

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

MINUTES FOR
MEETING HELD
Wednesday, February 18, 2015

City of Daytona Beach
Room #116
301 S. Ridgewood Avenue
Daytona Beach, FL

The meeting was called to order at 1:00 p.m. by Committee Chairman, Gerald Brandon.

The following POP Committee Members were present: Committee Chairman Gerald Brandon, Sandy Lou Gallagher, Robert Lovelace, Don Romanik, Robert Storke and Rich Walton. Also in attendance was Merry Smith, VGMC Operations Manager.

NEW BUSINESS

Approval of minutes

Robert Storke made a motion to approve the minutes of the January 28, 2015 committee meeting as presented; motion seconded by Sandy Lou Gallagher. Motion carried unanimously.

OLD BUSINESS

Review proposed Request for Statement of Qualifications (RSQ) for contract legal services

Mr. Brandon suggested going through the RSQ page by page to determine if there are any questions or changes necessary.

Page one, first paragraph, Mr. Brandon recommended deleting the term "several" from the sentence which in part reads "...in order to provide a forum for the several local governments...". He stated the term "several" suggests that it does not include all of the local governments. Mr. Storke commented that the word "several" may be a legal term. There was general agreement to delete the word "several" from the sentence.

Mr. Brandon also pointed out on page 1 that the term of the contract has been corrected to reflect it will be for a one year period with the option of two, one year renewals.

There were no comments or changes to page two.

Page three, last sentence under the Proposed Schedule, Mr. Brandon questioned whether the term "may" should be changed to "shall" so that it would read "The evaluation committee *shall* consist of VGMC Officers and members of the Personnel, Operations and Procedures Committee." Several members commented that the term "may" provides more flexibility for the officers of the commission to participate in the process if they choose to. There was general agreement to keep the language as currently written utilizing the term "may".

Mr. Brandon reviewed the dates in the proposed schedule. Mr. Romanik pointed out that the due date of April 27, 2015 to receive written questions to the RSQ was not 14 days prior to the May 13, 2015 closing date as required in the Inquiries and Addenda section. It was determined that the correct date should be April 29, 2015.

Mr. Brandon stated he felt the committee should establish a tentative meeting date following the RSQ Closing date to discuss the proposals received. Following discussion, the committee agreed to tentatively plan to meet on May 21, 2015, and also to leave the date to be determined (TBD) in the RSQ document.

Mr. Storke suggested that the Insurance Requirements section at the bottom of page 3 be moved so that it begins at the top of page 4. The committee members concurred.

Page 4, within a), Mr. Brandon questioned the provision which states "Umbrella liability limit will not be required to be carried by subconsultants." Mr. Walton asked if there are subconsultants under our current legal contract. Ms. Smith responded there are not. Mr. Lovelace asked if it may possible the umbrella liability policy for the primary consultant covers a subcontractor. Mr. Romanik stated the ultimate responsibility lies with the primary consultant regardless of what its subconsultant does, and he feels the language in the RSQ is fine. Following further discussion, the committee agreed to leave this provision as is.

Page 6, Mr. Brandon questioned the provision with states "For any on-site work performed by or on behalf of Consultant on County property, the County shall be named as an additional insured or additional named insured." He commented the language is specific to, and for the County and that the VGMC also deals with all of the municipalities. Mr. Brandon suggested deleting the provision altogether or adding language to include the municipalities. Mr. Storke stated if the provision remained in the RSQ, we could add "local governments" to the provision.

Mr. Lovelace asked if there are circumstances were it would be reasonable to expect our consultant(s) would perform on-site work. Mr. Brandon responded it occurs rarely, but can happen. He then discussed a situation when VGMC consultants went on-site in DeBary while reviewing an amendment application related to the subject property. Mr. Lovelace asked if it were true that VGMC consultants could also perform on-site work on privately owned property. Mr. Romanik responded affirmatively. Mr. Brandon added that the situation he described in DeBary was privately owned property. Mr. Lovelace commented that it is not really up to the VGMC to protect the landowner by mandating this coverage.

Mr. Romanik commented that the provision is not applicable to the VGMC as written. He also pointed out the waiver of subrogation provision in the RSQ.

Following further discussion, there was general agreement to delete the provision "For any on-site work performed by or on behalf of Consultant on County property, the County shall be named as an additional insured or additional named insured.". The committee also directed Ms.

Smith to run this matter by Mr. Chipok for his review and to notify the committee members if he did not concur with their action to delete the provision.

Page 7, Section A. of Limitation of Liability and Indemnification of VGMC, Mr. Brandon stated he was initially concerned that the Operations Manager was not included in those covered in this provision. He stated he spoke with Ms. Smith and she felt she was covered under the term "employee". Ms. Smith read from Section 90-54 of the VGMC Consistency Certification Rules which in part states: "...The commission with the approval of the county manager may employ administrative staff who shall be employees of the county...". There was general agreement to leave the language in this section as written.

Page 8, Section C., subsection (c), Mr. Brandon questioned the use of the term "sole" authority. Ms. Smith pointed out the first sentence in this section indicates the firm's indemnification obligations in this section are subject to VGMC or the indemnified party *giving the firm...sole authority...* which would suggest the commission would need to take action to grant the authority. Mr. Lovelace stated he understood Mr. Brandon's concern, but felt that with or without the word "sole", the authority is there. Following brief discussion, the committee agreed to leave the language in this section as written.

