

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

MINUTES FOR
MEETING HELD
Thursday, March 3, 2016

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

The meeting was called to order at 10:34 a.m. by Committee Chairman, Gerald Brandon and roll was taken.

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 Heather Ramos, and VGMC Operations Manager Merry Smith.

Members of the public in attendance included: Deanie Lowe, Jim Cameron, , Joe Yarborough, Scott Simpson, Bruce Teeters, David Hartgrove and Andrea Brandon.

NEW BUSINESS

- 1) Approval of the minutes of the February 4, 2016 POP Committee meeting.

Sid Vihlen made a motion to approve the minutes of the February 4, 2016 POP Committee meeting as presented; seconded by Robert Storke. Motion carried unanimously.

OLD BUSINESS

Consider recommendation of proposed amendments to VGMC Consistency Certification Rules

Mr. Brandon asked if anyone had any comments to the memorandum he sent to the Charter Review Commission on February 29, 2016. Mr. Romanik commented that the memo was well done.

Mr. Brandon stated at the February 24th meetings of the POP Committee and VGMC, a question came up as to whether or not the language in the charter would allow the VGMC to deem some amendments consistent without VGMC review. He stated that prior to leaving GrayRobinson, Mr. Chipok drafted some preamble language to include in the adopting ordinance which would be intended to address the issue. Mr. Brandon asked Ms. Ramos if she had opinion as to whether or not a charter amendment would be required in order to include the proposed language in the rules revisions.

Ms. Ramos stated if the rules are amended as proposed, a challenge could be presented that the charter requires the VGMC to review all comp plan amendments. That being said, she stated

there is a section in the charter that allows VGMC to adopt rules of procedure. What a court would look at is the policies and procedures the VGMC follows and the preamble language drafted by Mr. Chipok would be very helpful to a court to describe what the intent is for deeming certain amendments consistent. Alternatively, a court could find the express language in the charter could arguably require a review of every comp plan amendment. Ms. Ramos stated that a challenge to the proposed rules change on this issue may never be an issue, however, the more cautious course of action would be either to leave the process as is, or amend the charter to specifically address the amendments that would be deemed consistent without VGMC review.

Chairman Wachtel commented that changing the charter would require a ballot question that could potentially be defeated, so his preference would be to handle it as a rules change if it could be done so legally. Ms. Ramos stated if it is handled through a rules change with no change to the charter, she feels the commission would have strong argument with a finding that the small scale amendments do not need to be reviewed as thoroughly as others. Ms. Lowe commented that under the proposed rules revisions, the small scale and annexation JPA amendments are still being reviewed by the other units of local government.

Mr. Walton pointed out that our present rules exempt amendments to the capital improvements elements of the comprehensive plan from VGMC review, and feels this creates a precedence for others categories of amendments to be exempt from VGMC review.

Mr. Lovelace asked if the proposed preamble language which pertains to the small scale and annexation JPA reviews were to be included in the adopting ordinance by the county, could it complicate the issue of the proposed revisions as a whole. Ms. Ramos responded that it would be up to the county as to what they include in their ordinance.

Ms. Lowe commented that we have come to agreement with the business community and cities on most of the issues that have been raised, but there continues to be disagreement on the VGMC review of large scale amendments. As a means of compromise, Ms. Lowe stated it has been suggested that if VGMC staff reviews a large scale amendment application and identifies potential impacts to another local government, then VGMC staff would point that out to the affected local government(s) and if the local government has a problem with it, they should be the one to raise the objection and request the public hearing, not the VGMC. Mr. Vihlen commented that Ms. Lowe has an excellent point. He stated the attitude of many cities, including DeBary who he represents, and many in the business community is that the VGMC is meddling in the day-to-day land use activities and responsibilities of the cities.

Getting back to the draft preamble language, Mr. Simpson discussed the specific language in the charter and raised concern with the second sentence in the second paragraph which states that "No plan, element of a plan or amendment of a plan adopted after the date this article becomes law shall be valid or effective unless and until the plan amendment has been 'reviewed' by the commission." He stated if we create presumptions of consistency on amendments without a change to the charter, he feels there is a greater basis for challenge.

