

CHARTER REVIEW COMMISSION

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

Derek Triplett

Mark Watts

Lisa Ford Williams

CHARTER REVIEW COMMISSION DAYTONA BEACH INTERNATIONAL AIRPORT DENNIS R. MCGEE ROOM

Monday, March 14, 2016
5:30 p.m.

A G E N D A

- I. Call to Order
- II. Roll Call
- III. Approval of minutes of February 1, 2016 [Pages 2-9]
- IV. Correspondence Received [Pages 10-65]
- V. Public Participation (Limit 3 minutes)
- VI. Volusia Growth Management Commission (VGMC)
 - A. Subcommittee Report
 1. Proposed Rules of Procedures
 - a) February 4, 2016 [Pages 66-92]
 - b) March 3, 2016 [Pages 93-143]
 - B. County Attorney – Power and Duty, Section 202.3 [Pages 144-147]
 - C. Guest Speaker – Jim Sellen, VGMC Planning Consultant
 - D. Mark Watts – Application of proposed Rules of Procedure changes to specific scenarios [Pages 148-201]
 - E. Discussion and Vote
- VII. Written Correspondence from Charter Commission members
 - A. Pat Drago [Pages 202-203]
 - B. Peter Heebner [Page 204]
- VIII. Draft Amendments – County Attorney [Pages 205-229]
- IX. Discussion by Commission of matters not on the agenda
- X. Adjourn – next meeting, April 11, 2016 at 5:30 in the DBIA – Dennis R. McGee Room

**CHARTER REVIEW COMMISSION
VOLUSIA COUNTY, FLORIDA**

**MINUTES OF THE MEETING OF
February 1, 2016**

CALL TO ORDER

Chair Brown called the meeting to order at 5:30 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 Hyatt Brown, Frank Bruno Jr., Frank Darden, Patricia Drago, Ambassador Stanley Escudero, Dr. Phillip Fleuchaus, David Haas, Peter Heebner, Patricia Northey, Mark Watts, and Lisa Ford Williams. Also present were County Attorney Dan Eckert, County Manager Jim Dinneen, Councilperson Doug Daniels, Councilperson Josh Wagner, county support staff and members of the public. Chair Brown informed the Commission that Dr. Bailey had been released from rehabilitation, however, would not be attending and Glenn Ritchey Sr. would not be attending due to a schedule conflict. James Morris had previously advised of his absence for this meeting. Derek Triplett was not present.

APPROVAL OF MINUTES

Frank Bruno Jr. made a motion to approve the minutes of the January 11, 2016 meeting. The motion was seconded by Mark Watts. The motion was approved unanimously.

CORRESPONDENCE RECEIVED

Chair Brown mentioned that the correspondence received was included in the agenda packet and asked if anyone wished to comment on the correspondence; there were no remarks from the commission.

PUBLIC PARTICIPATION

Chair Brown opened the floor to public participation and reminded the audience that speakers are allotted three minutes.

John Bandorf of volusiaexposed.com spoke about converting the Medical Examiner's office from a county office to a state office. Mr. Bandorf provided an example of this and stated that if the Medical Examiner's office is not changed from county office to state office, it will cost tax payers money. Mr. Bandorf added that the county needs an extra layer of protection to prevent a perceived conflict of interest. Chair Brown asked the

members of the Commission if there were any questions for Mr. Bandorf; there were no questions from the commission.

Chair Brown stated that there was no additional public participation.

PRESENTATION BY GUEST SPEAKERS

Chair Brown opened the floor to a presentation by Councilperson Doug Daniels and noted that a presentation by Councilperson Josh Wagner would follow. Chair Brown added that they were allotted five minutes.

Councilperson Daniels thanked the Commission for the opportunity to present and spoke about economic development. Councilperson Daniels stated that the average net wealth in Daytona Beach is \$14,000 and stated that it takes a blue ribbon group to come together and develop an economic development plan to get the county out of the position that we are currently in. Councilperson Daniels stated that according to the Brookings Institute, out of the top 100 metropolitan areas, Volusia County is number 88 and since 2009, the county's standard of living has declined one percent.

Councilperson Daniels suggested that the County develop a strategic plan which covers education and health care. He noted that the county has gone from an average age of 43 to 46 with no net population of growth, therefore, leaving the county with an old and poor population. He further suggested a local option sales tax and stated that it can be done by charter.

Chair Brown welcomed questions by members of the Commission. Frank Darden reiterated that Councilperson Daniels suggested a sales tax increase and asked Councilperson Daniels by how much would the tax be raised. Councilperson Daniels stated that it would be anywhere from \$0- \$0.01. He stated that the increase should be specific and provided examples relating to the county's need for infrastructure.

Frank Darden asked if there is a direct correlation with higher tax and bringing young people back to Volusia County. Councilperson Daniels stated that the county would have to vet projects to make sure that they happen and to move the county forward.

Ambassador Escudero asked if there were other organizations that served as a blue ribbon committee and if not, how would the commission be constructed. Councilperson Daniels answered and said that it can be done through the charter.

Ambassador Escudero asked for clarification. Mark Watts stated that Councilperson Daniels suggested that the county move forward with the local option sales tax and to create an infrastructure that is charter based. Councilperson Daniels confirmed and added that the county needs an economic development project to increase wealth by increasing high paying jobs.

Dr. Fleuchaus stated that he doesn't see how the charter prevents economic development and asked if county council has the power to issue a local sales tax.

Councilperson Daniels stated that a panel like the Charter Review Commission would have to be created to vet the proposals and come up with an economic development plan centered on infrastructure development.

Frank Bruno Jr. stated that the Charter Review Commission enables the County Council. He stated that he agrees that the county needs infrastructure, however, doesn't think that the recommendation should come from the commission.

Patricia Drago stated that the county has major economic development challenges and agrees that the county needs a strategic plan, however, it should not be consultant driven. She added that an infrastructure bank would be highly appropriate but was unsure if the Charter Review Commission should form it. Patricia Northey agreed and asked Councilperson Daniels if an independent group should take ownership of the infrastructure.

Councilperson Daniels confirmed and stated that it can be done by the Commission or by a referendum.

Councilperson Josh Wagner began by saying that he believes Volusia County has a great charter and stated that a mechanism needs to be in place for people to strive. He stated that a local sales tax is a great idea because we need infrastructure. He stated the best way to promote business with fewer restrictions is to get out of the way. He discussed the Dunn Avenue extension as an example of recent infrastructure within the county. He added that local option sales tax is the smartest, most economical initiative that the County can do as \$0.01 is equal to about \$64 million per year.

Mr. Bruno stated that you have to educate people and allow it to fly on its own merit otherwise it won't go anywhere.

Ms. Northey asked Councilperson Wagner if he followed what recently happened in Seminole County and stated that Seminole County doubled what they thought they would get because they had a plan.

Ms. Drago stated that the government needs to get out of the way except when it's infrastructure and added that we need to plan for infrastructure strategically; Councilperson Wagner agreed.

ARTICLE IV – ADMINISTRATIVE BRANCH- COUNTY MANAGEMENT

Chair Brown went over each section contained in Article IV and asked if there were any comments regarding these sections.

Ambassador Escudero asked for the amount of compensation for the county manager. Mr. Dinneen replied by stating that he made \$240,000 by contract.

ARTICLE VI – ADMINISTRATIVE DEPARTMENTS OF THE GOVERNMENT

Chair Brown went over each section contained in Article VI and asked if there were any comments regarding these sections.

Patricia Drago referred to section 601.1 (2) and asked if that was the appropriate section for the commission to review and discuss the recommendation of the Medical Examiner; Chair Brown confirmed and read section 601.1 (2) aloud.

Dan Eckert stated that the charter allows county council to establish a medical examiner by a code of ordinances and have him or her designated as a department head, however, it is not the charter that does that. Mr. Eckert referenced Florida Statute 406.17 and read it aloud. He added that the county charter did so in 1995.

Ms. Drago asked how many charter counties have a medical examiner on staff, or use a state medical examiner. Mr. Eckert stated that he is unable to answer that because he is unsure of an exact number.

Frank Darden asked if there was a statute that allows termination of a constitutional officer's state responsibility. Mr. Eckert stated that Article VIII of the constitution allows abolishment or transfer of duties under the charter's transfer of duties.

Dr. Fleuchaus asked if the annotated charter outlines why it was done and if it was economically successful. Mr. Eckert stated that the charter outlines centralized services and suggests that it may be attributable to being taxed at a lower per capita rate in comparison to other counties. Dr. Fleuchaus added that the Sheriff, Property Appraiser, and Supervisor of Elections were department heads and not constitutional officers.

Ambassador Escudero asked what the rationale was for change and if there are any advantages. Mr. Eckert explained that it was approved by the voters.

Mr. Dinneen stated that Volusia County has a unique charter and believes that it is the model for the state. He stated that elected department heads are absolutely independent and he would never interfere with his or her authority. He stated that the reason for the change was to eliminate duplication in government as they do not have to create staff and as a result saved tax payers approximately \$12 million in overhead costs annually.

Ms. Drago asked for the number of charter counties that use the state and local level medical examiners.

Deanie Lowe stated that as a former Supervisor of Elections, a benefit of having an elected department head is that you get a lot more continuity of employees that work for the county and that overhead costs are reduced because of that.

Mark Watts asked Mr. Eckert for clarification regarding whether or not they could address the issues under 601.1. Mr. Eckert stated that commission members cannot because of the transfer of duties and it would create a partial repeal of the charter.

Mr. Dinneen spoke about Section 602- Department directors. He suggested language modification to reflect changes within as divisions and departments have grown. Chair Brown requested that Mr. Eckert draft language to include these changes to present at the next meeting.

ARTICLE X – PERSONNEL ADMINISTRATION

Chair Brown went over each section contained in Article X and asked if there were any comments regarding these sections.

Pat Drago noted that the commission received comments on Section 1003.

David Haas stated that the term personnel director was archaic and asked for consideration to modify the term to human resources. Chair Brown requested that Mr. Eckert draft language to modify the term personnel to human resources for discussion at the next meeting.

ARTICLE XI - FINANCE

Chair Brown went over each section contained in Article XI and asked if there were any comments regarding these sections.

Mark Watts asked for clarification regarding Section 1104 and asked if it was obsolete. Mr. Eckert clarified that it was provided in a previous draft.

ARTICLE XII – CODE OF ETHICS

Chair Brown asked if there were comments on Article XII.

Patricia Drago noted that the commission received comments on Section 1201 regarding the code of ethics; Chair Brown confirmed.

Mark Watts asked if there were holes in the county's current ethics structure that the commission should consider. Frank Bruno Jr., stated that the county operates under the state's ethical standards and practices and does not have an issue with the practice.

Pete Heebner asked for clarification regarding the way that it is administered under the current structure. Mr. Eckert clarified that it is managed by the Commission of Ethics

through a state administered process. Chair Brown asked if any citizen could file a complaint and Mr. Eckert confirmed.

Mr. Bruno stated that in the forty five years that Volusia County has had a charter, there haven't been any issues on the staff or council level. Mr. Eckert clarified by stating that there has been grievances, however, no one has been found guilty.

ARTICLE XIV- SPECIAL TAX DISTRICTS AND AUTHORITIES

Chair Brown went over each section contained in Article XIV and asked if there were any comments regarding these sections.

Chair Brown noted that the sections contained in Article XIV have been repealed and asked Mr. Eckert if the sections in Article XIV were included in a previous clean up. Mr. Eckert stated that the articles that were repealed had been left in place and the special tax districts listed in Section 1434 were still in existence.

Chair Brown requested that Mr. Eckert clean up the language contained in Article XIV and provide amendments as necessary for review at the next Charter Review Commission meeting.

Mr. Eckert noted that in Sections 1401-1433, the abolishment serves as a historical record.

Further discussion ensued and Chair Brown stated that Mr. Eckert would provide additional information at the next meeting.

REPORT FROM SUBCOMMITTEE

Chair Brown stated that Frank Bruno Jr., would provide a report from the subcommittee meeting on behalf of Glenn Ritchey Sr. in his absence. He noted that members of the Volusia Growth Management Commission (VGMC) were present in the audience to talk about issues mentioned during the subcommittee meeting and that Gerald Brandon, Vice Chairman of the VGMC would speak after Mr. Bruno.

Mr. Bruno commented on the meeting that was held at noon on January 25, 2016 at the Daytona Beach International Airport. He stated that the meeting was chaired by Glenn Ritchey Sr. and that subcommittee members Pat Drago, and Frank Bruno Jr. were present. He also commented that Charter Review Commission member Pete Heebner was present and asked to join the subcommittee in the absence of Ambassador Stanley Escudero.

Mr. Bruno stated that minutes of the January 4, 2016 meeting were approved and members of the subcommittee received a verbal and written report from Mr. Brandon on behalf of the VGMC Personnel, Operations and Procedures (POP) committee. Mr. Bruno stated that the VGMC POP committee met on January 21, 2016 and a copy of

the report was sent to the Charter Review Commission and the general public. He mentioned that there was no additional discussion on matters not on the agenda and the meeting was adjourned at 1:00 p.m. and an additional subcommittee meeting was not scheduled.

Chair Brown called upon members of the VGMC to discuss what they have been doing and to answer questions that members of the commission may have.

Mr. Brandon, Vice Chairman of the VGMC commented on the VGMC POP committee meeting that was held on January 21, 2016. He stated that members of the committee analyzed information given from previous Charter Review Commission meetings for items of consideration with possible solutions. He stated that a meeting was scheduled for February 4, 2016 and welcomed questions from members of the Charter Review Commission.

Chair Brown commented that the VGMC and the Charter Review Commission are making substantial headway and would like consideration of small and large thresholds, standing for governments only, and the burden of proof. He invited members of the Charter Review Commission to weigh in on the discussion and stated that he would like to come to a reasonable compromise.

Discussion ensued amongst members of the Charter Review Commission. Mr. Brandon stated that he would bring the three items of consideration to the POP for consideration.

Pete Heebner invited everyone to read the POP report that was presented at the subcommittee meeting. He asked if the proposed changes were to change the procedural rules and not to amend the charter. Mr. Brandon advised that if it is not in the charter, the rules can be amended.

Members of the commission discussed different scenarios such as zoning, small scale planning at great lengths.

Chair Brown asked the VGMC to come up with recommendations for the Charter Review Commission. He stated that if the VGMC and the Charter Review Commission agreed with the recommendations, the recommendations should then go before County Council for approval by 2/3 vote before going on the ballot in November.

David Haas quoted "The commission may perform such other directly related duties as the commission from time to time deems necessary" and stated that the sentence is broad. Mr. Brandon advised that it encompasses the VGMC's budget. Mr. Haas suggested that the language be narrowed. Chair Brown agreed and asked the VGMC to revise the language.

DISCUSSION BY COMMISSION OF MATTERS NOT ON THE AGENDA

Mr. Haas discussed Section 303.4 and stated that when there is an election, the term shall begin on the first day of January after the election. In all non charter counties, elected officials take their seat the first meeting in November. Chair Brown stated that the State Legislature takes effect immediately and Pat Drago stated that the School Board does as well.

Chair Brown asked members of the commission for ideas regarding elected officials taking office immediately. He asked if there was a reason for taking office in January and asked that the topic is added to the next agenda.

Ambassador Stanley Escudero asked when the next subcommittee meeting will be. Chair Brown asked that Glenn Ritchey Sr. work with staff to establish a date and time for the next subcommittee meeting.

Dr. Fleuchaus asked staff to print a copy of the annotated charter.

Ms. Drago spoke about the homeless issue in Volusia County and expressed dismay of the inability of local governments working together. She stated that the county and the cities are at across purposes which are detrimental. She commented that the deliberative bodies do not deliberate well together and asked for the input of members of the commission.

Chair Brown asked if there was a countywide group that could assess the need and develop a plan for consideration by the elected official. Ms. Drago commented that she would like to know what some of the other counties have done to successfully address homelessness issues. Mr. Bruno stated that the county had VCOG, which worked well; however, it no longer exists.

Pat Northey commented that it is an item worthy of discussion and stated the county is missing a group that will discuss important issues.

Mr. Dinneen stated that there is a misconception that the County and the City of Daytona Beach does not get along and stated that the only fight is the money needed for operation of a facility.

Ms. Drago stated that it is an unacceptable issue and there needs to be a common ground.

Chair Brown stated that it is a worthy issue, however, may not fit in the charter. He welcomed a discussion at a later date.

ADJOURNMENT

Chair Brown adjourned the meeting at 7:26 p.m. The next meeting will take place on March 14, 2016 at 5:30 p.m. in the Dennis R. McGee Room at the Daytona Beach International Airport, 700 Catalina Drive, Daytona Beach, Florida.

From: Larry Arrington <arrington.larry@gmail.com>
To: "VCCharterReview@volusia.org" <VCCharterReview@volusia.org>
Date: 3/6/2016 5:09 PM
Subject: Charter Review Public comments
Attachments: The Civitas Project 2-19-16 (2) (2).pdf

Dear Members of the Charter Review Commission:

I write to you as President and Founding Director of the Civitas Project, a newly-formed private, non-profit organization in alliance with Stetson University and chaired by Stetson political science professor T. Wayne Bailey. I invite you to visit the following web site: thecivitasproject.org. for more information about us.

I also write to you as a citizen and a former County Manager of Volusia County (1995-2000). I have attached a document that contains three essays. I ask you to read them (especially the first two). These contain recommendations for consideration by the Charter Review Commission. The first essay will give you more info about why I'm making these recommendations and about my experience and background.

Please contact me at 386-717-0169 or email me at arrington.larry@gmail.com if you have questions or comments. Thank you for your consideration

Larry Arrington
President
The Civitas Project
Sent from Mail for Windows 10



The Civitas Project: Three Essays Addressing Problems of Governance and Poverty

By Larry Arrington
February, 2016 (Copyright@2016)

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Man's capacity for justice makes democracy possible, but man's inclination to injustice makes democracy necessary.

---Reinhold Niebuhr

In an age of dysfunctional government, effective leadership capacity is the threshold issue. That means being able to listen to others, surround yourself with people smarter than you, gather a governing majority and above all have an actual implementation strategy...There is a tone of ugliness creeping across the world, as democracies retreat, as tribalism mounts, as suspiciousness and authoritarianism take center stage.

---David Brooks

Introduction and Executive Summary

Introduction

This paper argues that Volusia County, like the nation as a whole, has lost its vision of goodness and sustainability. We have entered an age of disruption, anxiety and fear, hyper-partisan ideology, and exhaustion. Our present dysfunction is rooted in the incapacity to govern with good leadership and quality political institutions. This is as much a moral challenge as a political one.

Truthfully, we are cut off from the best of the moral *and* political heritage grounding our founders' aspirations. Individually and collectively, we too often mirror the worst of our national heritage. Our public life is in crisis. Our local political behavior in recent years also shows that we are cut off from the heritage of the leaders who established the Volusia County Charter in the early 1970s during what is termed the Golden Age of Florida Politics.¹

We are facing tremendous challenges brought about by disruption of our economic, natural, and social systems. Unfortunately, the political system and other institutions of society as a whole, including the religious sphere, are not responding well to these challenges.

The core moral problem is at the level of the individual citizen, extending to our collective political life, which is emphasized in these essays. But reform of political institutions alone is not enough. Each of us must do some "soul searching" about the kind of place we want to live in and leave to the generations to come.

Large numbers of contemporary Americans have forgotten that liberty is conditioned on a commitment to work in common cause for the common good; that citizens are free to agree or to disagree with the collective decisions of the body politic, but their individual freedom is not unfettered from responsibility to the public interest as a whole.

Our major institutions cannot produce goodness and sustainability unless individual citizens are willing to sacrifice purely selfish material interests in favor of the public interest. We are not meant to be merely a transactional people serving selfish interests at the expense of others and to the detriment of the biosphere we inhabit. Evidence that we are falling short of the American promise abounds here in Volusia County.

This "white paper" is written within this philosophical and prophetic landscape. It consists of three essays, and is prepared for key leaders in Volusia County who are concerned about the direction of our region and about governance generally. Some specific recommendations are offered to the Charter Review Commission (CRC). The

CRC is busy this year examining the Volusia County Charter, which it does at least once every ten years. The present conflict and confusion about homelessness is symptomatic of deeper problems, and teaches many lessons, so a case example about the problems of poverty and homelessness is included among these essays.

I became interested in preparing such a paper as a citizen who is highly concerned about the damage being caused by our failure to lead well. The goodness and sustainability of our region is imperiled by political dysfunction and inept public management.

