

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

MINUTES FOR
MEETING HELD
Thursday, February 4, 2016

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

The meeting was called to order at 2:00 p.m. by Committee Chairman, Gerald Brandon.

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 Legal Counsel Paul Chipok, VGMC Planning Consultant Jim Sellen, and VGMC Operations Manager Merry Smith.

Members of the public in attendance included: Deanie Lowe, Jim Cameron, Steve Sather, John Duckworth, Beth Lemke and Andrea Brandon.

NEW BUSINESS

None

OLD BUSINESS

Continued discussion and consideration of proposed amendments to VGMC Rules

Mr. Brandon provided an overview of what has transpired since the committee last met on January 21, 2016. He stated Mr. Chipok has drafted amendments to the rules based upon the recommendations from the January 21st meeting. Additionally, he stated he presented the recommendations to the CRC subcommittee at their meeting on January 25, 2016, Ms. Lowe met with some members of the business community on January 29, 2016, and he also attended the February 1, 2016 meeting of the full CRC and received additional recommendations from them.

Mr. Brandon recognized several members of the public who were in attendance.

Mr. Brandon asked if the committee members had any comments or questions relating to the information he presented to the CRC subcommittee on January 25th, and there were none. Mr. Wachtel stated he would like the POP Committee to bring forward their recommendations to the full VGMC at the February 24, 2016 regular meeting in order to get their comment and feedback before finalizing the recommendations. Mr. Brandon stated he'd like to have the recommendations finalized to bring back to the full commission for approval at the March 23, 2016 regular meeting. Brief discussion ensued relating to the timeframe for the process and when the CRC will issue their recommendations.

Mr. Chipok summarized the proposed draft revisions to the rules which were prepared based upon the discussion at the January 21st POP Committee meeting. He stated small scale amendments would be deemed consistent without VGMC staff review, and automatically approved in 30 days if no objection is raised by another local government. He also stated the applicant jurisdiction will still be required to submit the amendments to the VGMC and other local governments so that there is record of all comp plan amendments and to insure the local governments have notice of the applications in case they have objections. If an objection is raised, Mr. Chipok stated a hearing would be scheduled and VGMC would review the application and prepare a staff report for the hearing.

Mr. Walton asked at what point the jurisdictions would submit the small scale applications to the VGMC. Mr. Chipok responded that the small scale applications would be submitted to the VGMC after adoption, consistent with the state process. Mr. Walton commented that the proposed process would eliminate the extra time required under the present rules where the local government cannot adopt until VGMC consistency certification is issued.

Mr. Chipok stated under the proposed draft rules, applications involving properties being annexed that are part of Joint Planning Area (JPA) agreement would be handled/processed the same as the proposed small scale amendment revisions. He added the applicant local government would also file a copy of the JPA with the VGMC and reference the JPA when the applications are submitted.

With respect to standing, Mr. Chipok stated based upon the discussion at the January 21st POP meeting, the proposed rules amendments provide for: 1) Standing would be limited to units of local governments; 2) Standing would be automatic for an adjacent jurisdiction; 3) Non-adjacent local governments would be required to establish standing at the hearing; 4) Delete the provision which requires the application to be noticed in a newspaper; 5) Add a provision that the notice of application will be posted on the VGMC website; and 6) Include a provision that written notice of application is sent by the VGMC to each unit of local government, which is a process that is currently practiced.

As far as timeframe to appeal, Mr. Chipok stated the proposed revisions state the units of local government would have 28 days to object and petition for hearing, which is consistent with the present timeframe for adjacent local governments. Additionally, he stated in order to further streamline the process, the provision allowing an adjacent local government to request a 21-day extension to file objections/petition for hearing has been eliminated.

