

# CHARTER REVIEW



## C O M M I S S I O N

### Members

Hyatt Brown  
Chair

Glenn Ritchey Sr.  
Vice Chair

Dr. T. Wayne Bailey

Frank Bruno Jr.

Frank Darden

Patricia Drago

Ambassador  
Stanley Escudero

Dr. Philip Fleuchaus

David Haas

Peter Heebner

James Morris

Patricia Northey

Glenn Ritchey Sr.

Derek Triplett

Mark Watts

Lisa Ford Williams

## CHARTER REVIEW SUBCOMMITTEE

DAYTONA BEACH INTERNATIONAL AIRPORT  
DENNIS R. MCGEE ROOM

Monday, March 7, 2016  
12:00 Noon

## A G E N D A

- I. Call to Order/Roll Call**
- II. Approval of minutes from January 25, 2016  
[pages 2 – 15]**
- III. Correspondence Received  
[pages 16 – 42]**
- IV. Volusia Growth Management Commission (VGMC)**
  - A. VGMC Report**  
**Speaker - Gerald Brandon, VGMC Vice-Chairman [pages 43 - 69]**
  - B. Discussion/Recommendations**
- V. Public Participation**
- VI. Discussion of matters not on the agenda**
- VII. Adjourn – set next subcommittee date/time**

**CHARTER REVIEW COMMISSION SUBCOMMITTEE  
[VOLUSIA GROWTH MANAGEMENT COMMISSION]  
VOLUSIA COUNTY, FLORIDA**

**MINUTES OF THE MEETING OF  
JANUARY 25, 2016**

**CALL TO ORDER**

Subcommittee Chair Glenn Ritchey called the meeting to order at 12:08 p.m. in the Dennis R. McGee Room at the Daytona Beach International Airport, 700 Catalina Drive, Daytona Beach, Florida.

**ROLL CALL**

Members present included Chair Glenn Ritchey Sr., Frank Bruno Jr., and Patricia Drago. Ambassador Stanley Escudero was not present. Volusia County Attorney Dan Eckert, Tammy Bong, Dona DeMarsh Butler, county support staff and members of the public were also present.

**APPROVAL OF MINUTES**

Frank Bruno made a motion to approve the minutes of the January 4, 2016 meeting. The motion was seconded by Patricia Drago. The motion was approved unanimously.

**PUBLIC PARTICIPATION**

Chair Ritchey opened the floor to public participation.

Bruce Teeters, 567 N. Beach Street, Daytona Beach, stated that the Volusia Growth Management Commission (VGMC) serves a purpose, but the focus has expanded over time. He feels that if there is no benefit for the entire county, there should be a review of it's purpose. He reminded the subcommittee that the VGMC is the only of its kind in the state of Florida.

**VOLUSIA GROWTH MANAGEMENT COMMISSION – PERSONNEL, OPERATIONS,  
& PROCEDURES COMMITTEE REPORT**

Gerald Brandon, Volusia Growth Management Commission Vice-Chairman and Chair of the Personnel, Operations, & Procedures (POP) Committee spoke to the subcommittee regarding the POP Committee meeting on January 21, 2016 and the possible revisions to the VGMC Consistency Rules and Regulations to address some of the previously raised issues regarding the VGMC (handout attached as Exhibit A).

Mr. Brandon stated that the group agreed that updates and revisions to the VGMC Consistency Certification Rules could be established to not only conform with the current growth management laws, but also to improve efficiency with potential changes to review guidelines and timing. The POP Committee did not recommend changes to the charter which would require a ballot amendment. The Committee looked at three basic areas to recommend changes: standing, thresholds for review, and how the process could be expedited.

Standing draft language was proposed in 2009 to limit the standing to units of local government which would include the County, each municipality within Volusia County, the School Board, and any state or federal agency who may be an adjacent property owner. Any person who believes they are affected by a proposed amendment would be referred back to the local government in which they reside.

Thresholds for review would be considered based on two classifications, small scale amendments and those that are not considered small scale. Small scale amendments would be submitted to the VGMC by local governments after adoption, which is consistent with state requirements. Any amendment not considered small scale and is related to an annexation would not be reviewed by VGMC staff and will be presumed consistent unless an objection is filed by a local government within 28 days. The VGMC office will maintain copies of the inter-local agreement establishing the joint planning area. All other amendments will continue to be reviewed by the VGMC.

Mr. Brandon discussed how the proposed changes will help address specific comments/issues as raised by various parties about the current VGMC process.

Mr. Brandon stated that concern had been raised regarding appointed VGMC members denying or overriding what local elected officials have decided. The VGMC does not appoint members, they are appointed by each local municipality. Members are not required to vote in a specific way. There should be an open dialog between the local government and their appointed member. Elected officials are not able to be appointed as it would constitute holding a dual office.

Mr. Brandon stated that the burden of proof for showing an amendment is consistent, when there has been an objection filed, lies with the applicant's local government. He gave an example of an objection to a transportation network application. It should not be up to the objecting party to prepare a transportation study to show the amendment as inconsistent.

Mr. Brandon related that the POP Committee also discussed recommendations regarding appeals and accountability. The group did not feel that there should be an appeal mechanism to the County Council, as they believe that it is important for the VGMC to remain an independent board to maintain a level playing field for all local governments. Currently, appeals are processed through the court system.

Mr. Brandon discussed weighted voting and other related duties. The group did not have opposition to changing the Charter with regard to weighted voting, but stated that if a change were made, the number of Volusia County members should change from five to one. He also stated that there had been no recollection by the VGMC of using the Charter provision of allowing the group to perform related duties as it deemed necessary.

Mr. Brandon stated that they did not see an issue with the Charter language specifying that rules are proposed by the VGMC and adopted by a vote of the County Council. He next discussed the VGMC budget. The group feels that they have been very good stewards of the budget. If the proposed rules changes are adopted, the annual expenses would be significantly reduced. If the funding provision is eliminated from the Charter, another source of funding would need to be established.

Mr. Brandon finished the presentation by inviting questions from the subcommittee.

Chair Ritchey stated that the presentation provided a good overview, but he will need to take the handout for further review. He next invited Charter Review Commission member Peter Heebner to sit with the subcommittee.

Ms. Drago asked if the group had considered being more consistent with the Community Planning Act? Mr. Brandon expressed that they did consider it and they were attempting to make the timeline as short as possible. Ms. Drago stated that she had checked off her items of concern as Mr. Brandon had presented, and each was addressed. In 1996, citizen standing was a concern. Citizen standing is not required in the Charter language, but would strictly require a rules and procedure change. The only Charter change that would be required would be a change to the weighted vote.

Mr. Brandon hoped that the Charter Review Commission subcommittee will come back to them after reviewing the proposal so that they may work toward a possible solution.

Chair Ritchey had a question regarding the "catch-all" provision. He asked that if it had not been used, would it be a problem to eliminate it. Mr. Brandon stated that it related to other duties they perform such as adopting a budget or issuing a Request for Statement of Qualifications (RSQ). Chair Ritchey stated that they could address it and eliminate the problem, perhaps by itemizing the required duties.

Ms. Drago had a question for either Paul Chipok or Dan Eckert. She asked whether threshold changes for small scale amendments would require a Charter change. Attorney Eckert stated that the proposal simply would be deemed consistent. Attorney Chipok concurred with that answer.

Mr. Bruno stated that he would like to know where everyone is with the proposed changes with a consensus. He stated that what has been done is great, but there might be a problem with advertising because not every city or town has an active website.

Mr. Brandon stated that they were only concerned with the required VGMC advertisements. The only notifications needed would be to local governments.

Ms. Drago asked if no public standing meant no public advertisements. Mr. Brandon stated objections would require a public hearing that would need to be advertised. Attorney Eckert stated that if there is no third party standing you do not need the same kind of public notice.

Attorney Chipok outlined timing for small scale amendments. They are sent to the Department of Economic Opportunity and deemed consistent unless they receive something back from the state. For non-small scale, expedited amendments or areas of state concern, when the local government transmits the application to Tallahassee within the first thirty days the state agencies look at the application. For both types, the critical time period is thirty days. With the proposed rule changes, all actions would be taken within the first thirty days unless there is a significant issue or an objection is raised. If no action is taken in the thirty day period the application is presumed consistent.

Chair Ritchey thanked the Attorney Chipok and the group for their effort. He asked how many members were in attendance at the last meeting. Mr. Brandon stated that seven members are on the POP Committee.

Chair Ritchey asked if these recommendations would require full VGMC approval. Mr. Brandon stated that they will still need to present to the full commission. Attorney Chipok stated that the rules would be more formalized and then presented to the full commission for a vote. If accepted, a resolution would be adopted and forwarded to the County Council for adoption in the County code.

Chair Ritchey asked if it would require a super majority vote of the full commission in order to pass to the County Council. Attorney Chipok replied that it only takes a majority vote. A two part threshold; a majority of members present, and a majority of the weighted vote.

Ms. DeMarsh Butler stated that the proposed changes would be posted to the Charter Review website as soon as they are received from the VGMC.

Chair Ritchey thanked Mr. Brandon and the commission for doing exactly what they promised and the subcommittee members for the good questions presented.

Mr. Brandon wanted to thank Merry Chris Smith for the hard work she has done.

Chair Ritchey asked for any members of the public in attendance who would like to speak.

Deanie Lowe, 1065 N. Halifax Drive, Ormond Beach, asked for any initial reactions.

Mr. Bruno stated that people who are not present should have the opportunity to review the proposed changes.

Mr. Brandon stated that a meeting of the POP Committee has been tentatively scheduled for February 4, 2016.

Ms. Drago asked whether the VGMC has published these internally to allow for comments. Attorney Chipok replied that they had not yet been published but will be put up on the website as suggested concepts. They are not yet in a strikethrough and underline form. There needs to be discussion with the general community as far as potential changes.

Ms. Drago was interested in seeing which of these proposals would require a rules change as opposed to a Charter change. Attorney Chipok explained that the three areas that Mr. Brandon discussed were all rules changes and did not require a Charter change.

Chair Ritchey added that there had been some concern that rules changes could simply be changed back in the future if they were not specified in the Charter language. Attorney Chipok offered that it is two part process where the rules are generated by the VGMC and approved by resolution, the forwarded to the County Council for approval. No one can unilaterally change the rules. Mr. Bruno asked if the Council adoption required a super majority. Attorney Eckert replied that was the case.

Mr. Heebner stated that there was some public discussion that the VGMC role could be expanded to handle other county issues.

Chair Ritchey asked for a volunteer to report back to the full Charter Review Commission. Mr. Bruno stated that he would handle reporting at the next meeting.

## **ADJOURNMENT**

There being no further business for discussion, the meeting was adjourned at 12:55 p.m. The next meeting date is to be determined.

EXHIBIT A

Volusia Growth Management Commission  
Personnel, Operations, and Procedures Committee  
Summary Handout

DRAFT

The Personnel, Operations & Procedures (POP) Committee met for over 3 hours on Thursday, January 21, 2016 to discuss various recommendations and comments which have been recently raised to the Charter Review Commission, and possible revisions to the VGMC Consistency Rules and Regulations which may address some of the issues.

In attendance were:

- 1) Five members of the POP Committee, including myself.
- 2) VGMC Chairman Jim Wachtel.
- 3) VGMC Legal Counsel Paul Chipok of the law firm of GrayRobinson.
- 4) VGMC Professional Planning Consultant Jim Sellen of the planning firm VHB.
- 5) Deanie Lowe

John Duckworth from the County was also present.

The VGMC members present expressed their belief that the VGMC continues to serve a valuable intergovernmental coordination role in Volusia County and support the continued existence of the commission. We agreed that the commission has operated in accordance with the charter, however, also agreed that updates and revisions to the VGMC Consistency Certification Rules could be established to not only conform with current growth management laws, but also to improve efficiency with changes to the review guidelines, timing and other areas of the rules.

The committee was generally opposed to recommending changes to the charter which would require a ballot question. The committee felt that most of the issues raised could be addressed through rules changes which could be proposed by the VGMC and approved by ordinance of the Volusia County Council.

Following are proposed revisions to the VGMC Consistency Rules that the POP Committee members present and VGMC Chair unanimously support:

## **Standing:**

- 1) Revise the rules to limit standing to “units of local government”.
- 2) Add a provision to the rules defining a “unit of local government” as “Volusia County, each municipality within Volusia County, the School Board of Volusia County, and any state or federal agency who is an adjacent property owner to a proposed comprehensive plan amendment”.
- 3) Add a provision to the rules which would refer any person who believes they are affected by a proposed amendment to address their concern with the local government in which they reside.

Draft language to this effect was proposed in 2009 in a collaborative effort of several local government attorneys including Scott Simpson and Jamie Seaman, and VGMC Attorney Paul Chipok. The recommendation died when it was determined through a poll of the local governments that less than ½ of them supported eliminating citizen standing, and there was also not a perceived abuse at the time.

With 13 of the local governments recently adopting resolutions supporting the elimination or modification of the VGMC citing reasons which included that the VGMC has been used as a forum for growth opponents, it is apparent many of the local governments have changed their position on this matter since 2009.

The proposed revisions are intended to in part address the following comments raised to the CRC:

- 1) Narrow definition of VGMC authority -- Limit mission to determination of consistency between adjacent local governments
- 2) Define “substantially affected or aggrieved party” -- the term “party” would be replaced by “unit of local government” which would be defined within the rules
- 3) The VGMC has been used as a forum for opponents opposed to growth

## Thresholds for VGMC Review

- 1) All Small Scale Amendments:
  - a) The local governments will submit small scale amendments to the VGMC office *after* adoption. This process is consistent with state requirements.
  - b) Small scale amendments will not be reviewed by VGMC staff and they will be presumed consistent within 30 days of receipt, *unless* there is an objection filed by a unit of local government within the present 28 day time frame. If an objection is filed by a unit of local government, a hearing will be held within 60 days of the date the objection is filed.
- 2) Amendments not considered small scale:
  - a) Any amendment relating to an annexation involving property located within a joint planning area will not be reviewed by VGMC staff and presumed consistent within 30 days of receipt, *unless* there is an objection filed by a unit of local government within the present 28 day time frame.
  - b) The local governments will continue to submit the amendments to the VGMC office – the interlocal agreement establishing the joint planning area should be part of the VGMC record.
- 3) All other amendments not meeting the criteria of small scale or joint planning area properties will continue to be reviewed by VGMC staff per current procedures.

The proposed revisions are intended to in part address the following comments raised to the CRC:

- 1) Create minimum thresholds for VGMC review and deem certain amendments as consistent

Minimum thresholds are proposed

- 2) VGMC should not review amendments unless an objection is filed by a municipality or the County

Establishing thresholds as described, as well as limiting standing to a “unit of local government”, would substantially reduce the number of applications that are subject to review by VGMC staff. For those applications that do not fit the proposed thresholds, the POP committee maintains VGMC staff should continue to review those to ensure consistency, and also compliance with any prior conditions of approval.

