Personnel, Operations & Procedures Committee
Volusia Growth Management Commission

MINUTES FOR
MEETING HELD
Wednesday, July 25, 2012

1st Floor Training Room
Thomas C. Kelly Administration Center
123 W. Indiana Avenue
DeLand, FL

The meeting was called to order at 6:00 p.m. by Committee Chairman, Gerald Brandon.

The following POP Committee Members were present: Committee Chairman Gerald Brandon, James Wachtel, Robert Storke, Joan Spinney, Kenneth Kuhar and Richard Walton. Also in attendance were Steven Katz, VGMC Chairman, Paul Chipok, VGMC Legal Counsel and Merry Chris Smith, VGMC Coordinator.

OLD BUSINESS

Consideration of amendments to the VGMC Rules of Procedure

Mr. Brandon asked if the committee members had any comments or changes to the proposed amendments to the Rules of Procedure and there were none. He then asked Mr. Chipok for his legal opinion with respect to the proposed amendments. With respect to the Rules of Procedure, Mr. Chipok commented on the addition of provisions (f) & (g) in Article VII, Section 3 which designates the Chairman to serve as the Vice Chairman and Secretary in their absence. Mr. Katz stated the purpose of the two provisions is to allow for the commission to function in the absence of one of the officers that have a specific delegated task, particularly between meetings. Following discussion, there was a general consensus of the committee to keep these provisions in the proposed rules amendments. Mr. Storke pointed out that the provision relating to the Chairman serving as Secretary in their absence only includes one duty of the Secretary. Following further discussion, the committee agreed the reference to 5.(g) should be changed to 5. which will then incorporate all of the duties of the Secretary.

Ms. Spinney arrived at the meeting at 6:05 p.m.

Discussion ensued relating to where the membership section should be placed. Mr. Brandon commented on a conversation he had with an individual who was part of the original establishment of the VGMC, and he stated he feels the entire membership section belongs in the Rules of Procedure. Mr. Katz commented on a conversation he had with the County Attorney, Dan Eckert, with respect to renaming the Article and creating a separate section within the Consistency Certification Rules to address membership. He added that he feels the VGMC would still have complete control of membership once an individual is appointed as a member of the commission.

The committee was in agreement with the language proposed for membership, and Mr. Chipok stated the language was acceptable from a legal standpoint.

Discussion continued regarding the placement of the membership section. Mr. Katz stated placing the rule in the consistency regulations ordinance would bind all of the jurisdictions within the County. Ms. Spinney commented in opposition and expressed concern that the County could change the rule at any time if it is contained in their ordinance. Mr. Wachtel asked Mr. Chipok for his opinion regarding this issue. Mr. Chipok explained that under our present rules (Rules of Procedure), once a member is appointed by a jurisdiction, the appointing jurisdiction cannot remove the member unless they have a specific ordinance stating their member serves at the will of the appointing jurisdiction. He further explained the Rules of Procedure operate internally for the VGMC, however, if the membership section is placed in the County ordinance, the authority is taken away from the appointing local governments and solidifies the member's property right in the position for the extent of the term. To confirm his understanding, Mr. Wachtel stated the County's ordinance would trump the City's serving at-will ordinance. Mr. Chipok concurred.

Brief discussion ensued relating to member removal due to absence.

Ms. Spinney reiterated her opposition and commented that the VGMC would be giving away a core piece of the Commission's self-governance if the membership section is placed in the County's ordinance. Mr. Walton & Mr. Storke both commented that placing the membership section in the County's ordinance gives the members more strength in the power of their appointment. Ms. Spinney discussed historical issues with the County and asked Mr. Chipok if the County would have the ability to make changes to the language if it is placed in the County ordinance. Mr. Chipok stated the Charter reads that the Commission proposes the consistency certification rules and the County adopts them by ordinance. He stated several years ago when proposed amendments to the Consistency Certification Rules were presented to the County, the County's position at the time was that since it was in the County's ordinance, they had the ability to modify or change the proposed rules. Mr. Chipok stated he has not had any conversations with the County Attorney's office since that time, however, his interpretation of the Charter is that the VGMC proposes the rules, and the County either adopts or does not. He further stated the Charter does not give the County the ability to change or modify the rules, adding that he does not know if the County Attorney's office would agree with that interpretation. Mr. Katz concurred with Mr. Chipok's interpretation of the Charter and commented on recent communications he's had with the County Attorney on this issue.

