

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

MINUTES FOR
MEETING HELD
Thursday, September 20, 2012

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, James Wachtel, Robert Storke, Kenneth Kuhar, Rich Walton and Joan Spinney. Also in attendance was Merry Chris Smith, VGMC Coordinator.

OLD BUSINESS

None

NEW BUSINESS

Approval of the minutes of the August 22, 2012 POP Committee Meeting:

James Wachtel made a motion to approve the minutes of the August 22, 2012 POP Committee meeting as presented; seconded by Robert Storke. Motion carried unanimously.

Commissioner Walton joined the meeting at 1:03 p.m.

Consider recommendation of approval of VGMC Resolution #2012-04 rescinding Resolution #2012-03 and providing for approval of revisions to the Rules of Procedure:

Commissioner Spinney commented that she would like to utilize this opportunity to reconsider the proposed changes to the consistency certification rules. Chairman Brandon stated that this agenda item relates to the rules of procedure. Commissioner Wachtel explained that Resolution #2012-03, which was approved at the August regular commission meeting, needs to be rescinded and Resolution #2012-04 approved in order to comply with Article X, Section 1. of the Rules of Procedure. Ms. Spinney suggested the committee relook at the previous recommendation to move the section addressing membership into the consistency certification rules. Mr. Wachtel commented that the committee had spent several months previously reviewing that issue, which was later approved by the commission, and he felt strongly the recommendation needs to move forward. Mr. Brandon added that the amendments to the consistency certification rules are expected to be scheduled for County Council approval at their October 4, 2012 meeting.

Commissioner Walton suggested Article X, Section 1. of the Rules of Procedure be amended to delete the requirement that two hearings are necessary to amend the procedures. Mr. Wachtel suggested moving forward with the current resolution and look at changing this at a future meeting. Mr. Walton concurred.

James Wachtel made a motion to recommend the commission approve VGMC Resolution #2012-04; seconded by Rich Walton. Motion carried unanimously.

Rich Walton made a motion to consider amending Article X. Section 1. to only require one meeting of the commission to approve amendments to the Rules of Procedure and to ask VGMC legal counsel, Paul Chipok, to review and draft the procedural change; seconded by Joan Spinney. Motion carried unanimously and the committee agreed to review this at a future POP meeting.

Consideration of 2012-13 proposed contracts for VGMC consultants:

Chairman Brandon commented on the history of the relationship with VGMC staff and the role of the POP Committee. Brief discussion ensued regarding the VGMC Chairman's latest update and the response from legal.

The committee briefly discussed the Request for Statement of Qualifications (RSQ) process. Ms. Spinney stated the VGMC has historically and deliberately hired staff from outside of Volusia County and expressed concern to hire from within the County. There was a general consensus that the POP Committee should look at adding procedures to the Rules of Procedure to address the RSQ process.

1) VHB-MillerSellen proposed contract –

Commissioner Wachtel raised concern about increasing the hourly rate. Commissioner Walton concurred and commented there are many planners who would do the work for \$100/hour.

Mr. Walton discussed the proposed term of the contract and suggested that each of the staff contracts include language stating that at the conclusion of the one year term, the contract will revert to month-to-month until such time as a new contract is approved. He also suggested the contracts include a provision that requires the parties of the contract to provide a minimum 30 days notice if either party wishes to terminate services. The committee members were in general agreement.

Rich Walton made a motion to modify the term of the staff contracts so that they revert to month-to-month under the current terms until a new agreement can be reached and also a provision which requires the parties of the contract to provide a minimum 30 days notice if either party wishes to terminate services; motion seconded by Joan Spinney. Motion carried unanimously.

General discussion ensued relating to disputed invoices. Mr. Walton suggested the POP committee further review the rules of procedure in terms of the process for disputed invoices. The committee was in general agreement.

General discussion ensued relating to the proposed increase in the VHB-MillerSellen hourly rate from \$115 to \$125.

James Wachtel made a motion to keep the hourly rate at \$115; seconded by Rich Walton. Motion carried unanimously.

The committee also discussed the attendance provision in the proposed contract.