- 3) Language in the charter which states the VGMC has the “duty” to determine consistency

The proposed rules revisions can address this without the need for a charter change by defining certain situations when amendments would be presumed/deemed consistent without VGMC review, and those that require VGMC review. Either way, it’s met the “duty” to determine consistency.

- 4) Amend rules to expedite process

By deeming certain amendments consistent, the processing time for the majority of amendments will automatically fall within the 30 day state review time.

- 5) Allow local governments an exemption to VGMC review by creating interlocal agreements

The proposed rules changes would allow those properties that are the subject of a joint planning agreement through an interlocal agreement would be exempt from VGMC staff review, *unless* an objection is raised by a unit of local government.

Now I would like to address other specific recommendations and/or comments raised to the CRC:

## **Membership**

Concern has been raised that the appointed members can deny what local elected officials have approved.

Sections 90-51, 90-52 & 90-53 of the VGMC Consistency Rules and Regulations address member appointments. These sections relating to membership were proposed by the VGMC and adopted by ordinance of the Volusia County Council in October 2012.

As I've mentioned in earlier meetings and has been the case since the inception of the commission, all members are appointed by their respective jurisdictions. VGMC does NOT appoint nor select its members. Some members report they have ongoing open dialogue with their jurisdictions, while others have indicated they've never been asked to report to their local government on VGMC matters. We encourage members and their appointing local government to maintain an open line of communication relating to pending and anticipated VGMC matters.

It's true that a member is not required to vote a certain way, and I'll point out in the Annotations to the proposed charter language in 1986 on page 28 of your agenda package, the second sentence in paragraph 3 states "These representatives are to be able to vote on all matters without obligation to receive prior approval from their appointing governmental bodies". This emphasizes the need for an open dialogue between each of the local governments and their appointed member.

In this same paragraph farther down, the annotations in part state "All voting and non-voting members may be either elected officials or lay citizens." The VGMC, on at least one occasion in the past, has had a member who was also an elected official. In 2008, however, the Florida Attorney general issued an opinion (AGO 2008-61) which determined that membership on the VGMC constitutes an office for purposes of dual office-holding. As a result, elected officials and other individuals who hold another "office", would be prohibited from being appointed to the VGMC as it would be a violation of dual office-holding.

## **Presumption of Consistency/Burden of Proof**

Scott Simpson has recommended language be added to the rules which would presume an amendment was consistent as submitted by the local government, and the burden of proof that the amendment is inconsistent should be on the objecting part.

The earlier recommendation which would deem amendments as consistent under certain circumstances are essentially presumed consistent. However, in those cases where objections are filed, the committee feels strongly that the burden of proof to show the amendment is consistent lies with the applicant local government. As an example, if

an application is submitted for a land use change that a local government feels could potentially adversely affect the transportation network, yet no transportation analysis is provided, it should not be up to the objecting local government to prepare a transportation study to show that the amendment is not consistent.

### **Appeals & Accountability**

It has been recommended that the rules be amended to provide for VGMC accountability and to include an appeal mechanism to the Volusia County Council.

The committee feels it is important for the VGMC to remain an independent board and to maintain a level playing field for all of the local governments. Under the present charter rules, the appeal of a VGMC decision is to the courts. Establishing an appeal mechanism where the Volusia County Council, or another local elected body, would consider an appeal to a VGMC decision takes the level playing field off the table and could very likely cause a challengeable conflict, particularly if the amendment in question involves an application submitted by, or objected to, by Volusia County.

Let's say for example the County submits objections to an application submitted by the City of Port Orange. The amendment goes to public hearing before the VGMC and the VGMC rules in favor of Port Orange. The County then could appeal the decision to its own County Council which could then overturn the decision. That process seems neither practical nor fair.

The committee recommends leaving the appeal process as it presently is.

As I mentioned earlier, the committee is opposed to changes to the charter. However, should the CRC decide to move forward in that direction, we offer up the following:

### **Weighted Vote**

It has been recommended that the weighted vote requirement be deleted so that each jurisdiction has an equal vote. We don't particularly see a problem with the weighted vote system. Its intention may have been established to avoid the smaller populated jurisdictions from "ganging up" to oppose or stop a development proposed in a larger populated jurisdiction. Should the CRC chose to recommend this change in the charter, and the intent is for each local government to have an equal vote, we would suggest the number of Volusia County members be changed from 5 to 1.

### **Other Directly Related Duties**

It has been recommended to delete the language in the Charter which reads "The commission may perform such other directly related duties as the commission from time to time deems necessary." (Referred to the "catch-all" provision.)

At the last CRC committee meeting, Pat Drago asked how many times the "additional duties" clause may have been used by the VGMC. The POP committee discussed this and other than possibly administrative or operational related functions, the committee does not recall a specific situation outside of the course of the normal consistency review process.

### **Rules**

It has been recommended that the provision in the Charter where the VGMC "proposes" the rules be deleted, and that the rules are adopted by a majority vote of the County Council.

Under the present Charter, the VGMC proposes the rules and must be adopted by ordinance approved by a 2/3 vote of the County Council.

We don't see a problem with this. Again, we feel a level playing field needs to be maintained. In this case, neither the VGMC nor the County Council can unilaterally change the rules. Who better to "propose" rules or amendments than those who work most closely with the users and process. When proposed amendments are being considered by the VGMC, it's done at a noticed public hearing. Once approved, the amendments are then submitted to Volusia County in the form of a recommendation to adopt.

## **Budget & Funding Language in Charter**

The charter currently requires the VGMC to adopt a budget which may provide independent staff and which shall be funded by the County. It also states the budget may be amended upon two-thirds vote of the full County Council.

Each year, the VGMC adopts a proposed budget and submits it to the County. The submitted budget goes to the Budget Department and follows the same the budget process as the county departments. During this process, negotiations do occur and often the proposed budget originally adopted by the VGMC is not what ultimately comes to the County Council for approval during the County budget hearings.

The VGMC has historically been very good stewards of the budget. Any monies that are not utilized by the commission are returned to the County. Last year, our total expenses were less than \$140,000 and I believe we returned somewhere around \$160,000 to the County at the end of the fiscal year.

If the proposed changes discussed earlier that would significantly reduce the number of applications reviewed by VGMC staff are ultimately implemented, the VGMC annual expenses would also be significantly reduced.

As far as funding is concerned...so long as the Charter requires the existence of the VGMC, funding will have to be provided. If county funding is eliminated from the Charter, another source of funding will need to be established.



## Volusia Growth Management Commission

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TO: Charter Review Commission Subcommittee

FROM: Gerald Brandon, VGMC Vice Chairman *GB*

DATE: February 5, 2016

RE: VGMC Personnel, Operations & Procedures (POP) Committee  
Recommendations

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The Personnel, Operations & Procedures (POP) Committee of the Volusia Growth Management Commission (VGMC) met again on February 4, 2016 to further discuss comments and recommendations relating to proposed rules revisions.

POP Committee members in attendance included: Don Romanik, Robert Lovelace, Robert Storke, Rich Walton, Sid Vihlen and myself. Also in attendance on behalf of the VGMC were: Chairman Jim Wachtel, VGMC Legal Counsel Paul Chipok, and VGMC Planning Consultant Jim Sellen. Members of the community in attendance included: Deanie Lowe, Jim Cameron, Beth Lemke, Steve Sather and John Duckworth from Volusia County.

Following is a summary of the POP Committee discussion. All of the recommendations were unanimously supported by the VGMC members present. Keep in mind, the recommendations being proposed by the POP Committee have not yet been brought forward to the full VGMC. We expect to schedule a workshop discussion on these issues at the February 24, 2016 regular meeting of the VGMC.

### Summary of Discussion and Recommendations – February 4, 2016 POP Meeting

- 1) Standing – POP agreed to delete federal and state agencies from the proposed definition of “Unit of Local Government”, but keep the VC School Board as unit of local government.

Also, there was a question raised relating to the proposed provision which directs individuals to address consistency concerns to their local governments. This provision is part of the published “notice of application”. It is not intended that

staff of the VGMC or the local governments have the responsibility of notifying members of the public. The committee is including this provision in their recommendation.

- 2) Thresholds for Review – The committee agreed to leave the proposed changes as previously recommended. Specifically, all small scales and any applications that are properties being annexed that are located in an area subject to a JPA, shall be deemed consistent without VGMC staff review 30 days after receipt, unless an objection is filed by a unit of local government. Historically, amendments of this nature are generally consistent as submitted and rarely raise objections or require a public hearing. It should be noted that the majority of applications submitted to the VGMC fit into these two categories.

The committee concluded that all other “large scale amendments” (referred by the state as “expedited state review process” and “state coordinated review process”) should continue to be reviewed by VGMC staff per current procedure. The committee agreed that we are operating within the present charter which states the commission has the duty to “determine consistency”. We have proposed a streamlined process for all small scales and those large scales which are part of a JPA based upon our historical review of applications of this nature, and we feel this meets the requirement to determine consistency. However, consistency on all other applications must be determined by the VGMC and the committee agreed that those applications should not have a blanket presumption of consistency as submitted. Keep in mind, these applications represent a smaller number of all amendment applications, and they are often certified by letter, either as submitted, or through VGMC staff coordinating with the local governments to clarify any areas of concern, without the need for public hearing

- 3) Membership – There has been question raised about members serving at the will of their appointing government. It has been the VGMC’s position that if an appointing jurisdiction has specific rules in their governing documents that appointed members serve at the will of the appointing body, then this would apply to VGMC members. Otherwise, the member has a right to the appointment for the term of appointment specified in the rules. The VGMC can only remove a member for misfeasance, malfeasance, or not meeting attendance requirements.
- 4) Burden of Proof/Presumption of Consistency – The issue of presumption of consistency has been addressed, in part, by the proposed threshold for small scale and large scale annexation/JPA reviews. Again, the committee will not be

recommending “all” applications are presumed consistent without VGMC staff review as described earlier.

With respect to “burden of proof” – The commission must weigh all evidence presented at a public hearing. The POP Committee is proposing revisions to Sections 90-37(e) and 90-37(j) to neutralize the burden of proof requirements and clarify the commission will make their determination based upon the preponderance of evidence presented at the hearing.

- 5) Appeals – It has been recommended that a provision be added to the rules which would provide for appeal of a VGMC decision to the County Council. The committee disagrees. Volusia County is an adjacent jurisdiction to all municipalities in the county and in many cases could be a party to an application. The VGMC creates a level playing field for all of the local governments, and it simply would not be practical to appeal a decision to the Volusia County Council.
- 6) Weighted Vote – The question of weighted vote continues to be raised. The POP Committee doesn’t see a particular problem with the weighted vote, except that if the CRC recommends a change to the charter eliminating the weighted vote, and the intent is for each jurisdiction to have an equal vote, then the County should have only one member as opposed to the 5 appointees provided in the present charter.

A question has also been raised about whether a voting conflict exists for an appointed member whose jurisdiction is a party to an application, either as the applicant or objecting jurisdiction. An Attorney General Opinion (AGO 2008-61) issued in 2008 found that members of the VGMC serve as “officers” for purposes of dual office holding. Additionally, pursuant to state statutes, officers are required to vote unless they have a financial interest in the subject matter.

- 7) “Other Directly Related Duties” in the Charter – We’ve been asked by the CRC to propose more defined duties relating to the provision in the charter which states: “The commission may perform such other directly related duties as the commission from time to time deems necessary.”

As communicated to the CRC previously, the POP Committee does not advocate changes to the charter which would require a ballot question, nor do we recall there being a specific use or abuse of this provision by the VGMC. However, if the CRC chooses to amend this provision in the charter, the POP Committee recommends the following language: “The commission may perform such other directly related analysis to pending applications and other administrative duties

as the commission from time to time deems necessary.” The committee raised concern that crafting individual, specific duties within the charter language could unintentionally limit and thereby hamper the ability of the VGMC to perform necessary duties in the future.

The revisions to the rules as proposed by the POP Committee are presently being drafted and a copy will be forwarded to you upon completion. In the meantime, please let us know when the CRC sub-committee plans to meet next as we would like to be present to address any questions or concerns.

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

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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

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- 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

## ARTICLE II. VOLUSIA GROWTH MANAGEMENT COMMISSION CONSISTENCY CERTIFICATION RULES AND ORGANIZATION

### DIVISION 1 – DEFINITIONS AND INTERPRETATION OF ARTICLE

#### Sec. 90-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Adjacent jurisdiction* means a local government whose territorial boundaries are physically contiguous to the land to be affected by a comprehensive plan or amendment thereto for which an applicant jurisdiction has applied to the commission for a certification or certificate. Notwithstanding any other provision of this article, which requires the commission to publish notice of receipt of an application pursuant to section 90-35(c), an adjacent jurisdiction, as defined in this subsection, shall have 28 days after receipt of an application by the commission to file any objections or comments on or request that a public hearing be held to consider an application.

*Applicant jurisdiction* means a local government which has applied to the commission for a certification or certificate regarding a comprehensive plan or amendment thereto.

*Area* and *area of jurisdiction* mean the total area qualifying under the provisions of F.S. § 163.3171, as amended from time to time, whether this be all of the lands lying within the limits of an incorporated municipality, lands in and adjacent to an incorporated municipality, unincorporated lands within the county, or areas comprising combinations of lands in incorporated municipalities and unincorporated areas of the county.

*Certification* and *certificate* mean a letter, resolution or other written document from the commission determining consistency or inconsistency of a comprehensive plan, element, plan amendment or portion thereof with other applicable plans.

*Charter* means the county Home Rule Charter, as amended.

*Commission* means the Volusia Growth Management Commission, a governmental entity created by the Charter.

*Comprehensive plan* means a plan that meets or is intended to meet the requirements of F.S. §§ 163.3177 and 163.3178.

*Large scale comprehensive plan amendment* means any plan amendment that requires a transmittal and adoption hearing and does not qualify for adoption pursuant to F.S. § 163.3187 ([small scale comprehensive plan amendment](#)) as amended from time to time.

*Small scale comprehensive plan amendment* means any plan amendment that only requires an adoption hearing and qualifies for adoption pursuant to F.S. § 163.3187(1)(c) as amended from time to time.

*Unit of local government* means Volusia County, each municipality within Volusia County and the School Board of Volusia County.

*Written or in writing* means a piece of correspondence or document, as context dictates, that must be provided on paper and delivered by either hand delivery, U.S. Mail or courier service. Electronic transmissions by themselves are not sufficient to be deemed “written” or “in writing” and must be followed up with a hard copy transmittal delivered by either hand delivery, U.S. Mail or courier service.

