

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

MINUTES FOR
MEETING HELD
Thursday, February 24, 2016

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

The meeting was called to order at 6:02 p.m. by Committee Chairman, Gerald Brandon and roll was taken. Mr. Brandon announced that we have a quorum but a couple of the members were delayed in traffic and should be arriving shortly.

The following POP Committee Members were present: Committee Chairman Gerald Brandon, Robert Lovelace, Don Romanik, Robert Storke, Sid Vihlen and Rich Walton. Also in attendance were VGMC Chairman James Wachtel, VGMC Member Saralee Morrissey, VGMC Legal Counsel Paul Chipok and Heather Ramos, VGMC Planning Consultants Jim Sellen, Erika Hughes and Chris Dougherty and VGMC Operations Manager Merry Smith.

Members of the public in attendance included: Deanie Lowe, Jim Cameron, Steve Sather, Joe Yarborough, Scott Simpson, Bruce Teeters, Kent Sharples, Beth Lemke and Andrea Brandon.

NEW BUSINESS

- 1) Approval of the minutes of the January 21, 2016 POP Committee meeting.

Don Romanik made a motion to approve the minutes of the January 21, 2016 POP Committee meeting as presented; seconded by Robert Lovelace. Motion carried unanimously.

Mr. Brandon stated there is a lot to go over in a short period of time with the regular VGMC meeting scheduled to begin at 7:00 p.m., so we need to try to move through the items quickly, but as thoroughly as possible.

- 2) Annual performance evaluation of the VGMC Operations Manager.

Mr. Brandon asked everyone to submit their completed evaluations of the VGMC Operations Manager. Since we were awaiting two additional members to arrive who would also be providing evaluations, Mr. Brandon moved into the next item of business.

OLD BUSINESS

Continued discussion and consideration of proposed draft amendments to the VGMC Consistency Certification Rules

Mr. Brandon asked if anyone had any questions relating to the 2-8-16 version of the draft amendments which were prepared based upon the discussion at the February 4, 2016 POP Committee meeting.

Mr. Storke arrived at the meeting.

Mr. Chipok summarized the draft amendments as outlined in his memorandum dated 2-8-16, a copy of which was included in the agenda package and attached as "Exhibit A" to these minutes.

Mr. Vihlen arrived at the meeting.

As to the issue of standing, Mr. Wachtel stated the issue of the school board being considered a unit of local government has been contested and asked Mr. Chipok to explain the reasoning behind including the school board as a unit of local government. Mr. Chipok stated the school board is a non-voting member on the VGMC pursuant to the charter. Additionally, they provide a source of infrastructure in the form of schools. There is a requirement for school concurrency and as part of the process, Mr. Chipok stated it makes sense the school board has access to the VGMC system to ensure the impacts on infrastructure, which is one of the VGMC review criteria, are not adversely impacted by a proposed amendment.

Ms. Morrissey clarified that when an application comes before the VGMC it is a comprehensive plan amendment, and she stated the school board doesn't review concurrency during the comprehensive planning process, they look at adequacy. She stated adequacy is based more on long term planning and much of what comes before the VGMC has no specific timeline for development. Ms. Morrissey stated the school board review is specific to Section 206 of the charter and is a slightly different review than concurrency.

In response to a question from Mr. Walton, Ms. Morrissey stated that Section 206 of the charter requires when land use or zoning is proposed that increases residential density, the school district shall determine if adequate school capacity can be provided in a timely manner. Mr. Chipok asked if the VGMC is an adequate tool for implementation of that. Ms. Morrissey responded affirmatively.

Mr. Simpson asked Ms. Morrissey why the school board would need standing in order to object to an amendment. He also asked what the school board would be objecting to since they do not have a comp plan and the VGMC reviews consistency between comp plans. Ms. Morrissey responded that the school board has a 20-year work plan which is their "planning" document and they look at the consistency of a comp plan amendment to their work plan. Mr. Simpson asked if the school board would actually need to object to a comp plan amendment through the VGMC process since they have a separate charter provision to make sure there are adequate schools. Ms. Morrissey stated if the school board raises a concern to the local government and they do not address it, she believes they need to have the right to object through the VGMC process.

Mr. Simpson asked if the school board objected to an amendment and the VGMC determines there are adequate schools, will the school board be bound by the VGMC decision. Ms. Morrissey stated that has never occurred in the past. She asked what the recourse would be for the school board since they do not adopt anything that deals with whether or not the land use is approved and what entitlements go with that land use. She stated the local government has that power, and the school board has no jurisdiction over what the local government ultimately adopts. Ms. Morrissey stated she is here to protect the interests of the school district.