Rich Walton made a motion to modify the attendance provision to include a statement that the planner will not attend if the VGMC Coordinator notifies them there are no planning related items scheduled for discussion; motion seconded by Joan Spinney. Motion carried on a 4-1 vote with Kenneth Kuhar voting in opposition. Mr. Kuhar stated he felt a planner should be in attendance at all regular meetings in case a commission member has a planning question or matter they wish to discuss. Ms. Smith asked the committee if the following language was sufficient: "...unless otherwise notified by the VGMC Coordinator at the time of agenda distribution." The committee concurred and Mr. Kuhar commented that he preferred that wording.

There were no further recommended modifications to the VHB-MillerSellen proposed contract.

2) Planning Design Group proposed contract –

Rich Walton made a motion to modify the contract term consistent with the recommended modification to the VHB-MillerSellen contract, and also add the same attendance provision to the scope of services as previously discussed relating to the VHB-MillerSellen contract; motion seconded by Robert Storke. Motion carried unanimously.

Commissioner Storke raised a question relating to the applicability of item #17 of Exhibit A, General Conditions to Agreement. Mr. Wachtel commented that the provision appears to be more tailored to private clients. Brief discussion ensued.

Joan Spinney made a motion to delete item #17 of the General Conditions to Agreement; seconded by James Wachtel. Motion carried unanimously.

There were no further recommended modifications to the Planning Design Group proposed contract.

Chairman Brandon called for a brief recess at 2:12 p.m. and the meeting reconvened at 2:16 p.m.

3) GrayRobinson proposed contract –

Mr. Brandon expressed concern that the Commission Chairman contacted staff directly regarding modifications to the proposed contract prior to it being submitted by staff for review by the POP committee. Ms. Spinney raised concern with the Commission Chairman's comments submitted to the POP committee relating to the proposed contracts.

Brief discussion ensued relating to an RSQ to engage a second legal firm. Mr. Wachtel commented that legal is more of a continual dialogue and questioned the suitability of having two legal firms representing the commission.

Rich Walton made a motion to modify the legal contract consistent with the modifications to the two planning contracts relating to the contract term, termination of representation and attendance. Several members commented that legal should be in attendance at all regular meetings and there was general agreement. The committee also discussed that 30-days notice on termination of legal representation may not be sufficient and suggested it be increased to 90 days for legal.

Mr. Walton amended his motion to state the contract term should include language stating that at the conclusion of the one year term, the contract will revert to month-to-month until such time as a new contract is approved, and also include a provision that requires the parties of the contract to provide a minimum 90 days notice if either party wishes to terminate services; motion was seconded by Joan Spinney. Motion carried unanimously.

Mr. Walton excused himself from the meeting at 2:25 p.m. to attend a previously scheduled appointment.

The committee began review of comments (Exhibit A) from the VGMC Chairman relating to the proposed legal contract.

There was a general consensus that contracts are not limited to scope of services and include other items such as terms. There was also agreement that planning and legal staff need the ability to communicate with each other on VGMC matters without requiring prior approval of the Chairman, and also that the Vice Chairman and Secretary should have the ability, in the absence of the Chairman, to authorize legal staff to attend meetings related to VGMC matters. With respect to adding a provision in the legal contract relating to engaging a second law firm, Mr. Brandon commented that this was premature since this issue had not yet been considered by the commission. With respect to the proposed change relating to responding to litigation matters, Mr. Wachtel expressed concern of being able to get the commission together in a timely manner to provide initial direction on new litigation, and other members of the committee concurred.

The committee was in general agreement that the budget should not be addressed in the contract. Mr. Wachtel suggested the language relating to a litigation contingency be retained since it is not part of the approved budget.

With respect to the VGMC Chairman's recommendations relating to expenses billed by legal, there was general agreement that mileage and travel time should be paid pursuant to the VGMC Rules of Procedure. In addition, there was general agreement that if it is necessary for more than one attorney to attend a hearing, travel time should be paid to each. The committee discussed the recommendation that legal establish a fixed fee for preparation and attendance at regular meetings. There was general agreement this would not be appropriate since the meetings can vary significantly depending upon the agenda, as well as whether or not a public hearing is

scheduled. With respect to other expenses related to long distance, duplication and research, the committee felt these were minimal and were in agreement not to make changes.

Commissioner Kuhar stated the proposed agreement submitted by legal staff is in letter form as opposed to a contract which he felt may be the basis for the Chairman's first comment. Following further discussion, there was a consensus to leave the agreement in the present letter form, which concluded the discussion relating to the VGMC Chairman's comments.