(Ord. No. 87-24, § 2, 7-23-87; Ord. No. 92-87, § 1, 10-8-92; Ord. No. 93-13, § 1, 5-20-93; Ord. No. 2007-05, § 1, 2-22-07; Ord. No. 2012-16, § 1, 10-4-12)

**Sec. 90-32. Interpretation of article.**

In the interpretation and application of this article, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the commission;
- (3) Deemed not to limit or repeal any other powers granted by other state statutes, the Charter, county ordinances or commission resolutions; and
- (4) Interpreted in a manner consistent with Section 202.3 of the Volusia County Charter and the Community Planning Act (F.S. § 163.3161 et seq.).

(Ord. No. 87-24, § 14, 7-23-87; Ord. No. 2012-16, § 1, 10-4-12)

**DIVISION 2 – Volusia Growth Management Commission  
Consistency Certification Rules**

**Sec. 90-33. Findings, purpose and intent.**

In adopting this article, the county council makes and expresses the following findings, purpose and intent:

- (1) In accordance with section 1303 of the county Charter, the 1985-1986 county Charter review commission was formed to prepare necessary amendments to the Charter.

(2) In consideration of the rapid growth of the county in recent years and the adoption of landmark comprehensive planning legislation in the state, the Charter review commission determined that growth management was a top priority among its objectives.

(3) As a result of information, evidence and testimony received at numerous public meetings and hearings, the Charter review commission proposed the creation of the Volusia Growth Management Commission to determine the consistency of the municipalities' and the county's comprehensive plans and any amendments thereto with each other.

(4) The citizens of the county voted at a referendum held on November 4, 1986, to adopt Charter amendments creating the commission and granting certain powers to the commission.

(5) The main purpose of the commission is to provide an effective means for coordinating the plans of municipalities and the county, in order to provide a forum for the several local governments in the county to cooperate with each other in coordinating the provision of public services to and improvements for the citizens of the county, and create incentives to foster intergovernmental cooperation and coordination.

(6) The commission held an organizational meeting on February 25, 1987, and then, through its committee on growth management related issues, duly noticed and held further public hearings on May 18, 1987, and May 21, 1987, and held commission hearings on June 10, 1987, and June 24, 1987, to develop rules of procedure for and enforcement of the commission's consistency review within the time provided for under the Charter amendment.

(7) On June 24, 1987, the commission adopted Resolution No. 87-5, which recommended that county council adopt this article, which contains the rules of procedure for consistency review and enforcement as required by the Charter amendment.

(8) Since the Volusia County Council adoption of Ordinance No. 87-24, the Commission has undertaken a diligent process with numerous public hearings to consider amendments to the Commission's certification rules as codified in Volusia County Code Chapter 90, Article II. The Commission has addressed revisions to the procedures for submitting and processing applications and has acknowledge advances in technology recognizing the use of electronic communications in defined circumstances.

(Ord. No. 87-24, § 1, 7-23-87; Ord. No. 2012-16, § 1, 10-4-12)

**Sec. 90-34. Certificate of plan consistency required.**

(a) A certificate of consistency is hereby established. Except as set forth in subsections (b) and (c) below, no comprehensive plan, element of a comprehensive plan or amendment of a comprehensive plan adopted after November 4, 1986, shall be valid or effective unless and until such comprehensive plan, element of a comprehensive plan or amendment has been reviewed by the commission and has been certified consistent in accordance with this article. This certificate of consistency will be required in addition to any other necessary licenses, permits and/or approvals applicable to land development.

(b) As of June 1, 2016, a copy of a small scale comprehensive plan amendment and the small scale application form as prescribed by the commission shall be forwarded to the commission by the adopting unit of local government immediately after adoption of the small scale comprehensive plan amendment. The small scale comprehensive plan amendment will not be reviewed by the commission staff and such amendment shall be deemed to be consistent thirty (30) days after receipt by the commission, unless there is an objection filed by a unit of local government within twenty-eight (28) days. Notice of the small scale comprehensive plan application shall be provided in accordance with Section 90-35(c). If an objection is filed, the commission staff shall conduct a review of the small scale comprehensive plan amendment and a hearing shall be held in accordance with Sections 90-35 and 90-37. If no objection is filed, the commission's written acknowledgment of the small scale application form shall serve as the certificate of consistency, effective thirty (30) days after receipt by the commission.

(c) As of June 1, 2016, for those large scale comprehensive plan amendments which are: (i) the initial comprehensive plan amendment by the unit of local government for the property after annexation of such property into the unit of local government; and (ii) such property is located in an area subject to a Joint Planning Area (JPA) Agreement pursuant to Section 163.3171, Florida Statutes, will not be reviewed by the commission staff and such amendment shall be deemed to be consistent thirty (30) days after receipt by the commission of a copy of the comprehensive plan amendment and the JPA application form as prescribed by the commission, unless there is an objection filed by an unit of local government within twenty-eight (28) days. Notice of the JPA large scale comprehensive plan amendment application shall be provided in accordance with Section 90-35(c). If an objection is filed, the commission staff shall conduct a review of the JPA large scale comprehensive plan amendment and a hearing shall be held in accordance with Sections 90-35 and 90-37. If no objection is filed, the commission's written acknowledgment of the JPA application form shall serve as the certificate of consistency, effective thirty (30) days after receipt by the commission.

(Ord. No. 87-24, § 3, 7-23-87)

**Sec. 90-35. Application for certificate; procedure for issuance; public hearing requirements.**

(a) After November 4, 1986, except for small scale comprehensive plan amendments and Joint Planning Area (JPA) large scale amendments as set forth in Section 90-34(b) and (c), respectively, all local governments who desire to adopt or amend a comprehensive plan or element or amendment thereof, in accordance with this article, shall submit an application on forms as the commission may prescribe, and shall submit such information as the commission may require. The commission may require such local government to submit any additional information reasonably necessary for proper evaluation of the application.

(b) An applicant jurisdiction shall, at a minimum, submit the following information and documents with any application filed under this section with the commission:

(1) Information required by rule or order of the commission, which shall include, at a minimum, a detailed inquiry into:

a. The extent to which any plan, element, or plan amendment submitted proposes to create adjacent, incompatible land uses and the manner in which the adverse impact of these incompatible uses may be eliminated or mitigated; and

b. The extent to which any plan, element, or plan amendment proposes policies and/or physical improvements which may adversely impact the objective of promoting the coordination of infrastructure affecting more than one area of jurisdiction.

(2) An application shall, at a minimum, contain the following information in addition to that required in subsection (b)(1) of this section:

a. The application shall contain a list of all adjacent governments and units of local government.

b. For each entity listed in subsection (b)(2)a of this section, the application shall indicate the following:

1. Existing coordination mechanisms used in preparation of the plan, element, or plan amendment being submitted.

2. Any recommendations contained in the proposed plan, element, or plan amendment which affect the plans for land use or infrastructure contained in the plans of adjacent local governments within the county.

3. The facts supporting the recommendations contained in subsection (b)(2)b.2 of this section and the identification of

recommended measures which may be used to mitigate or eliminate any adverse impacts resulting from these recommendations.

4. Identification of specific problems and needs within the comprehensive plans of said adjacent governments which would benefit from improved or additional intergovernmental coordination, and recommended solutions for resolving these potential problems and needs.

(c) The applicant jurisdiction shall submit one original and five copies of each application. The original application and two copies of each application and all supporting documents filed with the commission's administrative staff must be a hard copy in writing; the remaining copies may be in either hard copy or electronic format. The commission shall process all applications and shall cause public notice of receipt of all applications to be given as provided in this article. When the commission receives an application for approval of a comprehensive plan or amendment thereto, its administrative staff shall date-stamp the application. Within two days on which the VGMC office is open for business, the administrative staff shall conduct a completeness review of the application to ensure: the application is completely filled out; required signatures are present and notarized; required number of copies are included; notification to required jurisdictions and agencies as indicated on application has been accomplished; summary of amendment(s) is provided; verification of the acreage and location for map amendments; verification that staff reports, and current and proposed land use maps, where applicable, are included. If any of the foregoing information is incomplete, the administrative staff shall contact the applicant jurisdiction to obtain the necessary information. An application shall be deemed complete once all information is provided, either at the initial submission of the application or after receipt of all of the minimum requirements described in this subsection (c) based upon the determination of the administrative staff and such application shall have placed upon the written application an additional date designating such application as a complete application (the "complete application"). The administrative staff shall thereafter send a dated cover letter and a notice of the complete application to the applicant jurisdiction and direct that electronic versions of the complete application be sent by the applicant jurisdiction to all adjacent jurisdictions, and to such other persons and in such other manner as may be prescribed by the commission. The administrative staff shall also send a copy of the complete application to the commission's professional staff, ~~and, within 10 days of the date.~~ Notice of the complete application, shall cause notice of receipt of the complete application to be published one time only in a newspaper of general circulation in Volusia County shall be provided by commission administrative staff by US Mail to each unit of local government and posted on the commission's website. Such notice shall be in substantially the form provided below:

VOLUSIA COUNTY  
VOLUSIA GROWTH MANAGEMENT  
COMMISSION  
Notice of Application

- (1) The type of application (e.g., adoption of or amendment to a comprehensive plan);
- (2) A description and location of the subject matter or activity covered by the action, and the commission's case number, and the name and address of any person at the applicant jurisdiction to whom comments should be directed;
- (3) A copy of the complete application and accompanying material are available for public inspection at the commission's offices at (commission's address);
- (4) The notice shall contain paragraphs which read substantially as follows:
  - a. Any ~~substantially affected or aggrieved party~~unit of local government shall have a right pursuant to the Volusia Growth Management Commission Comprehensive Plan Consistency Certification Rules to petition for a public hearing on the application. The petition must contain the information set forth below and must be received by the commission at the address set forth above within 2128 days of ~~publication of this notice~~the receipt of the application with such date being [insert date]. A copy of the petition must also be mailed at the time of filing with the commission to (the named contact person at the address indicated to whom comments should be directed at the applicant jurisdiction).
  - b. Failure to file a petition within 2128 days of ~~publication of this notice~~the receipt of the application, that date being [insert date], constitutes a waiver of any right any ~~person~~unit of local government may have to a public hearing pursuant to the Volusia Growth Management Commission Comprehensive Plan Consistency Certification Rules ~~and to participate as a substantially affected or aggrieved party~~. Any subsequent intervention will only be as allowed pursuant to section 90-38 of the Volusia County Code which codifies the Volusia Growth Management Commission Comprehensive Plan Consistency Certification Rules.
  - c. The petition shall contain the following information:
    - i. The name, address and telephone number of ~~each petitioner~~the petitioning unit of local government; the commission's case number and the location of the proposed activity;
    - ii. A statement of how and when each ~~petitioner~~petitioning unit of local government received notice of the application;
    - iii. A statement of how ~~each petitioner's~~the petitioning unit of local government's substantial interests are affected by the proposed application;

- iv. A statement of the material facts disputed by ~~each petitioner~~ the petitioning unit of local government, if any;
- v. A detailed statement outlining the reasons why the proposed amendment violates the criteria for evaluating compatibility in Sec. 90-37; and
- vi. A statement of relief sought by the ~~petitioner~~ petitioning unit of local government, stating precisely the action the ~~petitioner~~ petitioning unit of local government wants the commission to take with respect to the pending application.

d. Any person who believes the unit of local government in which they reside could be substantially affected or aggrieved by the application is directed to address that concern with the elected governing body of the unit of local government in which they reside.

(d) All applications received by the commission shall be processed and all determinations of consistency shall be made as provided in this subsection unless a public hearing is held on an application. If the commission holds a public hearing on an application as allowed pursuant to this subsection, the commission shall determine consistency pursuant to the criteria provided in section 90-37.

(1) Review by commission.

a. Within 30 days after the date of the complete application, the commission's professional staff shall examine the complete application; determine whether any adjacent jurisdiction or any other ~~person, including a substantially affected or aggrieved party as defined in this article,~~ unit of local government has commented or requested a public hearing; notify the applicant jurisdiction of any apparent errors or omissions; request any additional information pertinent to the application; and determine whether the applicant jurisdiction has addressed the conditions of approval of past commission resolutions and whether the application meets the consistency test as set forth in this article. If the commission's professional staff needs additional information to review the application, a request for additional information (RAI) shall be forwarded in writing to the applicant jurisdiction. A written request for additional information shall toll the running of the time provided by this article for the commission to act on the application until either: (i) the RAI response is deemed complete by the commission's professional staff; or (ii) the applicant jurisdiction provides written notice that no further information in response to the RAI will be provided and that the applicant jurisdiction desires to proceed to public hearing on the application. An applicant jurisdiction's failure to supply additional information shall not be grounds for denial of certification unless the commission's professional staff timely requests the additional

information from the applicant jurisdiction in writing within 30 days after the complete application date on the application.

b. If the commission's professional staff determines that the applicant jurisdiction has not addressed the conditions of approval of outstanding commission resolutions, the commission shall hold a public hearing.

c. If the commission's professional staff determines that an application may be inconsistent under the test set forth in section 90-37, the commission shall hold a public hearing.

d. [Reserved]

(2) Units of local government.

~~a. (2) Adjacent jurisdictions.~~ Within 28 days after the date of the complete application, any ~~adjacent jurisdiction~~ unit of local government may:

~~a.(i)~~ Submit written comments regarding the merits or the sufficiency to the commission regarding the complete application; or

~~b.(ii)~~ Request a public hearing; ~~or~~ in accordance with Section 90-35(c).

~~c. Request, for good cause shown in writing and submitted to the chairman of the commission with a copy to the applicant jurisdiction, one 21-day extension of time to comment on the complete application.~~

~~The chairman of the commission shall acknowledge in writing such 21-day extension requested by an adjacent jurisdiction. Once one adjacent jurisdiction has requested a 21-day extension, that extension shall apply to all adjacent jurisdictions and no additional extensions of time by any other adjacent jurisdiction to comment on the pending application shall be honored. However, once one request for an extension of time has been made that request shall toll all time periods provided in this subsection.~~

b. If the unit of local government requesting the hearing is an adjacent jurisdiction then the unit of local government shall participate as a party and is deemed to be substantially affected and aggrieved either upon requesting a public hearing or filing a petition for leave to intervene pursuant to Section 90-38.

(3) When a public hearing is requested by either the commission's professional staff or by the applicant jurisdiction pursuant to subsection (d)(1)a. of this section or by ~~an adjacent jurisdiction or a substantially affected or aggrieved party~~ a unit

of local government, the commission shall hold a public hearing on the complete application within 60 days after the public hearing is requested but in no event more than 90 days from the date of the complete application (less any tolled time), unless the commission shall not have a regular meeting scheduled or a quorum of the members of the commission shall not be obtained for the regular meeting, which shall by necessity extend the date of the public hearing beyond 90 days. At any public hearing held by the commission to determine whether the adoption of a comprehensive plan or amendment thereto is or can be made to be consistent through conditions, the commission shall comply with the criteria of section 90-37.