After a brief personal introduction, the guiding ideas are presented in Essay One. The second essay presents some ideas about changes to the Volusia County Charter and improvements to the local governance of the county. Essay Three is about the experience of other urban metro areas with homelessness and the problems of poverty generally, concentrating on work accomplished in Pinellas County in the Tampa Bay region. This gives us a glimpse into governance of one of Florida's largest and most densely developed coastal counties as it struggles with the problems of urban regeneration.

Please allow me to introduce myself. (My bio is attached.) I am a semi-retired resident of DeLand, who holds graduate and undergraduate degrees in political science from Stetson University; a husband, father, and private citizen, who is a former employee of Volusia County Government. I worked for the county in phases totaling eighteen years of service beginning as an intern in the county manager's office and ending with a tenure as county manager (1995-2000). Since leaving the employ of Volusia County, I have done planning and management consulting work for public, private and non-profit clients throughout Florida, including many city and county governments and non-profits.

I recently finished a three year stint as an executive for Pinellas County government. Pinellas, with St. Petersburg and Clearwater as the best known of 24 cities, has about 1,000,000 residents. This peninsula within a peninsula bordering the Gulf of Mexico and Tampa Bay, experienced massive post-World War II growth before other counties in the I-4 corridor and is a harbinger of things to come.

As Pinellas County Government's chief strategy officer, I led the county's planning, growth management and economic development agencies, and for some of my time there, I led the public works, utilities, transportation, environmental management, and solid waste and related functions.



Prior to beginning my tenure in Pinellas, our consulting firm completed a strategic plan for the City of Orlando. I have long believed that Volusia County needs to be better connected with the economic and social development of Central Florida, extending to Tampa Bay. After working in Pinellas and with Mayor Buddy Dyer in Orlando and then watching him execute his strategic plan with proficiency and great success, I am even more aware of three capacities Volusia needs: 1) intergovernmental and inter-sector collaboration of good quality; 2) systems thinking, the ability to connect the dots among the challenges we face; and 3) co-creation of desired futures with strong supporting coalitions of engaged citizens.

I recently spent time in a meeting with St. Petersburg's Mayor Rick Kriseman, discussing his governance challenges and the capacity he is building to help foster a sustainable community. I write about these capacities in these essays.

Our consulting firm also completed a strategic plan for Tampa Bay Water, the innovative collaborative water supplier, which is the state's first major experiment with desalination. We also put together the Peace-River Manasota Water Planning Alliance, which consisted of public water suppliers in the counties south of Tampa Bay to Collier County. Florida's water crises (including drinking water supply, water quality, flooding problems, extremes of weather and sea level rise) and environmental resilience problems generally are plainly scary. But that discussion, while touched upon here, calls for different white paper.

My consulting partner, Dr. Herb Marlowe, helped plan and facilitate the development of the Pinellas County Homeless Coalition. Separately and together, we helped craft strategic plans and community visions in several edge cities in both urban regions, including work in Hillsborough County.

Herb for many years has helped the City of DeLand with its strategic planning (without my involvement because my wife worked there). I am proud to say that my hometown is a leader in mastering the art of strategic planning with a sustainability vision. The fact that my wife, Dale Arrington, who recently was named Orange City Manager, was Assistant City Manager of DeLand for the last decade, makes me prouder. Michael Pleus, the City Manager of DeLand and President of the Florida City-County Management Association, worked on my staff when I was County Manager of Volusia County. Together with [Mayor Bob Apgar](#), a former Board Member of the Florida League

of Cities and recipient of the organization's highest award, the E. Harris Drew Lifetime Achievement Award, they are carrying forward the Volusia tradition of excellence in governance.

Since leaving the post of Volusia County Manager in 2000, I've worked throughout Florida with teams of people who put together analyses of, and responses to, the social, economic, and environmental challenges facing the varied metro regions of the state. I share these experiences because they helped me understand Florida's urban challenges, and the diversity of approaches people are deploying to respond.

Last spring I was invited to speak to the Volusia League of Women Voters about challenges facing Volusia County and how the upcoming Charter Review Commission process might be used to address them. Preparing for the League presentation prompted me to organize my thinking about the issues I'm writing about here. Now that I am semi-retired back home in Volusia, I am able to reflect on my experiences, and think about how we are doing as we try to respond to our public challenges. I don't like what I see, with some notable exceptions.

From the Gulf of Mexico to the Atlantic Ocean across Florida's Main Street, there is much exhilarating and positive change. There also are many challenges and lessons to be learned from others. As things now stand, Volusia is more a backwater than a reliable, admired, and trusted main stage player flourishing in the flow of the I-4 Renaissance.

One of the analyses I worked on for Pinellas County resulted in a report that is cited in the paper: [*The Economic Impact of Poverty*](#).² This report examined the problems of poverty in Pinellas County using state of the art technology and highly advanced research methods. It lays out many strategies for dealing with the impacts of poverty, including homelessness. While many of the strategies have not yet been implemented, several are in place. As you learn from reading the essay, the experience in Pinellas is decidedly mixed, with many lessons learned from successes and failures.

Emphasis is on the recommendations to build a network support structure for the homeless, a **continuum of care** designed to help break the relentless cycle of poverty. This network is linked to the Pinellas homeless shelter system, including Safe Harbor, which is much discussed as a possible model for Volusia County. There are many lessons about governance in this case example—good and bad.

These essays also draw on research and writing I have completed for a book manuscript which examines governance challenges in the present era broadly, and focuses on the metropolitan level. Florida case examples are used to illustrate public initiatives that are working and some that are not. I hope to complete and publish the manuscript during the next year.

This paper examines how to help build a sustainable good community; and to do so with solid leadership and quality political institutions. I emphasize leading edge thinking about how to practice “**deliberative democracy**” in the present age of widespread political dysfunction. The term I use for these ideas is “**Civitas**.” A core idea is that we have lost our capacity to build civitas, and must regain it.

Individually as citizens, and collectively as a community, we should aspire to convey a dignified civility and sense of purpose to build a sustainable good place together. We're after **gravitas** as well as civitas. Gravitas was one of the virtues that enabled the greatness of the Roman Empire. The loss of both civitas and gravitas contributed to its decline and fall.

These essays include analyses and recommendations for the citizenry broadly, and for leaders of our major public, private and non-profit organizations. Along with others with whom I have consulted, I also make specific recommendations to the Volusia County Charter Review Commission in Essay Two. These arise out of my experience with the League of Women Voters.

My writing here will stir controversy and even anger in some quarters. I mean no disrespect to anyone or to any institution, although I must tell you that I often experience what the great theologian Reinhold Niebuhr called "sublime madness."³ It is necessary that we tell it like we see it with passion and commitment and sometimes a soulful anger directed well. That is what I am trying to do here. Trying to speak truth to power is a risky business because no one holds a monopoly on truth. Upsetting purely selfish-interests, which is sometimes necessary, is like poking at a bee hive.

If I overstep, misinform or offend wrongly, please know that it is not intentional or mean spirited. My view as I get older, as Jefferson put it in his first Inaugural Address, aspires to be of the "whole ground in all its parts."⁴ If you see the picture as I do you may be moved to a "sublime madness" of your own, and go on to help make this county an even better place. The madness is directed at our failed attempts to govern well. It is sublime because the love of our beautiful home ground is able to inspire and uplift, even as we are pained by the imperfections of our moral and political life as a people.

These essays are intended to contribute to beginning and sustaining an informed civic dialogue about our present and future political life. They are linked to a newly-formed organization called "**The Civitas Project**," which is founded to help build the capacities to govern well during the present turbulent era. My views and opinions in these essays don't necessarily reflect those of others affiliated with the Civitas Project.

The Civitas Project seeks a new reality in our political life, a convergence of disparate political and moral positions, and a commitment to facing the truth in an age of mendacity. Awakening to emergence of our closest approximation of truth requires lucid awareness of both idealism and realism: the deep wisdom of the owl and the pragmatic cunning of the fox. Demanded is consciousness of the tension between the ideal "way things ought to be" and practicalities of "the way things are." Involved is a passionate sense of duty to seek balance and harmony among these tensions to the extent humanly possible. Otherwise, we are back to the "law of the jungle."⁵

The **mission** of the Civitas Project is to help co-create a sustainable good society to the extent humanly possible, knowing there is no utopia. Our purpose is to help build civitas through quality initiatives including education, conflict resolution, informed commentary, and well-designed and facilitated collaborative labs that bring people together to develop consensus around complex public problems. Our main **goal**, as explained in Essay One, is to practice **deliberative democracy** and to promote balanced and informed **public reason** about the collective challenges we face. Our

values are those required to build civitas and gravitas. We aspire to help our leaders and citizens do the hard work of civitas, which, as a leading scholar of democracy puts it, demands well-intentioned and publicly minded “struggle, strategy, ingenuity, vision, courage, conviction, compromise, and choices by human actors...politics in the best sense of the word.”⁶

A formal announcement and web site launch introducing the Civitas Project and presenting the Board of Directors and affiliations will be made in coming weeks.

Executive Summary of Recommendations

The following specific recommendations are made to the Volusia County Charter Review Commission made in Essay Two:

Basic Open Government.

- Require all agenda materials to fully and accurately disclose all items that come before the council and material information related to those items, as well be posted on the internet at least a week before the meeting, absent an emergency.
- Reaffirm that a majority of the council may place any matter on a future agenda.
- Allow county employees to provide information and freely discuss pending issues with anyone – citizens, council members, and the news media.

Basic Budgeting and Fiscal Integrity.

- The county government needs greater fiscal integrity to ensure that its financial practices are consistent with the direction of the council and with sound financial management practices.

Strategic Planning and Measurable Performance.

- The county government should adopt a Strategic Plan that includes a vision of Volusia County as citizens want it to be, and a road map for how to work toward that vision.
- The plan should:
 - Be based on objective financial forecasting;
 - Set measurable goals and objectives; and
 - Be linked to the budget and to other management systems of the county organization.

A New and Expanded Mission for the Volusia Growth Management Commission (GMC). The following steps should be taken:

- Abolish the GMC;
- Create a new Charter provision which:
 - Addresses land use as needed;
 - Develops plans, including policy recommendations to appropriate public agencies about regional issues facing Volusia County; and
 - Serves as a convener of citizens representing the public, private and non-profit sectors to:
 - 1) Think critically and systemically about specific regional public issues;

- 2) Collaborate in common cause; and
- 3) Co-create desired future outcomes, impacts, and results.

Code of Ethics. The county needs a code of ethics, applicable to council members and senior management, filling the holes in the state standards.

Inspector General; Internal Auditor.

- Citizens and council members need an independent source of quality information, a source that can:
 - Investigate and advise on:
 - Budget matters;
 - Legal, policy and ethical violations; and
 - Efficiency, and other matters.
 - Such an officer could give citizens the means to hold government accountable.

The following specific recommendations are made in Essay Three to all Volusia leaders and citizens interesting in responding to the problems of poverty, including homelessness:

- Follow the advice of local experts who presented ideas and information about homelessness to the Volusia County Roundtable on February 8, 2016.
- Commission a comprehensive report similar to the Pinellas County Economic Impact of Poverty Update. This report should be constantly updated to help decision-makers make evidence-based, best practice policy and management decisions.
- Establish a community-based, private, non-profit organization dedicated to planning, developing, implementing, leading and managing a Continuum of Care designed to mitigate the consequences of poverty.
- Ensure that the board of this community-based corporation shapes it to reflect the following characteristics:
 - **Strategic and visionary.** It fits within a larger set of leadership strategies designed to advance a sustainable approach to the problems of poverty.
 - **Holistic and systemic.** The approach looks at the big picture causes and consequences of the cycle of poverty, and designs multi-faceted and complex strategic actions accordingly.
 - **Inter-sector and collaborative.** The emphasis is on all three sectors—public, non-profit, and private—working together. *There is a strong emphasis on private sector leadership so both business acumen and political clout are brought to the table.*
 - **Decentralized, dispersed, and networked.** The approach is best understood as a networked system that is open, transparent, deliberative and highly participative.
 - **Built on a “Continuum of Care Model”** that establishes an ecology of support services so people can improve their lives and advance, to the extent feasible, toward self-reliance.
 - **Focused on the common good of all stakeholders:** providers, funders, and most important of all, people served. Service providers and funders are

- bound together in a network of mutual reciprocity and commitment to a common goal, using negotiated agreements.
- **An ounce of prevention is worth a pound of cure** is a guiding principle.
- **Led and managed using “adaptive leadership.”** The network learns by doing and adjusts and adapts its practices accordingly.
- **Based on performance and accountability** for achieving desired outcomes, impacts, and results.
- Link the initiatives of the Continuum of Care to volunteer, faith-based and other efforts that are essential to the network, but not necessarily part of the revenue flow and agreement framework.
- Understand that a homeless shelter system is necessary, especially as a means of providing an alternative to incarceration for minor offenses by the homeless. The shelter system, however, is not a complete long-term response to the larger problems of poverty.
- Explore all possible sources of funding, including public, private and non-profit sources. Conduct a complete analysis of the possible use of Social Impact Bonds as a funding source for the Continuum of Care.

We still don't know how to put morality ahead of politics, science and economy. We are still incapable of understanding that the only genuine backbone of all our actions, if they are to be moral, is responsibility—responsibility to something higher than my family, my country, my company, my success. If I subordinate my political behavior to this imperative, mediated to me by my conscience, I can't go far wrong. . . . This is why I ultimately decided, after resisting for a long time, to accept the burden of political responsibility.

Vaclav Havel

Society is indeed a contract. It is a partnership . . . not only between those who are living, but between those who are living, those who are dead, and those who are to be born.

Edmund Burke

ESSAY ONE

The Big Ideas

A core message here is that the more adaptable, complex, autonomous, and coherent an institution or community is, the more capable of producing sustainable good outcomes it will be: the stronger is its **civitas**.⁷ Civitas may be thought of as a sense of solidarity and civic friendship that forms a “social ecology,” a web of relationships among people dedicated to working for the common good.

Pope Francis writes, “The social ecology is necessarily institutional, and gradually extends to the whole of society, from the primary social group, the family, to the wider local, national and international communities. Within each social stratum, and between them, institutions develop to regulate human relationships. Anything which weakens those institutions has negative consequences, such as injustice, violence and loss of freedom.”⁸

Adaptable institutions and communities are capable of evaluating the threats and the opportunities of their ever-changing environment, and adjusting their behavior to advance or protect fundamental purposes and interests. Sustainable and good institutions and communities must be complex precisely because the challenges facing them are complex. Complex challenges demand complex responses that address the multiple interconnected dimensions of those challenges. Sustainable good institutions and communities are autonomous, meaning they are free of internal or external domineering and coercive forces capable of controlling their destiny by dictating ways and means of adapting to challenges. Finally, sustainable good institutions and communities cohere; they manifest solidarity, unity, order and a strong resilient structure, which benefits of all citizens.

Sustainable good institutions are comprised of “good and sustainable peoples” who build communities that possess civitas. They flourish. Dogmatically rigid and dependent, myopic, and disunited people, institutions and communities without civitas perish.⁹ We call these kinds of institutions and communities “tribal.”

Deliberative Democracy and Public Reason

Deliberative democracy is viewed as skilled, public-spirited work—as “the capacities, powers, and skills that the citizen needs to acquire ...to become a serious and accountable actor and creator in public affairs.”¹⁰ Deliberative democracy enables **public reason**, the capacity of free and equal citizens to agree on the basic terms of their association, even as they may disagree on the content of what a sustainable good community may mean.

Scholar Gerald Gaus observes that the practice of civitas defines the terms of association on which good-willed and reasonable citizens, disagreeing about basic aspects of the good life and the ideally just society, can converge. Civitas is an alternative to sectarianism—what is called here “tribalism”—not simply a form of it.¹¹

Through public reason, citizens seek to balance clashing values and achieve a measure of stability and harmony as social advancement is sought in common cause. When deliberative democracy is practiced with civitas, citizens and their representatives work

together on public challenges and adaptations to them. The emphasis is on reasoned reflection and balanced public judgment.

Three Capacities of Transformational Moral Leaders

People who practice public reason well employ **systemic, holistic and critical thinking**. Each person involved ideally seeks to understand the underlying values, interests, and perspectives of all others engaged. The diversities of social roles played and perspectives held by citizens are viewed as gifts to the common work being done.¹²

People are open to reframing their perspectives as the common good is sought. They **collaborate in common cause**. Deliberative democracy is a process of discovery of right paths forward, rather than a mere ratification of inflexible or ideological positions. Citizens **co-create desired futures**—the outcomes, impacts and results they want—by consensus.¹³

These “desired futures” are not about achieving a utopia. There is no perfection inside history. The best we can do is approximate balance and harmony as we seek ideas about what a sustainable good society should be. Believe me, after more than four decades as a student and participant-observer in politics, I’m no wild-eyed idealist. I’ve been taught that pragmatism blended with a commitment to be the best we can be is the right way.

Deliberative democracy seeks **transformational leadership**, by which the needs, aspirations, and values of leaders and the led align to the extent possible in the decisions made. Citizens who disagree with public directions taken learn to “live with” the results of consensus because they have confidence in the processes and institutions used to make public decisions. The way we do things—the *how*—is extraordinarily important, often as important as the *what* and the *why*.

Capacities of Quality Political Institutions

Transformational leadership is **moral leadership** that builds and sustains institutions of political quality. This quality of leadership helps ensure that institutions are governed in accordance with the **rule of law**; that they possess the **strength to perform essential functions**; and that institutional means of ensuring **democratic accountability** are in place.¹⁴

Citizens engaged in transformational leadership know that they have ample opportunity and freedom to continue to express their point of view as public reason continues within the context of place and time. They have confidence in their governing institutions, and consider them legitimate instruments of public will and of justice.

Tribalism versus Civitas

Here is something else to think about as we assess why our great plans and our visions of ourselves don’t play out in the real world of dysfunctional politics and governance. **A predatory tribal culture of corruption and incompetence thrives in the absence of effective institutions.** Diamond writes, “The predatory society is the inverse of the civic community...there is no real community, no shared commitment to any common vision of the public good, and no respect for law. Behavior is cynical and opportunistic. Those who capture political power seek to monopolize it.” Elections become “a bloody zero-sum struggle where everything is at stake and no one can afford

to lose.” The nature of inter-governmental and inter-sector relations mirrors this “red tooth and claw” struggle when purely transactional leaders are at the helm.

People cooperate with one another but not as equals. Their aim is not the common good, but the acquisition and the sustaining of power and position. Elites equate the public interest and the common good with their narrow selfish-interests. Relations are not horizontal, but vertical and hierarchical. “Ordinary people (I would add ‘and some elected and appointed officials’) are not truly citizens (or public servants) but rather clients of powerful patrons, who themselves serve as clients to more powerful patrons. Blatant inequalities in power and status cumulate into vertical chains of dependency and exploitation, secured by patronage and coercion,” Diamond observes.

In an extreme predatory tribal society, officials feed on the state and the powerful prey on the weak. Political participation is mobilized from above by tribal leaders, civic engagement is weak, and compromise is forbidden. People feel powerless, exploited and unhappy; yet the tribe continues to draw the loyalty of its members, who fear exclusion more than they value a more virtuous course.¹⁵

In words that increasingly hold true for the diminishing American lower middle class and the disadvantaged, Diamond teaches that “The masses of ordinary people at the bottom of a predatory society cannot cooperate with one another because they are trapped in fragmented, hierarchical networks and thus distrust one another.”

A predatory society cannot sustain civitas and the democracy it demands; nor can such a society generate sustainable economic development, a healthy quality of life, and a protected and restored natural environment.

Diamond could be writing about the worst behavior of corrupt American finance elites in the lead up to the Great Recession—or he could be writing about a growing problem for us at the metropolitan level—when he observes, “In the predatory society, people do not get rich through productive activity and honest risk taking; they get rich by manipulating power and privilege, by stealing from the state, by extracting from the weak, and by shirking the law.” He continues, “Manufacturers do not produce, bankers do not invest, borrowers do not repay, and contracts do not get enforced. Every transaction is twisted to immediate advantage.”

These are descriptions of the extremes of tribal predatory societies, but some of the characteristics apply to any society that is in a period of political decay. Diamond writes that those countries “where order is decaying and the economy is stagnating are invariably much more predatory than civic. And the more predatory they are—the more rule is based on persons rather than laws and institutions—the more vulnerable democracy will be to corrosion.”¹⁶

Diamond’s teaching should serve as a stern warning to those who seek to lead right here at home. I have seen the emerging signs of this decay during the last decade or so during this age of political ideology and dysfunction. Our greatest risk is that our local political system will tend in this direction, reach a tipping point, and escalate into the red zone.