Mr. Chipok stated there have been only two instances in the past 10 years where the school board objected to an application due to school adequacy issues. He stated both applications were approved by the VGMC after conditions were included to address those issues.

Mr. Simpson stated he doesn't have a real problem with the school board having the ability to object, but he would like to know whether or not the school board would be bound by the VGMC decision if they find there are adequate schools. He added that all of the other local governments are bound by the decision of the VGMC. Ms. Morrissey responded that she's not sure the school board could agree to that. Mr. Chipok stated the VGMC is not the exclusive avenue of review for the school board. Ms. Morrissey stated that is why she cannot say that the school board would agree to that since it would depend upon the individual circumstances.

Mr. Teeters asked Ms. Morrissey if the school board review was not part of the VGMC authority, wouldn't the school board have the ability to raise issues to a comp plan amendment to the local government. Ms. Morrissey stated if the school board was notified of the comp plan amendment.

Mr. Simpson stated he's not asking Ms. Morrissey to agree here to be bound by it, but he would like the school board to consider it. Mr. Brandon stated it sounds as though Mr. Simpson does not object to the school board being included as a unit of local government, but wants the school board to agree to bound by the determination of the VGMC. Mr. Simpson stated some of his questions have been answered, such as the school board would be objecting to the consistency to their long term plan and that objections would be limited to residential development. Ms. Morrissey did not necessarily agree to the limitation of objections to residential development. Although she cannot recall any specific occurrence in the past, she stated if a comp plan amendment was proposing a land use next to a school that was a nuisance, she cannot say the school board would not object to it. Mr. Simpson stated it would have to be inconsistent with the school board long term plan. Ms. Morrissey disagreed. She stated she could see other instances where the district might have to object and it has nothing to do with whether or not there is a plan for schools, it could have to do with the land use being proposed and its impact on the school. Mr. Simpson responded that we don't afford that right to any other property owners through the VGMC process. He also stated the school board has other avenues to discuss issues of that nature through the local government planning process and Ms. Morrissey concurred.

Mr. Chipok stated the VGMC looks at consistency and coordination of amendments, including whether or not adequate infrastructure is supplied. Under state statute, comprehensive plans are

supposed to address infrastructure needs not only for those supplied by that local government, but those supplied by other entities for that particular amendment. Mr. Chipok stated the school board fits under the umbrella of a service supplier to not only the jurisdiction who is proposing the amendment, but also to the surrounding jurisdictions. He stated it falls within the scope of the VGMC review to ensure there is adequate infrastructure, and schools fit within that infrastructure.

Following further discussion, Mr. Brandon asked Ms. Morrissey if she would go back to the school district and raise the question posed by Mr. Simpson. Mr. Simpson stated the question is: If the school board files an objection to the VGMC regarding the adequacy of schools to a particular amendment, the school board would be bound by the VGMC ruling. Ms. Morrissey stated she would ask that question.

Relating to the thresholds created for small scale and annexation JPA reviews, Ms. Lowe stated the question has been raised as to how VGMC can justify treating the small scale reviews different from the others. Mr. Chipok provided a summary of applications received over the past 10 years, a copy of which is attached as "Exhibit B" to these minutes. He discussed the breakdown of applications based upon the type (i.e. large scale, small scale, etc.), the number of public hearings, and who called for the public hearing. With respect to the 28 public hearings held in the past 10 years, Mr. Chipok pointed out the majority of public hearings were a result of objections raised by another local government. Only three were called by VGMC, two by the school board, and six by citizen petition.

Ms. Lowe stated the question is how can we justify treating small scale amendment reviews differently than the others, specifically how can one amendment come through presumed consistent, and another does not. Mr. Chipok responded that one way to look at it is that the state, through Chapter 163, also makes that distinction and treats the small scale in a different manner. The state does not specifically review small scale comp plan amendments and cannot object to them. With that process, Mr. Chipok indicated the state already uniquely separates small scale amendments where the impacts are limited to such a degree that state involvement is not necessary. As a practical matter, Mr. Chipok stated only three hearings have been held by the VGMC over the past 10 years on small scale amendments, two of which were called by members of the public and dealt with internal consistency issues. Chairman Wachtel added that under the proposed rules amendments, other local governments still have the responsibility to review the small scale amendments, and they can object to an application at which time the VGMC would review it and bring it to public hearing.

Mr. Teeters commented that a local jurisdiction has the right to object to a comprehensive plan amendment proposed by another local government, and asked why anyone else should get involved if there are no objections raised by another local government.