Mr. Chipok began reviewing the specific draft rules amendments. He stated there has been question raised regarding the VGMC using the term “large scale” amendments when the state no longer uses this term. Mr. Chipok stated the state now refers to the amendments as either small scale, expedited review process, or areas of state concern. He explained that the amendments defined as expedited review or areas of state concern are still submitted to the state after the transmittal hearing and the state still has 30 days to issue comments, which is consistent with the those amendments that previously were referred to as “large scale”. Since the 30 day review

time has not changed, Mr. Chipok stated for VGMC purposes, we refer to both the expedited review and areas of state concern amendments as large scale amendments, and have added a provision in the rules that states a large scale amendment is anything not considered a small scale amendment.

Based upon discussion at the last POP meeting, Mr. Chipok stated a definition for “unit of local government” has been added which includes, the county, the municipalities within the county, the school board, and state and federal agencies that are adjacent property owners to a subject amendment. After thinking through this further while drafting the amendments, Mr. Chipok expressed concern over “who” would make the determination that a state or federal agency was an adjacent property owner. He also felt there were other points of entry into the planning process for those agencies and recommended removing state and federal agencies from the definition of unit of local government.

Mr. Chipok discussed the administrative challenge of determining whether or not a state or federal agency is an adjacent property owner when an application is submitted to the VGMC, and commented that he did not feel there was a way to track that from a practical standpoint. Mr. Brandon commented there’s also been recent feedback strongly recommending taking the state and federal agencies out of the definition of “unit of local government”. Mr. Wachtel added that the VGMC looks at consistency between comprehensive plans, and an adjacent property owned by a state or federal government such as a park, would not necessarily have a comprehensive plan to determine consistency with. Mr. Chipok stated in areas of state concern, the state and federal agencies have an avenue through the FDEO comprehensive planning process to address their concerns. Brief discussion ensued relating to the Oak Hill application as it related to the state review process.

Mr. Chipok continued to review the proposed draft amendments relating to small scale amendments, and those large scale amendments which relate to annexation of properties that are part of a Joint Planning Area (JPA) agreement, that would be deemed to be consistent in 30 days without VGMC staff review unless an objection was raised by a unit of local government. He stated the local government would still file an application with the VGMC, and notice would also continue to be provided to the other local governments. Mr. Chipok stated these are two clear areas within the rules where the VGMC can stay true to the existing charter language which states the VGMC has the duty to review all applications. Historical knowledge and experience indicates amendments of these two classifications have resulted in a minimal number of issues or public hearings before the VGMC. He added that the proposed rules still allow the opportunity for units of local government to raise objections..

Mr. Chipok moved onto the next section of the proposed rules amendments. He discussed the removal of the notice requirement to advertise in a local newspaper since standing would be limited to units of local government under the proposed rules. Mr. Chipok stated the notice of application would instead be mailed to the units of local government and be posted on the VGMC website. Mr. Romanik asked if the provision which directs individuals to contact the local government in which they reside if they have an objection to an application is necessary.

Mr. Chipok responded this gives direction to an individual who feels an amendment creates adverse impacts to raise those concerns to their local government. General discussion ensued relating to the process of small scale, JPA and large scale processes under the proposed draft revisions, as well as the local government process, as it relates to the ability for individuals to participate in the process.

Mr. Chipok continued reviewing the proposed amendments, stating that all units of local government would have 28 days to file an objection to an application, and the 21-day extension to object has been deleted.

Ms. Lowe asked for clarification relating to standing as it relates to units of local government. Mr. Chipok responded that under the proposed rules amendments, a petitioning adjacent local government would automatically be considered a party to the hearing, however, any other unit of local government would have to prove up their standing at a public hearing. Mr. Sellen added that the county is an adjacent local government to all of the jurisdictions.

Mr. Chipok completed his review of the remaining proposed rules revisions, which included a provision that the VGMC does not look at internal consistency, language that formalizes non adjacent jurisdictions must prove up standing, and other clean up language to conform to the proposed changes.