(4) Unless a public hearing is otherwise required pursuant to this article, no public hearing shall be held on any complete application received by the commission unless timely requested by the staff, by ~~an adjacent jurisdiction or by a substantially affected or aggrieved party~~ a unit of local government. If no public hearing is requested ~~by any adjacent jurisdiction~~, it shall be presumed that all ~~adjacent jurisdictions~~ units of local government approved the adoption of or amendment to the comprehensive plan of the applicant jurisdiction.

(5) Nothing in this section shall be construed to prohibit the submission of relevant evidence to the commission at any time up to and including a public hearing called by the commission pursuant to this article.

(e) Nothing contained in this article shall preclude the concurrent processing of applications for certification and the state's related review pursuant to the Community Planning Act (F.S. § 163.3161 et seq.), as amended from time to time. For large scale comprehensive plan amendments the application for certification by the commission shall be submitted to the commission simultaneously with, or prior to, transmittal of a proposed plan amendment to the Florida Department of Economic Opportunity ("DEO"). ~~For small scale comprehensive plan amendments the application shall be submitted by the local government concurrent with the forwarding of the recommendations of the Local Planning Agency to the local governing body pursuant to F.S. § 163.3174(4)(a) as amended from time to time.~~ The commission shall have 30 days from receipt of any large scale comprehensive plan application to make comments to the DEO. The commission shall have 30 days from the date of the complete application to make comments to the applicant local government. For all comprehensive plan amendments other than those deemed approved under Section 90-34(b) as a small scale comprehensive plan amendment or under Section 90-34(c) as a JPA large scale comprehensive plan amendment, the commission certification shall be a prerequisite to any final public hearing on a comprehensive plan amendment by the applicant local government. The applicant local government's response shall be to both the commission and DEO and shall occur simultaneous with or prior to the applicant local government's response to the objections, recommendations and comments report by the DEO for the comprehensive plan amendment, if applicable.

(f) Every application under this section shall be approved, conditionally approved, or denied within 90 days after the date of the complete application by the commission unless either: (i) the 90-day time period on a complete application has been tolled pursuant to subsection (d)(1) of this section ~~or extended pursuant to subsection (d)(3);~~ in which case the 90-day time period does not include that period from the date of commencement of the tolling until the tolling is stopped; or (ii) ~~an extension is requested and granted as provided in subsection (d)(2) of this section;~~ or (iii) if anytime on or after 60 days from the date of the complete application there occurs a force majeure event/emergency/natural disaster which disrupts normal governmental functions within any part of the county then there shall be an automatic extension of the 90-day time period for an additional 30 days. The chairman of the commission shall provide written notice to the applicant of implementation of an automatic extension under subsection ~~(iii)~~ above. Within 15 days after the conclusion of a public hearing held on the complete application, the applicant jurisdiction shall be notified if the complete application is approved, conditionally approved or denied. Failure of the commission to approve, conditionally approve or deny an application within the time period set forth in this subsection shall be deemed an approval of the application. For every conditional approval, the applicant local government shall comply with the requirements set forth in the conditional approval including, but not limited to, incorporating into the proposed comprehensive plan amendment referenced in the application those changes recommended by the commission. Failure to incorporate the commission's recommended changes shall result in automatic revocation of the certificate thereby rendering both the complete application and the proposed comprehensive plan amendment of the applicant local government invalid and ineffective. For those conditional approvals granted prior to the effective date of this ordinance, revocation where provided shall occur in accordance with the terms of the resolution of certification. Continuances of hearings may be granted upon a request for a waiver by the applicant jurisdiction of the 90-day period referred to in this subsection, for up to an additional 90-day period as determined by the chairman of the commission. Any requests for continuances totaling longer than 90 days may only be granted by the commission at a noticed hearing.

(g) Within 30 days after final adoption pursuant to state law of any plan, element, or plan amendment previously certified by the commission, the local government adopting said plan, element, or plan amendment shall transmit a true and correct copy of said plan, element, or plan amendment to the commission.

(h) For any unit of local government, other than an adjacent jurisdiction, asserting that it is a substantially affected or aggrieved party pursuant to section 90-35(c) or 90-38, as the first item of business at the public hearing pertaining to the certificate of consistency of a comprehensive plan or element or amendment thereof, the commission shall render a determination of such unit of local government's status as a party to the public hearing based upon the contents of the required petition under section 90-35(c) or 90-38 as applicable and testimony and evidence presented at the hearing. In the event party status is denied by the commission, the unit of local government denied party status shall be entitled to be heard at the public hearing as a member of the public. As

used in this section, the term “substantially affected or aggrieved party” means any unit of local government that will suffer an adverse effect to an interest protected or furthered by its comprehensive plan when compared to the applicant jurisdiction’s local government comprehensive plan, element or amendment thereof based on the review criteria set forth in Section 90-37(c).

(Ord. No. 87-24, §4,7-23-87; Ord. No. 89-39, § 1,9-7-89; Ord. No. 91-39, § 1,11-21-91; Ord. No. 92-87, § 2, 10-8-92; Ord. No. 93-13, § 2, 5-20-93; Ord. No. 98-17, § I, 9-3-98; Ord. No. 99-16, §§ 1--3, 5-13-99; Ord. No. 2007-05, § 2, 2-22-07; Ord. No. 2012-16, § 1, 10-4-12)

**Sec. 90-36. Consultation with commission regarding application for certificate.**

The applicant or his representative may consult with the staff of the commission concerning the application for certificate under this article. However, any representation by the staff of the commission shall not relieve any person of any requirement of applicable special acts, general laws, articles, the Charter, this article or any other commission rules, regulations or standards, or constitute approval, express or implied.

(Ord. No. 87-24, § 5, 7-23-87)

**Sec. 90-37. Criteria for issuance of certificate.**

(a) Consistency shall be determined and a certificate shall be issued to the applicant, upon such conditions as the commission may direct, if the applicant affirmatively provides the commission with reasonable assurance based upon competent, substantial evidence that the proposed plan, element, or plan amendment is consistent with the comprehensive plans of (a) all other local governments which are adjacent to the land to be affected by the applicant’s proposed plan, element, or plan amendment, and (b) all other substantially affected and aggrieved local governments whose substantial interests are or will be affected by issuance of the certificate.

(b) For the purpose of subsection (a) of this section, a plan, element, or plan amendment shall be consistent if it is compatible with and in furtherance of such adjacent and substantially affected comprehensive plans when all such plans are construed as a whole. For purposes of this section, the phrase “compatible with” means that the plan, element, or plan amendment is not in conflict with such adjacent and substantially affected comprehensive plans. The phrase “in furtherance of” means to take action in the direction of realizing the goals or policies of such adjacent and substantially affected comprehensive plans. In addition to such requirements, consistency shall not be deemed to exist if the commission affirmatively determines that the plan, element, or plan amendment adversely affects intergovernmental cooperation and coordination.

(c) In determining whether a plan, element, or plan amendment adversely affects intergovernmental cooperation and coordination, the commission may, in its sole discretion, consider one or more of the following factors:

- (1) The extent to which the plan, element, or plan amendment provides for areawide or central utility service solutions;
- (2) The extent to which the plan, element, or plan amendment provides for areawide or regional transportation solutions;
- (3) The extent to which the plan, element, or plan amendment causes or may reasonably be anticipated to cause significant adverse impacts on infrastructure beyond the boundaries of one jurisdiction;
- (4) The extent to which the plan, element, or plan amendment causes or may reasonably be anticipated to cause significant adverse impacts on natural resources which extend beyond the boundaries of one jurisdiction;
- (5) The extent to which the plan, element, or plan amendment provides for the coordination of the timing and location of capital improvements in a manner to reduce duplication and competition; and
- (6) The existence of an agreement among all substantially affected local governments, ~~substantially affected parties (if any)~~ and the applicant local government which provides for all said governments' consent to the application. If the commission determines that such an agreement exists for any given application, then it shall be rebuttably presumed that said application does not adversely affect intergovernmental cooperation and coordination.

(d) For purposes of determining consistency under this section, the plan, element, or plan amendment and the comprehensive plans against which it is compared and analyzed shall be construed as a whole and no specific goal and policy shall be construed or applied in isolation from the other goals and policies in the plans. The commission and its professional staff shall not evaluate or make consistency determinations on whether a proposed comprehensive plan amendment is internally consistent with the comprehensive plan of the applicant jurisdiction.

(e) 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 as determined by the Commission, establishes that the proposed plan, element or plan amendment is not consistent with other comprehensive plans and adversely affects intergovernment cooperation and coordination based on the criteria contained in Section 90-37(c) above.~~

~~(f) Notwithstanding the other provisions of this article, for any small scale comprehensive plan amendment which meets the review by commission requirements~~

~~of section 90-35(d)(1)(a) shall be deemed consistent by the commission and a certification to this effect shall be issued within 40 days of the date of the complete application by the commission without the need to hold a public hearing, provided no written objections are timely issued or received by the commission. If a 21 day extension is requested pursuant to section 90-35(d)(2)c, then the small scale comprehensive plan amendment shall be deemed consistent by the commission if it meets the review by commission requirements of section 90-35(d)(1)(a), and a certificate issued within 60 days of the date of the complete application without any need to hold public hearing, provided no written objections are timely issued or received by the commission.~~

(f) [Intentionally left blank]

(g) Notwithstanding the other provisions of this article, for any small scale comprehensive plan amendment the failure to file a written objection to any such small scale comprehensive plan amendment shall be deemed a waiver of any right to a review by the commission and/or to intervene pursuant to section 90-38. If a written objection to any such small scale plan amendment is issued or received, then that plan amendment application shall be processed and reviewed in the same manner and subject to the same requirements as set forth in sections 90-35, 90-36 and 90-37.

(h) Notwithstanding anything to the contrary contained in this article, any modifications to the capital improvements element of a comprehensive plan done pursuant to F.S. § 163.3177(3)(b), which would otherwise be reviewable by the commission, and are not deemed to be amendments to the comprehensive plan pursuant to that statute, shall be exempt from further review by the commission.

(i) Each applicant has a continuing affirmative duty to submit the objections, recommendations and comments (ORC) report and any and all additional correspondence, notices, documentation, orders, proposed orders, agreements or other information except adversarially administrative pleadings in formal F.S. § 120.57(1) proceedings (collectively referred to in this section as “additional information”) prepared by, transmitted by, received from or agreed to by either the State of Florida Department of Economic Opportunity or the applicant, related to any comprehensive plan, element, or amendment previously certified as consistent by the commission. The commission shall have the right, power and authority to reopen and reconsider its decision to certify consistency and change or modify its conditions of certification applicable to any such plan, element, or amendment should the commission determine in its sole discretion that the additional information changes the facts and circumstances related to its prior certification until a final determination as to the validity of the plan, element of a plan, or plan amendment is made pursuant to the Community Planning Act (F.S. § 163.3161 et seq.), as amended from time to time. Should the applicant fail to submit to the commission a copy of any and all additional information within 30 days after receipt, transmittal, execution or creation (as applicable) by the applicant, the commission shall likewise have the right, power and authority to reopen and reconsider said certificate of consistency. The commission may initiate any such reconsideration proceeding by sending written notice to the applicant/certificate holder, shall schedule and advertise

such reconsideration proceeding as a public hearing no less than 60 days after the date of said notice, and may consider any issue and receive such evidence in said public hearing and its subsequent decision that it deems relevant. The commission shall render a written decision by resolution within 30 days from the date of said public hearing. Appeal from said decision shall be in the manner provided in this article for appeal of certifications of consistency.

(j) Notwithstanding any provision of this section to the contrary, an application for a certificate of plan consistency shall not be reviewed at a public hearing except as provided in section 90-35(d). When no public hearing is held, the chairman of the commission, based upon the recommendation of the professional staff of the commission, shall issue by letter a certificate of plan consistency as provided in section 90-35(d). This issuance of the certificate of plan consistency by letter is the final administrative action by the commission on the application. However, if a public hearing is called by the commission or is held pursuant to the request of ~~an adjacent jurisdiction or a substantially affected or aggrieved party~~ a unit of local government, the commission shall determine consistency pursuant to the criteria contained in this section; and ~~the applicant jurisdiction shall be required to establish by~~ based upon a preponderance of competent, substantial evidence ~~that its~~ presented at the hearing to determine whether ~~the~~ application meets the criteria specified in this section.

(Ord. No. 87-24, § 6, 7-23-87; Ord. No. 90-46, § I, 12-20-90; Ord. No. 91-39, § 2, 11-21-91; Ord. No. 92-87, § 3, 10-8-92; Ord. No. 93-13, § 3, 5-20-93; Ord. No. 2007-05, § 3, 2-22-07; Ord. No. 2012-16, § 1, 10-4-12)

### **Sec. 90-38. Intervention.**

~~Persons~~ Units of local government other than the original parties to a pending complete application under this article who are or may be substantially affected and aggrieved by the outcome of the proceeding may petition the commission for leave to intervene. Petitions for leave to intervene must be filed in writing at least five days before the date of the public hearing, and should, at a minimum, contain the following:

- (1) The name and address of the ~~intervenor~~ intervening unit of local government and an explanation of how its substantial interests may be substantially affected by the commission's determination;
- (2) If the ~~intervenor~~ intervening unit of local government intends to object to certification of consistency, a statement of all disputed issues of material fact, including specific objections to the pending application;
- (3) A demand for relief to which the ~~intervenor~~ intervening unit of local government deems itself entitled; and

- (4) Other information which the ~~intervenor~~intervening unit of local government contends is material and relevant.

Furthermore, the petition shall include allegations sufficient to demonstrate that the ~~intervenor~~intervening unit of local government is entitled to participate in the proceeding as a matter of constitutional or statutory right, or that the substantial interests of the ~~intervenor~~intervening unit of local government are subject to determination or may be affected by the outcome of the proceeding. Nothing in this section shall be deemed to prohibit or prevent members of the public from being heard at the public hearing required by section 90-35.

(Ord. No. 87-24, § 7, 7-23-87; Ord. No. 2012-16, § 1, 10-4-12)

#### **Sec. 90-39. Revocation of certificate.**

If the commission's professional staff advises the commission that the applicant jurisdiction or its agent submitted false or inaccurate material information in its complete application or at a public hearing, the commission shall hold a public hearing and if the Commission shall vote to revoke a certificate of plan consistency such action shall invalidate the plan, element, or plan amendment certified thereby.