Mr. Brandon responded that the direction the POP Committee has been trying to go is to amend the rules and not have changes to the charter. Mr. Simpson stated he understands, and he feels the direction the committee is going with the rules revisions is great, but he is not confident that a change in rules to presume certain amendments consistent will not require a change to the charter in order to make it less challengeable. Following further discussion, it was agreed that Ms. Ramos and Mr. Simpson will get together to further discuss the issue of the present charter language, and it would ultimately come down to the opinion of the County Attorney. The committee would continue to focus on changes to the rules.

The committee then discussed the new subsection 90-33(9) which was added to address the concerns raised relating to the "other directly related duties" language in the charter. This provision is intended to define within the rules what the other duties are. Following discussion, both Mr. Simpson and Mr. Yarborough expressed agreement with the proposed language, as did members of the POP Committee.

Mr. Brandon then moved back into the discussion raised earlier relating to the VGMC review of large scale amendments. He read into the record an email he received from VGMC planning consultant, Jim Sellen, on the issue of VGMC continuing to review large scale amendments which is attached as Exhibit A to these minutes. Mr. Lovelace asked Ms. Ramos if she had a legal opinion on Mr. Sellen's comments. Ms. Ramos stated it is a policy decision of the VGMC.

Ms. Lowe stated that Mr. Sellen's comments are not really inconsistent with what she raised earlier. She stated it has been proposed that VGMC continue to review large scale amendments to the VGMC consistency criteria, but if staff determines there may be impacts to other local governments, staff should raise the issue(s) to the affected local government and let them decide if they want to object to the amendment.

Mr. Wachtel commented that he believes the concern in the community has been that VGMC staff, through their review, can cause a public hearing which can delay the process for the applicant government. He asked Ms. Smith how many hearings have been held that were requested solely by VGMC staff. Ms. Smith responded that there have been three in the past 10 years. Specifically, 1) City of Orange City large scale application relating to their EAR based amendments which was approved with conditions in 2010; 2) City of Deltona large scale application relating to the EAR based amendments which was approved without conditions in 2010; and 3) City of Daytona Beach large scale amendment relating to the Riverbend Church which was approved with conditions in 2007.

Brief discussion ensued relating to the interaction of staff with the local governments during the application review process.

Mr. Simpson commented that a principle concern of the local governments is that ultimately the decision to file an appeal to cause there to be a public hearing lies with local government who alleges their comprehensive plan is affected by the proposed amendment of another local government. He stated the proposed revision as stated by Ms. Lowe relating to large scale

amendments would address this concern, while still giving VGMC the opportunity to review the amendment and discuss any concerns they may identify with the affected government. Mr. Yarborough commented that the cities see VGMC staff assuming a more facilitative role in the process. He added that VGMC staff will continue to review the large scale amendment applications and will be able to raise any to the impacted local government(s), but would not have the independent ability to call for a public hearing.

Mr. Brandon stated he would like to get the issues worked out in advance of the March 23, 2016 regular meeting so the POP Committee can submit a formal recommendation for a vote by the full commission at that meeting. Ms. Smith added that the agenda package for the March 23rd meeting is due out next week. Mr. Brandon stated there is a meeting of the CRC subcommittee this Monday, March 7th and he would provide them with an update on any further changes to the 2-26-16 draft that come out today's POP Committee meeting. Additionally, the full CRC will be meeting on March 14th.

Mr. Romanik asked how many of the VGMC public hearings over the past 10 years were a result of another local government commenting on an application. Ms. Smith stated the majority of public hearings held before the VGMC over the past 10 years were a result of comments or objections raised by another local government. Based on that information, Mr. Romanik commented that we can assume the local governments are reviewing the amendments when they are submitted. Mr. Yarborough concurred, stating the planners of the local governments are reviewing and responding to the comp plan amendments being proposed by the other local governments.

Mr. Wachtel stated that we need to look at who the VGMC is intended to protect, which is the adjacent jurisdictions. He commented that when the VGMC was originally created, the local governments may not have been as knowledgeable to potential impacts, but now 30 years later, most of the local governments have professional planning staff to review these issues. Mr. Yarborough concurred. He stated that the caliber of planning professionals has evolved, and the annexations battles have subsided. Mr. Yarborough stated there is an open line of communication between the local governments, and feels we should streamline the process and for VGMC to have a facilitative and conflict resolution role.

Mr. Wachtel stated if VGMC staff identifies issues with an application, they will contact the adjacent jurisdiction. If the adjacent jurisdiction sees the same issue, the adjacent jurisdiction can request additional information or a public hearing. He expressed support for the proposed change to the large scale amendment review process, emphasizing that it does not eliminate the review by VGMC staff. Mr. Yarborough commented that the very existence of the VGMC plays an important role since the local governments would rather work out any issues than to have to bring it before the VGMC for public hearing.