Mr. Chipok then discussed possible alternative language to Section 90-37(e) of the rules which presently reads: "The commission may deny certification where any applicant has failed to establish, by a preponderance of the evidence, its entitlement under this article to the certificate." He stated this language puts the burden of proof on the local government. Mr. Chipok has drafted language which states "The commission may deny certification where a preponderance of the evidence as determined by the commission establishes that the proposed plan, element or plan amendment is not consistent with other comprehensive plans and adversely affects intergovernmental cooperation and coordination based on the criteria contained in 90-37(c)." Mr. Chipok stated the proposed language states the commission would make its determination based upon the preponderance of evidence presented at the hearing and the criteria established in 90-37(c). He stated this would make the burden of proof more neutral. Mr. Chipok stated similar language could also be employed in Section 90-37(j) as well.

Mr. Wachtel commented that we are proposing two changes where small scale amendments and annexation amendments that are part of a JPA are deemed consistent upon receipt. He felt in those situations, the burden of proof to show the amendment is inconsistent belongs to the objecting local government. With respect to all other large scale amendments, Mr. Wachtel stated he felt we cannot presume they are consistent as submitted. He stated they need to be reviewed against the established consistency criteria and if additional information is needed, the burden of proof to demonstrate the amendment meets the consistency criteria should be on the applicant jurisdiction. Mr. Chipok reviewed the notice of application which details what an objecting party must submit if they have an objection and request a hearing. He also stated VGMC staff has an independent duty to review the amendments with the consistency criteria,

and at a public hearing the commission would have evidence in the form of the petition for hearing, the VGMC staff report, the applicant local government application and any other evidence presented at the hearing for their use in evaluating and making a determination based upon the preponderance of evidence. Mr. Chipok added that the philosophy of the VGMC is to be a problem solving organization and not to deny applications. He stated staff may suggest conditions of approval in order to issue a finding of consistency which comes to the commission at a public hearing for consideration and approval by resolution. Mr. Chipok stated VGMC staff works very closely with the applicant jurisdiction and objecting parties to try and reach consensus on issues prior to it coming before the commission at a public hearing.

Mr. Brandon asked if the members present were in agreement with the rules revisions prepared by Mr. Chipok based upon the discussion which occurred at the January 21, 2016 POP meeting. He added that we've also received feedback on the recommendations in the meantime, and he would like to readdress those next. Following a roll call vote, all of the committee members present and VGMC Chairman Wachtel concurred the draft rules revisions dated 2/1/16 are consistent with the direction from POP at the January 21, 2016 meeting.

The committee then began discussing additional comments that have been received since POP last met. Ms. Lowe stated she asked for a meeting with interested individuals in the business community for the purpose of gathering feedback to the January 21, 2016 POP recommendations. In addition to herself, she reported the following individuals were present: Clay Irvin, Scott Simpson, Jim Cameron, Steve Sather, Bruce Teeters, Joe Yarborough, and Glenn Storch by phone.

Ms. Lowe stated the group individually reviewed the draft rules revisions and the following recommendations came out of their meeting:

- 1) Delete state and federal agencies as a unit of local government.
- 2) Delete the provision which directs individuals to contact their local government if they have an objection. They felt it could be a liability if staff forgot to notify the individual(s) of the process. Mr. Chipok stated the way this provision is drafted it would be part of the notice of application which would be posted on the VGMC website, and it is not a duty of the local government staff to inform the individuals.
- 3) All amendments should be treated equally in terms of review. All amendments should be deemed consistent upon submittal, not just small scale and JPA's, and not be reviewed by VGMC staff unless an objection is raised by another local government. Ms. Lowe commented this was a big issue with the group.
- 4) VGMC members should serve at the will of their appointing local government, and the appointing government should be able to remove their member at any time.

- 5) They felt strongly that the burden of proof to show an application is not consistent should be on the objecting party. Additionally, any VGMC review should be limited solely to the issues raised by the objecting party.
- 6) They had no recommendation on adding a provision to appeal a VGMC decision to another unit of local government or other governmental body.
- 7) They did not have an issue with the weighted vote, but raised concern that an appointee may have a conflict if a public hearing involves their appointing jurisdiction.
- 8) They believe the “other directly related duties” language in the charter is too broad and needs to be more specifically defined.
- 9) Concern was raised that rules changes now could be changed back in the future, although no specific recommendation was made.