Volusia County is in danger of becoming I-4’s poster child for political decay and dysfunction. It had that distinction during the first part of the twentieth century. The County Government website states: “There was a

time in the 1920s and 30s when Volusia County was the most corrupt area in the nation, second to Cook County, Illinois of Al Capone fame.”¹⁷

The remnants of Volusia's legacy of corruption lingered through the 1960s. Some observers claim it lasted longer than that. The stories of the Ring and the Anti-Ring still abound among old timers. These were names for two "tribes" that greatly influenced the county's social, political, and economic life. We don't want to even inch in that direction again. Being known for the good quality of our civitas is much better.

A new day dawned during the late sixties and early seventies. Florida was changing. Volusia expected its share of Florida's predicted rapid growth, and needed to get prepared to take advantage of its opportunities and be ready to deal with its threats. Much like the challenge leaders face today, when civitas has ebbed, the county's best leaders back then knew the old had to give way to the new. A new flow of civitas was needed then, as now, to realize a vision of a sustainable good community in the place we call home.

Tribalism trumps civitas when people are shut out of the political process by leaders, when public issues are not handled with openness and transparency, and when ways and means of checking and balancing and otherwise holding leaders accountable are missing. Such leadership isn't transformational, it's transactional. Everything is about advancing selfish interests by making deals, denigrating those who disagree, and other means of coercion.


Dimension	Old Leadership Approach	Emerging Leadership Approach
Major Actor:	Fragmented by Sector, Public, Private, Non-Profit	Blend of Engaged citizen-stakeholders of public, private and non-profit sectors
Power, Authority, Decision-making:	Centralized command & control; bureaucratic experts attacking "problems" in isolation	Decentralized, dispersed; Open, transparent and deliberative; Participatory decision-making
Policy-making Process:	Representative by separate interests	Deliberative, Collaborative, Open, Transparent
Leadership Philosophy	Transactional; Emphasis on the parts; balancing competing self-interests	Transformational; Emphasis on the whole; common good
Focus:	Internal Focus on management of people and programs	External Focus on collaboration, negotiation; Adaptive Leadership of Networks
Policies:	Centralized/Uniform	Decentralized/Diverse/Flexible
Accountability:	Process/Outputs/Efficiency	Outcomes, Results, Impacts

LEADERSHIP
APPROACHES
OF AN
EXEMPLARY
PUBLIC
SERVICE
ORGANIZATION

Leading from the Emerging Future: Core Capacities

- Three capacities are needed to lead from emerging future:
 - To co-create desired futures
 - To collaborate with others across "siloed" boundaries
 - To think in systems, to see that public challenges and responses to them are best understood in the context of their interrelationships, rather than in isolation.

(Adapted from Peter Senge)



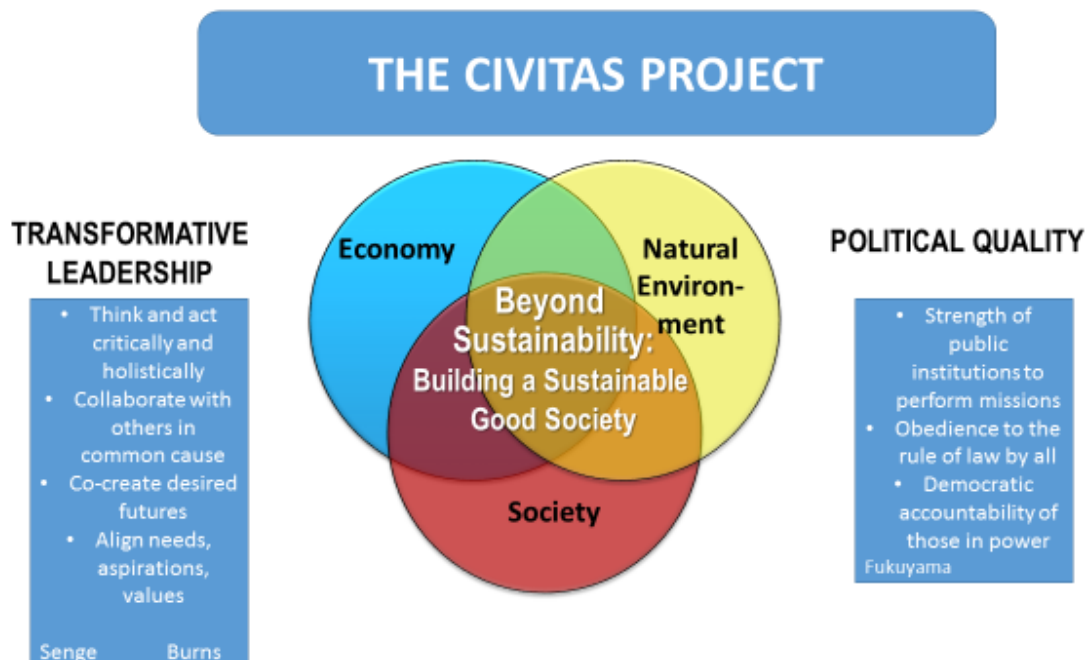
Jainkumar & Associates

My experience and research also lead me to conclude that the leaders of our institutions and communities need to cultivate understanding and appreciation for two things: 1) the idea of sustainability/resilience; and 2) community visioning and strategic planning.

Sustainability

Sustainability entails living respectfully of the past, and mindful of the future; embracing, honoring and respecting life in the present, and caring deeply for the well-being of generations to follow. Sustainability is broadly defined as meeting the needs of the present generation without compromising the ability of future generations to meet their needs.¹⁸ There is the Golden Rule of Sustainability: “Do unto future generations as you would have them do unto you.”

The systems of community life consist of three components: the economy, the natural environment, and society (quality of life). These components are interdependent.



If one component weakens, the other two are negatively affected. Pope Francis observes, “Today, the analysis of environmental problems cannot be separated from the analysis of human (social) contexts, nor from how individuals relate to themselves, which leads in turn to how they relate to others and to the environment. There is an interrelation between ecosystems and between the various spheres of social interaction, demonstrating yet again that ‘the whole is greater than the part.’”¹⁹

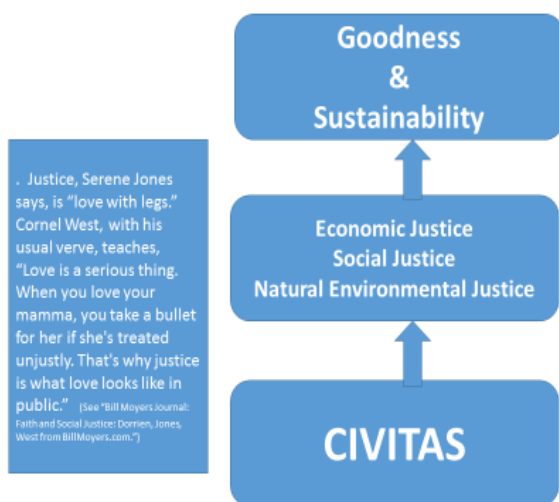
A community or institution that has sustainability also possesses resilience, the capacity to “bounce back” after experiencing adversity. Essay Three presents a case example of communities seeking to build sustainability within the quality of life/social and the economic domains. The essays also point to the need to build the capacity for resilience in the face of threats to the health of the natural environment, as well.

Some thoughtful people believe that egregious conditions in this “age of disruption” have caused the need to develop “beyond sustainability.” The notion that resilience and survivability in the face of the damage already done is about the best we can expect is not acceptable. A more hopeful and demanding outlook sees the challenge in broad, visionary terms that are fleshed out with specific and concrete, sometimes radical and urgent social actions. One group I am familiar with, the *Beyond Sustainability Initiative*, expresses its intentions as follows:

The Beyond Sustainability initiative is committed to supporting the emergence of a new generation of humanity with the capacity to envision and introduce new, sustainable systems. The initiative is based on the premise that humanity needs to move beyond practices that merely do no more harm. We believe that something more fundamental needs to take place...a re-imagining of our relationship with the Earth...a re-imagining of what prosperity can look like while

not destroying that which is needed to support future generations. We are seeking fresh thinking and concrete actions to bring this about as rapidly as possible. It is now well known that the planet is on an unsustainable course that will leave future generations in great peril if we do not change our ways.²⁰

To achieve goodness beyond sustainability demands civitas, including the capacity to work in common cause for the common good. The following graphic cites Serene Jones, President of Union Theological Seminary, and Cornel West, well-known theologian and philosopher who teaches at Princeton University and at Union Theological Seminary.



Timely and Fresh Big Ideas for the Home Ground

This "white paper" is written at a time when the Volusia County Charter is under its ten year review. It's a good time to be thinking about the big picture and big ideas. There are many challenges facing the county. The news and social media are full of happenings, beliefs, opinions, anger, frustration, and all the other thought and emotion that go along with homelessness, unhealthy intergovernmental conflict, sluggish economic development, environmental degradations, and more.

The Charter review is being accomplished by a Charter Review Commission consisting of fifteen citizens appointed by the County Council. The next essay provides background and makes some recommendations to this important commission.

It is vital to recognize that the County Charter doesn't belong to the County Council or to the County Manager. The document is the "mini-constitution" for the local governance of *all* citizens of Volusia County, whether they reside inside or outside cities. The Charter belongs to the people. It can expand the power of government, or restrict it. It can mandate that government be conducted using the ways and means of civitas, which is precisely what the recommendations of this paper seek to do.

Presented next, in the essay about the County Charter and the following narrative about the problems of poverty and homeless, are big ideas for consideration and deliberation. There are no specific prescriptions or models. The details of implementing these ideas

are up to those responsible for such decisions. This paper explores what's broken and why the ideas and recommendations herein deserve examination on behalf of the entire community.

The world that is on the rise remains half buried beneath the debris of the world that is in collapse, and in the vast confusion of human affairs no one can say what will remain of old institutions and ancient mores.... Although the ongoing revolution in man's social state, laws, ideas, and sentiments is still far from over, it is already clear that its works cannot be compared with anything the world has ever seen before. Looking back century by century to remotest Antiquity, I see nothing that resembles what I see before me.

--Alec de Tocqueville, *Democracy in America*

Founding purposes fade and what finally get served are the purposes of institutional self-enhancement...It is rarely the result of evil intent: It happens because means triumph over ends, form triumphs over spirit..."

---John Gardner

ESSAY TWO

The Volusia Charter Review: The Civitas Project Continues

The Golden Age: A Season of Renewal

The Volusia County Charter is a remarkable document originally crafted by some amazing people who understood civitas, and how to work in common cause for the common good. I was fortunate to be a student at Stetson when the original Volusia County Charter and Study Commission did its work in the late sixties and early seventies. Dr. T. Wayne Bailey, a member of the original founding group and of the present Charter Review Commission, was my professor. He remains my mentor, colleague and friend to this day.

I also worked with P.T. “Bud” Fleuchaus, and even helped out with his campaign for Congress. Fleuchaus, a Republican, along with the late Edgar M. Dunn, Jr., a Democrat, first conceived of the idea of a county charter, and formed the original study commission. Fleuchaus went on to serve on the Volusia County Council and, along with Bailey, is among Volusia’s senior statesmen. He also serves on the 2016 Charter Review Commission.

Dunn became a state senator who was a major leader during what is sometimes termed “The Golden Age of Florida Politics.”²¹ I am proud to say that Ed Dunn was my friend and colleague throughout my career up until his death in 2000.

Hyatt Brown, who was also active in the initial Charter Study Commission, is chair of the present Review Commission. Brown is a former Speaker of the Florida House of Representatives during the “Golden Age,” and is also among our senior statesmen.

I was a junior member of the management team that initially implemented the charter under the leadership of another extraordinary leader, Dr. Thomas C. Kelly. Tom went on to serve as county manager for more than two decades. He was awarded the most prestigious honor given by the International City Manager Association. I was fortunate to follow him as county manager.

Along the way, I wrote a master’s degree thesis for Stetson about the Volusia Charter experience. The thesis included a case study of the work of the Charter and Study Commission. Since I have known and worked with many of the founders through the years, my motivation in writing this white paper is, in part, to honor their legacy.

These leaders understand that their original work of civitas must continue as times change and the need for amendments to the charter emerge. They know, as the great British political statesman Edmund Burke put it (as stated in the epigraph of this essay), that society is a partnership among the dead, the living, and the unborn.²²

All partnerships have to join hands across time to form what Lincoln called “mystic chords of memory” that enable us to adapt to changing conditions.²³ As civitas is built, we re-appropriate the best of our past into the present on behalf of the future. It may be said that this white paper comes from both my head and my heart.

It is likely that Bailey, Brown and Fleuchaus will agree with some of what I have to say here and disagree with some of it. One thing is certain: they will react always with civility: those “habits of the heart” or virtues that must be present for deliberative democracy to work.²⁴ My best advice to the community is to watch and learn from these great leaders. They possess gravitas.

At the advent of the Golden Age of Florida Politics in the late sixties and early seventies, Volusia's politics underwent what Lincoln would have understood as a “new birth of freedom.”²⁵ The Volusia County Charter and Study Commission was formed after revision of the Constitution of the State of Florida in 1968. The revision extended a measure of local home rule to Florida counties which chose to adopt county charters via local referendum.

I wrote these words in 1989 after surveying the fragmented multiplicity of Florida’s “tribal” local governments and other public agencies, which created what political scientist V.O. Key labeled an “every man for himself” perspective,²⁶ outdated forms of governance, and massive duplication and overlap:²⁷

State and local government in Florida is in serious trouble. Perhaps the most important political question facing the state is whether local governments can adapt to the changing conditions, meet the demands and play a positive role in preserving Florida's political stability and quality of life.

The 1968 Constitutional Revision was seen as a way to rationalize the state’s service delivery systems, to restructure and empower local governments, and to devolve responsibility for solving local public problems to the local level. The quoted text continues:

By the end of the period leading up to the 1968 revision of the constitution, it had become increasingly obvious that the institutional mechanisms devised for governance were in need of reform. Specifically, the burden-some and cumbersome process of governing localities through the legislature had proved unsuitable to the late twentieth century needs of a rapidly growing state.

In the 1965 session of the legislature, 2,107 local bills were introduced, costing legislators valuable time needed for addressing the growing problems of the state government. Many observers during the period questioned the viability of government structures established under the precepts of Jacksonian democracy as well. Clearly, the time had come to revise the process of governing Florida. The home rule movement produced an environment in which the powers and structure of local government were to become major targets of constitutional revision. ²⁸

The Volusia Charter and Study Commission mirrored the thrust of the larger constitutional revision by taking advantage of the opportunity to gain local home rule. Volusia’s charter, the product of the local commission, became one of Florida’s strongest and most progressive charters, and remains so. I have either staffed or advised every Volusia County Charter Review since the first one in the 1970s, so I’m grateful for the opportunity to advise this one, too.

The charter's form of government, the council-manager plan, replaced the outdated county commission form. The constitutional officer system with its five independently elected officials—the clerk of the court; sheriff; tax collector; property appraiser; and supervisor of elections—was substantially restructured. The tax collector was abolished, a move which proved popular with the voters. The other officers (with the exception of the Clerk of the Court whose finance and records responsibilities were placed under the county manager) became not Constitutional, but Charter offices, subject to the policies and procedures of the rest of county government for such matters as human resources, procurement, budget, information management systems, and others. This move alone was intended to save much duplication and overlap.

The charter also granted county government the ability to enact ordinances of countywide force and effect, including local laws setting environmental standards. The charter also made it possible to transfer functions and responsibilities between the cities and the county. This was done, for example, with beach management and the creation of a uniform library system. Both the powers and duties, and the structure, of county government were modernized.

This brief summary background shows that the intent of both the Constitutional Revision and the Volusia County Charter entails building civitas. This is done by democratizing and empowering the local level with self-determination, and by strengthening the capacity of government to provide services and infrastructure, and enforce laws and policies in a more efficient manner.

Home rule also builds the capacity to put in place new institutions at the local level to improve political quality through establishment of stronger democratic accountability. The charter established a form of government designed to check and balance and separate administrative powers from legislative powers. Before, these powers were fused in the individual offices of county commissioners and constitutional officers.

The council-manager form was also intended to build a degree of professional and apolitical competence in governance, an idea that first arose in the United States during the Progressive Era (1890s-1920s) to help offset corruption and incompetence in local governments.

The Charter and Study Commission did more than produce a county charter. It also sketched a vision for the kind of county citizens wanted to live in, and prescribed many specific recommendations for strategies to achieve that vision. As a result, county government had a vision and a set of strategies that played out during the next couple of decades. Today, there is no vision. There are no strategies. The original civitas has ebbed; the political order once created has decayed. Volusia needs another season of renewal.

The full quote by John Gardner referenced in the epigraph to this essay could have been written about the ebbing and decay of the civitas originally created by the founders of the Volusia County Charter. Gardner writes in his classic book, *On Leadership*:

Organizations are created by their founders to serve vibrant, living purposes. But all too often the founding purposes fade and what finally get served are the

purposes of institutional self-enhancement. It happens in hospitals to the detriment of patients, in schools to the detriment of students, in businesses to the detriment of shareholders and customers, and in government to the detriment of taxpayers. It is rarely the result of evil intent: It happens because means triumph over ends, form triumphs over spirit and the turf syndrome conquers all. ²⁹

The Metropolitan Revolution: Home-Grown Adaptive Leadership

A strong county charter is well-suited to the present era. A Brookings Focus Book titled, *The Metropolitan Revolution: How Cities and Metros Are Fixing Our Broken Politics and Fragile Economy*, provides in depth analysis and case examples of extraordinary work being done at various metropolitan areas within the United States. Written by Bruce Katz and Jennifer Bradley, the following quote summarizes the significance of their work:

In traditional political science textbooks, the United States is portrayed neatly as a hierarchical structure—the federal government and the states on top, the cities and metropolitan areas at the bottom. The feds and the states are the adults in the system, setting direction; the cities and metropolitan areas are the children, waiting for their allowance. The metropolitan revolution is exploding this tired construct. Cities and metropolitan areas are becoming the leaders in the nation: experimenting, taking risk, making hard choices, and asking forgiveness, not permission. ³⁰

The key observation and hope for the future is that civitas will rise up from the metropolitan level, with an updraft of pressure on state and federal governments to align with the needs, aspirations and values of Americans. The quest for order created by civitas requires a coherent strategy within each metropolitan region, and a means to enhance successes and ameliorate failures across regions.

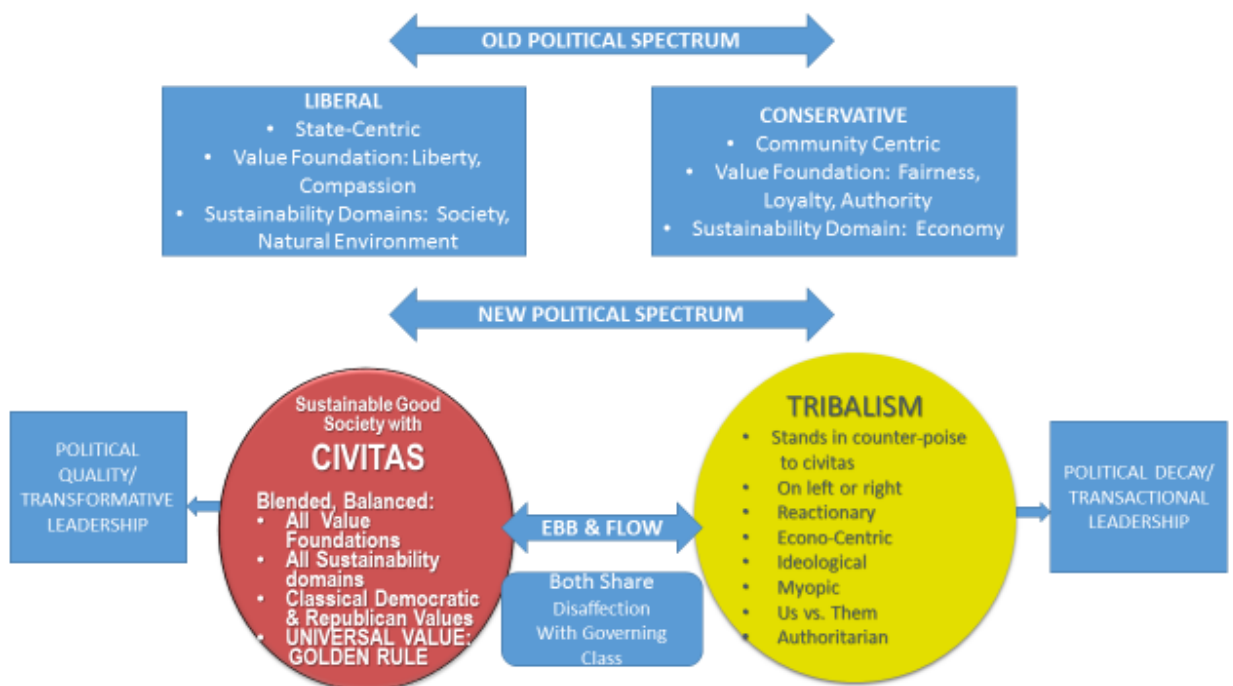
Metro regions become the twenty first century version of the nation's "laboratories of democracy." Regions learn from each other, but do not accept a "one-size fits all approach," preferring instead to rely upon the strengths of diversity and particularities of concrete circumstances of time and place. The top-down pyramid of federal to local is turned on its head, with the *principle of subsidiarity*³¹ taking its place: federal and state governments perform those functions that cannot be performed at regional and local levels, steering and supporting, but not dictating or supplanting.