Mr. Cameron and Mr. Teeters both discussed the evolution of intergovernmental coordination within the county that has occurred over the years.

Mr. Brandon asked for input from the POP Committee members on the issue.

Mr. Romanik asked if VGMC staff would have the ability to request a public hearing under the proposed scenario. He stated he agrees with the comments made relating to the level of professionalism which has evolved over the years, however, he's concerned about the political intervention that could occur in the process. Mr. Simpson responded that political decisions are not the role of the VGMC, those decisions belong with the elected officials. He stated the VGMC is not a policy review board, and if a proposed comp plan amendment does not impact another local government, it is not an issue of the VGMC. Mr. Romanik stated he doesn't feel the VGMC is a policy review board, but the commission has six consistency review criteria that need to be reviewed to determine consistency. Mr. Simpson stated the consistency criteria are reviewed to determine impacts on adjacent local governments, and it should be left to the adjacent jurisdictions to determine the impacts to their comprehensive plan and whether or not they wish to object and cause a hearing.

Mr. Lovelace asked if it has been common in the past that local jurisdictions have not responded in any way to a notice of comp plan amendment in an adjoining jurisdiction. Ms. Smith responded that we do not receive anything from the local governments on the majority of applications, and typically we would only receive a response if they have comments on an application. Mr. Lovelace asked Ms. Ramos if a lack of response constitutes a formal lack of objection to an application. Ms. Ramos responded affirmatively.

Mr. Brandon asked what direction the committee was heading on this issue.

Mr. Wachtel commented that he believes the concern is that traditionally staff has been allowed to call for a public hearing, when there has been no objection from an adjoining jurisdiction. He stated the philosophy and discussion which occurred today is fine, but somehow the rule needs to be written that prevents VGMC staff from calling for a public hearing in spite of the fact there have been no objections from adjacent jurisdiction. Or, perhaps something to the effect that a public hearing may only be called by units of local government.

Ms. Ramos reiterated the proposed concept is if staff finds inconsistencies in an amendment, they would contact the adjacent jurisdiction to outline their concerns, then it would be up to the jurisdiction to take action to request a hearing if they chose to do so.

Under the proposed scenario, Mr. Romanik commented that if an adjacent jurisdiction chose not to object to an application even after VGMC staff has raised their concerns to them, then he could accept the proposed concept.

Mr. Storke stated he feels the concept should not be limited to VGMC staff notifying adjacent jurisdictions, since the impacts could potentially extend beyond just the adjacent jurisdictions. The committee concurred that the unit(s) of local government the VGMC staff felt could be impacted by an amendment should be notified of the concerns.

Mr. Simpson stated that another procedural issue he raised relates to the timing on small scale amendments. He felt that the review time for the units of local government should be reduced from 28 days to 21 days in order to allow VGMC staff more time to review the application if an objection is raised. Mr. Yarborough stated he circulated the concept amongst the cities and none have objected so long as they can submit their objections electronically.

With respect to the committee's position on the proposed change in the large scale review process, Ms. Ramos stated her understanding is there a consensus that VGMC staff will review the large scale applications and if they find an issue, they will send a report to all of the jurisdictions with their concerns. Additionally, the only parties with authority to ask for a public hearing are the units of local government as defined in the proposed draft revisions.

Relating to the school board being a unit of local government, Ms. Lowe asked if the school board would automatically be granted standing, similar to adjacent jurisdictions. Following further discussion, there was general agreement that the school board would have automatic standing.

For purposes of clarity, Mr. Vihlen stated the consensus is the VGMC was surrendering their right to independently request a public hearing. The members concurred.

Ms. Smith asked for clarification with respect to the earlier discussion of reducing the timeframe for local governments to object to 21 days. Mr. Simpson stated that recommendation only relates to the small scale amendment and annexation JPA amendments not being reviewed by VGMC unless an objection is raised. He also stated we need to look at the large scale review timeframes.

Following discussion, the committee was in agreement to reduce the timeframe for units of local government to issue an objection on small scale and annexation JPA amendments from 28 days to 21.

With respect to the large scale amendment review process under what is presently being proposed, there was discussion regarding the time involved with VGMC staff raising a concern to the other local governments and the time needed for the local government to determine if they wish to object. Mr. Yarborough commented that the local governments are reviewing the applications during the same time the VGMC staff is. He felt the present timeframes are sufficient.