(Ord. No. 87-24, § 8, 7-23-87; Ord. No. 2012-16, § 1, 10-4-12)

#### **Sec. 90-40. Appeals.**

(a) Any ~~substantially affected and aggrieved~~unit of local government ~~or other substantially affected and aggrieved party which~~which is either the applicant jurisdiction, unit of local government which has requested a public hearing pursuant to section 90-35(e)(2)(a)(ii), or has previously timely intervened pursuant to section 90-38 may contest the issuance, denial or revocation of a certificate of consistency by filing a petition for writ of certiorari along with a complete record of the proceeding(s) from which said certificate emanated so certified by the commission's records custodians, in the manner prescribed by the state appellate rules to the circuit court of the county, within 30 days after the date the commission's decision is filed with its secretary. The court shall not conduct a trial de novo. The proceedings before the commission, including the testimony of witnesses, and any exhibits, photographs, maps or other documents filed before them, shall be subject to review by the circuit court. The petition for writ of certiorari shall state how the commission erred and shall include all of the documents, papers, photographs, exhibits and transcripts constituting the record upon which the action appealed from was taken, or properly certified copies thereof in lieu of originals. The petition, along with the record, shall be filed in the circuit court within 30 days after the filing of the decision by the commission to which such petition is addressed. The court may extend the time for filing the record, including the transcript and exhibits, for good cause shown. The ~~person~~unit of local government filing the petition for certiorari shall be responsible for filing a true and correct transcript of the complete testimony of the witnesses.

(b) The petition for writ of certiorari shall be furnished to the original applicant, the owner of record of the subject property, to each attorney at law appearing for any person at the hearing before the Volusia Growth Management Commission, and to the Volusia Growth Management Commission. The commission shall suspend the issuance of its permit until the court has ruled upon the petition.

(c) The Volusia Growth Management Commission shall be a necessary and indispensable party to any appeal of its decisions. Any ~~other person including but not limited to an adjacent unit of~~ local government may intervene, pursuant to Florida Rule of Civil Procedure 1.230, as a respondent in the certiorari proceeding authorized by this section.

(Ord. No. 87-24, § 9, 7-23-87; Ord. No. 99-16, § 4, 5-13-99)

**Sec. 90-41. Enforcement.**

The commission may institute a civil action in a court of competent jurisdiction to seek injunctive relief to enforce compliance with this article or any certificate issued pursuant to this article.

(Ord. No. 87-24, § 10, 7-23-87)

**Sec. 90-42. Waiting period for reapplication for certificate.**

No local government shall have the right to file an application for certification pursuant to section 90-35 if the same plan, element, or plan amendment for which certification is applied has been the subject of an application before the commission within a period of six (6) months prior to the filing of the application. However, the applicant jurisdiction has the right to withdraw, without the penalty of the six (6) month waiting period, an application at any time up to fifteen (15) days before either (i) the issuance of a letter of certificate of plan consistency pursuant to section 90-37(j) or (ii) the date of the scheduled public hearing on the application pursuant to section 90-35(e). Such withdrawal of the application shall be made either electronically or in writing and delivered by either hand delivery, U.S. Mail or courier service to the commission. Electronic transmissions must be followed up by the applicant jurisdiction with a hard copy transmittal delivered to the commission as soon as possible.

(Ord. No. 87-24, § 11, 7-23-87; Ord. No. 2012-16, § 1, 10-4-12)

**Sec. 90-43. Article not to affect preexisting rights.**

Nothing in this article shall alter or affect rights previously vested or plans, elements, or plan amendments previously, finally and completely adopted in accordance with applicable state law prior to November 4, 1986.

(Ord. No. 87-24, § 12, 7-23-87; Ord. No. 2012-16, § 1, 10-4-12)

**Sec. 90-44. Ratification of past agreements.**

Notwithstanding anything to the contrary contained in this article, the following agreements are hereby ratified and confirmed and the plans, elements, and plan amendments involved therein are certified consistent for purposes of this article:

- (1) Agreement between the City of Daytona Beach, Florida, and Gerald Berson dated March 1987.
- (2) Agreement between the City of Port Orange, Florida, DSC of Newark Enterprises, Inc., and the County dated January 8, 1987.
- (3) Agreement between the City of Port Orange, Florida, S.C.B. Development Inc., and the County dated January 8, 1987.
- (4) Agreement between the City of Edgewater, Florida, Radnor/Edgewater, Inc., and the County dated January 12, 1987.
- (5) Agreement between the City of Port Orange, Sandalwood Inc., and the County dated January 5, 1987.
- (6) Agreement between the City of Port Orange, Jennie M. Krol and the County dated January 5, 1987.
- (7) County Council Ordinance No. 87-19, approving, among other things, amending the County comprehensive plan amendments related to Mosquito Lagoon, Hontoon Island and the North Peninsula.

(Ord. No. 87-24, § 13, 7-23-87)

Secs. 90-45 thru 90-50 – Reserved

**DIVISION 3 – VOLUSIA GROWTH MANAGEMENT COMMISSION  
ORGANIZATION**

**Sec. 90-51. Member Appointments**

There shall be one voting member from each municipality within the county and five voting members from the unincorporated area of the county. The appointment of each voting representative shall be made by the governing body of each respective jurisdiction. A voting member of the Commission may be appointed to the Commission so long as the voting member at such time of the appointment: (i) is not a candidate for

elective office and does not hold elective office with respect to any municipality in Volusia County or Volusia County; (ii) would not violate the dual-office holding provision of the Florida Constitution, and (iii) maintains a residence within the boundary of the appointing jurisdiction or the unincorporated area of Volusia County. In the event clause (i) or (ii) shall apply to a voting member during the term of appointment, there shall be declared an immediate vacancy on the date such voting member officially files the paperwork as a candidate for elective office or the date the voting member assumes the position creating the dual-office. The Volusia County School Board and the St. Johns River Water Management District shall each designate one nonvoting member to serve on the Commission. All members will serve until successors are appointed and qualified. Nonvoting members shall serve at the pleasure of their appointing authorities. Any voting or nonvoting member may be reappointed.

### **Sec. 90-52. Membership Term**

All terms of the current members appointed by a municipality and Volusia County shall expire based upon the original three year term of appointment previously designated by the Commission. For the period July 1, 2013, to and including July 1, 2015, the term for members of the Commission appointed by a municipality and Volusia County shall be transitioned so that the terms shall expire on a bi-annual basis and the approximately one-half of the current weighted vote shall be subject to appointment on a bi-annual basis. Members appointed by a municipality to a term beginning on July 1, 2012, shall be appointed to a three year term expiring on June 30, 2015. Members that are appointed by a municipality, other than the City of Deltona, for a term beginning July 1, 2013, shall be appointed for a four year term, expiring on June 30, 2017. The member appointed by the City of Deltona for a term beginning July 1, 2013, shall be appointed for a two year term expiring on June 30, 2015. Members that are appointed by a municipality for a term beginning July 1, 2014, shall be appointed for a three year term expiring on June 30, 2017. All members that are appointed by a municipality for a term beginning on and after July 1, 2015 shall be appointed to a four year term. The current terms for the two Volusia County members expiring on June 30, 2013, shall initially be for two years expiring on June 30, 2015, and thereafter shall for a four year term. The current terms for the three Volusia County members expiring on June 30, 2014, shall initially be for three years expiring on June 30, 2017, and thereafter shall be for a four year term.

### **Sec. 90-53. Member Removal, Attendance and Vacancies**

A member or officer may be removed by a weighted vote of two-thirds of the Commission for the intentional failure to disclose a voting conflict of interest as required by Section 112.3143 of Florida Statutes or other applicable law, for misfeasance or malfeasance. Misfeasance shall be any lawful action which is performed on behalf of or in connection with the Commission which is found to have been done in an illegal or improper manner. Malfeasance shall be any action which is performed on behalf of or in connection with the Commission which is found to be an act of wrongdoing or intentional misconduct.

In order for the Commission to carry out its duties and responsibilities to the best of its abilities, attendance at all regular meetings of the Commission is mandatory. If any member fails to attend three regularly scheduled Commission meetings during any calendar year ending December 31, the member's seat shall be deemed vacant. The Commission Chairman shall notify the member and appointing jurisdiction after two missed regular meetings. A vacancy on the Commission shall also occur upon the death of the Commission member, upon the member's resignation, upon the refusal of an appointee to accept a position as a member of the Commission, upon conviction of a felony, upon adjudication of the member by a court to be mentally incompetent. \_

Upon such removal or vacancy, the member's seat shall be deemed vacant and the Chairman of the Commission shall send written notification of the vacancy to the member and their appointing jurisdiction. A member may be reappointed by their respective jurisdiction if the seat is deemed vacant due to the failure to attend meetings of the Commission. Appointments to fill any vacancy shall be for the remainder of the unexpired term. The weighted vote apportioned to a vacant seat shall not be counted in determining whether or not a majority of the weighted vote is present and voting at a meeting of the Commission.

(Ord. No. 2012-16, § 1, 10-4-12)

**Sec. 90-54. Staff.**

The commission may retain attorneys, planners and other experts only as independent contractors. The commission with the approval of the county manager may employ administrative staff who shall be employees of the county; otherwise any administrative staff of the commission shall be leased employees. Any such county employee shall serve at the direction and pleasure of the commission; shall be unclassified under the provisions of the merit system; shall be paid according to the county compensation and classification plan in a range designated by the county personnel director; shall receive only those pay increases to which other county employees would be entitled or eligible; shall ~~accrue~~accrue leave and benefits otherwise applicable to a county employee; and shall comply with all rules and policies applicable to county employees not inconsistent with the direction of the commission. The commission shall select any such county employee under a competitive application process administered by the county personnel director who shall approve the starting salary of the employee. The commission shall adhere to the advice of the personnel director regarding the law governing the county as an employer and rules and policies applicable to county employees.

(Ord. No. 2014-02, § 1, 2-20-14)

**Secs. 90-55 – 90-70. – Reserved.**

<b>Summary report:</b>	
<b>Litéra® Change-Pro 7.5.0.176 Document comparison done on 2/8/2016 10:37:19 AM</b>	
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<b>Intelligent Table Comparison:</b> Active	
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Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>121</b>



## Volusia Growth Management Commission

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TO: Charter Review Commission Subcommittee

FROM: Gerald Brandon, VGMC Vice Chairman *GJB*

DATE: February 29, 2016

RE: Proposed Revisions to the VGMC Consistency Certification Rules

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With the next meeting of the Charter Review Commission (CRC) Subcommittee scheduled for Monday, March 7, 2016, I'd like to take this opportunity to provide you with an update on the status of the VGMC review of proposed rules amendments since my prior memorandum dated February 5, 2016 and the draft amendments dated 2-8-16 which were forwarded to you through County staff on February 8, 2016.

At the February 24, 2016 regular meeting of the VGMC, the Personnel, Operations & Procedures (POP) Committee presented the 2-8-16 draft rules amendments for the purpose of gathering comment and feedback from the full membership of the VGMC. It was not a public hearing and there was not a vote taken on the proposed rules amendments. Based upon the discussion, we can report that over 50% of the majority of members present, as well as over 50% of the weighted vote of those members present, expressed support for the rules amendments that were proposed by the POP committee in the 2-8-16 version of the draft.

There was also discussion relating to including language that would further define the "other duties" provision in the charter, as well as the question of whether or not an appointing local government has the authority to remove their appointed member from the commission. Since the commission is not advocating changes to the charter which would require a ballot question, VGMC staff has drafted additional provisions within the rules intended to address these issues. A redraft of the proposed rules revisions dated 2-26-16 has been prepared (a copy of which is attached), and the POP Committee is scheduled to meet on Thursday, March 3, 2016 to review the redraft. These two particular issues have been addressed in the following sections: 1) Pages 3 and 4, Section 90-33, a new subsection (9) has been added to further define "other duties"; and 2) Pages 20 and 21, Section 90-53, a new subsection (2) has been added to clarify

that an appointing unit of local government may remove its appointee consistent with its code of ordinances, if authorized by such code.

Following is a brief summary of the concepts and assumptions contained in the proposed draft revisions dated 2-26-16:

1) Thresholds for Review –

- a) All small scale amendments, and any applications that include properties being annexed that are located in an area subject to a Joint Planning Area (JPA) Agreement, shall be deemed consistent without VGMC staff review 30 days after receipt, unless an objection is filed by a unit of local government.

It should be noted, applications within these two categories represent approximately 64% of the applications received by the VGMC over the past 10 years.

- b) Applicant jurisdiction still has the duty to submit notice of the amendment to the VGMC and other jurisdictions.
- c) If amendment is related to an annexation/JPA, a copy of the JPA must be on file with the VGMC.
- d) If an objection/appeal is filed by a unit of local government, VGMC reviews the application and prepares a staff report, including recommendations, for the public hearing.

A question was raised at the February 24, 2016 meeting as to whether or not, based upon current charter language, the commission has the ability to automatically deem certain amendments as consistent without VGMC review. VGMC staff has drafted language intended to provide justification for the “deemed approved” recommendation for use in the preamble to the adoption ordinance so the actual charter language does not have to change. A copy of the draft language is attached as well.

2) Standing –

- a) Standing would be limited to units of local government.

- b) Unit of local government is defined as the county, municipalities within the county, and the Volusia County School Board.
  - c) Standing is automatic for an adjacent jurisdiction.
  - d) Non-adjacent units of local government would have to prove standing.
  - e) A provision is added directing individuals to address consistency concerns to their local government.
- 3) Notice of Applications –
- a) Delete provision requiring notice of application to be published in a newspaper.
  - b) Provision added for posting notice of application on the VGMC website.
  - c) Actual notice of each application provided to each unit of local government.
- 4) Time to Object/Appeal and Call for Hearing –
- a) All units of local government will follow the 28-day time frame to object/appeal.
  - b) Delete provision which allows an adjacent local government to request a 21-day extension to object/appeal.
- 5) Hearings –
- a) If a hearing is to be held, it must occur within 60 days of the request for hearing.
  - b) Standard/Burden of Proof – VGMC to determine consistency based upon the preponderance of competent substantial evidence presented at the hearing.
- 6) “Other Directly Related Duties” – Other duties would be limited to:
- a) Analysis and studies needed for review of pending applications before the commission.
  - b) Administrative duties for the operation of the commission.

- c) The commission acting as a mediator when requested by two or more units of local government to address an issue between such units of local government.

7) Membership –

Clarification that an appointing unit of local government may remove its appointee consistent with its code of ordinances.

As mentioned earlier, the POP Committee will be meeting on Thursday, March 3, 2016 to review this latest draft. The meeting will begin at 10:30 a.m. in conference room #149A at the Daytona Beach City Hall. It is anticipated the committee will vote on a recommendation relating to the proposed rules amendments to present to the full commission at a public hearing at the March 23, 2016 regular meeting.

I plan to attend the March 7, 2016 CRC Subcommittee to report on any further recommendations that may come out of the March 3<sup>rd</sup> POP Committee. If you should have any questions in the meantime, you can reach me through the VGMC office at (386) 947-1875, or [vgmc@volusia.org](mailto:vgmc@volusia.org).