David Brooks makes broad philosophical observations about the direction of society that affirm the view that the locus of power and influence has shifted. In doing so, he provides a strong narrative in favor of "The Metropolitan Revolution," even as he points to the dangers inherent in this power shift. He writes,

In each sphere of life there used to be a few big suns radiating conviction and meaning. The other bodies in orbit were defined by their resistance or attraction to that pull. But now many of the big suns in our world today lack conviction, while the distant factions at the margins of society are full of passionate intensity. Now the gravitational pull is coming from the edges, in sphere after sphere. Each central establishment, weakened by its own hollowness of meaning, is being ripped apart by the gravitational pull from the fringes.³²

This movement from the center to the fringes of politics and governance may promise transformational leadership from the home ground, answering the deep human yearning for *engagement* in a community of leadership built on a platform of reverence for the common good. If this hope is to have any chance of approximate success, the barriers to civitas—tribalism and rigid adherence to political ideology—must be transcended. The taproot must be radically extracted by bold and courageous public reasoning and action at the metro level. A county charter adapted to the current needs, aspirations and values of the citizenry, while not a panacea, can help make this “metropolitan revolution” happen, and build much civitas in the process.

A new political spectrum is needed to replace the worn-out Liberal to Conservative construct. What is at stake is a choice between the ways and means of civitas versus tribalism. This new spectrum has much more power to interpret contemporary American politics, recognizing that citizens across the normal political spectrum share in common disaffection with the governing class, much of it directed at the federal and state levels of government. (The new spectrum relies upon value foundations theory devised in the field of moral psychology by [Jonathan Haidt](#) and others).³³ The following graphic depicts this change:



Volusia County Council Member Doug Daniels can be a bit of a curmudgeon. He’s kind of like Socrates in ancient Athens who went around asking people all kind of hard questions they couldn’t answer, trying to get them to think about what they were doing with their life. Socrates was executed for doing so, a fate Doug has avoided thus far. But Socrates was on to something. (He more or less invented philosophy and influenced his star student Plato, who, in turn influenced Aristotle, etc.) Doug’s been like that all of his

life: sneaky smart, fiercely independent, and on (or up) to something. I should know. I'm his cousin. We grew up in the same neighborhood. His mother was my algebra, geometry, and trigonometry teacher, so I know where Doug got his hard-nose stubborn streak. His sister was my classmate and is the one who inherited a wonderful disposition.

Doug wrote a piece about issues he believes the Charter Review Commission should address, and published it in the newspaper. I agreed with what he wrote, which is unusual in our relationship. You will see the linkages to the big ideas we have been discussing. The following is a blend of Doug's words and mine.

Although the following suggestions seem fundamental, their realization is unlikely without the Charter Review Commission taking a hand, proposing changes in the charter, ordinances, and management policies. Reform seldom comes from within, which is why the voters established the Charter Review Commission process in the original charter. Necessary reform also may legitimately constrain government, rather than empower it.

Reform through the county charter can also strengthen the role of cities and other key stakeholders as they interact with the county government.

Some of these recommendations are best implemented via charter amendment and some by formal Charter Review Commission management and leadership recommendations.

Charter Amendments and Management Recommendations

Basic Open Government. Citizens cannot evaluate government if they cannot see it, see it with enough information to know what it is doing. To help with this the CRC should make the following official management recommendations:

- Require all agenda materials to fully and accurately disclose all items that come before the council and material information related to those items, as well be posted on the internet at least a week before the meeting, absent an emergency.
- Reaffirm that a majority of the council may place any matter on a future agenda.
- Allow county employees to provide information and freely discuss pending issues with anyone – citizens, council members, the press.

Basic Budgeting and Fiscal Integrity. Once the council allocates funds, the funds should be earmarked and used for that purpose, absent a formal action of the County Council to change course. Peculiar to our county, the staff has the power to transfer or reallocate funds, changing council decisions in the process. The council-allocated money is spent elsewhere, and no one - neither the citizens nor the council - need be the wiser. The county government needs greater fiscal integrity to ensure that its financial practices are consistent with the direction of the council and with sound financial management practices.

Strategic Planning and Measurable Performance. The county government, in collaboration with private, non-profit and citizen stakeholders, should establish a Strategic Plan that includes a vision of Volusia County as citizens want it to be, and a road map for how to work toward that vision. Such a plan should be based on objective financial forecasting, and set measurable goals and objectives. Once adopted, county

staff should be organized around achieving those goals with each department developing its own business plan, one with objective measures of performance becoming part of the budget for all to see.

A New and Expanded Mission for the Volusia Growth Management Commission (GMC). There is a dire need for better working relationships among our local municipalities, public agencies, key non-profits, and the private sector. The state has weakened its environmental and growth management functions, with the avowed purpose of de-centralizing planning and regulation to the metropolitan region. This was done in the interests of local home rule. It is time for county government to adapt to these changes and to expand the meaning of growth management and environmental protection to include all the major economic, social, and environmental issues we face.

Many issues pose serious challenges to the future of the county. These include homelessness and the problems of poverty, water and the environment, climate change, extreme weather, and sea level rise, economic development, mental health and substance abuse, public safety and criminal justice, education and culture, as well as land use. County government has abandoned its responsibility to lead on major regional issues, preferring instead a myopic “circle the wagons” approach to governance. This must change because regional issues demand collaboration among all sectors.

Steps: Abolish the GMC; create a new Charter provision, which addresses land use as needed; develops plans, including policy recommendations to appropriate public agencies about regional issues facing Volusia County; and serves as a convener of citizens representing the public, private and non-profit sectors to: 1) think critically and systemically about specific regional public issues; 2) collaborate in common cause; and 3) co-create desired future outcomes, impacts, and results.

The Volusia County Growth Management Commission has served its founding purpose, but has been overtaken by changes in the state’s growth management laws. The VGMC should continue as a check on any jurisdiction which approves unwise development projects with negative impacts on surrounding properties regardless of jurisdiction. Clay Henderson, Executive Director of Stetson’s Institute for Water and Environmental Resilience, is working with a sub-committee of the Charter Review Commission on ideas about how best to do this.

Henderson is a former Volusia County Council Member who was instrumental in developing the county’s land acquisition and popular ECHO programs and similar programs at the state level. ECHO stands for environmental, cultural, heritage, and outdoor initiatives funded by a successful countywide referendum. Recognizing that “a prophet is not without honor, except in his home town,” when Henderson moves about the state, he’s considered one of Florida’s treasured growth management and environmental leaders.

The revamped GMC should be restructured and re-missioned to become a countywide collaborative organization dealing with the major economic, social, and environmental issues important to us all. The GMC should coordinate closely with Volusia municipalities; the River to Sea Transportation Planning Organization; the Volusia County School District; and local colleges and universities. It should also serve as a primary convener of inter-sector organizations and the public at-large to help ensure

quality civic engagement on the major regional issues. This new role builds our “civic infrastructure” and fosters “social capital” and “civitas.” These are necessary ingredients to a prosperous future.

The skeptic would say that such an institution would be useless because local public agencies have proven they aren’t up to the task of collaborating about long-term regional issues, thinking systemically, and co-creating desired futures. But that cynical attitude fails to see that democracy is learned—and civitas is built— through practice driven by political will. If the voters, through amendment to the charter, act in favor of such an institution, it is incumbent upon elected officials to heed the sovereign will. Who knows? If elected and appointed officials who reflect the needs, aspirations and values expressed in the public will are placed in office, sustainable good governance might follow.

Code of Ethics. The county needs a code of ethics, applicable to council members and senior management, filling the holes in the state standards.

Inspector General; Internal Auditor. Both citizens and council members need an independent source of quality information, a source that could investigate and advise on spending and budget matters, legal, policy and ethical violations, efficiency, and other matters. Such an officer could give citizens the means to hold government accountable. There are examples of offices with these functions in other Florida counties, and at both the state and federal levels of government.

Things have changed significantly since the Charter was first adopted. Yet we have only tinkered with it since. If the Charter is to provide a framework for open government, effective and accountable, significant changes are needed. For the good of us all, this once-in-a-decade opportunity should not be allowed to pass. The CRC is a tool for building civitas and for helping the “Metropolitan Revolution” come to life.

Caught in the Middle: Conclusions

In concluding this essay, I briefly share some pertinent reflections drawn from my experience, research and writing. We learn that large numbers of citizens during the present era of political dysfunction feel caught in the middle between: a) governing and economic elites—progressive and conservative—and b) a disadvantaged underclass. Some in the middle believe the underclass is overly and wrongfully dependent on government welfare and undeserved transfers of wealth. Others in the middle seek genuine opportunity to express compassionate support for the least among us. In private moments of reflection, many in the middle fear that fate may place them among the disadvantaged.

Broadly, those stuck in the middle perceive that the American promise--the social contract that has bound them to the great American Dream--has been breached. Those in the upper reaches of the social and economic spheres have turned their backs on the middle class, it is believed. Elites either denigrate those in the middle for being unskilled and lacking in creativity; or look down on them as being unworthy because their insecure economic and social position must mean that those stuck in the middle are morally and intellectually unfit. One respected commentator, R.R. Reno, writes, “Cultural instability compounds economic instability. A person near the median in our society is on shaky ground. He feels that what was once reliable is now eroding. This is as much a source of today’s middle-class anxiety as stagnant household incomes.”³⁴

This insight helps explain the anger and disaffection of large numbers of citizens who are being drawn to the appeals of political figures outside the boundaries of the mainstream.

Could it be that the antidote for the anger and disaffection resides in a more robust democracy, in the building up of political quality and civitas? Could it be that those stuck in the middle yearn for the opportunity to participate in shaping their future, rather than being treated as unworthy of doing so?

Is this too idealistic? I don't think so. In today's utilitarian and materialistic culture, health and wealth are ends in themselves. The idea of devoting one's life to a cause greater than self, rather than the health and wealth one believes will make for happiness, seems absurd at first. Yet, when the self-interest of the tribe dominates culture, as it has throughout most of human history, people endure lives that are frustrating and without real meaning and purpose. Their world view doesn't extend beyond narrow and bounded interests. In the modern era, such people devote their spirit and energy to middle-class ends— "getting a promotion, getting a raise, taking immeasurably interesting vacations, getting their children into the right colleges, finding the best retirement spot, fattening their portfolios." These are, scholar Mark Edmundson teaches, "Lives without courage, contemplation, compassion, and imagination...lives sapped of significant meaning. In such lives, the self cannot transcend itself."³⁵ The individual is trapped within an oppressive tribal culture.

Most of the young people and many others I talk to today, regardless of social and economic status, don't want to live this way. Most citizens want to play an active role in politics, but they don't know how and are turned off by the available means of doing so. "They want someone to appeal to their sense of political self-worth, not just their interests" as Reno puts it. They are seeking to participate in a nation-defining transformation. This is what the Civitas Project is about.

"Not so long ago," David Frum writes in an article on Atlantic Magazine, "many observers worried that Americans had lost interest in politics. In his famous book *Bowling Alone*, published in 2000, the social scientist Robert Putnam bemoaned the collapse in American political participation during the second half of the 20th century. Putnam suggested that this trend would continue as the World War II generation gave way to disengaged Gen Xers." Then everything changed. Frum continues, noting that voter turnout increased substantially as a "hailstorm of divisive events: the dot-com bust, the Bush-versus-Gore recount, the 9/11 terrorist attacks, the Iraq War, the financial crisis, the bailouts and stimulus, and the Affordable Care Act." With the advent of social media, "Politics was becoming more central to Americans' identities in the 21st century than it ever was in the 20th."³⁶

Edmundson writes, "Every generation should be able to hold its own plebiscite on the issue of ideals. But many in the West, coming of age now, have never had the chance to hear the debate. (And many of their elders have forgotten or suppressed the issue.) Young people have been born into a world where the most pinched version of middle-class values— success, prosperity, safety, health— seems to stand supreme."³⁷

If Americans are seeking to participate in a nation-defining transformation, we should be working hard at building political institutions of high quality and of civitas. This isn't

some distant abstract idea that carries no relevance here at home. Institutions can be crafted in the county charter designed to foster: 1) adherence to the rule of law in a spirit of equality and fairness for all; 2) strength and quality in those agencies charged with enforcing laws and public policies and delivering public services; and 3) a strong ethic of deliberative democracy and accountability to the public.

This is precisely what the charter recommendations proffered here are designed to do. I offer this challenge to the members of the Charter Review Commission and to all local leaders and citizens: if you want to maintain the status quo tendencies toward tribal politics and the same old ways and means of life in the domains of the economy, the quality of life and the deterioration of the natural environment—don't do anything. But if you want to help build civitas and offer citizens here and in the future "a new birth of freedom," as Lincoln put it, get busy working on building civitas in our charter and in our everyday collective life.

Much more than charter amendments and management recommendations from the Charter Review commission are needed. Much depends not only on what we do, but on how and why we do it. The case example in the next essay on leading edge thinking about responses to the problems of poverty teaches many important lessons. These are lessons in how political quality and civitas are built, and in how transformative moral leadership is being attempted.

Write the vision; make it plain upon tablets, so he may run who reads it. For still the vision awaits its time; it hastens to the end—it will not lie. If it seems slow, wait for it; it will surely come, it will not delay.

—Habakkuk 2:2–3

I am convinced that unless we reinforce the middle ground, it will become a no-man's land across which the extremists will fight.

LeRoy Collins, former Governor of Florida

ESSAY THREE

Lessons from the Pinellas Experience and Beyond

The Economic Impact of Poverty

My consulting partner, Dr. Herb Marlowe and I developed a strategic plan for Pinellas County Government before the recession, completing the plan around 2005-06. After the recession, a new county administrator, Bob LaSala, was brought in as Pinellas struggled to emerge from impacts of the great economic downturn and other forces and trends on its service delivery capacities.

LaSala, whose professional experience is in New York, Florida and California, is a graduate of the Maxwell School of Public Administration at Syracuse. He has a well-deserved reputation for telling truth to power which has sometimes gotten him in trouble, but always well-served the communities he has worked for. He asked me to help him develop and implement leading edge leadership and management ideas—this time as a member of the executive staff. Strategic planning was one of those ideas.

The strategic planning activities began as leaders recognized that the demand for county services was outpacing the available resources to support many county programs. As a result, the Board of County Commissioners embarked on a series of strategic planning workshops in 2011 to develop a vision, mission, leadership philosophy, and specific strategies that would help frame future policy and budget discussions.

The Board's strategic vision is an improved quality of life, a more robust economy and healthy natural environment for Pinellas County residents. This strategic vision aims to have municipalities, engaged citizens, and the County Government working together to better align resources, and to revitalize and redevelop communities in a way that builds resilience and sustainability. The planning effort identifies five strategic goals:

- Establish and Focus on a Core Set of Services
- Maximize and Improve Service Delivery
- Improve Efficiency of Operations
- Increase Community Partnerships
- Support a High Performing Workforce

The concept of sustainability, which we discuss shortly, provided the organizing principle for the vision and strategic planning effort. The county's comprehensive plan, developed under the Growth Management Act of 1985, as amended, has a strong sustainability focus with many goals, objectives and policies linked to this powerful idea.

After the Board's goals were identified, each county department completed "deep dives" into their programs and services to align with the County Commission's goals. Following this process, the next step in the county's strategic planning activities involved collaborative workgroups across departments partnering together to review and determine whether the county's core services aligned with community needs.

One of those working groups involved the Pinellas County Department of Health and Human Services, in coordination with Community Development; Justice and Consumer Services; Code Enforcement; and Planning and Development, (including the functions I

headed, Economic Development, Strategic Planning, and Development Permitting). This team chose to analyze the factors that contribute to systemic poverty in an effort to determine the needs of the community as well as inefficiencies in county services and resource allocations.

The Department of Health and Human Services was headed by a highly seasoned veteran of the nation's poverty wars, Gwendolyn Warren, whose bio is attached. She is a long-time public sector administrator, who has distinguished herself as a leader in the areas of education, health, and social and community services.

For over thirty-five years, Ms. Warren has worked in a variety of executive level capacities in city and county government and has served with the goal to maximize human capacity. She has worked in jurisdictions with diverse populations in California, Florida and Georgia. She also served as President and CEO of the Miami Model City Community Revitalization District Trust. In that capacity, she facilitated the City of Miami's first comprehensive housing, economic development, and infrastructure revitalization project.

One of Ms. Warren's most significant accomplishments during her tenure as Deputy County Manager for Fulton County, Georgia, was the reorganization of the County's health and human services delivery system. This reorganization brought the full force of health and human services' resources to bear on the social determinants of health in Fulton County, improved collaboration, and realized cost efficiencies in excess of \$20 million in its first year of implementation. Ms. Warren knows what she's doing, and is one of the best and brightest public servants I have worked with in my career.

Pinellas County had the highest rate of homelessness and was the sixth largest county by population in Florida at the time the Pinellas report was completed. The county's strategic approach was to first understand the nature of the challenges about which planning is to occur. This avoids the temptation to jump to solutions before the problem is well-understood, which appears to be what has happened in Volusia County. A detailed "challenge narrative" about the problems of poverty was developed by Pinellas staff. The county's challenge narrative addresses the problems of poverty, including homelessness, and is titled *The Economic Impact of Poverty*. It highlighted seven factors that contribute to the cycle of poverty and drive the costs of combating poverty.

Based on this deep understanding of the nature of the problem, the report explored the economic effects of poverty and outlined specific initiatives to improve overall community outcomes without incurring additional costs. The goal was to work within existing resources to the extent possible, knowing that new revenues would be hard to come by, and required substantial public support. This support would not materialize unless a proven model was in place, and a clear business case was made demonstrating the need for additional revenues.

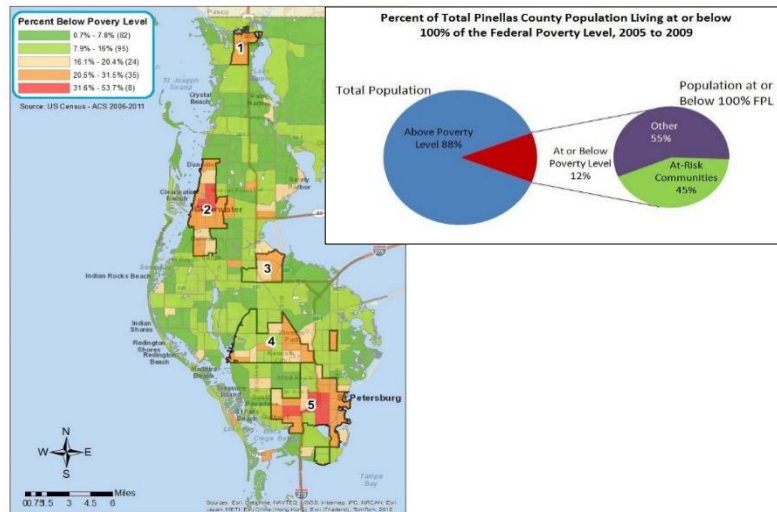


Building on the work of scholar Jonathan Haidt in the field of moral psychology, a guiding philosophy was that the liberal value cluster which supports compassion for the disadvantaged needs to be balanced against the traditional conservative value cluster that opposes public assistance. That opposition is grounded in a belief that “hand-outs” don’t create incentives for people to take personal responsibility for improvement of the conditions in their lives.³⁸ Free ride dependence is in no one’s interest. Neither is neglect of the problems of people caught up in the systemic cycle of poverty through no real fault of their own. What people need is a “hand-up.”