Mr. Simpson asked if we would be allowing the VGMC to issue a Request for Additional Information (RAI) under the proposed large scale review process, or if the RAI would come from an objecting unit of local government. Based upon the discussion, Ms. Ramos felt the only items changing are that VGMC staff would notify the other jurisdictions with their concerns, and the ability for the VGMC to independently call for a public hearing would be eliminated.

Following further discussion regarding a VGMC staff initiated RAI, there was general agreement that an earlier timeframe should be established for VGMC staff to issue an RAI, and that the clock would stop in the review process until such time as a response is received by the applicant local government. There was discussion of establishing a 10-day timeframe for VGMC staff to issue an RAI. Ms. Ramos commented that 10-days may be adequate to perform a cursory review by VGMC staff to determine if any further information would be necessary to review the application, however, she suggested this be confirmed with VGMC planning staff. There was a general consensus that subject to consideration by VGMC planning staff, an RAI will be issued within ten days of receipt on large scale amendment applications, and the clock will stop pending response by the local governments.

With respect to the school board being considered a unit of local government, Mr. Brandon stated at the last meeting there was one question raised to Ms. Morrissey by Mr. Simpson relating to whether or not the school board would be bound by a VGMC decision. Since then, Mr. Simpson has sent an email raising additional questions. Mr. Simpson responded that the questions were intended to be a summary of the dialogue he and Ms. Morrissey had at the last meeting. He stated he hasn't heard back yet from Ms. Morrissey, but the question is that if the school board objects to a comp plan amendment before the VGMC, will they be bound by the VGMC decision like the local governments are. Mr. Simpson stated the school board has their own separate review process and he does not believe it would be fair or equitable for the school board to raise the issue before the VGMC, cause there to be a hearing, not like the outcome, and decide to raise the same issue at the next step of their review process.

Mr. Brandon asked Ms. Smith to send a note to Ms. Morrissey asking her to provide a response to Mr. Simpson on the one question of being bound by the VGMC decision. Mr. Romanik asked Mr. Simpson if he would agree that the school board should have automatic standing. Mr. Simpson responded that if they are going to be given standing in the process, it should be automatic since schools are all over the county. Mr. Yarborough commented that the cities feel it is an equity issue that if the school board wants standing before the VGMC, they should be bound by the VGMC decision. Ms. Ramos commented that the school board has only raised an independent objection two times in the past ten years, and they are an important party to have at the table as a community partner in the process.

Mr. Brandon stated the committee has a general consensus on the proposed changes discussed tonight and suggested the POP Committee meet again immediately prior to the regular meeting of the commission to review the revised draft that will be prepared by staff and formalize the recommendation to the rules changes that will come before the VGMC at the March 23rd regular meeting.

Ms. Lowe stated at a prior meeting there were a couple of proposed amendments to the charter, and she understands the direction of the committee is to address the issues within the rules. However, she stated one of the recommendations was to remove the Business Development Corporation as a non-voting member of the commission since the agency no longer exists. She asked if the committee was planning to address that issue with the CRC. Ms. Ramos stated there

is a provision in the Florida Statutes that states a county can amend its charter if an agency has been abolished to remove it, but she's not sure if that would apply to this situation. She suggested if it cannot be removed without a charter amendment, then simply let it stay.

Mr. Brandon reminded the committee that the subcommittee of the CRC is scheduled to meet on March 7th at 12:00 noon at the airport, and the full CRC would be meeting at 5:30 on March 14th at the airport in case anyone wished to attend.

Ms. Smith pointed out that the agenda package for the March 23rd meeting is due out next week and asked if we would be in a position to have the revised draft amendments and resolution ready for distribution. Ms. Ramos stated she anticipated they would be ready.

Mr. Brandon thanked everyone for attending the meeting. Chairman Wachtel commented on the collaborative effort made from both sides of the table in being able to find a way to protect the community, to have the cities and entities work together, and to streamline the process. Ms. Lowe commented that the individuals who have come to the table have kept an open mind relating to the entire process. Mr. Brandon agreed that it's been a joint effort from all involved.

OTHER BUSINESS

None

ADJOURNMENT

There being no further business, the meeting was adjourned at 12:15 p.m.

 3/23/16
POP Committee Chairman Date

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 Amendmentd.

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.

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