The committee moved into discussion on the comments and further modifications to the proposed rules revisions as currently drafted.

RE: Unit of local government definition – Based upon earlier discussion, Mr. Chipok stated it could be revised to delete the reference to state and federal agencies, and the definition would read: “Unit of local government means Volusia County, each municipality within Volusia County and the School Board of Volusia County.” Mr. Sather spoke of a situation in New Smyrna Beach where the Utilities Commission has defined itself as a municipality and asked if using the term “municipality” in our rules would open standing up to a third party such as the Utilities Commission. Following discussion, the committee was comfortable using the term “municipality” and Mr. Chipok will look at the state’s definition of municipality to see if it needs to be further defined in the rules.

Mr. Brandon individually polled the VGMC members on changing the definition of unit of local government to only include the county, the municipalities within the county, and the Volusia County School board. Each of the members expressed support of the change.

RE: Standing – It was recommended by the business community group to delete the provision which directs individuals to contact their local government if they felt an amendment will cause adverse impacts. Mr. Chipok explained this language is part of the notice provision and it would automatically be stated in the notice published on the VGMC website. Mr. Walton commented that he understands their concern. Mr. Chipok responded that there is no additional independent duty on local government staff to give notice to a person who may inquire. Following further discussion, the committee was in agreement to keep the provision in the recommended rules revisions.

RE: Thresholds for VGMC review – Mr. Chipok discussed what we are already proposing in terms of small scale and large scale annexation JPA reviews being deemed consistent without

VGMC staff review unless an objection is raised by another local government. He stated that historically, amendments in these categories typically go through the process without comment and are letter certified without the need for a public hearing. Additionally, he stated these types of amendments represent the majority of applications that are submitted to the VGMC.

With respect to all other large scale amendments, Mr. Chipok stated we don't know what's in those applications until they are reviewed by staff against the established consistency criteria. He stated many of those applications meet the criteria and are letter certified without the need for public hearing, however, there are some that have issues that affect the consistency criteria, resulting in the need for additional information to address the issues, and potentially a public hearing before the commission. Mr. Wachtel commented that he sees large scale and small scales as inherently different, and he does not feel we should presume all large scale amendments are consistent when the application is submitted to the VGMC. He agreed that the large scale amendments need to be reviewed by VGMC staff to determine consistency.

Ms. Lowe commented that she believes the majority of the CRC members will want the threshold for review to be the same for all applications. Mr. Brandon responded that we are looking at each of the issues and comments raised to and by the CRC, however, it doesn't necessarily mean there will be agreement on how they should be addressed. Mr. Sellen commented there is an important distinction in saying all amendments be treated the same. Under that scenario, he stated you are no longer meeting the charge of the VGMC, but rather have become a conflict resolution board. Mr. Vihlen added that if all amendments were presumed consistent, it takes VGMC staff out of the process of making a consistency determination as to the six consistency criteria. He added that this would result in the VGMC serving as an arbitrator only when another local government objects, and the approach would essentially take away the function of the VGMC and its staff.

Mr. Chipok stated the CRC may make recommendations to change the charter, however, the rules revisions are being drafted based upon the language within the existing charter.

Mr. Sather asked if the original goal of creating the VGMC was to be a conflict resolution board. Ms. Lowe responded affirmatively, stating it was because of the conflict that existed between the county and municipalities and they wanted to create a level playing field with the VGMC. Mr. Sellen stated conflict resolution language was not used when creating the rules, the discussion related to a requirement that all of the local government comprehensive plans be consistent with each other, and that's how the rules were written.

Brief discussion ensued relating to the CRC recommending changes to the charter which would go on the ballot for a vote.

Mr. Sather commented in favor of addressing the issues through rules changes rather than through referendum. He also asked if there is a redundancy with VGMC staff reviewing applications when they've already been reviewed by the local governments, and he stated we do not want to give the VGMC more authority than the municipalities they serve.

Mr. Chipok again stated the rules revisions are being drafted based upon the current charter language which charges the VGMC with the duty to determine consistency. If the direction is to change it to a conflict resolution board, it would require a charter change with a very different set of rules than are currently proposed.