Mr. Brandon asked the individual members of the committee for their comments relating to placing the member section in the Consistency Certification Rules. Mr. Wachtel commented on a recent discussion with an individual who was familiar with the situation within the County when the VGMC was established. He stated that he has no problem placing the member section in the Consistency Certification Rules and feels that it reinforces the strength and control of the VGMC with respect to membership. Mr. Storke stated he supports placing the member section in the Consistency Certification Rules, but felt it should be a separate subsection of the Article. Mr. Kuhar commented in agreement with Ms. Spinney, and stated he felt the member section should remain in the VGMC Rules of Procedure. Mr. Walton stated if placing the member rule in the Consistency Certification Rules will provide more strength to the VGMC and members, he would support it.

Mr. Chipok stated the present membership rules require the appointed member to maintain a residence within the boundaries of the appointing jurisdiction, and commented that the proposed language is an expansion on that. Considerable discussion ensued regarding residency requirements as it relates to appointments, as well as the minimum provisions required by the Charter.

Mr. Brandon asked the committee if the proposed language in the membership was acceptable. All of the committee members found the proposed language for the entire member section to be acceptable.

Mr. Brandon then asked the committee where they want the member section to be placed. Joan Spinney made a motion to place the member section in the Rules of Procedure; seconded by Kenneth Kuhar. Motion failed on a 2-3 vote, with members Robert Storke, James Wachtel and Richard Walton voting in opposition.

Richard Walton made a motion to place the member section in the Consistency Certification Rules as a subsection of Article II; seconded by James Wachtel. Motion carried on a 3-2 vote, with members Joan Spinney and Kenneth Kuhar voting in opposition.

Discussion ensued relating to the process for moving the proposed amendments forward to the County Council for approval. Mr. Katz clarified that the POP recommendation to the full commission would be for approval of the resolutions. He added that approval by the Commission will require a majority unweighted vote under the present rules. Mr. Brandon stated that the POP recommendation serves as a motion and second to the full commission. Mr. Katz stated he will also have the title to Article II modified to include "organization".

Mr. Brandon stated he would like to set up one additional POP meeting 30 minutes prior to the August 22, 2012 regular meeting so the committee can review the final amendments and reaffirm their recommendation.

James Wachtel made a motion to recommend the Commission approve the proposed amendments to the Rules of Procedure, as amended on page 6, Article VII, Section 3.(g); seconded by Robert Storke. Motion carried on a 4-1 vote with Joan Spinney voting in opposition.

Consideration of amendments to the Consistency Certification Rules

Ms. Smith pointed out the change from "30" to "28" days under the definition of adjacent jurisdiction was made in order to be consistent with the proposed change to Section 90-35(e)(2).

Mr. Chipok pointed out the proposed modifications to Section 90-35(e)(3) which adds language extending the 90 days in the event the commission does not have a regular meeting scheduled or a quorum of the members is not obtained. He commented that the proposed language is not consistent with Section 90-35(g) as there is no accommodation to an automatic extension in the event the commission cannot obtain a quorum. Following discussion, the committee agreed to add another provision to Section 90-35(g) to reference Section 90-35(e)(3).

Mr. Katz stated the findings contained in the resolution adopting the Consistency Certification Rules amendments should also be added to Section 90-33 of the rules. Mr. Chipok read the resolution findings. The committee concurred.

Robert Storke made a motion to approve the amendments to the Consistency Certification Rules as amended; seconded by James Wachtel. Motion carried on a 4-1 vote with Joan Spinney voting in opposition.

NEW BUSINESS

None

OTHER BUSINESS

None

ADJOURNMENT

The meeting was adjourned at 7:20 p.m.

Gerald T. Brandon

Gerald Brandon, POP Committee Chairman