The analysis was also guided by the principle that wise investments in addressing the problems of poverty have a clear economic and social return. For example, keeping recidivists out of jail and in a position to get safety-net help is a lot smarter and compassionate, and less expensive than incarcerating them over and over again. This traditional entrepreneurial principle is implicit throughout *The Economic Impact of Poverty Report*. The report is neither extremely liberal nor extremely conservative, but a blend of the best ideas and values from both camps.

One of the guiding principles of the entire Pinellas County strategic planning process was to avoid ideological approaches to solving problems, and to rely instead on balanced “common sense.” Civitas demands this blend of pragmatism and idealism, recognizing that we live in the tension between what is and what ought to be. We will never be able to “perfect the world” by our own powers of reason.

As a result of this analysis, five zones within Pinellas County were identified as having high concentrations of poverty and a small return to the tax base. While the individuals in these zones were the highest consumers of county services, funding allocations and project prioritizations were disjointed, leading to disparate outcomes. The following graphic depicts the at-risk zones.



Costs associated with individuals living in poverty are elevated due to an increased risk of adverse outcomes such as poor health, low productivity, and increased crime in unsafe neighborhoods, all of which lead to lower graduation rates and a reduced participation in the labor market. The egregious consequences of the relentless cycle of poverty are mind-numbing and heart-rending.

Meanwhile, if you don't have a college degree, safety net systems are not providing much safety. Religious affiliation, a traditional source of moral and material support, is plummeting. The number of people who consider themselves classified among the NONE's (no religious affiliation) has tripled since 1990.³⁹

Human capital – the education, work experience, training and health of the workforce - is considered one of the fundamental drivers of economic growth. Poverty works against human capital development by limiting an individual's ability to remain healthy and contribute talents and labor to the economy. A decrease in human capital puts a strain on government resources and causes decreased economic opportunity on a community level. This, in turn, results in unemployment, increasing the number of individuals living in poverty. Breaking this cycle and "bending these unsustainable curves" is the name of the game.



Within zones of poverty there are vicious feedback loops—cycles of poverty with self-reinforcing drivers. The worse the situation gets, the worse it gets. One respected analyst of the problems of poverty, Jim Wallis, points to the power of vicious feedback loops when he writes, “The painful and combustible connection between poverty, crime, and hopelessness is another of our lingering national sins. Joblessness leads to hopelessness; if we don’t do a better job of educating all our children, they will struggle to find decent jobs, and without education and jobs it’s very hard to build the strong families that all humans so critically need.” Wallis speaks a hard truth when he writes, “Recessions and recoveries come and go, while whole communities of people are left behind, never enjoying ‘recovery,’ in predominantly black and brown neighborhoods across the country.” He points to one of the most vexing problems facing public servants whose job involves the protection and the uplifting of poverty-ridden people. “Law enforcement (and other providers of services) is then expected to control or at least contain the predictable outcomes of poverty’s chaos, pain, anger, and hopelessness in those black and brown neighborhoods, while the rest of us evade our responsibility to end that poverty and hopelessness.”⁴⁰ Because of this, more failure results. Law enforcement, government and non-profit service providers generally lose public confidence, and the vicious cycle grinds on.

This is precisely what is going on in parts of Volusia County where the problems of poverty are spreading beyond traditional neighborhood boundaries. One visible manifestation of this problem is homelessness. But as the cycle of poverty depicts and Wallis’ commentary suggests, there are many other interconnected factors. Homelessness is best understood in this multi-faceted light.

As was the case in Pinellas, there is an urban myth that Volusia’s homeless come from somewhere else. Some migrate here from other places to be sure. But it would surprise (and should shame) the average Volusian that many homeless in our county are their former neighbors, or still would be if circumstances of life had not turned against them. Many of those who migrate from elsewhere are drawn to the region because of the nature of our tourism marketing and special events/cheap vacation offerings.

The Pinellas experience contains a lesson for Volusia: a coordinated, holistic approach—mindful of the area’s economic and tourism development strategies—must be adopted to overcome the barriers to economic self-sufficiency and community

revitalization. This is not being done in Volusia County. We treat economic development, tourist development and social problems as if each existed in a separate world. Actually, they are interconnected and reinforce each other. The damage being done to the economy, and to the quality of life is tragic. The efficiency of our public and non-profit responses is compromised.

We must come to understand that resources and what is discussed later as “social capital” from the tourism and special events sectors of the economy should be invested in addressing the problems of poverty, including homelessness. Otherwise, the quality of our tourism and special events will be undermined by increasing problems of poverty that make our area less attractive to visit for any reason. This has enormous implications for the future of the area’s economic development, its general reputation, and quality of life.

We are demonstrating a lack of capacity for skilled moral leadership that sees the “whole ground in all its parts,” to borrow Jefferson’s words cited earlier. Volusia County’s political, civic and business leadership hasn’t mastered the basics of the economic impacts of poverty.

Here are some hard facts. In the United States, fifty percent of the population, about 150 million people, either live in poverty or nearly do. There are three classes of poor, according to analysts: the perennially poor; those who are a pay check or two away from low income thresholds; and the so-called “new poor,” who are former middle class.⁴¹ All three of these classes of people show an increasing presence in parts of Volusia County.

Volusia’s average household income is well-below the state average.⁴² Parts of the Halifax Area, for example, have average household income below some of the most poverty-ridden areas in Florida, including the Glades area around Lake Okeechobee where our consulting firm has done extensive economic and community development work. In North DeLand and the Deltona and DeBary area in Southwest Volusia, by contrast, the median household incomes are higher than the Volusia median. These areas are increasingly more allied with the Orlando metro orbit than with the Greater Daytona Beach-Halifax area.⁴³

There’s another growing problem that may come as a surprise to many Volusians who live outside aging urban neighborhoods and depressed rural areas. A Brookings Institution report published in 2014 found that more Americans below the poverty level live in suburbs than in big cities or rural communities. The report found that this is “...a significant shift compared to 2000, when the urban poor still outnumbered suburban residents living in poverty. But as poverty has spread, it has not done so evenly. Instead, it has also become more clustered and concentrated in distressed and high-poverty neighborhoods.”⁴⁴

The size of these pockets of poverty is likely to continue to metastasize unless present trends abate. This means that the challenges of poverty are growing in suburban as well as in urban areas. These include difficulties in earning a living wage; obtaining a quality education; finding quality housing and transportation; and obtaining adequate and affordable health care. These trends also mean increases in crime, substance abuse and mental and physical health problems, homelessness and other tragic pathologies of poverty.

In the Daytona Beach area, many of these neighborhoods are in close proximity to the beach and the locations of major special events, the area's strategic assets. This means that business owners large and small and of all kinds join residents and stewards of our major educational institutions and non-profits in having a fundamental interest in addressing the problems of poverty head on. Compassion for one's fellow humans notwithstanding, everyone's economic well-being and quality of life is threatened by the impacts of poverty. Our common good is at risk, we are all in this together, and we should stop fighting with one another and get on with figuring out how to build civitas, work together, and reverse the vicious feedback loops that are all around us—like tornadoes spinning off from a hurricane.

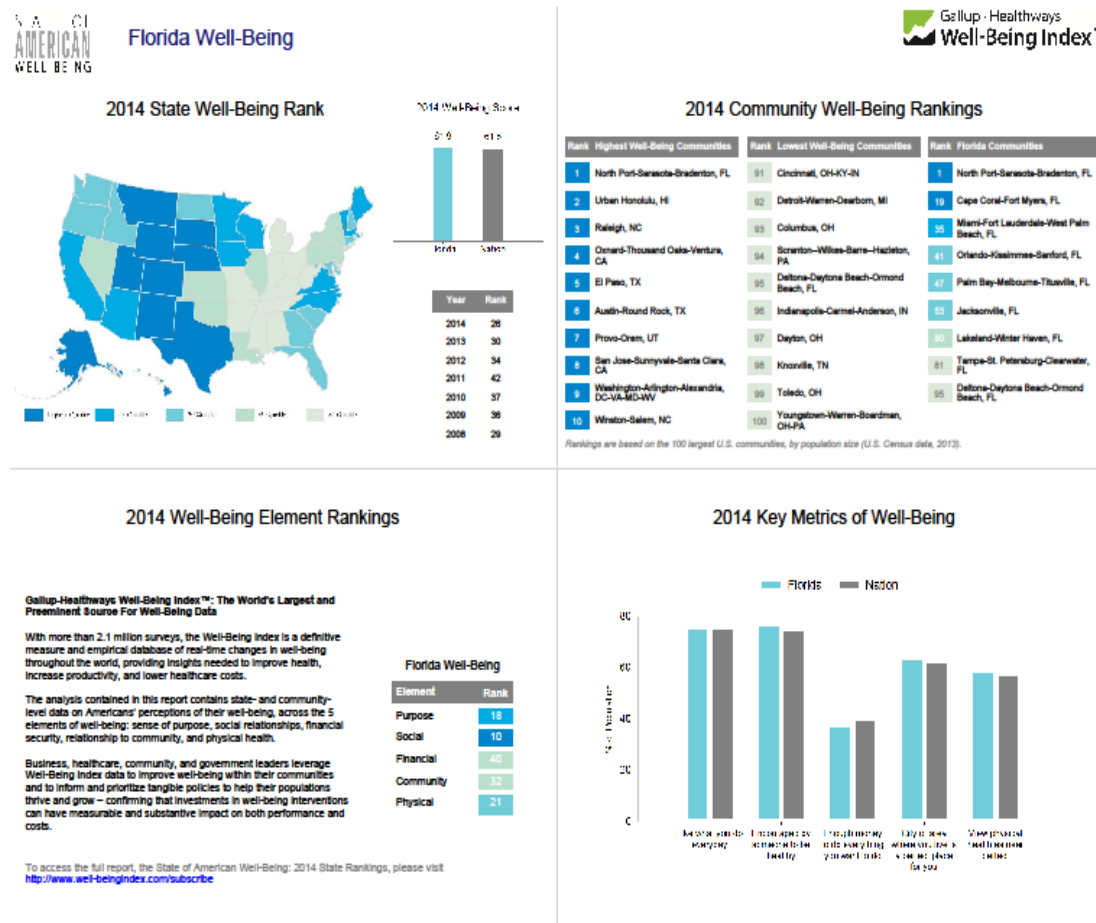
Pope Francis helps us see with greater clarity when he writes, "We are all too slow in developing economic institutions and social initiatives which can give the poor regular access to basic resources. We fail to see the deepest roots of our present failures, which have to do with the direction, goals, meaning and social implications of technological and economic growth." ⁴⁵

There is another Volusia Truth that should be faced head on: We are not being good stewards of the natural environment. The practice of continuing to allow driving motorized vehicles on the beach is the iconic exhibit A, but there are other indications of our neglect. Major water bodies in our county, including clear water springs, are impaired. The ecology of the beautiful Indian River Lagoon nearly collapsed due to persistent algae blooms and other environmental catastrophes. There is no discernible public dialogue about the effects of climate change and sea level rise. Instead, our public leaders are talking about building a beach boardwalk in the core tourist area—more at risk human structures.

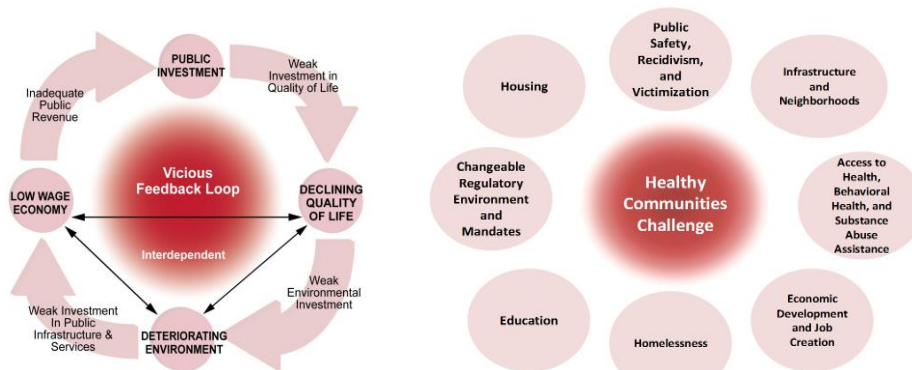
We should see that environmental, social, and economic problems feed off each other. Instead, many political and business leaders deny our sins against the natural environment, and don't connect the dots back to economic and social impacts. Many poverty-ridden neighborhoods are in low-lying areas with poor public transportation. These same areas suffer from inadequate storm and waste water infrastructure, which is highly susceptible to flooding, storm surge, and the damage these cause to the health, quality of life, and pocketbooks of people who live there. These problems are worsened by the extreme weather and sea level rise that come with climate change. Some political leaders, including Florida's governor, frown upon use of the terms "climate change" and "sea level rise." This places a chilling effect on our public agencies and our academic institutions, further exacerbating the problems.

The Pope weighs in again. He writes, "Recognizing the reasons why a given area is polluted requires a study of the workings of society, its economy, its behaviour patterns, and the ways it grasps reality...It is no longer possible to find a specific, discrete answer for each part of the problem." He continues in words that affirm sustainability—not as an abstract theory, but as a practical experience. "It is essential to seek comprehensive solutions which consider the interactions within natural systems themselves and with social systems. We are faced not with two separate crises, one environmental and the other social, but rather with one complex crisis which is both social and environmental." ⁴⁶ The economic, social and natural environmental domains inter-link in this chain of logic about the well-being of the whole of a community.

The highly-regarded Gallup-Healthways Index measures community well-being from several perspectives. According to its [website](#), the index “...gives leaders a unique perspective on where their populations are and where they can be — information that is vital to inform well-being improvement strategies.” Strategies that improve well-being lower healthcare costs, increase worker productivity, and enhance community competitiveness. The following graphic shows where Volusia County stands among Florida metro areas, and nationally.⁴⁷ ***Volusia has among the lowest well-being rankings nationally and within Florida.***



We must use an integrated approach to devising strategies that develop the economy, combat poverty, restore dignity to the excluded, and at the same time protect nature. The integrated approach also recognizes that humans live within, to use Francis’ words, “a reality which has previously been given to us, which precedes our existence and our abilities. So, when we speak of ‘sustainable use’, consideration must always be given to each ecosystem’s regenerative ability in its different areas and aspects.”⁴⁸ This process demands academic freedom. The open and integrated approach to knowledge must not be obstructed by religious or political dogma with their reductionist tendency to separate and fragment; to divide and disconnect.



There is no single cause for a given economic, environmental or social problem like poverty and homelessness. The causes are multifaceted and highly-complex, which means that the responses to these challenges must also be multi-faceted and complex. Research indicates that communities exhibiting high poverty rates also have disparities in social and environmental determinants that lead to bad outcomes.

Our study in Pinellas found that all five of the at-risk zones of poverty suffer from the same seven factors: insufficient transportation; limited access to food; lower educational attainment; limited access to health care; increased crime rates; high unemployment; and inadequate and insufficient housing. These seven factors all contribute to the continued cycle of poverty.

Research from the Center for American Progress indicates that there is a correlation between childhood poverty and the experience of poverty later in life. The annual economic cost to the United States associated with adults who grew up in poverty is **\$500 billion** per year, or **4%** of the Gross Domestic Product (GDP). This figure highlights the costs of high crime rates, poor health, and forgone earnings and productivity associated with adults who grew up in low-income households. Specifically, each year, poverty reduces productivity and economic output by **1.4%** of GDP, raises costs of crime by **1.3%** of GDP, and raises health expenditures and reduces the value of health by **1.2%** of GDP.

In Pinellas County, we found that the cost of poverty is **\$2.5 billion** annually. A similar calculation should be made for Volusia County, which has about one half the resident population of Pinellas. Both counties are tourist destinations.

Individuals in disadvantaged communities face significant barriers to economic self-sufficiency, which, in turn, drives public service costs upward. Facing limited options and opportunities, these individuals often have lower educational attainment, low wage jobs or prolonged periods of unemployment, high rates of incarceration, and a higher risk of homelessness.

In Volusia County, we keep feeding the same beast when we pour our limited public resources into incentivizing more low-wage jobs; failing to come to grips with our growing transportation problems by refusing to charge new development its proportional fair share of cost for its impacts;

spending an increasing percentage of public budgets for law enforcement and jail costs; and underserving those with mental illness and substance problems who continue to overwhelm our criminal justice system and threaten our personal security and sense of well-being.

The high cost of poverty suggests that an investment of significant resources in poverty reduction is more socially cost-effective over time, than an investment targeted at combating the adverse outcomes of poverty piecemeal. We also must come to see that economic, social and environmental challenges should not be treated as if they were in competition for public resources because they serve different “interests.” They don’t. They all serve the public interest broadly. Clearly, a well thought out, well balanced, and systemic and strategic approach is the way to go. This describes, “enlightened self-interests,” or “self-interests, rightly understood,” which is a perspective required of civitas.

Responses to Poverty and Homelessness: What They Teach Us

The Pinellas approach to responding to the challenges posed by homelessness, to summarize and expand our discussion so far, does several things right, in spite of its failings. The approach *as conceptualized* in its planning stages, like Miami-Dade and Orlando-Orange County, is:

- **Strategic and visionary.** It fits within a larger set of leadership strategies designed to advance a good and sustainable approach: in this case, to the problems of poverty.
- **Holistic and systemic.** The approach looks at the big picture causes and consequences of the cycle of poverty, and designs multi-faceted and complex strategic actions accordingly.
- **Inter-sector and collaborative.** The emphasis is on all three sectors—public, non-profit, and private—working together. *There is a strong emphasis on private sector leadership so both business acumen and political clout are brought to the table.* A private, non-profit organization was contemplated. Its board and business practices, as planned, would have created a means for avoiding many of the pitfalls of the government-driven bureaucratic approach. This model also is helpful in attracting funders precisely because of its business-like, multi-stakeholder approach.
- **Decentralized, dispersed, and networked.** The approach is best understood as a networked system that is open, transparent, deliberative and highly participative. There is no centralized command and control bureaucratic program in charge. Agreements among stakeholders provide for performance metrics to hold each other accountable.
- **Built on a “Continuum of Care Model”** that establishes an ecology of support services so people can improve their lives and advance, to the extent feasible, toward self-reliance. Envisioned was the integration of medical services, behavioral health services, substance abuse treatment services, and community support. Funding streams are multiple. This model is designed, in part, to attract and to sustain funders by gaining their confidence and trust.
- **Focused on the common good of all stakeholders:** providers, funders, and most important of all, people served. Service providers and funders are bound

together in a network of mutual reciprocity and commitment to a common goal, using negotiated agreements.

- **An ounce of prevention is worth a pound of cure** is a guiding principle. As suggested earlier, smart investments upfront can avoid huge disproportionate costs of a “cure” downstream, whether the issue is criminal justice, substance abuse, or primary medical care.
- **Led and managed using “adaptive leadership.”** The network learns by doing and adjusts and adapts its practices accordingly.
- **Based on performance and accountability** for achieving desired outcomes, impacts, and results.

The continuum of care network is flexible and linked to volunteer, faith-based and other efforts that are essential to the network, but not necessarily part of the revenue flow and agreement framework. These others include public and private educational institutions at all levels; non-profits with missions that are focused on the problems of poverty; and private sector stakeholders who understand that addressing the problems of poverty inures to their fundamental interests.

Working with the National Alliance to End Homelessness, the Pinellas Continuum of Care model had the following planning components. Each component is “mapped out” so a clear picture of existing resources and needs is understood. All organizations in the network—those that may receive funding through a private, non-profit board, as discussed, and those that receive their resources elsewhere—should form the foundation upon which a new model is built. These organizations should be empowered by the new model to continue and strengthen the good work they presently do within a new coherent system of accountability. This includes provider agencies and the Volusia-Flagler Homeless Coalition and Continuum of Care Board. The roles and relationships among these entities and the new board will have to be carefully considered to maximize the overall model and to avoid turf battles.

Working with the National Alliance to End Homelessness, the Pinellas Continuum of Care model had the following planning components. Each component is “mapped out” so a clear picture of existing resources and needs is understood. This must be done without threatening the freedom and creativity of each organization within the network. We’re after a deep respect for the freedom of each agency to choose to become part of a larger whole so it can do its job even better. There must be no coercion, no bureaucratic drive to ensure conformity to a one-size-fits-all approach. From the foundation described in the following graphic, an organic and unified system of care may be formed among organizations that are self-governing, and free to adapt to changing conditions.