Mr. Sellen responded to Mr. Sather's comment about the VGMC having more authority than the local governments. He stated that would be true if the VGMC reviewed applications based upon the effect the amendment has within the applicant local government, however, that's not what the VGMC looks at. Mr. Sellen stated when elected officials are considering an amendment, they look at how it affects their own jurisdiction, not how it may impact the neighboring local governments. He stated the VGMC looks at impacts an amendment creates outside of the local applicant government's boundaries. He also spoke generally about the Farmton amendment and the review process which resulted in it being developed as a DRI. Mr. Sellen stated the VGMC does not take away the authority of the local elected officials, it looks at impacts that extend beyond the applicant jurisdiction.

Mr. Vihlen commented that it may be a matter of communication, for the local government officials to understand that the consistency criteria applies to impacts on neighboring jurisdictions and not within the boundaries of the applicant local government. He stated he's heard from elected officials who do not support the VGMC function because they believe the six consistency review criteria interfere with their ability to locally plan.

Mr. Sellen stated when VGMC staff reviews an application and finds there may be adverse impacts, it is incumbent on staff to show how the amendment is inconsistent. To that extent, he stated the applications are presumed to be consistent when they are submitted unless staff can demonstrate they are not. Mr. Sellen further stated that in order to make a determination on consistency, there has to be a standard of review by which to evaluate. He stated the six consistency criteria is the VGMC standard of review.

Mr. Brandon asked the committee members whether they wished to keep the level of threshold for review as currently proposed in the draft amendments, or if they wanted to consider including all large scale amendments in the threshold of no VGMC review unless an objection is raised by another local government. Following further discussion, the members felt the thresholds as proposed sufficiently streamline the process, and agreed that all other large scale amendments should continue to be subject to VGMC review. Mr. Vihlen suggested we let the CRC know that we are complying with the requirements of the existing charter, and if they wish to recommend changes to the charter, it is their privilege to do so.

Mr. Walton excused himself from the meeting at approximately 4:00 p.m.

RE: VGMC Membership – The question has been raised as to the authority of a local government to remove their appointed member. The committee discussed the ways the VGMC can remove a member, for reasons such as misfeasance or malfeasance, or 3 missed meetings in

a calendar year. Mr. Chipok stated the VGMC rules only address how the VGMC can remove a member. He stated his opinion concerning members being removed by their appointing government, and how we've historically handled this issue, is that we defer back to the appointing jurisdiction's rules and regulations. If their governing regulations provide that their appointees serve at the will of the local government, then they have the ability to remove their appointee. If there is no such regulation at the appointing governmental level, then it is presumed the appointment of the member is for the full term. Mr. Chipok stated there is case law that supports that.

Mr. Chipok stated that Volusia County Attorney Dan Eckert's opinion is that since a member's term is set by charter, the County ordinance controls. Mr. Chipok pointed out that the charter only establishes the term and does not address how a member can be appointed or removed.

General discussion ensued. Mr. Brandon asked if the membership language in rules should be left as is since it has been the position of the VGMC that if an appointing government wishes to remove their member, and they have regulations stating their board appointees serve at the will of the local government, then they are allowed to do so. There was a consensus of the committee to leave the membership language as presently written.

RE: Burden of Proof – Mr. Chipok reviewed the draft revisions to Section 90-37(e) he prepared which were discussed earlier, and explained the revision makes it more neutral by spelling out the commission will make its determination based upon the preponderance of all evidence presented at a hearing. Mr. Chipok suggested the committee add the change to the draft rules revisions, and similarly modify Section 90-37(j) as recommended by Ms. Lowe. Following additional comment, the committee was in favor of adding this language to the recommended rules amendments.

RE: Appeals – Ms. Lowe stated at the Volusia County Council meeting this morning, several of the council members commented that the rules should include a provision where a determination of the VGMC could be appealed to the Volusia County Council. Since the county is an adjacent jurisdiction to all of the local governments, there was general agreement not to add a provision that would allow a VGMC decision to be appealed to the Volusia County Council. Ms. Lowe stated that in an earlier email from Scott Simpson, he concurred with that position.