**PROPOSED PREAMBLE LANGUAGE  
IN SUPPORT OF JUSTIFICATION FOR  
AUTOMATIC APPROVAL OF SMALL SCALE  
AMENDMENT AND JPA/ANNEXATION AMENDMENTS**

WHEREAS, Section 202.3 of the Volusia County Charter was originally created in 1986;  
and

WHEREAS, in 1986, the Florida Community Planning Act, Florida Statutes, Chapter 163, Part II, did not include provisions for an contemplated small scale comprehensive plan amendments or Joint Planning Area/Interlocal agreements regarding comprehensive plan amendments after annexation of property into a municipality; and

WHEREAS, between 2006 and 2015, the Volusia Growth Management Commission (commission) received 372 small scale comprehensive plan amendment applications and 14 large scale comprehensive plan amendments related to the annexation of property subject to a Joint Planning Area/Interlocal agreement; and

WHEREAS, all of those 372 small scale applications and 14 JPA applications after review pursuant to Section 90-37(c) of the Volusia County Code by VGMC Staff were recommended for approval (and only three were subject to public hearing based on a citizen initiated petition); and

WHEREAS, based on comments from the business community and the units of local government, there is a desire to streamline the certification review process under Section 202.3 of the Charter, where possible; and

WHEREAS, Section 202.3 of the Charter, in part, provides that no plan amendment “shall be valid or effective unless and until such plan... amendment has been reviewed by the commission and has been certified as consistent”; and

WHEREAS, based on the fact that:

- (1) Small scale amendments and JPA amendments were neither contemplated nor in existence when Section 202.3 of the Charter was written;
- (2) For the previous 10 years all small scale amendments and JPA amendments have been found consistent without the need for public hearing by VGMC staff under the review criteria contained in Section 90-37(c) of the Volusia County Code; and
- (3) There is a desire to streamline the certifications process where possible;

the commission recommends to the council and the council hereby accepts the premise that small scale amendments and JPA amendments may be deemed “consistent” without VGMC Staff review in accordance with Charter Section 202.3 by following the notice and appeal

procedures for small scale amendment and JPA amendments as set forth in the text of the amendments contained in the Ordinance below; and

## ARTICLE II. VOLUSIA GROWTH MANAGEMENT COMMISSION CONSISTENCY CERTIFICATION RULES AND ORGANIZATION

### DIVISION 1 – DEFINITIONS AND INTERPRETATION OF ARTICLE

#### Sec. 90-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Adjacent jurisdiction* means a local government whose territorial boundaries are physically contiguous to the land to be affected by a comprehensive plan or amendment thereto for which an applicant jurisdiction has applied to the commission for a certification or certificate. Notwithstanding any other provision of this article, which requires the commission to publish notice of receipt of an application pursuant to section 90-35(c), an adjacent jurisdiction, as defined in this subsection, shall have 28 days after receipt of an application by the commission to file any objections or comments on or request that a public hearing be held to consider an application.

*Applicant jurisdiction* means a local government which has applied to the commission for a certification or certificate regarding a comprehensive plan or amendment thereto.

*Area* and *area of jurisdiction* mean the total area qualifying under the provisions of F.S. § 163.3171, as amended from time to time, whether this be all of the lands lying within the limits of an incorporated municipality, lands in and adjacent to an incorporated municipality, unincorporated lands within the county, or areas comprising combinations of lands in incorporated municipalities and unincorporated areas of the county.

*Certification* and *certificate* mean a letter, resolution or other written document from the commission determining consistency or inconsistency of a comprehensive plan, element, plan amendment or portion thereof with other applicable plans.

*Charter* means the county Home Rule Charter, as amended.

*Commission* means the Volusia Growth Management Commission, a governmental entity created by the Charter.

*Comprehensive plan* means a plan that meets or is intended to meet the requirements of F.S. §§ 163.3177 and 163.3178.

*Large scale comprehensive plan amendment* means any plan amendment that requires a transmittal and adoption hearing and does not qualify for adoption pursuant to F.S. § 163.3187 ([small scale comprehensive plan amendment](#)) as amended from time to time.

*Small scale comprehensive plan amendment* means any plan amendment that only requires an adoption hearing and qualifies for adoption pursuant to F.S. § 163.3187(1)(c) as amended from time to time.

*Unit of local government* means Volusia County, each municipality within Volusia County and the School Board of Volusia County.

*Written or in writing* means a piece of correspondence or document, as context dictates, that must be provided on paper and delivered by either hand delivery, U.S. Mail or courier service. Electronic transmissions by themselves are not sufficient to be deemed “written” or “in writing” and must be followed up with a hard copy transmittal delivered by either hand delivery, U.S. Mail or courier service.

(Ord. No. 87-24, § 2, 7-23-87; Ord. No. 92-87, § 1, 10-8-92; Ord. No. 93-13, § 1, 5-20-93; Ord. No. 2007-05, § 1, 2-22-07; Ord. No. 2012-16, § 1, 10-4-12)

**Sec. 90-32. Interpretation of article.**

In the interpretation and application of this article, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the commission;
- (3) Deemed not to limit or repeal any other powers granted by other state statutes, the Charter, county ordinances or commission resolutions; and
- (4) Interpreted in a manner consistent with Section 202.3 of the Volusia County Charter and the Community Planning Act (F.S. § 163.3161 et seq.).

(Ord. No. 87-24, § 14, 7-23-87; Ord. No. 2012-16, § 1, 10-4-12)

**DIVISION 2 – Volusia Growth Management Commission  
Consistency Certification Rules**

**Sec. 90-33. Findings, purpose and intent.**

In adopting this article, the county council makes and expresses the following findings, purpose and intent:

- (1) In accordance with section 1303 of the county Charter, the 1985-1986 county Charter review commission was formed to prepare necessary amendments to the Charter.

(2) In consideration of the rapid growth of the county in recent years and the adoption of landmark comprehensive planning legislation in the state, the Charter review commission determined that growth management was a top priority among its objectives.

(3) As a result of information, evidence and testimony received at numerous public meetings and hearings, the Charter review commission proposed the creation of the Volusia Growth Management Commission to determine the consistency of the municipalities' and the county's comprehensive plans and any amendments thereto with each other.

(4) The citizens of the county voted at a referendum held on November 4, 1986, to adopt Charter amendments creating the commission and granting certain powers to the commission.

(5) The main purpose of the commission is to provide an effective means for coordinating the plans of municipalities and the county, in order to provide a forum for the several local governments in the county to cooperate with each other in coordinating the provision of public services to and improvements for the citizens of the county, and create incentives to foster intergovernmental cooperation and coordination.

(6) The commission held an organizational meeting on February 25, 1987, and then, through its committee on growth management related issues, duly noticed and held further public hearings on May 18, 1987, and May 21, 1987, and held commission hearings on June 10, 1987, and June 24, 1987, to develop rules of procedure for and enforcement of the commission's consistency review within the time provided for under the Charter amendment.

(7) On June 24, 1987, the commission adopted Resolution No. 87-5, which recommended that county council adopt this article, which contains the rules of procedure for consistency review and enforcement as required by the Charter amendment.

(8) Since the Volusia County Council adoption of Ordinance No. 87-24, the Commission has undertaken a diligent process with numerous public hearings to consider amendments to the Commission's certification rules as codified in Volusia County Code Chapter 90, Article II. The Commission has addressed revisions to the procedures for submitting and processing applications and has acknowledge advances in technology recognizing the use of electronic communications in defined circumstances.

(9) For clarification of the statement in the Volusia County Charter Section 202.3 which, in part, reads "The commission may perform such other directly related duties as the commission from time to time deems necessary", the

commission has recommended to the council and the council hereby adopts and limits the interpretation of “other directly related duties” to the following:

- (a) Analysis and studies needed for review of pending applications before the commission.
- (b) Administrative duties for operation of the commission.
- (c) The commission acting as a mediator when requested by two or more units of local government to address an issue between such units of local government.

(Ord. No. 87-24, § 1, 7-23-87; Ord. No. 2012-16, § 1, 10-4-12)

**Sec. 90-34. Certificate of plan consistency required.**

(a) A certificate of consistency is hereby established. Except as set forth in subsections (b) and (c) below, no comprehensive plan, element of a comprehensive plan or amendment of a comprehensive plan adopted after November 4, 1986, shall be valid or effective unless and until such comprehensive plan, element of a comprehensive plan or amendment has been reviewed by the commission and has been certified consistent in accordance with this article. This certificate of consistency will be required in addition to any other necessary licenses, permits and/or approvals applicable to land development.

(b) As of June 1, 2016, a copy of a small scale comprehensive plan amendment and the small scale application form as prescribed by the commission shall be forwarded to the commission by the adopting unit of local government immediately after adoption of the small scale comprehensive plan amendment. The small scale comprehensive plan amendment will not be reviewed by the commission staff and such amendment shall be deemed to be consistent thirty (30) days after receipt by the commission, unless there is an objection filed by a unit of local government within twenty-eight (28) days. Notice of the small scale comprehensive plan application shall be provided in accordance with Section 90-35(c). If an objection is filed, the commission staff shall conduct a review of the small scale comprehensive plan amendment and a hearing shall be held in accordance with Sections 90-35 and 90-37. If no objection is filed, the commission’s written acknowledgment of the small scale application form shall serve as the certificate of consistency, effective thirty (30) days after receipt by the commission.

(c) As of June 1, 2016, for those large scale comprehensive plan amendments which are: (i) the initial comprehensive plan amendment by the unit of local government for the property after annexation of such property into the unit of local government; and (ii) such property is located in an area subject to a Joint Planning Area (JPA) Agreement pursuant to Section 163.3171, Florida Statutes, will not be reviewed by the commission staff and such amendment shall be deemed to be consistent thirty (30) days after receipt by the commission of a copy of the comprehensive plan amendment and the

JPA application form as prescribed by the commission, unless there is an objection filed by an unit of local government within twenty-eight (28) days. Notice of the JPA large scale comprehensive plan amendment application shall be provided in accordance with Section 90-35(c). If an objection is filed, the commission staff shall conduct a review of the JPA large scale comprehensive plan amendment and a hearing shall be held in accordance with Sections 90-35 and 90-37. If no objection is filed, the commission's written acknowledgment of the JPA application form shall serve as the certificate of consistency, effective thirty (30) days after receipt by the commission.

(Ord. No. 87-24, § 3, 7-23-87)

**Sec. 90-35. Application for certificate; procedure for issuance; public hearing requirements.**

(a) After November 4, 1986, except for small scale comprehensive plan amendments and Joint Planning Area (JPA) large scale amendments as set forth in Section 90-34(b) and (c), respectively, all local governments who desire to adopt or amend a comprehensive plan or element or amendment thereof, in accordance with this article, shall submit an application on forms as the commission may prescribe, and shall submit such information as the commission may require. The commission may require such local government to submit any additional information reasonably necessary for proper evaluation of the application.

(b) An applicant jurisdiction shall, at a minimum, submit the following information and documents with any application filed under this section with the commission:

(1) Information required by rule or order of the commission, which shall include, at a minimum, a detailed inquiry into:

a. The extent to which any plan, element, or plan amendment submitted proposes to create adjacent, incompatible land uses and the manner in which the adverse impact of these incompatible uses may be eliminated or mitigated; and

b. The extent to which any plan, element, or plan amendment proposes policies and/or physical improvements which may adversely impact the objective of promoting the coordination of infrastructure affecting more than one area of jurisdiction.

(2) An application shall, at a minimum, contain the following information in addition to that required in subsection (b)(1) of this section:

a. The application shall contain a list of all adjacent governments and units of local government.

b. For each entity listed in subsection (b)(2)a of this section, the application shall indicate the following:

1. Existing coordination mechanisms used in preparation of the plan, element, or plan amendment being submitted.
2. Any recommendations contained in the proposed plan, element, or plan amendment which affect the plans for land use or infrastructure contained in the plans of adjacent local governments within the county.
3. The facts supporting the recommendations contained in subsection (b)(2)b.2 of this section and the identification of recommended measures which may be used to mitigate or eliminate any adverse impacts resulting from these recommendations.
4. Identification of specific problems and needs within the comprehensive plans of said adjacent governments which would benefit from improved or additional intergovernmental coordination, and recommended solutions for resolving these potential problems and needs.

(c) The applicant jurisdiction shall submit one original and five copies of each application. The original application and two copies of each application and all supporting documents filed with the commission's administrative staff must be a hard copy in writing; the remaining copies may be in either hard copy or electronic format. The commission shall process all applications and shall cause public notice of receipt of all applications to be given as provided in this article. When the commission receives an application for approval of a comprehensive plan or amendment thereto, its administrative staff shall date-stamp the application. Within two days on which the VGMC office is open for business, the administrative staff shall conduct a completeness review of the application to ensure: the application is completely filled out; required signatures are present and notarized; required number of copies are included; notification to required jurisdictions and agencies as indicated on application has been accomplished; summary of amendment(s) is provided; verification of the acreage and location for map amendments; verification that staff reports, and current and proposed land use maps, where applicable, are included. If any of the foregoing information is incomplete, the administrative staff shall contact the applicant jurisdiction to obtain the necessary information. An application shall be deemed complete once all information is provided, either at the initial submission of the application or after receipt of all of the minimum requirements described in this subsection (c) based upon the determination of the administrative staff and such application shall have placed upon the written application an additional date designating such application as a complete application (the "complete application"). The administrative staff shall thereafter send a dated cover letter and a notice of the complete application to the applicant jurisdiction and direct that

electronic versions of the complete application be sent by the applicant jurisdiction to all adjacent jurisdictions, and to such other persons and in such other manner as may be prescribed by the commission. The administrative staff shall also send a copy of the complete application to the commission's professional staff, ~~and, within 10 days of the date.~~ Notice of the complete application, ~~shall cause notice of receipt of the complete application to be published one time only in a newspaper of general circulation in Volusia County~~ shall be provided by commission administrative staff by US Mail to each unit of local government and posted on the commission's website. Such notice shall be in substantially the form provided below:

VOLUSIA COUNTY  
VOLUSIA GROWTH MANAGEMENT  
COMMISSION  
Notice of Application

- (1) The type of application (e.g., adoption of or amendment to a comprehensive plan);
- (2) A description and location of the subject matter or activity covered by the action, and the commission's case number, and the name and address of any person at the applicant jurisdiction to whom comments should be directed;
- (3) A copy of the complete application and accompanying material are available for public inspection at the commission's offices at (commission's address);
- (4) The notice shall contain paragraphs which read substantially as follows:
  - a. Any ~~substantially affected or aggrieved party~~ unit of local government shall have a right pursuant to the Volusia Growth Management Commission Comprehensive Plan Consistency Certification Rules to petition for a public hearing on the application. The petition must contain the information set forth below and must be received by the commission at the address set forth above within 2428 days of ~~publication of this notice~~ the receipt of the application with such date being [insert date]. A copy of the petition must also be mailed at the time of filing with the commission to (the named contact person at the address indicated to whom comments should be directed at the applicant jurisdiction).
  - b. Failure to file a petition within 2428 days of ~~publication of this notice~~ the receipt of the application, that date being [insert date], constitutes a waiver of any right any ~~person~~ unit of local government may have to a public hearing pursuant to the Volusia Growth Management Commission Comprehensive Plan Consistency Certification Rules ~~and to participate as a substantially affected or aggrieved party.~~ Any subsequent intervention will only be as allowed pursuant to section 90-38 of the Volusia County Code which codifies the Volusia Growth Management Commission Comprehensive Plan Consistency Certification Rules.

c. The petition shall contain the following information:

- i. The name, address and telephone number of ~~each petitioner~~the petitioning unit of local government; the commission's case number and the location of the proposed activity;
- ii. A statement of how and when each ~~petitioner~~petitioning unit of local government received notice of the application;
- iii. A statement of how ~~each petitioner's~~the petitioning unit of local government's substantial interests are affected by the proposed application;
- iv. A statement of the material facts disputed by ~~each petitioner~~the petitioning unit of local government, if any;
- v. A detailed statement outlining the reasons why the proposed amendment violates the criteria for evaluating compatibility in Sec. 90-37; and
- vi. A statement of relief sought by the ~~petitioner~~petitioning unit of local government, stating precisely the action the ~~petitioner~~petitioning unit of local government wants the commission to take with respect to the pending application.

d. Any person who believes the unit of local government in which they reside could be substantially affected or aggrieved by the application is directed to address that concern with the elected governing body of the unit of local government in which they reside.