The mission in the Pinellas model was to build a sustainable good “community of communities,” not a big state-centric bureaucratic structure. Government is certainly an important partner, but not the leader dictating to others. A key role of government is to enact policies and laws that help build and strengthen the network and secure and sustain its mission. Elected officials were encouraged to champion the model, and to hearten support coalitions. Government can help build civitas by being a convener of interested citizens tasked with working in common cause for the common good. ***There must be admonishment against public managers, elected officials, or provider agencies which disrespect the collaborative model as they advance their individual myopic selfish interests and turf at the expense of others.***

Take a look at an article in Nation Magazine⁴⁹ complete with an excellent video that describes the Salt Lake City approach to homelessness. My wife, Dale Arrington, City Manager of Orange City, along with a group of public administrators and others from Central Florida, visited Salt Lake to get familiar with the program. They found that it manifests many of the qualities described in the model we planned for Pinellas County.

One fundamental characteristic that both Salt Lake City and the visiting Central Florida group share: they are collaborating with each other, thinking systemically, and co-creating or learning how to co-create their desired future for the treatment of the homeless and solutions to the problems of poverty generally. Orange County and Orlando are busy figuring out how to improve their existing customized approach to the problems of poverty as this is written.

Where is Volusia County Government and the City of Daytona Beach in this picture? No one from Volusia County Government went on the Salt Lake trip. Daytona Beach had a representative. Meanwhile, a story in the February 2, 2016, Daytona Beach News Journal carries the headline “Hours After Daytona Homeless Camp Dismantled, New One Proposed.” The Daytona Beach City Manager in referring to the determination of a homeless activist to find another camp is quoted as saying: “We’re ready no matter what he does. We’re not going to let him run over the city.”⁵⁰

Bellicose language is understandable coming from officials charged with enforcing the law and keeping order. But it is regrettable that matters reached this point. The Daytona Beach City Manager was quoted in an earlier New Journal article as saying, “It’s rather pitiful for

the county to take an action that seeks to intimidate the city rather than find a solution.”⁵¹ In yet another article the city manager says of the homelessness problem broadly in what has to be the understatement of the year: “It’s more complicated than any of us thought...”⁵² The story just seems to get worse and more politically conflicted. ***We are in a war of the parts against the whole in this county, and it is tearing the place apart.***

What is being described in the Pinellas, Orlando-Orange, Miami-Dade and Salt Lake examples is an all-out effort to attack the problems of poverty on multiple fronts in the knowledge that unless smart strategies are put in place, the problems will only get worse and more expensive. Economic development efforts and efforts to solve the problems of poverty are interconnected. They may damage each other, or they may work together “virtuously” to help create a more just and prosperous society for everyone.

Smart strategy recognizes that while self-reliance and personal responsibility must be guiding principles, it is also true that not all people are able to demonstrate these attributes. The most disadvantaged—the least among us—need the compassion and help of society broadly. The best principle to guide policy is the Golden Rule.

This balanced approach is consistent with the work of moral psychology, cited earlier, about ways to reconcile unhealthy conflicts of values. It’s politically attractive because traditional conservative preferences for self-reliance through market-driven solutions and supply-side economics is blended with the traditional progressive approach to providing a safety net to the disadvantaged relying upon the precepts of Keynesian economics. The former is more community-driven, the latter is more government-driven. The blended “both/and” approach breaks through the inflexible rigidities of polarized positions and is capable of ending political gridlock and dysfunction. David Brooks of the New York Times wrote a [column](#) published January 29, 2016, that’s an excellent summary of a similar approach being taken in Great Britain.⁵³

I have described the broad-brush “policy wonk” version of the Pinellas approach as we planned it. Then, reality set in. This is not the place for a play by play description of all that went wrong with implementation of these ideas. Suffice it to say, there’s plenty of blame to go around. The bottom line is that the failure to move forward comprehensively is attributable to a combination of: being in too much of a hurry; failure to communicate well, especially at the political level with the potential provider network; protection of self-interests by providers who were threatened by having to change the way they did business; and political panic by hypersensitive elected officials who couldn’t deal with the torrent of phone calls, emails, etc. flowing into their offices from angry non-profits and interest groups.

Gwendolyn Warren and I gave presentations to the major cities in Pinellas County about the findings, conclusions and recommendations of *The Economic Impact of Poverty Report* and the outcomes of the strategic planning process. We received unanimous support from all of them, and many compliments for the overall quality of the effort. The main resistance came from provider agencies whose ways of doing business would have to change.

The problem was more about *how* things were done in the face of political adversity than the *why* or the *what* of the plan’s intentions and strategic actions. There are manifold

lessons to be learned from these failures. One of them is to be sure that elected officials stay strong and informed. Elected officials should help build and sustain coalitions of support, rather than cave in when the going gets tough. Having a strong, knowledgeable and politically respected private, non-profit board of directors helps.

This is also not the place to prescribe a model for addressing poverty and homelessness suited to Volusia County. I've been in conversation with some highly qualified Volusians with deep experience in serving the homeless population. I defer to their work. I know they are incorporating many of the planning principles we used in Pinellas, and are eager to learn what we did right and where and why we failed. I will continue to work with them. Their identities, backgrounds, and a summary of their thinking are included in an [article](#) published in the Daytona Beach News Journal February 4, 2016.⁵⁴

Whatever models are chosen by the Volusia community for developing responses to the problems of poverty, *or any other major regional challenge*, it is certain that there will be a need for far better communication among stakeholders than has been the case to date.

New institutions should be created in Volusia County to help educate both leaders and the broader public about major issues; and to convene, design and facilitate consensus-based strategic planning and action. One such planning and collaborative institution was recommended in Essay Two concerning changes to the County Charter. Our purpose in forming the Civitas Project, as discussed in the Introduction to this white paper, is much the same.

Funding Proposals

Unrealistic proposals are being made in Volusia to fund solutions to the problems of poverty/homelessness. These proposals cause significant intergovernmental conflict when they are more about turf protection and cost shifting than trying to respond collaboratively in common cause.

Cities in Florida generally have very little experience with the provision of human services, a responsibility traditionally falling to federal, state and county governments. Unlike the county, cities have no general fund that taxes all residents of Volusia County inside and outside city boundaries. While it is possible to negotiate ways for cities to contribute to homelessness (Pinellas County has done this to a limited extent), a spirit of mutual cooperation and support must exist among the local agencies. This cooperative and collaborative spirit clearly has not been applied to the homeless issues in Volusia County.

Those who lead in ways that cause needless and endless conflict should realize that the citizenry has a low tolerance for these unhealthy inter-governmental battles—and for good reason.

This is not the place for a full-blown analysis of funding options for the problems of poverty/homelessness. However, some general comments are offered that may be helpful to decision-makers.

The City of Daytona Beach has raised the possibility of approaching the Florida Legislature to request authorization, presumably by special act, to impose a tax on the

consumption of food and beverages within the city limits. In 1990, Miami-Dade County secured such a special act for human services funding and other purposes.⁵⁵ Like Daytona Beach, the Pinellas report found that a dedicated source for homelessness funding makes sense. In most places, including Pinellas, sources of funding are disjointed and often unpredictable. But finding a stable dedicated source will be difficult.

I have a history with this idea that I will summarize. During the administration of Yvonne Scarlett Golden, former Mayor of Daytona Beach, I was hired by the city through the Tallahassee-based Pennington Law firm as part of the team of lobbyists charged with working with the Legislature to advocate for the food and beverage tax. It is a matter of public record that our efforts failed when substantial opposition arose from the hotel and restaurant interests locally and statewide.

My consulting firm also was hired in 2004 by Daytona Beach to complete a Financial Master Plan for the city government. Daytona Beach is not a wealthy city. At the time we were hired to help put together a financial plan to stabilize the city's finance and budget practices, there was a high degree of concern about the trajectory of the city's financial future. I told the Orlando Sentinel at the time: "The city of Daytona Beach will be in trouble if it doesn't reverse the trends...We have projected that in two years, they will be under financial emergency under Florida law."⁵⁶

We had on our consulting team Gayle Sittig, a former Volusia resident and public employee, who had gone on to work for Governors Martinez and Chiles. Sittig is a brilliant finance expert who had been appointed by Governor Chiles to oversee the restructuring of the City of Miami's finances when that city formally was declared in financial emergency according to state law. (She later asked me to consider becoming Miami's interim City Manager to help with its transition and stabilization. After meeting with then new Mayor Manny Diaz, I decided to drop the idea. He had matters well at hand by that time.)

The moral of this story: the finances of the City of Daytona Beach, while greatly improved in recent years, were not strong then and they are not strong now relative to more prosperous Florida cities. Volusia County should have a fundamental interest in the financial strength of all municipalities within its boundary. The present "us versus them" mentality is retrograde and inconsistent with modern governance and management practice.

Financial-Strategic Planning

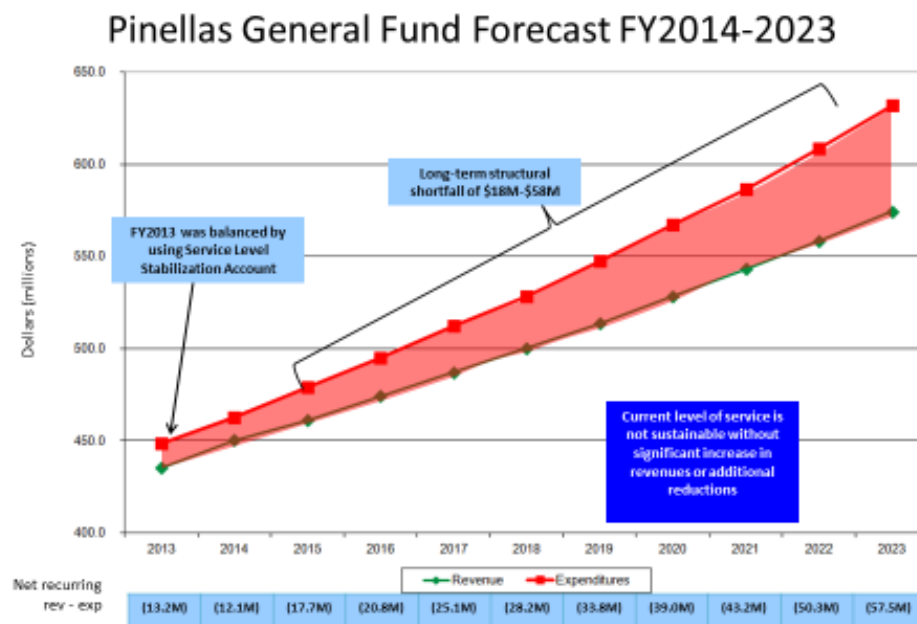
There is some question about the future financial projections of Volusia County Government, as well. The County Government doesn't use financial forecasting as part of comprehensive strategic planning. When financial trends are mapped and projected, it is much easier for decision-makers and the public to make informed decisions. No doubt the bureaucrats and independent auditors know what's going on with the county's financial condition and its projections. But it appears doubtful that other stakeholders do, including the County Council and the general public. There's a lack of transparency and sharing of information compared with other public organizations I am familiar with.

In Pinellas County, which generally is a wealthy county with a robust economic and tax base, the good, the bad and the ugly of financial forecasts are plain for all to see.⁵⁷ The following graphics are instructive. They show the projections of the Pinellas general

fund and transportation trust fund for the years indicated. Decision-makers know they must close the gaps or “bend the curves” through a combination of strategies, including reductions in taxes and costs, increases in revenues, innovation and efficiencies and by examining the entire suite of core services provided by the county.

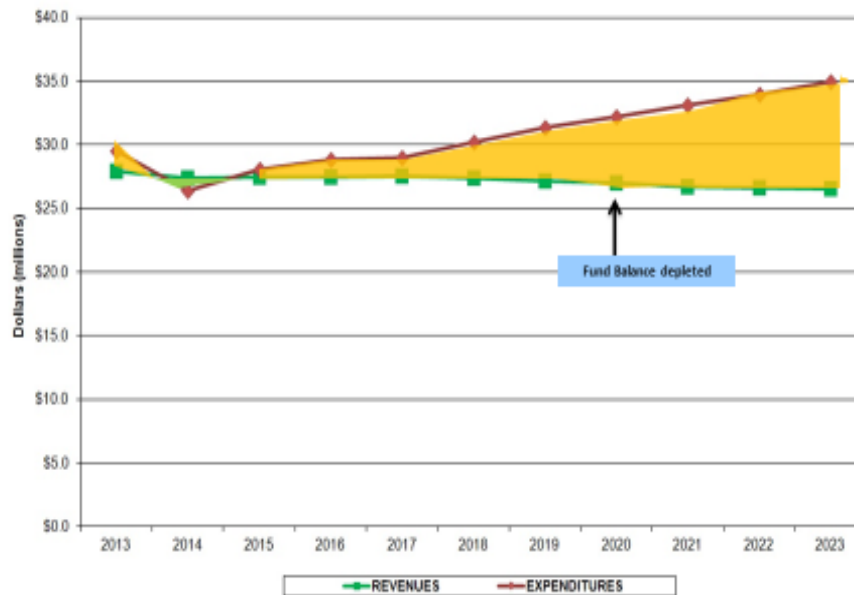
The Pinellas leadership (and the leadership of most well-managed urban counties and cities I am familiar with) has a vision, a sense of strategic direction, and a set of strategies to get where they need to go that are constantly updated and changed as conditions merit.

Volusia County Government practice has not achieved this level of fiscal and strategic sophistication. Its employees possess—but aren’t using—the expertise and the tools to correct this management weakness. Some of the recommended charter amendments taken up in Essay Two are designed to ensure that they do.



Slide presented at April 18th Work Session

Pinellas Transportation Trust Fund Forecast



12

Funding Poverty/Homelessness.

In the Pinellas Economic Impacts of Poverty planning model, the funding questions were multi-faceted and complex. Pinellas County Government levies a countywide property tax for indigent health care services. Part of that revenue was to be used for the continuum of care, according to the strategies included in *The Economic Impacts of Poverty Report*. ***At the time the report was written, eighty six percent of the County's homeless initiative was funded through the county's Department of Health and Community Services – either through direct services or through contracts, matches, and pass-through funding for community agencies.***

Through these entities, the county provided funding for 24 community agencies plus the Department to operate 21 services tailored to homeless individuals. The county also provides the majority of funding for Safe Harbor, a shelter for homeless men and women that is operated by the Sheriff's Office. According to its [website](#), “the primary purpose of Safe Harbor is jail diversion—that is to keep the homeless out of the criminal justice system. Pinellas Safe Harbor will provide these men and women with a safe environment while they pursue services needed to get back on their feet. As a result, the population of ordinance violators, and non-violent offenders would be reduced in the Jail, at a significant savings to tax payers.”⁵⁸

Pinellas compared its existing and planned initiatives against the programs, services and funding sources in other urban counties, which Volusia also should do. As discussed earlier, Miami-Dade and Orange County have well-developed programs that resulted in decreases in the homeless population, as cited in the Pinellas report.

Interestingly, the Miami-Dade Homeless Trust is guided by a **10 Year Strategic Plan** that details the strategies necessary to end homelessness in the County. A Continuum of Care model is used in order to deliver services to the homeless population. This model provides coordinated outreach and assessment, medical and nutritional support services and three different types of housing: transitional, emergency and permanent supportive. Although Miami-Dade County administers a variety of strategies to combat homelessness, the primary emphasis is housing the homeless and preventing the loss of housing. As a result of these efforts, between 2005 and 2011, Miami-Dade saw a twenty seven percent reduction in homelessness. Due to the County's continued success in reducing homelessness, it has been recognized as a National Model by the U.S. Department of Housing and Urban Development.

The Pinellas Report details outcomes in both Miami-Dade and Orange County during the study period.

The Pinellas effort also envisioned that Florida would accept the increased federal funding for the expansion of Medicaid under the Federal Affordable Health Care Act. This measure was defeated when the Florida House of Representatives rejected by a vote of 72-41 a Senate-approved plan to expand Medicaid to some 800,000 eligible Florida residents. Governor Scott threatened to veto the legislation if it passed. His threat undoubtedly added to the GOP opposition to the bill. Hopefully, wiser and less ideologically minded people will reverse this mistake in the near future.

Pinellas envisioned a sustainable, comprehensive, and integrated homeless continuum of care, which was seen as a work in progress over a number of years. Planners understood that it is important to first understand the types of programs and services that are available to homeless residents and how provider agencies are coordinating and collaborating among one another. Once this picture is properly analyzed, the intention was to begin to identify gaps in care and design a continuum with a single point of entry and a complement of services that address the many needs of their homeless population – including physical health, behavioral health, substance abuse disorders, housing, and employment.

It was also believed necessary to manage the sources of funding that support homeless services throughout the County. By consolidating contracts and streamlining services, it is possible to more efficiently target the right kind of care to those who need it the most and work with homeless individuals and families to transition them back to permanent housing and economic self-sufficiency. Pinellas understood that a helpful tool for the long-term vitality of a homeless services continuum of care is to utilize a diverse mix of funding sources, including federal, state, local, and foundation grant opportunities or a dedicated source of funding such as the Penny for Pinellas program.

There is another possible funding source we briefly reviewed in Pinellas a few months before my tenure there ended. There is some possibility of a financing approach known as "Social Impact Bonds" also known as "Pay for Success Bonds" or "Social Benefit Bonds." These instruments amount to a contract with the public sector in which a commitment is made to pay for improved social outcomes that result in public sector savings.⁵⁹

Usually, agreements are signed among local governments and a private non-profit corporation (see discussion later in this essay) to issue Social Impact Bonds. The debt is secured in part and re-paid through savings achieved through the programs the bonds

fund. For example, savings in jail costs derived by helping to break the cycle of recidivism of homeless people (many with mental health and substance abuse problems) may be used.

Check out an [article in Forbes](#) magazine posted on the web. It gives a good overview of how these bonds work.⁶⁰ A group affiliated with the Kennedy School of Government at Harvard also is [researching and advising](#) about social impact bonds.⁶¹

Decision-makers should have competent bond counsel and financial advisors research this possibility as a funding source. It may be possible to develop a financial arrangement that blends these bond proceeds with other revenues and enables the funding of both operating and capital costs. This is a complex question about which only competent counsel can reasonably advise.

Finally, as discussed below, the model must be highly-efficient and mission-driven. When accountable to the public, a private, non-profit model with a board consisting of multiple stakeholders, advances the possibility of availing the community of outside funding sources. It is doubtful that outside public or private investors are willing to put their money into the dysfunctional political circumstances that now exists in Volusia County. A new model—with new and more visionary leaders—is clearly indicated.

Surveying the Whole Ground

When we step back and survey the whole ground of the present political dysfunction in Volusia County, we see only a few signs of authentic moral leadership. Volusia leaders are not thinking critically and holistically. Most do not connect the dots among the economics of poverty, its many driving causes, and the social dysfunction that is all around us. There is little effective and sustained collaboration among levels of government, especially at the leadership level. Nor is there concerted collaborative action by the private and non-profit sectors to genuinely commit to the eradication of poverty, which produces the root causes of homelessness. There is no vision and no plan to do this. Meanwhile, at national, state, and metropolitan levels, the middle class continues to erode, and the problems of the most disadvantaged Americans worsen.

We are deep in denial, boxing at shadows, blaming each other for problems that belong to us all. Volusia is experiencing unsustainable trends and conditions across the economy, quality of life/society, and the natural environment. While there are many good and sustainable initiatives underway in Volusia County, overall it must be admitted that our basic systems are over-stressed and showing signs of serious decay.

If we don't face down these challenges, they will continue to hold us back. Jim Wallis teaches about the biblical insight: "You will know the truth, and the truth will make you free." He points out that this is a moral statement that breaks through the confusion and chaos of our lives, freeing us from the grip of untruths that control us, dominate us, and set us on the wrong path. "Untruths are burdens to bear and even can be idols that hold us captive—not allowing us to be free people who understand ourselves and the world truthfully."⁶² Many of these untruths are ill-intended norms and beliefs that we hold with dogmatic rigidity to our peril.

One of the untruths is that Volusia County is progressive, in control of its present and future—a great place to live, work and play—all the marketing

hype that our promoters believe and want the outside world to believe. While this is a great place to be for some of us, it won't continue to be so unless we face the truth about ourselves. Look at the debacle involving the homeless at the County Administration Center on Beach Street in Daytona Beach for vindication of the truth that we are not always what we purport to be. Their tragedy reflects all of us in a mirror of shame.

Strategic planning is an evolving art that can help us face down our challenges with clear-eyed, empirically based evidence. So can well-designed and facilitated collaborative efforts of deliberative democracy designed to set strategy after coming to a full “three-hundred and sixty-degree” systemic understanding of the realities we face. Organizations that are not making this form of visionary, big picture planning and collaboration part of their culture are falling behind, merely reacting to the day to day with no sense of direction or depth of knowledge about the challenges they face. Volusia County Government is one of those organizations and there are others.