RE: Weighted Vote & Conflict of Interest – Mr. Chipok spoke of the Attorney General Opinion (AGO 08-61) requested by the VGMC in 2008 which determined that members of the VGMC are considered officers, and therefore members could not be elected officials because that would be considered dual office holding. Additionally, Mr. Chipok stated that since the members are considered officers, under the conflict of interest and voting statute, an officer is required to vote on every item that comes before them, unless they have a financial interest in the subject matter.

Ms. Lowe stated that concern has been raised to the CRC about the weighted vote provision in the charter. She commented that the POP Committee previously discussed that if the CRC recommends eliminating the weighted vote requirement then the number of county

representatives on the VGMC should be reduced from five to one so that all of the local governments have an equal vote. General discussion ensued relating to votes requiring both a weighted and majority vote of the commission.

RE: “Other Directly Related Duties” language in the charter – Ms. Lowe stated the CRC wants the VGMC to more specifically define what those other related duties are. Mr. Brandon stated the duties are often administrative in nature, such as creating Budget and POP committees, creating and updating internal operating procedures, hiring staff, and bidding for contract professional services.

Ms. Lowe read from the annotated version of when the VGMC was established by charter which stated: “To accomplish its duties, the commission may conduct studies and perform such other directly related tasks as it deems necessary to arrive at its determination.” General discussion ensued. Mr. Chipok stated the VGMC has never been charged with or asked to do anything as comprehensive such as the “How Shall We Grow” study done by the East Central Florida Regional Planning Council. He added that he does not believe we’ve ever utilized that provision beyond the scope of anything other than directly related to an application that was before us.

Following further discussion, Mr. Chipok proposed recommending replacing “other directly related duties” in the charter with “other directly related analysis to pending applications”. Mr. Wachtel stated we should also include “and other administrative duties”. The committee was in agreement with the recommended language.

RE: Rules – Ms. Lowe stated the CRC is hoping that all parties can agree on the rules amendments and they also are discussing incorporating the rules changes into the charter.

Ms. Lowe stated another meeting of the business group is scheduled for February 11th and she will be attending.

Mr. Brandon stated that a memo will be prepared and sent to the CRC Subcommittee outlining the discussion and recommendations of today’s POP meeting, and he will plan to meet with the subcommittee when they meet next. He also stated that CRC Chair Hyatt Brown has requested a demonstration showing how an application moves through VGMC process. Mr. Brandon asked Mr. Sellen & Mr. Chipok to prepare a flow chart of the VGMC application process, including what occurs if there are objections and/or inconsistencies. They agreed to do so.

Mr. Romanik excused himself from the meeting at approximately 4:45 p.m.

It was reported the next full CRC meeting was scheduled for Monday, March 14, 2016. Ms. Lowe stated her meeting with the business group on February 11, 2016 will begin at 10:00 a.m. at the Daytona Chamber of Commerce office. Mr. Wachtel stated the next regular meeting of the VGMC will be on February 24, 2016 in Daytona Beach, and the draft amendments will be scheduled for a workshop discussion by the full commission at the meeting.

Based upon today's discussions, Mr. Chipok stated he would revise his memo summarizing the changes, and will also modify the proposed rules amendments in accordance with the latest recommendations from POP.

Mr. Brandon stated a meeting of the POP Committee will be scheduled immediately prior to the February 24, 2016 VGMC to review the revised draft.

Mr. Chipok announced he will be leaving GrayRobinson at the end of February and going to work for the Seminole County Attorney's office. He stated Heather Ramos will be taking over as legal counsel for VGMC. The committee members congratulated Mr. Chipok.

OTHER BUSINESS

None

ADJOURNMENT

There being no further business, Mr. Brandon thanked everyone for attending, and the meeting was adjourned at 4:54 p.m.

Brent Brandon 2/24/16
POP Committee Chairman Date