(d) All applications received by the commission shall be processed and all determinations of consistency shall be made as provided in this subsection unless a public hearing is held on an application. If the commission holds a public hearing on an application as allowed pursuant to this subsection, the commission shall determine consistency pursuant to the criteria provided in section 90-37.

(1) Review by commission.

- a. Within 30 days after the date of the complete application, the commission's professional staff shall examine the complete application; determine whether any adjacent jurisdiction or any other ~~person, including a substantially affected or aggrieved party as defined in this article,~~unit of local government has commented or requested a public hearing; notify the applicant jurisdiction of any apparent errors or omissions; request any additional information pertinent to the application; and determine whether the applicant jurisdiction has addressed the conditions of approval of past

commission resolutions and whether the application meets the consistency test as set forth in this article. If the commission's professional staff needs additional information to review the application, a request for additional information (RAI) shall be forwarded in writing to the applicant jurisdiction. A written request for additional information shall toll the running of the time provided by this article for the commission to act on the application until either: (i) the RAI response is deemed complete by the commission's professional staff; or (ii) the applicant jurisdiction provides written notice that no further information in response to the RAI will be provided and that the applicant jurisdiction desires to proceed to public hearing on the application. An applicant jurisdiction's failure to supply additional information shall not be grounds for denial of certification unless the commission's professional staff timely requests the additional information from the applicant jurisdiction in writing within 30 days after the complete application date on the application.

b. If the commission's professional staff determines that the applicant jurisdiction has not addressed the conditions of approval of outstanding commission resolutions, the commission shall hold a public hearing.

c. If the commission's professional staff determines that an application may be inconsistent under the test set forth in section 90-37, the commission shall hold a public hearing.

d. [Reserved]

(2) Units of local government.

~~a. (2) Adjacent jurisdictions.~~ Within 28 days after the date of the complete application, any ~~adjacent jurisdiction~~ unit of local government may:

~~a.(i)~~ Submit written comments regarding the merits or the sufficiency to the commission regarding the complete application; or

~~b.(ii)~~ Request a public hearing; ~~or~~ in accordance with Section 90-35(c).

~~c. Request, for good cause shown in writing and submitted to the chairman of the commission with a copy to the applicant jurisdiction, one 21-day extension of time to comment on the complete application.~~

~~The chairman of the commission shall acknowledge in writing such 21-day extension requested by an adjacent jurisdiction. Once one adjacent jurisdiction has requested a 21-day extension, that extension shall apply to all adjacent jurisdictions and no additional~~

~~extensions of time by any other adjacent jurisdiction to comment on the pending application shall be honored. However, once one request for an extension of time has been made that request shall toll all time periods provided in this subsection.~~

b. If the unit of local government requesting the hearing is an adjacent jurisdiction then the unit of local government shall participate as a party and is deemed to be substantially affected and aggrieved either upon requesting a public hearing or filing a petition for leave to intervene pursuant to Section 90-38.

(3) When a public hearing is requested by either the commission's professional staff or by the applicant jurisdiction pursuant to subsection (d)(1)a. of this section or by ~~an adjacent jurisdiction or a substantially affected or aggrieved party~~ a unit of local government, the commission shall hold a public hearing on the complete application within 60 days after the public hearing is requested but in no event more than 90 days from the date of the complete application (less any tolled time), unless the commission shall not have a regular meeting scheduled or a quorum of the members of the commission shall not be obtained for the regular meeting, which shall by necessity extend the date of the public hearing beyond 90 days. At any public hearing held by the commission to determine whether the adoption of a comprehensive plan or amendment thereto is or can be made to be consistent through conditions, the commission shall comply with the criteria of section 90-37.

(4) Unless a public hearing is otherwise required pursuant to this article, no public hearing shall be held on any complete application received by the commission unless timely requested by the staff, by ~~an adjacent jurisdiction or by a substantially affected or aggrieved party~~ a unit of local government. If no public hearing is requested ~~by any adjacent jurisdiction~~, it shall be presumed that all ~~adjacent jurisdictions~~ units of local government approved the adoption of or amendment to the comprehensive plan of the applicant jurisdiction.

(5) Nothing in this section shall be construed to prohibit the submission of relevant evidence to the commission at any time up to and including a public hearing called by the commission pursuant to this article.

(e) Nothing contained in this article shall preclude the concurrent processing of applications for certification and the state's related review pursuant to the Community Planning Act (F.S. § 163.3161 et seq.), as amended from time to time. For large scale comprehensive plan amendments the application for certification by the commission shall be submitted to the commission simultaneously with, or prior to, transmittal of a proposed plan amendment to the Florida Department of Economic Opportunity ("DEO"). ~~For small scale comprehensive plan amendments the application shall be submitted by the local government concurrent with the forwarding of the recommendations of the Local Planning Agency to the local governing body pursuant to F.S. § 163.3174(4)(a) as amended from time to time.~~ The commission shall have 30 days from receipt of any

large scale comprehensive plan application to make comments to the DEO. The commission shall have 30 days from the date of the complete application to make comments to the applicant local government. For all comprehensive plan amendments other than those deemed approved under Section 90-34(b) as a small scale comprehensive plan amendment or under Section 90-34(c) as a JPA large scale comprehensive plan amendment, the commission certification shall be a prerequisite to any final public hearing on a comprehensive plan amendment by the applicant local government. The applicant local government's response shall be to both the commission and DEO and shall occur simultaneous with or prior to the applicant local government's response to the objections, recommendations and comments report by the DEO for the comprehensive plan amendment, if applicable.

(f) Every application under this section shall be approved, conditionally approved, or denied within 90 days after the date of the complete application by the commission unless either: (i) the 90-day time period on a complete application has been tolled pursuant to subsection (d)(1) of this section ~~or extended pursuant to subsection (d)(3),~~ in which case the 90-day time period does not include that period from the date of commencement of the tolling until the tolling is stopped; or (ii) ~~an extension is requested and granted as provided in subsection (d)(2) of this section;~~ or (iii) if anytime on or after 60 days from the date of the complete application there occurs a force majeure event/emergency/natural disaster which disrupts normal governmental functions within any part of the county then there shall be an automatic extension of the 90-day time period for an additional 30 days. The chairman of the commission shall provide written notice to the applicant of implementation of an automatic extension under subsection (iii) above. Within 15 days after the conclusion of a public hearing held on the complete application, the applicant jurisdiction shall be notified if the complete application is approved, conditionally approved or denied. Failure of the commission to approve, conditionally approve or deny an application within the time period set forth in this subsection shall be deemed an approval of the application. For every conditional approval, the applicant local government shall comply with the requirements set forth in the conditional approval including, but not limited to, incorporating into the proposed comprehensive plan amendment referenced in the application those changes recommended by the commission. Failure to incorporate the commission's recommended changes shall result in automatic revocation of the certificate thereby rendering both the complete application and the proposed comprehensive plan amendment of the applicant local government invalid and ineffective. For those conditional approvals granted prior to the effective date of this ordinance, revocation where provided shall occur in accordance with the terms of the resolution of certification. Continuances of hearings may be granted upon a request for a waiver by the applicant jurisdiction of the 90-day period referred to in this subsection, for up to an additional 90-day period as determined by the chairman of the commission. Any requests for continuances totaling longer than 90 days may only be granted by the commission at a noticed hearing.

(g) Within 30 days after final adoption pursuant to state law of any plan, element, or plan amendment previously certified by the commission, the local government adopting

said plan, element, or plan amendment shall transmit a true and correct copy of said plan, element, or plan amendment to the commission.

(h) For any unit of local government, other than an adjacent jurisdiction, asserting that it is a substantially affected or aggrieved party pursuant to section 90-35(c) or 90-38, as the first item of business at the public hearing pertaining to the certificate of consistency of a comprehensive plan or element or amendment thereof, the commission shall render a determination of such unit of local government's status as a party to the public hearing based upon the contents of the required petition under section 90-35(c) or 90-38 as applicable and testimony and evidence presented at the hearing. In the event party status is denied by the commission, the unit of local government denied party status shall be entitled to be heard at the public hearing as a member of the public. As used in this section, the term "substantially affected or aggrieved party" means any unit of local government that will suffer an adverse effect to an interest protected or furthered by its comprehensive plan when compared to the applicant jurisdiction's local government comprehensive plan, element or amendment thereof based on the review criteria set forth in Section 90-37(c).

(Ord. No. 87-24, §4,7-23-87; Ord. No. 89-39, § 1,9-7-89; Ord. No. 91-39, § 1,11-21-91; Ord. No. 92-87, § 2, 10-8-92; Ord. No. 93-13, § 2, 5-20-93; Ord. No. 98-17, § 1, 9-3-98; Ord. No. 99-16, §§ 1--3, 5-13-99; Ord. No. 2007-05, § 2, 2-22-07; Ord. No. 2012-16, § 1, 10-4-12)

**Sec. 90-36. Consultation with commission regarding application for certificate.**

The applicant or his representative may consult with the staff of the commission concerning the application for certificate under this article. However, any representation by the staff of the commission shall not relieve any person of any requirement of applicable special acts, general laws, articles, the Charter, this article or any other commission rules, regulations or standards, or constitute approval, express or implied.

(Ord. No. 87-24, § 5, 7-23-87)

**Sec. 90-37. Criteria for issuance of certificate.**

(a) Consistency shall be determined and a certificate shall be issued to the applicant, upon such conditions as the commission may direct, if the applicant affirmatively provides the commission with reasonable assurance based upon competent, substantial evidence that the proposed plan, element, or plan amendment is consistent with the comprehensive plans of (a) all other local governments which are adjacent to the land to be affected by the applicant's proposed plan, element, or plan amendment, and (b) all other substantially affected and aggrieved local governments whose substantial interests are or will be affected by issuance of the certificate.

(b) For the purpose of subsection (a) of this section, a plan, element, or plan amendment shall be consistent if it is compatible with and in furtherance of such

adjacent and substantially affected comprehensive plans when all such plans are construed as a whole. For purposes of this section, the phrase “compatible with” means that the plan, element, or plan amendment is not in conflict with such adjacent and substantially affected comprehensive plans. The phrase “in furtherance of” means to take action in the direction of realizing the goals or policies of such adjacent and substantially affected comprehensive plans. In addition to such requirements, consistency shall not be deemed to exist if the commission affirmatively determines that the plan, element, or plan amendment adversely affects intergovernmental cooperation and coordination.

(c) In determining whether a plan, element, or plan amendment adversely affects intergovernmental cooperation and coordination, the commission may, in its sole discretion, consider one or more of the following factors:

- (1) The extent to which the plan, element, or plan amendment provides for areawide or central utility service solutions;
- (2) The extent to which the plan, element, or plan amendment provides for areawide or regional transportation solutions;
- (3) The extent to which the plan, element, or plan amendment causes or may reasonably be anticipated to cause significant adverse impacts on infrastructure beyond the boundaries of one jurisdiction;
- (4) The extent to which the plan, element, or plan amendment causes or may reasonably be anticipated to cause significant adverse impacts on natural resources which extend beyond the boundaries of one jurisdiction;
- (5) The extent to which the plan, element, or plan amendment provides for the coordination of the timing and location of capital improvements in a manner to reduce duplication and competition; and
- (6) The existence of an agreement among all substantially affected local governments, ~~substantially affected parties (if any)~~ and the applicant local government which provides for all said governments’ consent to the application. If the commission determines that such an agreement exists for any given application, then it shall be rebuttably presumed that said application does not adversely affect intergovernmental cooperation and coordination.

(d) For purposes of determining consistency under this section, the plan, element, or plan amendment and the comprehensive plans against which it is compared and analyzed shall be construed as a whole and no specific goal and policy shall be construed or applied in isolation from the other goals and polices in the plans. The commission and its professional staff shall not evaluate or make consistency determinations on whether a proposed comprehensive plan amendment is internally consistent with the comprehensive plan of the applicant jurisdiction.

(e) 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 as determined by the Commission, establishes that the proposed plan, element or plan amendment is not consistent with other comprehensive plans and adversely affects intergovernment cooperation and coordination based on the criteria contained in Section 90-37(c) above.~~

~~(f) Notwithstanding the other provisions of this article, for any small scale comprehensive plan amendment which meets the review by commission requirements of section 90-35(d)(1)(a) shall be deemed consistent by the commission and a certification to this effect shall be issued within 40 days of the date of the complete application by the commission without the need to hold a public hearing, provided no written objections are timely issued or received by the commission. If a 21 day extension is requested pursuant to section 90-35(d)(2)c, then the small scale comprehensive plan amendment shall be deemed consistent by the commission if it meets the review by commission requirements of section 90-35(d)(1)(a), and a certificate issued within 60 days of the date of the complete application without any need to hold public hearing, provided no written objections are timely issued or received by the commission.~~

(f) [Intentionally left blank]

(g) Notwithstanding the other provisions of this article, for any small scale comprehensive plan amendment the failure to file a written objection to any such small scale comprehensive plan amendment shall be deemed a waiver of any right to a review by the commission and/or to intervene pursuant to section 90-38. If a written objection to any such small scale plan amendment is issued or received, then that plan amendment application shall be processed and reviewed in the same manner and subject to the same requirements as set forth in sections 90-35, 90-36 and 90-37.

(h) Notwithstanding anything to the contrary contained in this article, any modifications to the capital improvements element of a comprehensive plan done pursuant to F.S. § 163.3177(3)(b), which would otherwise be reviewable by the commission, and are not deemed to be amendments to the comprehensive plan pursuant to that statute, shall be exempt from further review by the commission.