Mr. Cameron commented when the VGMC was established in 1986, the rules were written right after the consolidation movement in 1985. He stated a lot has changed since then and he feels the cities and county do a better job handling conflict amongst themselves.

Ms. Lowe commented that she feels the committee has come a long way in recommending there will be no VGMC review on small scale amendments unless a unit of local government objects, but she feels strongly there is going to be question as to why the large scale amendments can't be treated in the same manner.

Mr. Dougherty asked for clarification on the reference to Joint Planning Area Agreements. He asked if this includes Interlocal Service Boundary Agreements. Mr. Chipok responded affirmatively, stating that is what it is primarily intended to address. Mr. Dougherty stated he believes JPA's and ISBA's are in separate sections of the state statutes and we may want to look at that. Mr. Chipok asked Mr. Dougherty to look at the proposed language and get back with legal if he has any suggestions for clarification.

Mr. Simpson commented that the cities view the VGMC as a venue for local governments to come to if a conflict arises, and they do not believe the VGMC needs to be otherwise involved. He also discussed language within the charter which requires every comp plan to be reviewed by the VGMC. Mr. Simpson stated the proposed changes that would presume amendments consistent without VGMC review may be inconsistent with the charter, and a charter amendment may be necessary to implement the proposed changes.

Mr. Brandon thanked Mr. Simpson and the other members in the community who have been meeting with Ms. Lowe to try and develop recommendations that would work for everyone involved.

Mr. Brandon asked staff to explain the reasons why large scale amendment reviews by VGMC are necessary. Mr. Chipok first responded by saying when the charter language was originally written, there were no small scale amendments. He stated that distinction did not occur until sometime in the late 1990's. Mr. Chipok also stated in his opinion, the large scale amendments are so broad, that it is difficult to carve out exceptions or distinctions. He added that the majority of large scale amendments that are reviewed do not have issues.

Mr. Yarborough commended the committee for the progress made in the form of recommendations thus far. He also stated he works with the cities and discussed the resolutions adopted by the cities where 13 of the 16 cities recommended either eliminating the VGMC or fix it by streamlining the process. Mr. Yarborough stated the consensus of the cities is the VGMC should be a conflict resolution board, and the VGMC should only be involved if a conflict exists with an adjacent local government relating to a comp plan amendment.

Mr. Sellen stated the VGMC looks only at impacts that extend beyond jurisdictional boundaries. With respect to the concept that VGMC only looks at large scale amendments when another local government objects, Mr. Sellen stated that sometimes another jurisdiction doesn't necessarily see or understand the long term impact of a proposed amendment until it's too late. As an example, he discussed when Orange City created a single land use category called Mixed Use which had a broad range of floor area ratios and uses, and no other local government

objected. Mr. Sellen stated VGMC staff recognized there could be serious impacts to roads, utilities, schools, etc. in the future if the amendment was approved as submitted without ever being able to measure the specific impacts in the future. He also discussed the collaborative effort that went into addressing the concerns and the resulting conditional approval. General discussion ensued relating to the local government planning staff review of proposed comp plan amendments of neighboring jurisdictions.

Mr. Brandon stated the next meeting of the POP Committee will be held on March 3rd to review the comments and feedback gathered from the full commission discussion scheduled at the regular meeting beginning in just a few minutes.

Mr. Brandon also stated we received a letter from David Hartgrove and made sure everyone had seen that.

Mr. Simpson asked Mr. Chipok if he and Mr. Eckert are still in disagreement with the ability of a local government to remove their appointee. Mr. Chipok responded that he believes they still disagree, but feels it can be addressed through either a rules or charter amendment. Mr. Yarborough commented the cities should be able to appoint and remove members in accordance with what their procedures allow for any board. Mr. Chipok stated the VGMC concurs with that position.

OTHER BUSINESS

None

ADJOURNMENT

Mr. Brandon thanked everyone for attending and the input provided. There being no further business, the meeting was adjourned at 6:58 p.m.