This is not the place for a discussion of how to do community visioning and collaborative strategic planning. My aim here is to encourage leaders who want to be effective in the present unstable environment to begin integrating both sustainability-thinking and state of the art planning into the ways they lead and manage their organization.

This is the way to build the moral leadership capacity and the political quality our institutions need to respond to complex challenges like the problems of poverty, including homelessness; economic development; law enforcement and public safety; race relations; arts, culture and heritage; and water and the natural environment. Democracy is learned—and civitas is built-- through practice.

As I conclude this part of the white paper about the Pinellas approach to strategic planning and poverty, I don't want to paint too rosy a picture. There are many failures as well as successes in the Pinellas effort. I am highly critical of some of the decisions its leadership made. I witnessed at times an appalling lack of political courage, and the introduction of a management philosophy after a change in administrations that is a throwback to the past. But that's another matter my book will address. There is much to be learned from failure as well as from success.

In making these critical observations of our political and public management leaders, I ask the reader to join me in refraining from succumbing to angry judgmentalism. My career placed me among those leaders. I know how difficult the job can be. But we can do much better than now. As we become unsettled and respond as citizens to the dysfunction, it's wise to remember that we are not looking for revenge. As Doc Holliday said of Wyatt Earp in the great movie Tombstone, it's a reckoning we're after: a “getting it right” by accepting our civic responsibilities and building civitas.

One thing I learned from my career: most elected officials these days seldom lead anywhere. They wait for the parade to form, and then seek to get out in front of it. With some notable exceptions, we don't have the “A-Team” holding our elected offices and key public management positions. Civil society, especially the private and non-profit

sectors—and just plain concerned citizens—are the true leaders. Elected officials should represent their interests, and align with their needs, aspirations and values. That’s really as it should be.

Enormous responsibility comes with the burden of being a citizen. That said, it is time for leading citizens of Volusia County to step up, and begin the work of understanding the problems of poverty and homelessness holistically and critically, collaborate among themselves and the elected officials who represent them, and co-create a desired future that responds to the challenges at hand with factual knowledge, courage and wisdom.

When we reach the bottom of our dreadful experience with political dysfunction and see our common reality through each other’s eyes, we may say with the cartoon character Pogo, “We have met the enemy and he is us.”⁶³ We must look within ourselves to the sphere of personal conscience, withdraw our false judgments of others, and face down our demons by seeking the truth. That’s where the power resides. We have to muster the courage to be citizens willing to make a commitment to the hard work of civitas, and assume the burden of freedom. In this way, we build moral leadership on a platform of reverence for the place we call home. We must do this to gain our liberty from the true source of oppression: the enemy within.

I applaud the Pinellas political leadership and all others for their earnest efforts to build public agencies capable of responding to the complex challenges. Pinellas County Government and the best public agencies and communities are learning by doing, and others must do the same. There are many lessons to be learned from communities across the I-4 corridor and in other places about how to lead—and how *not* to lead.

Pinellas is facing the urban regeneration challenge Volusia is beginning to experience. Their efforts to deal with the problems of poverty (including homelessness) is part of this process.

The Necessity of Social Capital

In the case of homelessness, it will take time to conceptualize, gain consensus, plan, develop and execute a new model. It is likely that both short and long-term scenarios will be phased. No matter what, Volusians should have learned by now that visionary and transformative leadership, strategic planning, quality institutions, and the tools of deliberative democracy are essentials. These essentials may be described as components of “civitas” or “social capital.”

Scholar Robert Putnam defines social capital as “features of social organization such as networks, norms, and social trust that facilitate coordination and cooperation for mutual benefit.”⁶⁴ The term also is defined closer to our definition of civitas as “the network of relationships of trust, dependability, and respect for rules, all of which are indispensable for any form of civil coexistence.”⁶⁵ Social capital is directed at a noble goal, here conceived as a sustainable, good community capable of dealing with the problems of poverty. Social capital also is required to address a host of economic, social and environmental challenges, which why it is so important to build it and sustain it.

When society isn’t producing social capital, its sustainability is imperiled. Trust forms the essence of social capital, which, in the language of sustainability, is an important by-

product of cohesion and unity. Trust—as a key part of resilience—enables a community to hang tough in the face of adversity and to adapt to challenges with success.

As civitas is built, people learn to trust one another. They associate and cooperate for larger purposes defining their common good. There is respect and tolerance when disagreements occur because their mutual attachment to the greater good transcends these differences.

Stanford scholar Larry Diamond writes of trust: “Relations among people are primarily horizontal: people come together as individuals with equal dignity, rights, and obligations...Individuals are truly citizens; they have an interest in public issues and care about the welfare and progress of the community. In this sense, they are motivated at least to some degree by public-spiritedness.”⁶⁶

This public-spiritedness, however, is quickly quashed when people lose confidence in the quality of political institutions. This is because strong, effective institutions of governance are needed to enforce policies and laws and deliver agreed-upon services fairly and effectively. Civitas, as a culture of trust, demands cooperation, reciprocity, restraint, tolerance, and compromise. Civitas is built on social trust.

Volusia County governance, with a few notable exceptions, has lost its civitas and the trust that comes with it.

The lack of social capital grounded in trust helps explain why Americans consistently reveal in opinion research that they believe society is in decline. This may be interpreted to mean that the nation is on an unsustainable course.

The dearth of social capital also helps explain why surveys show that Americans don’t trust the nation’s institutions. A web site visit to any reputable organization that surveys public opinion shows the evidence of our distrust of each other. Opinion research finds that since June 2009 public confidence in virtually every major institution of American life has declined. Measured were organized religion, the military, the Supreme Court, public schools, newspapers, Congress, television news, the police, the presidency, the medical system, the criminal justice system and business.⁶⁷ Looking to the future, sadly, only 18 percent of high school seniors say that most people can be trusted.⁶⁸

Research also shows that Americans believe something has gone wrong with the way democracy works. Leading the list of concerns are political corruption, influence peddling, abuse of liberties, and polarization of partisan politics. These problems with American democracy have global significance because the U.S. is the most powerful and influential democracy in the world. These problems also have local metropolitan area significance, including along the I-4 corridor in this bellwether state. Florida is widely recognized as a microcosm and harbinger of things to come for the nation. What we do matters.

Scholar Larry Diamond, who specializes in the study of democracy, writes, “For the United States to be effective in promoting and inspiring democratic progress elsewhere in the world, it must be credible in its own practice of democracy. No country is a perfect democracy, but the United States must become a better democracy, and a reforming democracy, if its appeal to advance democracy is to resonate. It cannot continue to say, “Do as we say, not as we do.”⁶⁹ This is a serious problem because once trust is lost, it is

very difficult to reestablish. Trust, and the social capital it helps build, is a non-renewable resource.⁷⁰

Conclusions

This concludes the essays, but hopefully helps begin a conversation that will build civitas through public reason. I have no doubt that the Volusia body politic is up to the task of figuring out how to address our most vexing challenges. But much change in the ways and means of governing needs to take place.

Civitas is hard work, as the extensive effort of the original founders of the Volusia Charter shows us. They did not sit back and wait for the public parade to form; they formed it themselves and then led it. They heeded the warning of the famous philosopher Ludwig Wittgenstein, who wrote: “Resting on your laurels is as dangerous as resting when you are walking in the snow. You doze off and die in your sleep.”⁷¹

Meaningful change that builds civitas is not easy. The tribal approach to governing, which is ubiquitous in the present era, offers the illusion of certainty that comes with the familiar. It is easier for the average citizen to submit to the authority and manipulations of elites than to meet the demands and uncertainties of democracy.

Tribalism offers the allure of mass conformity to the dictates of dogma. It is certainly the easy way, but not always the safe way to be a citizen. Such conformity plays into the hands of the selfish who erroneously equate their interests with the public interest. The result is transactional leadership that is myopic, often unjust, rigid and inflexible, and ultimately self-defeating. The hard work of civitas, by contrast, demands “struggle, strategy, ingenuity, vision, courage, conviction, compromise, and choices by human actors— of politics in the best sense of the word,” scholar Larry Diamond writes.⁷² But it is only through this hard work of civitas that our communities are given the chance to thrive and our citizens are assured of a fair chance of the good life.

We live in difficult times when our civitas has ebbed and our political order has decayed. Sometimes it seems that we are headed toward catastrophe and that no one seems interested or concerned about changing course in the direction of goodness and sustainability. We can take heart in an insight offered by Mahatma Gandhi (1869-1948), perhaps the most impactful ecumenical moral leader of the twentieth century: “When I despair, I remember that all through history the way of truth and love have always won. There have been tyrants and murderers, and for a time, they can seem invincible, but in the end, they always fall. Think of it—always.”⁷³

Biographical Information

Larry Arrington has alternated between public sector executive positions at the local government level and private consulting. He served as a Congressional Intern and Aide in Washington, D.C., and returned to his native Florida to begin a career as a public administrator and planning and management consultant. He served Volusia County Government in phases a total of eighteen years, beginning as an intern in the County Manager's Office and ending with a tenure as County Manager. He also served as assistant county administrator in Leon County (Tallahassee), Florida. He has more than twenty years of experience as a planning and management consultant to local governments, non-profits, and private sector clients. He recently completed a tenure as Director of Planning and Development for Pinellas County Government in the Tampa Bay region. Larry's practical and consulting activities give him hands-on experience with responses to the major public challenges facing Florida.

He is past-president of the North and Central Florida Chapters of the American Society for Public Administration, and a former Board Member, Florida City-County Management Association. He holds undergraduate and graduate degrees in political science from Stetson University, where he has taught in the political science department. He is a frequent lecturer at the University of Central Florida, graduate program in public administration. Arrington is a seventh generation native Floridian, who resides in DeLand. He is married to Dale Arrington, former assistant city manager of DeLand, and presently City Manager of Orange City, Florida.

He presently serves as President/CEO and is a founding director of the Civitas Project.

He may be contacted at arrington.larry@gmail.com

Gwendolyn C. Warren is a long-time public sector administrator, who has distinguished herself as a leader in the areas of education, health, social and community services.

For over thirty-five (35) years, Ms. Warren has worked in a variety of executive level capacities in city and county government and has served with the goal to maximize human capacity. Her experience serving the public is extensive, having worked in jurisdictions in the states of California, Florida and Georgia with diverse populations that add unique and challenging issues to the provision of quality government services.

Ms. Warren's lifelong passion and commitment for designing services and programs to support and enhance the overall capacity of the community began at the age of eighteen, when she became the Co-Director of the Detroit Geographical Expedition and Institute, an extraordinary and enduring project of community based and collaborative radical geography research and education in the late 1960s. Ms. Warren shaped many of the DGEI's mapping projects, was a key author of its Field Notes, and was a leader of the educational component of the DGEI. The Detroit Geographic Expedition made significant contributions to school decentralization in Detroit.

Ms. Warren's keen ability to leverage limited resources to devise and spearhead innovative programs, services and initiatives designed to assist individuals with improving their health, achieving self-sufficiency, accessing necessary services, and building and supporting sustainable and safe neighborhoods is second to none.

During her tenure as the President and CEO of the Miami Model City Community Revitalization District Trust, she facilitated the City of Miami's first comprehensive housing, economic development and infrastructure revitalization project in the City's history. The project included the development of 400 new homes intended to provide homeownership opportunities for area residents. While providing homeownership opportunities was central, the prototype design was multi-faceted and included a comprehensive approach to literally transform the entire City neighborhood and provide an environment with quality of life standards to raise a family. The comprehensive strategy included: state of the art infrastructure improvements; "green space," including a neighborhood park and/or park improvement/expansion; establishment of a community one stop Business and Industry Service Center, which provided a full complement of strategic services to the business community that result in job creation and business expansion; creation of a neighborhood One-Stop Center to provide job training, placement assistance, homeownership training and counseling, and other available social services; and creation of a full-service healthcare facility.

One of Ms. Warren's most significant accomplishment during her tenure as Deputy County Manager for Fulton County, Georgia, was the reorganization of the County's health and human services delivery system. This reorganization brought the full force of health and human services' resources to bear on the social determinants of health in Fulton County, improved collaboration, and realized cost efficiencies in excess of \$20 million in its first year of implementation.

The savings generated through the reorganization allowed several key capital projects to be funded. These capital projects consisted of the renovation and repurposing of five county owned facilities. These projects allowed the County to facilitate an integrated, one-stop approach to social service delivery, while offering considerable cost savings. This initiative earned the County an award from the International City/County Management Association (ICMA).

Most recently, as the Executive Director of the Pinellas County Department of Health and Community Services, Ms. Warren, devised a strategy to partner with community agencies to design an integrated health care delivery model that incorporates physical health, behavioral health and community support services in one-stop centers throughout the County. The new delivery system is designed to reduce barriers to health care, increase collaboration, enhance the use of technology, improve outcomes, and reduce cost.

Ms. Warren holds a Bachelor of Arts in Sociology and a Masters of Fine Arts in Curriculum and Instructions from Michigan State University.

¹ *Reubin O'D. Askew and the Golden Age of Florida Politics (Florida Government and Politics)* by Martin A. Dyckman http://www.amazon.com/Reubin-Golden-Florida-Politics-Government/dp/0813035716/ref=sr_1_sc_2?s=books&ie=UTF8&qid=1428128714&sr=1-2-Spell&keywords=martin+dykman, Locations 4965–4967.

² See http://www.stpete.org/economic_development_dept/redevelopment_initiatives/docs/PSSCRA/Oct_2013_Update_on_Economic_Impact_of_Poverty_Report_for_BOCC.pdf.

³ See "A Time for 'Sublime Madness', by Chris Hedges, December 15, 2015, Truthdig, http://www.truthdig.com/report/item/a_time_for_sublime_madness_20130120."

⁴ "Thomas Jefferson First Inaugural Address In the Washington, D.C. Wednesday, March 4, 1801 <http://www.bartleby.com/124/pres16.html>."

⁵ https://en.wikipedia.org/wiki/Law_of_the_jungle.

⁶ Ibid.

⁷ Fukuyama, *The Origins of Political Order*, 451.

⁸ "ENCYCLICAL LETTER LAUDATO SI' OF THE HOLY FATHER FRANCIS ON CARE FOR OUR COMMON HOME," pages 106–107, paragraphs 142.

⁹ Fukuyama, *The Origins of Political Order*, 451.

¹⁰ "Deliberative Democracy Definition. Civic Renewal Movement Website <Http://www.cpn.org/crm/contemporary/beyond.html>."

¹¹ "The Range of Justice (or, How to Retrieve Liberal Sectual Tolerance), by Gerald Gaus, <Http://www.cato-unbound.org/2011/10/10/gerald-Gaus/range-Justice-or-How-Retrieve-Liberal-Sectual-Tolerance>."

¹² For an interesting discussion about treating diverse others as gifts, see Hauerwas, *A Community of Character*, Kindle Localtion 3226.

¹³ These capacities are identified in the combined work of several related scholars, some of whom have worked together. The scholars who first developed the capacities used here co-authored this book under the leadership of Peter Senge *The Necessary Revolution: How Individuals and Organizations Are Working Together to Create a Sustainable World*, By Peter Senge, Et. Al., http://www.amazon.com/Necessary-Revolution-Individuals-Organizations-Sustainable/dp/0385519044/ref=sr_1_1?s=books&ie=UTF8&qid=1433075946&sr=1-1&keywords=the+necessary+revolution.

¹⁴ Fukuyama, Francis (2014-09-30). *Political Order and Political Decay: From the Industrial Revolution to the Globalization of Democracy* (Kindle Locations 449-450). Farrar, Straus and Giroux. Kindle Edition.

¹⁵ *The Spirit of Democracy: The Struggle to Build Free Societies Throughout the World,,* http://www.amazon.com/Spirit-Democracy-Struggle-Societies-Throughout/dp/0805089136/ref=sr_1_1?ie=UTF8&qid=1442487535&sr=8-1&keywords=the+spirit+of+democracy, 297–299.

¹⁶ *Ibid.*, 298–299.

¹⁷ See The Ring and the Anti-Ring, Volusia County Heritage Website <http://216.157.37.6/history/ring.htm>.

¹⁸ This definition is used by the U.S. Environmental Protection Agency. It is derived from an earlier, widely disseminated definition by The Brundtland Commission in its report “Our Common Future”, published as Annex to document A/42/427, General Assembly, World Commission on Environment and Development, *Development and International Co-operation: Environment* (New York: United Nations, 1987).

¹⁹ “ENCYCLICAL LETTER LAUDATO SI’ OF THE HOLY FATHER FRANCIS ON CARE FOR OUR COMMON HOME,” page 106, paragraph 141.

²⁰ “Beyond Sustainability Website [Http://www.beyondsustainability.org/](http://www.beyondsustainability.org/).”

²¹ *Reubin O’D. Askew and the Golden Age of Florida Politics (Florida Government and Politics) by Martin A. Dyckman* http://www.amazon.com/Reubin-Golden-Florida-Politics-Government/dp/0813035716/ref=sr_1_sc_2?s=books&ie=UTF8&qid=1428128714&sr=1-2-Spell&keywords=martin+dykman, Locations 4965–4967.

²² <http://kymetaknight.blogspot.com/2013/02/burkes-social-contract-for-ages.html>.

²³ This term was used by Lincoln in his first Inaugural Address in 1861.

<http://www.ushistory.org/documents/lincoln1.htm>.

²⁴ Chapter XVII: PRINCIPAL CAUSES WHICH TEND TO MAINTAIN THE DEMOCRATIC REPUBLIC IN THE UNITED STATES Tocqueville, *Democracy in America*.

²⁵ This term famously was used by Lincoln in the Gettysburg Address

²⁶ “Fred P. Cone, Wilipeida, https://en.wikipedia.org/wiki/Fred_P._Cone.”

²⁷ See Local Government Reform in the Emerging Mega-State: The Florida Charter-County Movement, Master’s Degree Thesis by Lawrence W. Arrington, Stetson University Library, 1989.

²⁸ See Local Government Reform in the Emerging Mega-State: The Florida Charter-County Movement, Master’s Degree Thesis by Lawrence W. Arrington, Stetson University Library, 1989.

²⁹ See *On Leadership* by John Gardner, Simon and Schuster, p. 124

³⁰ *The Metropolitan Revolution: How Cities and Metros Are Fixing Our Broken Politics and Fragile Economy* by Bruce Katz and Jenifer Bradley, http://www.amazon.com/Metropolitan-Revolution-Politics-Fragile-Brookings/dp/081572151X/ref=sr_1_1?s=books&ie=UTF8&qid=1415986838&sr=1-1&keywords=metropolitan+revolution, 2.

³¹ “Subsidiarity, Catholic Culture, http://www.catholicculture.org/culture/what_you_need_to_know/?id=84.”

³² “Enter the Age of the Outsiders, by David Brooks, New York Times, October 20, 2015, http://www.nytimes.com/2015/10/20/opinion/enter-the-Age-of-the-outsiders.html?action=click&pgtype=Homepage&module=opinion-c-Col-Left-Region®ion=opinion-c-Col-Left-region&WT.nav=opinion-c-Col-Left-region&_r=0.”

³³ See <http://people.stern.nyu.edu/jhaidt/>.

³⁴ See New York Times article published February 2, 2016, How Both Parties Lost the White Middle Class, by R. R. Reno, http://www.nytimes.com/2016/02/02/opinion/campaign-stops/how-both-parties-lost-the-white-middle-class.html?_r=0.

³⁵ *Self and Soul: A Defense of Ideals*, by Mark Edmundson, http://www.amazon.com/Self-Soul-Defense-Mark-Edmundson-ebook/dp/B014214UHO/ref=tmm_kin_swatch_0?_encoding=UTF8&qid=1446890903&sr=8-1, Locs 711-723.