(i) Each applicant has a continuing affirmative duty to submit the objections, recommendations and comments (ORC) report and any and all additional correspondence, notices, documentation, orders, proposed orders, agreements or other information except adversarially administrative pleadings in formal F.S. § 120.57(1) proceedings (collectively referred to in this section as “additional information”) prepared by, transmitted by, received from or agreed to by either the State of Florida Department of Economic Opportunity or the applicant, related to any comprehensive plan, element, or amendment previously certified as consistent by the commission. The commission shall have the right, power and authority to reopen and reconsider its decision to certify consistency and change or modify its conditions of certification applicable to any such

plan, element, or amendment should the commission determine in its sole discretion that the additional information changes the facts and circumstances related to its prior certification until a final determination as to the validity of the plan, element of a plan, or plan amendment is made pursuant to the Community Planning Act (F.S. § 163.3161 et seq.), as amended from time to time. Should the applicant fail to submit to the commission a copy of any and all additional information within 30 days after receipt, transmittal, execution or creation (as applicable) by the applicant, the commission shall likewise have the right, power and authority to reopen and reconsider said certificate of consistency. The commission may initiate any such reconsideration proceeding by sending written notice to the applicant/certificate holder, shall schedule and advertise such reconsideration proceeding as a public hearing no less than 60 days after the date of said notice, and may consider any issue and receive such evidence in said public hearing and its subsequent decision that it deems relevant. The commission shall render a written decision by resolution within 30 days from the date of said public hearing. Appeal from said decision shall be in the manner provided in this article for appeal of certifications of consistency.

(j) Notwithstanding any provision of this section to the contrary, an application for a certificate of plan consistency shall not be reviewed at a public hearing except as provided in section 90-35(d). When no public hearing is held, the chairman of the commission, based upon the recommendation of the professional staff of the commission, shall issue by letter a certificate of plan consistency as provided in section 90-35(d). This issuance of the certificate of plan consistency by letter is the final administrative action by the commission on the application. However, if a public hearing is called by the commission or is held pursuant to the request of ~~an adjacent jurisdiction or a substantially affected or aggrieved party~~ a unit of local government, the commission shall determine consistency pursuant to the criteria contained in this section; and ~~the applicant jurisdiction shall be required to establish by~~ based upon a preponderance of competent, substantial evidence ~~that its~~ presented at the hearing to determine whether the application meets the criteria specified in this section.

(Ord. No. 87-24, § 6, 7-23-87; Ord. No. 90-46, § I, 12-20-90; Ord. No. 91-39, § 2, 11-21-91; Ord. No. 92-87, § 3, 10-8-92; Ord. No. 93-13, § 3, 5-20-93; Ord. No. 2007-05, § 3, 2-22-07; Ord. No. 2012-16, § 1, 10-4-12)

### **Sec. 90-38. Intervention.**

~~Persons~~ Units of local government other than the original parties to a pending complete application under this article who are or may be substantially affected and aggrieved by the outcome of the proceeding may petition the commission for leave to intervene. Petitions for leave to intervene must be filed in writing at least five days before the date of the public hearing, and should, at a minimum, contain the following:

- (1) The name and address of the ~~intervenor~~intervening unit of local government and an explanation of how its substantial interests may be substantially affected by the commission's determination;
- (2) If the ~~intervenor~~intervening unit of local government intends to object to certification of consistency, a statement of all disputed issues of material fact, including specific objections to the pending application;
- (3) A demand for relief to which the ~~intervenor~~intervening unit of local government deems itself entitled; and
- (4) Other information which the ~~intervenor~~intervening unit of local government contends is material and relevant.

Furthermore, the petition shall include allegations sufficient to demonstrate that the ~~intervenor~~intervening unit of local government is entitled to participate in the proceeding as a matter of constitutional or statutory right, or that the substantial interests of the ~~intervenor~~intervening unit of local government are subject to determination or may be affected by the outcome of the proceeding. Nothing in this section shall be deemed to prohibit or prevent members of the public from being heard at the public hearing required by section 90-35.

(Ord. No. 87-24, § 7, 7-23-87; Ord. No. 2012-16, § 1, 10-4-12)

#### **Sec. 90-39. Revocation of certificate.**

If the commission's professional staff advises the commission that the applicant jurisdiction or its agent submitted false or inaccurate material information in its complete application or at a public hearing, the commission shall hold a public hearing and if the Commission shall vote to revoke a certificate of plan consistency such action shall invalidate the plan, element, or plan amendment certified thereby.

(Ord. No. 87-24, § 8, 7-23-87; Ord. No. 2012-16, § 1, 10-4-12)

#### **Sec. 90-40. Appeals.**

(a) Any ~~substantially affected and aggrieved~~unit of local government or other substantially affected and aggrieved party whichwhich is either the applicant jurisdiction, unit of local government which has requested a public hearing pursuant to section 90-35(e)(2)(a)(ii), or has previously timely intervened pursuant to section 90-38 may contest the issuance, denial or revocation of a certificate of consistency by filing a petition for writ of certiorari along with a complete record of the proceeding(s) from which said certificate emanated so certified by the commission's records custodians, in the manner prescribed by the state appellate rules to the circuit court of the county, within 30 days after the date the commission's decision is filed with its secretary. The court shall not conduct a trial de novo. The proceedings before the commission,

including the testimony of witnesses, and any exhibits, photographs, maps or other documents filed before them, shall be subject to review by the circuit court. The petition for writ of certiorari shall state how the commission erred and shall include all of the documents, papers, photographs, exhibits and transcripts constituting the record upon which the action appealed from was taken, or properly certified copies thereof in lieu of originals. The petition, along with the record, shall be filed in the circuit court within 30 days after the filing of the decision by the commission to which such petition is addressed. The court may extend the time for filing the record, including the transcript and exhibits, for good cause shown. The ~~person~~unit of local government filing the petition for certiorari shall be responsible for filing a true and correct transcript of the complete testimony of the witnesses.

(b) The petition for writ of certiorari shall be furnished to the original applicant, the owner of record of the subject property, to each attorney at law appearing for any person at the hearing before the Volusia Growth Management Commission, and to the Volusia Growth Management Commission. The commission shall suspend the issuance of its permit until the court has ruled upon the petition.

(c) The Volusia Growth Management Commission shall be a necessary and indispensable party to any appeal of its decisions. Any ~~other person including but not limited to an adjacent~~unit of local government may intervene, pursuant to Florida Rule of Civil Procedure 1.230, as a respondent in the certiorari proceeding authorized by this section.

(Ord. No. 87-24, § 9, 7-23-87; Ord. No. 99-16, § 4, 5-13-99)

**Sec. 90-41. Enforcement.**

The commission may institute a civil action in a court of competent jurisdiction to seek injunctive relief to enforce compliance with this article or any certificate issued pursuant to this article.

(Ord. No. 87-24, § 10, 7-23-87)

**Sec. 90-42. Waiting period for reapplication for certificate.**

No local government shall have the right to file an application for certification pursuant to section 90-35 if the same plan, element, or plan amendment for which certification is applied has been the subject of an application before the commission within a period of six (6) months prior to the filing of the application. However, the applicant jurisdiction has the right to withdraw, without the penalty of the six (6) month waiting period, an application at any time up to fifteen (15) days before either (i) the issuance of a letter of certificate of plan consistency pursuant to section 90-37(j) or (ii) the date of the scheduled public hearing on the application pursuant to section 90-35(e). Such withdrawal of the application shall be made either electronically or in writing and delivered by either hand delivery, U.S. Mail or courier service to the commission.

Electronic transmissions must be followed up by the applicant jurisdiction with a hard copy transmittal delivered to the commission as soon as possible.

(Ord. No. 87-24, § 11, 7-23-87; Ord. No. 2012-16, § 1, 10-4-12)

**Sec. 90-43. Article not to affect preexisting rights.**

Nothing in this article shall alter or affect rights previously vested or plans, elements, or plan amendments previously, finally and completely adopted in accordance with applicable state law prior to November 4, 1986.

(Ord. No. 87-24, § 12, 7-23-87; Ord. No. 2012-16, § 1, 10-4-12)

**Sec. 90-44. Ratification of past agreements.**

Notwithstanding anything to the contrary contained in this article, the following agreements are hereby ratified and confirmed and the plans, elements, and plan amendments involved therein are certified consistent for purposes of this article:

(1) Agreement between the City of Daytona Beach, Florida, and Gerald Berson dated March 1987.

(2) Agreement between the City of Port Orange, Florida, DSC of Newark Enterprises, Inc., and the County dated January 8, 1987.

(3) Agreement between the City of Port Orange, Florida, S.C.B. Development Inc., and the County dated January 8, 1987.

(4) Agreement between the City of Edgewater, Florida, Radnor/Edgewater, Inc., and the County dated January 12, 1987.

(5) Agreement between the City of Port Orange, Sandalwood Inc., and the County dated January 5, 1987.

(6) Agreement between the City of Port Orange, Jennie M. Krol and the County dated January 5, 1987.

(7) County Council Ordinance No. 87-19, approving, among other things, amending the County comprehensive plan amendments related to Mosquito Lagoon, Hontoon Island and the North Peninsula.

(Ord. No. 87-24, § 13, 7-23-87)

Secs. 90-45 thru 90-50 – Reserved

## **DIVISION 3 – VOLUSIA GROWTH MANAGEMENT COMMISSION ORGANIZATION**

### **Sec. 90-51. Member Appointments**

There shall be one voting member from each municipality within the county and five voting members from the unincorporated area of the county. The appointment of each voting representative shall be made by the governing body of each respective jurisdiction. A voting member of the Commission may be appointed to the Commission so long as the voting member at such time of the appointment: (i) is not a candidate for elective office and does not hold elective office with respect to any municipality in Volusia County or Volusia County; (ii) would not violate the dual-office holding provision of the Florida Constitution, and (iii) maintains a residence within the boundary of the appointing jurisdiction or the unincorporated area of Volusia County. In the event clause (i) or (ii) shall apply to a voting member during the term of appointment, there shall be declared an immediate vacancy on the date such voting member officially files the paperwork as a candidate for elective office or the date the voting member assumes the position creating the dual-office. The Volusia County School Board and the St. Johns River Water Management District shall each designate one nonvoting member to serve on the Commission. All members will serve until successors are appointed and qualified. Nonvoting members shall serve at the pleasure of their appointing authorities. Any voting or nonvoting member may be reappointed.

### **Sec. 90-52. Membership Term**

All terms of the current members appointed by a municipality and Volusia County shall expire based upon the original three year term of appointment previously designated by the Commission. For the period July 1, 2013, to and including July 1, 2015, the term for members of the Commission appointed by a municipality and Volusia County shall be transitioned so that the terms shall expire on a bi-annual basis and the approximately one-half of the current weighted vote shall be subject to appointment on a bi-annual basis. Members appointed by a municipality to a term beginning on July 1, 2012, shall be appointed to a three year term expiring on June 30, 2015. Members that are appointed by a municipality, other than the City of Deltona, for a term beginning July 1, 2013, shall be appointed for a four year term, expiring on June 30, 2017. The member appointed by the City of Deltona for a term beginning July 1, 2013, shall be appointed for a two year term expiring on June 30, 2015. Members that are appointed by a municipality for a term beginning July 1, 2014, shall be appointed for a three year term expiring on June 30, 2017. All members that are appointed by a municipality for a term beginning on and after July 1, 2015 shall be appointed to a four year term. The current terms for the two Volusia County members expiring on June 30, 2013, shall initially be for two years expiring on June 30, 2015, and thereafter shall for a four year term. The current terms for the three Volusia County members expiring on June 30, 2014, shall initially be for three years expiring on June 30, 2017, and thereafter shall be for a four year term.

**Sec. 90-53. Member Removal, Attendance and Vacancies**

**(1) Action by the Commission.**

- a.** A member or officer may be removed by a weighted vote of two-thirds of the Commission for the intentional failure to disclose a voting conflict of interest as required by Section 112.3143 of Florida Statutes or other applicable law, for misfeasance or malfeasance. Misfeasance shall be any lawful action which is performed on behalf of or in connection with the Commission which is found to have been done in an illegal or improper manner. Malfeasance shall be any action which is performed on behalf of or in connection with the Commission which is found to be an act of wrongdoing or intentional misconduct.
- b.** In order for the Commission to carry out its duties and responsibilities to the best of its abilities, attendance at all regular meetings of the Commission is mandatory. If any member fails to attend three regularly scheduled Commission meetings during any calendar year ending December 31, the member's seat shall be deemed vacant. The Commission Chairman shall notify the member and appointing jurisdiction after two missed regular meetings. A vacancy on the Commission shall also occur upon the death of the Commission member, upon the member's resignation, upon the refusal of an appointee to accept a position as a member of the Commission, upon conviction of a felony, upon adjudication of the member by a court to be mentally incompetent.
- c.** Upon such removal or vacancy, the member's seat shall be deemed vacant and the Chairman of the Commission shall send written notification of the vacancy to the member and their appointing jurisdiction. A member may be reappointed by their respective jurisdiction if the seat is deemed vacant due to the failure to attend meetings of the Commission. Appointments to fill any vacancy shall be for the remainder of the unexpired term. The weighted vote apportioned to a vacant seat shall not be counted in determining whether or not a majority of the weighted vote is present and voting at a meeting of the Commission.

**(2) Action by the Appointing Unit of local government.**

**The appointing governing body of each jurisdiction of a voting representative shall retain those rights, if any, to remove the appointed voting representative as contained in the appointing governing body's code of ordinances. If the appointing governing body's code of ordinances does not provide for removal of an appointed voting representative from office then such appointee shall**

have the right to carry out his or her full term. In the event an appointed voting representative is removed from office, then the replacement appointed voting representative shall serve for the remainder of the prior appointed voting representative's term.

(Ord. No. 2012-16, § 1, 10-4-12)

**Sec. 90-54. Staff.**

The commission may retain attorneys, planners and other experts only as independent contractors. The commission with the approval of the county manager may employ administrative staff who shall be employees of the county; otherwise any administrative staff of the commission shall be leased employees. Any such county employee shall serve at the direction and pleasure of the commission; shall be unclassified under the provisions of the merit system; shall be paid according to the county compensation and classification plan in a range designated by the county personnel director; shall receive only those pay increases to which other county employees would be entitled or eligible; shall ~~accrue~~accrue leave and benefits otherwise applicable to a county employee; and shall comply with all rules and policies applicable to county employees not inconsistent with the direction of the commission. The commission shall select any such county employee under a competitive application process administered by the county personnel director who shall approve the starting salary of the employee. The commission shall adhere to the advice of the personnel director regarding the law governing the county as an employer and rules and policies applicable to county employees.

(Ord. No. 2014-02, § 1, 2-20-14)

**Secs. 90-55 – 90-70. – Reserved.**