POP Committee Chairman 3/23/16
Date

407-244-5683

PAUL.CHIPOK@GRAY-ROBINSON.COM

MEMORANDUM

TO: VGMC POP Committee
CC: Merry Chris Smith
FROM: Paul H. Chipok
DATE: February 8, 2016
SUBJECT: Consistency Certification Rules Revision

As a result of the February 4, 2016, POP meeting, attached is a February 8, 2016, blackline draft of revisions to the VGMC Certification Rules. The concepts and assumptions contained in the revisions are as follows:

1. Small scale comprehensive plan review
 - Presumed consistent unless appealed by unit of local government (No VGMC review)
 - Applicant jurisdiction still has duty to submit notice of amendment to VGMC and other jurisdictions
 - In the case of an appeal, VGMC reviews the application and prepares a staff report with recommendations
2. JPA Annexation related Comprehensive Plan Amendment
 - Presumed consistent unless appealed by unit of local government (No VGMC review)
 - JPA must be on file with VGMC
 - Applicant jurisdiction still has duty to submit notice of amendment to VGMC and other jurisdictions

- In the case of an appeal VGMC review the application and prepares a staff report with recommendations
3. Standing
 - Limited to units of local government
 - Standing is automatic for adjacent jurisdictions
 - Non-adjacent units of local government have to prove standing
 - “Unit of local government” is limited to county, municipalities and school board
 4. Notice of applications
 - Delete newspaper ad notice provisions
 - Added provision for posting application notice on VGMC website
 - Actual notice of each application provided to each unit of local government
 5. Time to Appeal and Call for Hearing
 - All units of local government follow the 28 day time frame to appeal
 - The 21 day extension that may be requested by adjacent local governments is not retained
 6. Application is approved in 30 days, unless:
 - Unit of local government calls for a public hearing
 - VGMC staff determines the application may be inconsistent and a public hearing is held
 7. Hearings
 - If a hearing is held, it must occur within 60 days of request for hearing
 - Standard – VGMC to determine consistency based upon preponderance of competent substantial evidence presented at the hearing

VGMC Application Summary

						Hearings				Hearings Held with No Local Government Objection		
Year	Total Apps	Large Scale	Small Scale	PUD	Large Scale JPA's	Total	Small Scale	Large Scale	PUD	VGMC	VC School Board	Public
2015	72	21	47	4	5	2	1	1	0	0	0	2
2014	46	28	18	0	6	2	0	2	0	0	1	0
2013	97	22	72	3	3	1	0	1	0	0	0	0
2012	33	13	19	1	0	0	0	0	0	0	0	0
2011	59	10	49	0	0	5	0	5	0	1	1	0
2010	34	19	13	2	0	5	1	3	1	1	0	1
2009	26	19	6	1	0	2	0	2	0	0	0	0
2008	81	27	50	4	0	2	0	2	0	0	0	1
2007	77	31	37	9	0	4	0	4	0	1	0	1
2006	83	21	61	1	0	5	1	4	0	0	0	1
Total	608	211	372	25	14	28	3	24	1	3	2	6

From: "Sellen, James" <JSellen@VHB.com>
To: "Ms. Merry Chris Smith" <vgmc@co.volusia.fl.us>
Date: 3/2/2016 11:55 PM
Subject: Statement Regarding automatic approval for Small Scale vs.Large Scale Plan Amendment.

Merry Chris,

I suggest the VGMC consider the following language for distinguishing between the process for reviewing Small Scale and Large Scale Plan Amendments. Please check my referenced to 90-37 and the Volusia County Charter. In the last sentence.

The VGMC staff has examined the content of Small Scale Plan Amendments submitted over the last 10 years. From that examination we have concluded that the vast majority of these amendments are non controversial and relate to changed from a land use category in the County to a land use category in a City with similar and compatible uses, densities and intensities.

Those amendments, and there have been about three, that have not fit this pattern, have been high profile and will most likely come under the scrutiny of an adjacent local government. Therefore, in the interest of streamlining the review process, the VGMC believes the Small Scale Amendments can receive automatic approval, unless challenged by an adjacent local government.

However, this is not the case for large scale amendments. Unlike Small Scale Amendments, Large Scale Amendments follow no particular pattern. Further, they consist of changes in governmental policy or capital investment (text changes) or large land holdings where the impacts will occur over a larger area, are more complex, not immediately evident and may occur in the long term future. We believe it is necessary and totally appropriate to fulfill the mission of the VGMC for these Large Scale Amendments to continue to be evaluated under the criteria established in section 90-37 of the Volusia County Charter.

Sent from my iPhone

This communication and any attachments to this are confidential and intended only for the recipient(s). Any other use, dissemination, copying, or disclosure of this communication is strictly prohibited. If you have received this communication in error, please notify us and destroy it immediately. Vanasse Hangen Brustlin, Inc. is not responsible for any undetectable alteration, virus, transmission error, conversion, media degradation, software error, or interference with this transmission or attachments to this transmission.

Vanasse Hangen Brustlin, Inc. | info@vhb.com