With respect to legal attendance at VGMC meetings in (i) of the proposed contract, Commissioner Storke suggested striking "...except when requested not to attend by the VGMC Chairman". He also suggested a conflict of interest provision be included in the contract. The committee was in general agreement and suggested adding the conflict of interest language which is presently in the planning contracts to the legal contract.

Robert Storke made a motion to strike "...except when requested not to attend by the VGMC Chairman" from item (i) of the proposed contract, and also add conflict of interest language; motion seconded by James Wachtel. Motion carried unanimously.

General discussion ensued regarding the role of the VGMC Chairman and the POP Committee relating to the staff contracts. Mr. Brandon stated the POP Committee reviews the proposed contracts, including any comments received, and prepares a recommendation for consideration by the full commission.

4) Discussion regarding request for proposals for VGMC contract services –

Mr. Brandon stated the RSQ process was originally intended to be done on a rotational basis which each of the three consultant services (legal, small scale planning reviews, and large scale planning reviews) performed every three years. He stated the last RSQ was done in 2010 and it involved legal services. Under the normal rotation, he stated an RSQ for small scale planning services would be next.

Mr. Brandon stated the VGMC Chairman would like the POP Committee to move forward with the engagement a second law firm through the RSQ process, and he asked the committee members their desire. Ms. Spinney commented that the committee should stick with the normal rotation and move forward with an RSQ for small scale planning services. The committee members concurred. Mr. Wachtel commented that he sees having two law firms as problematic.

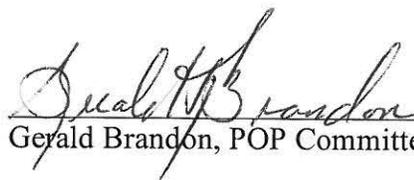
The committee agreed to schedule another POP committee meeting in late October or early November to begin specific discussions regarding the small scale planning services RSQ.

OTHER BUSINESS

None

ADJOURNMENT

There being no further business, the meeting was adjourned at 3:35 p.m.


Gerald Brandon, POP Committee Chairman

Chairman Katz comments relating to 2012-13 proposed legal contract:

- 1) Contract should be simplified – just list the scope of services;
- 2) Contract should state that legal staff will not perform any work without prior approval from the Chairman;
- 3) Planning staff should not engage legal staff -- planning should contact the VGMC Coordinator who, in turn, will contact the Chairman for direction in terms of whether or not the planner should consult with legal;
- 4) Contract should state that GrayRobinson understands VGMC will be engaging a second law firm and GR will have no role in supervising the selected firm. In addition, the Chairman will determine which law firm will receive requests for legal services when needed;
- 5) Section (v) of the contract – Delete the second portion which states “In the event there are exigent circumstances to attend such a meeting and prior approval from the chairman is not possible, authorization to attend said meeting may be obtained from the vice chairman or the secretary of the VGMC”.
- 6) Section (viii) of the contract – Delete reference to “Immediately address and respond to new litigation matters...” and revise to read: “Present new litigation matters to the full Commission for direction on the litigation position of VGMC and for direction as to whether general counsel shall pursue such litigation on behalf of the VGMC.”;
- 7) Not appropriate to reference the budget in the contract – they provide the scope of services and the VGMC determines the budget;
- 8) We should not be billed for both mileage and hourly rate for travel to attend meetings;
- 9) If more than one attorney attends a meeting or hearing, we should only be charged travel time for one;
- 10) A fixed fee amount for preparation and attendance at a regular meeting of the commission should be established – the fee should include communication with VGMC staff and Chairman for agenda coordination, review of agenda package, any telephone or email communications from VGMC staff and Chairman with comments or questions relating to agenda materials, post-meeting follow through on VGMC actions and travel to/from the meeting.
- 11) Costs/Expenses – The VGMC should not be billed for the following costs: Duplication, fax, and long distance calls. Most legal communications are done via scanning and email, eliminating duplication and faxing expenses. Long distance calls should not be charged since it is not necessary for legal staff to be outside of Volusia County.
- 12) Any costs/expenses (including Computerized Research) which exceed \$10 must be preapproved by the Commission Chairman