeld summarized that if the commission decides to go forward as a County employee, Management Specialist, and we go to the Personnel Board and get the position designated as "unclassified", the VGMC would retain control over the position and it would remain autonomous except for the function of being paid and receiving benefits through the County. Mr. Chipok agreed. Mr. Sonnenfeld added that we need to take measures to ensure the request to designate the position as "unclassified" gets processed, and not shut down by the Personnel Board. Mr. Hayman agreed and suggested the commission stipulate that an employee of the VGMC is not part of the County merit system.

There being no further discussion, Chairman Brandon called the question to the motion and second to request a meeting between the Budget & POP Committee Chairs, Paul, the County Manager, County Personnel Director and County Attorney to further discuss the issues. Motion carried unanimously.

Chairman Brandon thanked the members for their time and efforts.

ADJOURNMENT

With there being no further business, the meeting was adjourned at 7:07 p.m.



Attest: Secretary



Chairman

407-244-5683

PAUL.CHIPOK@GRAY-ROBINSON.COM

MEMORANDUM

TO: Jerry Brandon, Chairman
VGMC Members

CLIENT-MATTER NO.: 40080-1

CC: Operations Manager

FROM: Paul H. Chipok 

DATE: November 18, 2013

SUBJECT: Operations Manager Benefits, County Input

I had a conversation with Dan Eckert, Volusia County Attorney, on Friday, November 15, 2013, in the late afternoon. The county has met internally on this matter and the county's current position is that there are two options on courses of action for the Operations Manager position.

1) County Employee. The county's preferred course of action is to make the Operations Manager position a county employee position. An analysis will need to be done to put the position into the proper pay classification consistent with the duties of the position. Dan Eckert believes that the classification will be at least consistent with the current pay scale. The county would have to bring the position before the personnel board for approval of its "at will" status, "unclassified" in merit system terminology. In this respect, not all the provisions of the county merit system would apply, i.e., not those applicable to classified employees. It is not the view of the county administration that Ms. Smith is overpaid; however, Mr. Eckert cannot commit to a classification or pay rate until that process is undertaken. In the county's classification system, an operations manager is utilized for large departments (e.g. public works), so the job title now utilized by the VGMC would not be her classification.

The position will be an "at will" employee and reports directly to the VGMC Commission. This is similar to how some court employees are currently classified and categorized. Benefits will run prospectively, with the exception of the Florida retirement system. Leave and medical benefits will begin to accrue as of the switch to being a county employee. As an "unclassified" county employee those provisions of the leave and merit system that apply to unclassified employees would be applicable to the VGMC Operations Manager position.

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It is the intent of the county that the Operations Manager retains the autonomy of the position, is an at will employee and still reports directly to the VGMC Commission. Ms. Smith would have to agree that benefits are prospective if she is to become a county employee under the preferred course of action.

2) Leased Employee. This option requires the Operations Manager position to be an employee of a leasing company and the county contracts with the leasing company. The county has a current contract with ACH. The cost paid to ACH for their services is about 18 to 21% of the annual salary. This covers unemployment and workers compensation costs. It does not cover health or retirement benefits. The county currently uses ACH with other employees. By way of example, the county provides an additional stipend of \$600 per month for full time employees of the Southeast Volusia Advertising Authority to offset the health and retirement costs. The potential amount of a stipend for the part time VGMC Operations Manager position would need to be determined. ACH offers access to health and a 401K retirement plan.

This option provides full autonomy of the position and unquestionably keeps control and oversight directly with the VGMC.

In both scenarios, the county recognizes and acknowledges that they must deal with and rectify the retroactive retirement benefits issue with FRS.

Presently the Operations Manager position is classified by the county as a "contract employee". Participation in the FRS is allowed (and mandated). The county could offer participation into group medical coverage. There is no entitlement to leave. Basically it is a "work for pay" situation. Just keeping the status quo is not favored by the county management and not considered a viable option by the county.