Page 8, Section D., line 4, Mr. Brandon felt the wording should be changed from "Contract shall be deemed as a waiver of immunity of limits of liability *of* VGMC..." to "Contract shall be deemed as a waiver of immunity of limits of liability *to* VGMC...". Following brief discussion, the committee agreed to leave the language in this section as written and to run this question by Mr. Chipok for his review. Ms. Smith will notify the committee members if Mr. Chipok does not concur.

Page 8, last sentence, Mr. Brandon stated he asked Ms. Smith to add "(VGMC)" following Volusia Growth Management Commission.

Page 9, Delivery of Proposals, Mr. Brandon stated that we don't necessarily need 12 copies of the proposals. Mr. Romanik pointed out that within that section the number of total sets as broken down is 14 which is not consistent with the total number of 12 required in the first sentence. Following brief discussion, the committee concurred that a total of 12 proposals are needed as follows: 1 original hard copy, 1 electronic copy, and 10 hard copies. Ms. Smith will make the correction to the RSQ.

Page 9, Mr. Lovelace raised a question concerning the wording "Failure to provide the required copies and information *may* result in the proposal not being considered." After discussing the process for bid opening, the committee agreed that 1) Any proposals delivered after the closing date/time would not be accepted; and 2) The committee, as a group, would make the determination at their first meeting following the bid closing whether a proposal would not be considered for lack of copies or information.

Page 15, paragraph 2., Mr. Brandon stated we need to spell out “Volusia Growth Management Commission” since this is a separate form to the RSQ. The committee concurred.

The committee directed Ms. Smith to review the two issues discussed earlier (pages 6 and 8) with Mr. Chipok. If he concurs with the committee on these issues, they agreed it was not necessary to meet again to review the changes. Once all of the changes are made, a copy of the final RSQ will be distributed to each of the committee members prior to release.

OTHER BUSINESS

1) Mr. Brandon stated there have been some questions raised recently relating to the application submittal process. Ms. Smith distributed a handout with notes summarizing some of the issues (attached as Exhibit A).

Ms. Smith stated that VGMC procedures relating to application processing have not changed, and all jurisdictions are still required to submit printed copies of the applications to the VGMC. Some jurisdictions over the past several months have opted to distribute new applications to the adjacent and non-adjacent jurisdictions via email. She explained that VGMC rules do not prohibit email as a method of delivery to the adjacent and non-adjacent jurisdictions, and it can be an efficient and timely method for distribution. Some concern with utilizing email is potential delivery errors due to file size limitations or staff turnover at the local government level. She added that the applicant government is responsible for effecting delivery of the applications, but the VGMC office also mails out an acknowledgment letter for all new applications, and copies are mailed to all of the local governments so they are notified the application has been received.

Ms. Smith stated that several questions have been raised since the time some jurisdictions began distributing their applications electronically. Some of the questions include: 1) Am I required to use email? 2) Does the VGMC maintain email addresses for application distribution purposes? 3) Can I email the application to the VGMC? 4) If I receive an application via email from another jurisdiction am I required to respond?. Ms. Smith felt it might be appropriate to prepare a communication from the VGMC office to all of the local planning managers which addresses the questions and issues which have been raised, and also include a copy of the VGMC Consistency Certification Rules and application with a reminder that the VGMC rules have not changed.

Mr. Walton stated he’s received applications via email in his capacity as the Planning Director for the City of Daytona Beach. Additionally, he’s also been copied on email responses from other jurisdictions to the applicant jurisdiction indicating they have no objection to their application. He questioned whether the applicant jurisdictions are expecting responses, are they trying to expedite the process, what type of records are being kept, are the jurisdictions still sending the required printed copies to the VGMC, etc. Mr. Walton also spoke regarding the size of one of the application files he received via email which resulted in his email in box reaching/exceeding capacity. He expressed concern over the inconsistency of the process and feels the procedures should be clear to all of the jurisdictions.

Mr. Lovelace asked Mr. Walton how the other regulatory agencies deal with the issue. Mr. Walton responded that DEO requires the packages be individually addressed and delivered to the regulatory agencies, although he was not certain whether or not they allow email as a method of delivery.

General discussion ensued pertaining to the issues, including the varying levels of electronic technology throughout the jurisdictions within the County.

Mr. Brandon suggested in the short term, we send out the VGMC Consistency Certification Rules to each of the jurisdictions and then look at addressing the issue over the next couple of months to come up with a consistent plan that would provide flexibility, but includes structure.

Mr. Walton stated another issue that needs to be clarified is what information is required to be provided to the non-adjacent jurisdictions in the form of the application summary. Mr. Brandon stated we also need to readdress the definition of adjacent jurisdiction.

Following further discussion, Mr. Lovelace suggested that Ms. Smith, along with input from Mr. Walton, define what the issues are in order to establish some form of recommended action/policy for consideration by the committee which protects the interest of the VGMC first, and which then can be transmitted to the local jurisdictions. There was general agreement to move forward in this direction.

2) Mr. Walton stated that he's learned VHB recently acquired the transportation planning firm of GMB. He pointed out that GMB has active contracts with some of the local governments in Volusia County, including the City of Daytona Beach, and he raised the question of potential conflicts. Ms. Smith stated the VGMC has not received any formal notification from VHB on the acquisition to date. She also stated that if we receive a new application where GMB has been involved in the transportation analysis, the application would be referred to Littlejohn for review. Mr. Brandon and several other committee members commented that we need to find out more about the acquisition to determine if or how it impacts the VGMC.

ADJOURNMENT

There being no further business, Mr. Brandon thanked everyone for attending, and the meeting was adjourned at 2:18 p.m.


POP Committee Chairman

6/11/15
Date