- ³⁶ See <http://www.theatlantic.com/magazine/archive/2016/01/the-great-republican-revolt/419118/>.
- ³⁷ *Self and Soul: A Defense of Ideals*, by Mark Edmundson, http://www.amazon.com/Self-Soul-Defense-Mark-Edmundson-ebook/dp/B014214UHO/ref=tmm_kin_swatch_0?_encoding=UTF8&qid=1446890903&sr=8-1, L:ocs 73–75.
- ³⁸ See “Moral Foundations <http://www.moralfoundations.org/>.”
- ³⁹ See “What Republicans Should Say,” by David Brooks, New York Times, January 29, 2016
- ⁴⁰ See “Crossing the Bridge to a New America, by Jim Wallis, Sojourners’ Magazine, February, 2016, <https://sojo.net/magazine/february-2016/crossing-Bridge-New-America>.”
- ⁴¹ “Huffington Post Article on The Rich and the Rest of Us http://www.huffingtonpost.com/2012/09/05/cornel-West-poverty_n_1855545.html.”
- ⁴² See <http://www.floridacharts.com/charts/OtherIndicators/NonVitalIndRateOnlyDataViewer.aspx?cid=0293>.
- ⁴³ See <http://statisticalatlas.com/county/Florida/Volusia-County/Household-Income>.
- ⁴⁴ “Brookings Institution Growth and Spread of Concentrated Poverty <http://www.brookings.edu/research/interactives/2014/concentrated-poverty#/M10420>.”
- ⁴⁵ “ENCYCLICAL LETTER LAUDATO SI’ OF THE HOLY FATHER FRANCIS ON CARE FOR OUR COMMON HOME,” pages 80–81, paragraph 102.
- ⁴⁶ “ENCYCLICAL LETTER LAUDATO SI’ OF THE HOLY FATHER FRANCIS ON CARE FOR OUR COMMON HOME,” pages 104–105, paragraphs 139–140.
- ⁴⁷ See http://wbi.healthways.com/hubfs/Well-Being_Index/2014_Data/State_Summaries/Florida_2014_State_Summary.pdf?t=1454689603845.
- ⁴⁸ “ENCYCLICAL LETTER LAUDATO SI’ OF THE HOLY FATHER FRANCIS ON CARE FOR OUR COMMON HOME,” pages 104–105, paragraphs 139–140.
- ⁴⁹ The Nation, October 23, 2014. <http://www.thenation.com/article/city-came-simple-solution-homelessness-housing/>.
- ⁵⁰ Daytona Beach News Journal, February 2, 2016
- ⁵¹ <http://www.news-journalonline.com/article/20160110/NEWS/160109599>.
- ⁵² <http://www.news-journalonline.com/article/20160128/NEWS/160129488/-1/PARADE?Title=New-homeless-shelter-name-suggested-Volusia-Safe-Harbor-could-become-Volusia-One>.
- ⁵³ See “What Republicans Should Say,” by David Brooks, New York Times, January 29, 2016
- ⁵⁴ See <http://www.news-journalonline.com/article/20160203/NEWS/160209839/101040?Title=Experts-Use-existing-resources-to-meet-Volusia-s-homeless-needs>.
- ⁵⁵ <http://www.miamidade.gov/taxcollector/tourist-taxes.asp>. A one percent (1%) **Homeless and Domestic Violence Tax** is collected on all food and beverage sales by establishments that are licensed by the State of Florida to sell alcoholic beverages for consumption on the premises, except for hotels and motels. Only businesses that make over \$400,000 in gross receipts annually are obligated to collect this tax. The Homeless and Domestic Violence Tax is collected throughout Miami-Dade County with the exception of facilities in the cities of Miami Beach, Surfside and Bal Harbour. Eighty-five percent (85%) of the tax receipts goes to the Miami-Dade County Homeless Trust, and fifteen percent (15%) goes to Miami-Dade County for domestic violence centers.
- ⁵⁶ http://articles.orlandosentinel.com/2004-02-24/news/0402240045_1_city-of-daytona-daytona-beach-property-taxes.
- ⁵⁷ Source: Pinellas County Office of Management and Budget. These forecasts are updated annually. For the latest information, contact Pinellas County or check out the County’s website: <http://www.pinellascounty.org/commission/default.htm>.
- ⁵⁸ See <http://www.safeharborpinellas.org/mission.html>.
- ⁵⁹ Google “Social Impact Bonds.” https://www.google.com/?gws_rd=ssl#q=social+impact+bonds.
- ⁶⁰ <http://www.forbes.com/forbes/welcome/>.
- ⁶¹ <http://harvardmagazine.com/2013/07/social-impact-bonds>.
- ⁶² See “Crossing the Bridge to a New America, by Jim Wallis, Sojourners’ Magazine, February, 2016, <https://sojo.net/magazine/february-2016/crossing-Bridge-New-America>.”
- ⁶³ See “Pogo (comic Strip) From Wikipedia, the Free Encyclopedia, https://en.wikipedia.org/wiki/Pogo_%28comic_strip%29.”
- ⁶⁴ See “Bowling Alone: America’s Declining Social Capital Robert D. Putnam An Interview with Robert Putnam, National Endowment for Democracy,, Journal of Democracy 6:1, Jan 1995, 65-78 .”
- ⁶⁵ “ENCYCLICAL LETTER LAUDATO SI’ OF THE HOLY FATHER FRANCIS ON CARE FOR OUR COMMON HOME,” pages 94–95, paragraph 128.
- ⁶⁶ {Citation}

⁶⁷ “New York Times Article on Public Trust http://www.nytimes.com/2014/10/22/us/nations-Confidence-Ebbs-at-a-Steady-drip.html?_r=1.”

⁶⁸ See “What Republicans Should Say,” by David Brooks, New York Times, January 29, 2016

⁶⁹ *The Spirit of Democracy: The Struggle to Build Free Societies Throughout the World*, http://www.amazon.com/Spirit-Democracy-Struggle-Societies-Throughout/dp/0805089136/ref=sr_1_1?ie=UTF8&qid=1442487535&sr=8-1&keywords=the+spirit+of+democracy, 346–347.

⁷⁰ Bellah et al., *The Good Society*, 76–77.

⁷¹ <https://www.goodreads.com/quotes/6722584-resting-on-your-laurels-is-as-dangerous-as-resting-when>

⁷² *The Spirit of Democracy: The Struggle to Build Free Societies Throughout the World*, http://www.amazon.com/Spirit-Democracy-Struggle-Societies-Throughout/dp/0805089136/ref=sr_1_1?ie=UTF8&qid=1442487535&sr=8-1&keywords=the+spirit+of+democracy, 364.

⁷³ “Gandhi’s Keys for a Happy Life – 3 Tips for Happiness, <http://www.simplethingcalledlife.com/2014/mahatma-Gandhi-Quotes/>.”



Volusia Growth Management Commission

TO: Charter Review Commission Subcommittee

FROM: Gerald Brandon, VGMC Vice Chairman *GB*

DATE: February 5, 2016

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

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 objective 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.

TO: VGMC POP Committee
CC: Merry Chris Smith
FROM: Paul H. Chipok
DATE: February 8, 2016
SUBJECT: Consistency Certification Rules Revision

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

- 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 ~~21~~28 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 ~~21~~28 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.

Summary report: Litéra® Change-Pro 7.5.0.176 Document comparison done on 2/8/2016 10:37:19 AM	
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Intelligent Table Comparison: Active	
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Delete	51
Move From	2
<u>Move To</u>	2
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	121

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

**MINUTES FOR
MEETING HELD
Thursday, March 3, 2016**

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

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

The following POP Committee Members were present: Committee Chairman Gerald Brandon, Robert Lovelace, Don Romanik, Robert Storke, Sid Vihlen and Rich Walton. Also in attendance were VGMC Chairman James Wachtel, VGMC Legal Counsel Heather Ramos, and VGMC Operations Manager Merry Smith.

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

NEW BUSINESS

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

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

OLD BUSINESS

Consider recommendation of proposed amendments to VGMC Consistency Certification Rules

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OTHER BUSINESS

None

ADJOURNMENT

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

POP Committee Chairman

Date

From: "Sellen, James" <JSellen@VHB.com>
To: "Ms. Merry Chris Smith" <vgmc@co.volusia.fl.us>
Date: 3/2/2016 11:55 PM
Subject: Statement Regarding automatic approval for Small Scale vs.Large Scale Plan Amendmentd.

Merry Chris,

I suggest the VGMC consider the following language for distinguishing between the process for reviewing Small Scale and Large Scale Plan Amendments. Please check my referenced to 90-37 and the Volusia County Charter. In the last sentence.

The VGMC staff has examined the content of Small Scale Plan Amendments submitted over the last 10 years. From that examination we have concluded that the vast majority of these amendments are non controversial and relate to changed from a land use category in the County to a land use category in a City with similar and compatible uses, densities and intensities.

Those amendments, and there have been about three, that have not fit this pattern, have been high profile and will most likely come under the scrutiny of an adjacent local government. Therefore, in the interest of streamlining the review process, the VGMC believes the Small Scale Amendments can receive automatic approval, unless challenged by an adjacent local government.

However, this is not the case for large scale amendments. Unlike Small Scale Amendments, Large Scale Amendments follow no particular pattern. Further, they consist of changes in governmental policy or capital investment (text changes) or large land holdings where the impacts will occur over a larger area, are more complex, not immediately evident and may occur in the long term future. We believe it is necessary and totally appropriate to fulfill the mission of the VGMC for these Large Scale Amendments to continue to be evaluated under the criteria established in section 90-37 of the Volusia County Charter.

Sent from my iPhone

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Exhibit A
POP Committee Minutes
March 3, 2016 Meeting

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 unit of 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),~~ For purposes of these consistency certification rules, the School Board of Volusia County is considered 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 unit of 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. For purposes of these consistency rules, the School Board of Volusia County's 20-year work plan serves as the School Board's "comprehensive plan".

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 amendments](#)) 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.](#)

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.

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 if~~ 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~~units of local ~~governments~~government 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~~commission has addressed revisions to the procedures for submitting and processing applications and has ~~acknowledge~~acknowledged 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 finds that “other directly related duties” includes 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.
- (d) Those duties necessary to meet the requirements of F.S. § 163.3177(h).

(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 certificate of consistency is hereby established. 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.

(Ord. No. 87-24, § 3, 7-23-87)

Sec. 90-341. Application for certificate under the “streamlined” review process; procedure for issuance; public hearing requirements.

(a) As of June 1, 2016, commission staff shall utilize a “streamlined” review process for the following types of comprehensive plan amendments:

-

- (1) a small scale comprehensive plan amendment (upon adoption), or
- (2) large scale comprehensive plan amendments (i) that are 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) with property located in an area subject to a Joint Planning Area (JPA) Agreement pursuant to F.S. § 163.3171.

(b) A copy of an application form as prescribed by the commission shall be forwarded to the commission by the applicant jurisdiction for foregoing types of comprehensive plan amendments. The application form will be reviewed by the commission staff for completeness, and such comprehensive plan amendment shall be deemed to be consistent twenty-one (21) days after receipt by the commission, unless a written objection is filed by a unit of local government. Notice of the comprehensive plan application shall be provided in accordance with Section 90-35(c), below, with the dates modified to accommodate the 21-day review period. If an objection is filed, the commission staff shall conduct a review of the 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 receipt of the complete application form shall serve as the certificate of consistency, effective twenty-one (21) days after receipt by the commission.

Sec. 90-35. Application for certificate for large-scale comprehensive plan amendments; procedure for issuance; public hearing requirements.

(a) ~~(a)~~—After November 4, 1986, all units of local governments~~government~~ 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~~applicant jurisdiction to submit any additional information reasonably necessary for proper evaluation of the application.

(b) ~~(b)~~—~~An~~Unless an applicant jurisdiction is eligible to utilize the process outlined in Sec. 90-341, above, an applicant jurisdiction shall, at a minimum, submit the following information and documents with any application filed under this section with the commission:

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

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

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

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

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

2. ~~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~~a unit of local governments within the county government.

3. ~~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. ~~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~~units of local government. 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. 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.

(d) ~~All applications~~Applications received by the commission under this section 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.

b. 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. ~~ASuch RAI shall be forwarded within 14 days after the date of the complete application. The~~ 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~~.

c. ~~The~~ commission's professional staff ~~timely requests the additional~~shall prepare a written report regarding the application, which may include information from regarding whether the applicant jurisdiction in writing within 30 days after the has (i) provided a complete application date on the application.

, (ii) complied with one or more RAIs, if applicable, and (iii) addressed the commission's professional staff's conditions of approval, if any. Further, the written report shall set forth ~~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~~staff's determination regarding whether an application may be inconsistent under the test set forth in section 90-37, ~~the commission shall hold a public hearing. Such written report shall be sent electronically to all units of local government.~~

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.~~
- 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.

~~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.~~

(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.~~ The jurisdiction. For all comprehensive plan amendments other than those listed in Sec. 90-341, the commission certification shall be a prerequisite to any final public hearing on a comprehensive plan amendment by the applicant ~~local government~~ jurisdiction. The applicant ~~local government's jurisdiction'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~~ jurisdiction 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~~ jurisdiction 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 [jurisdiction](#) 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 [units of](#) 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 units of local governments, ~~substantially affected parties (if any)~~ and the applicant ~~local government~~jurisdiction 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 intergovernmental 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~~adversarial 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(d)(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 [unit of](#) 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~~[commission](#) may be appointed to the ~~Commission~~[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~~[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~~[commission](#). For the period July 1, 2013, to and including July 1, 2015, the term for members of the ~~Commission~~[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~~commission for the intentional failure to disclose a voting conflict of interest as required by ~~Section 112.3143 of the~~ 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~~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~~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~~Attendance at all regular meetings of the ~~Commission~~commission is mandatory. If any member fails to attend three regularly scheduled ~~Commission~~commission meetings during any calendar year ending December 31, the member's seat shall be deemed vacant. The ~~Commission Chairman~~chairman of the commission shall notify the member and appointing jurisdiction after two missed regular meetings. A vacancy on the ~~Commission~~commission shall also occur upon the death of the ~~Commission~~commission member, upon the member's resignation, upon the refusal of an appointee to accept a position as a member of the ~~Commission~~commission, upon conviction of a felony, or 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~~chairman of the ~~Commission~~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~~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~~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.

Summary report: Litéra® Change-Pro 7.5.0.175 Document comparison done on 3/9/2016 9:40:28 AM	
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Intelligent Table Comparison: Active	
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Modified DMS: iw://GRDMS/ORLANDO1/9485300/5	
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Delete	127
Move From	4
<u>Move To</u>	4
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	296

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 unit of 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. For purposes of these consistency certification rules, the School Board of Volusia County is considered an adjacent jurisdiction.

Applicant jurisdiction means a unit of 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. For purposes of these consistency rules, the School Board of Volusia County's 20-year work plan serves as the School Board's "comprehensive plan".

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 amendments) 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.

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.

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 are sufficient to be deemed “written” or “in writing” if followed up with a hard copy transmittal delivered by 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 units of local government 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 acknowledged 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 finds that “other directly related duties” includes 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.
- (d) Those duties necessary to meet the requirements of F.S. § 163.3177(h).

(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 certificate of consistency is hereby established. 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.

(Ord. No. 87-24, § 3, 7-23-87)

Sec. 90-341. Application for certificate under the “streamlined” review process; procedure for issuance; public hearing requirements.

(a) As of June 1, 2016, commission staff shall utilize a “streamlined” review process for the following types of comprehensive plan amendments:

- (1) a small scale comprehensive plan amendment (upon adoption), or
- (2) large scale comprehensive plan amendments (i) that are 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) with property located in an area subject to a Joint Planning Area (JPA) Agreement pursuant to F.S. § 163.3171.

(b) A copy of an application form as prescribed by the commission shall be forwarded to the commission by the applicant jurisdiction for foregoing types of comprehensive plan amendments. The application form will be reviewed by the commission staff for completeness, and such comprehensive plan amendment shall be deemed to be consistent twenty-one (21) days after receipt by the commission, unless a

written objection is filed by a unit of local government. Notice of the comprehensive plan application shall be provided in accordance with Section 90-35(c), below, with the dates modified to accommodate the 21-day review period. If an objection is filed, the commission staff shall conduct a review of the 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 receipt of the complete application form shall serve as the certificate of consistency, effective twenty-one (21) days after receipt by the commission.

Sec. 90-35. Application for certificate for large-scale comprehensive plan amendments; procedure for issuance; public hearing requirements.

(a) After November 4, 1986, all units of local government 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 applicant jurisdiction to submit any additional information reasonably necessary for proper evaluation of the application.

(b) Unless an applicant jurisdiction is eligible to utilize the process outlined in Sec. 90-341, above, 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 jurisdictions 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 a unit of local government.
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 units of local government. The administrative staff shall also send a copy of the complete application to the commission's professional staff. Notice of the complete application 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 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 28 days of 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 28 days of the receipt of the application, that date being [insert date], constitutes a waiver of any right any unit of local government may have to a public hearing pursuant to the Volusia Growth Management Commission Comprehensive Plan Consistency Certification Rules. 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 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 petitioning unit of local government received notice of the application;

iii A statement of how the petitioning unit of local government's substantial interests are affected by the proposed application;

iv. A statement of the material facts disputed by 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 petitioning unit of local government, stating precisely the action the 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. 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.

(d) Applications received by the commission under this section 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 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.

b. 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. Such RAI shall be forwarded within 14 days after the date of the complete application. The 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.

c. The commission's professional staff shall prepare a written report regarding the application, which may include information regarding whether the applicant jurisdiction has (i) provided a complete application, (ii) complied with one or more RAIs, if applicable, and (iii) addressed the commission's professional staff's conditions of approval, if any. Further, the written report shall set forth the commission's professional staff's determination regarding whether an application may be inconsistent under the test set forth in section 90-37. Such written report shall be sent electronically to all units of local government.

(2) Units of local government.

a. Within 28 days after the date of the complete application any unit of local government may:

- (i) Submit written comments regarding the merits or the sufficiency to the commission regarding the complete application; or
- (ii) Request a public hearing in accordance with Section 90-35(c).

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 the applicant jurisdiction pursuant to subsection (d)(1)a. of this section or by 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 a unit of local government. If no public hearing is requested, it shall be presumed that all 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"). 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 jurisdiction. For all comprehensive plan amendments other than those listed in Sec. 90-341, the commission certification shall be a prerequisite to any final public hearing on a comprehensive plan amendment by the applicant jurisdiction. The applicant jurisdiction'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 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) 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 (ii) 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 jurisdiction 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 jurisdiction 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 jurisdiction 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 units of local governments, 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 units of local governments and the applicant jurisdiction 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 a preponderance of the evidence, as determined by the Commission, establishes that the proposed plan, element or plan amendment is not consistent with other comprehensive plans and adversely affects intergovernmental cooperation and coordination based on the criteria contained in Section 90-37(c) above.

(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 adversarial 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 held pursuant to the request of a unit of local government, the commission shall determine consistency pursuant to the criteria contained in this section and based upon a preponderance of competent, substantial evidence 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, § 1, 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.

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 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 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 intervening unit of local government deems itself entitled; and
- (4) Other information which the intervening unit of local government contends is material and relevant.

Furthermore, the petition shall include allegations sufficient to demonstrate that the 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 intervening unit of local government are subject to determination or may be affected by the outcome of the proceeding.

(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 unit of local government which is either the applicant jurisdiction, unit of local government which has requested a public hearing pursuant to section 90-35(d)(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 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 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 unit of 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 the Florida Statutes or 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. 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 chairman of the commission 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, or 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 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.

Section 202.3. Volusia Growth Management Commission.

There is hereby created the Volusia Growth Management Commission (hereafter commission). The commission shall have the power and the duty to determine the consistency of the municipalities' and the county's comprehensive plans and any amendments thereto with each other. The commission may perform such other directly related duties as the commission from time to time deems necessary.

The determination by the commission shall be binding on the submitting government. No plan, element of a plan, or amendment of a plan adopted after the date this article becomes law shall be valid or effective unless and until such plan, element of a plan, or amendment has been reviewed by the commission and has been certified as consistent. The review of any such determination of the commission shall be by certiorari.

The commission shall be composed of voting and non-voting members. 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. The Volusia County School Board, the St. Johns River Water Management District, and the Volusia County Business Development Corporation shall each designate one non-voting member to serve on the commission. The term of office of the commission members shall be fixed by the Rules of Procedures of the commission but shall not exceed four years.

Each voting member shall have a weighted vote. Each municipality represented shall have a vote equal to the percentage of its population with the overall county population. The unincorporated area representatives' combined vote shall not exceed the percentage of the unincorporated area's population with the overall county's population, and the individual vote of each unincorporated area representative shall be equal to the other. The determination of the weight of each vote shall be determined annually.

Rules of procedure for the commission's consistency review and for the manner in which this section is to be enforced and implemented, and amendments thereto, shall be proposed by the commission and shall not become effective until adopted by ordinance approved by a two-thirds vote of the entire membership of the council.

The commission, by a two-thirds vote, shall adopt an annual budget which may provide for independent staff and which shall be funded by the county. The budget may be amended upon two-thirds vote of the full council. (Res. No. 86-136, Amend. No. 2, 9-18-86; Res. No. 96-121, Amend. No. 1, 6-20-96)

MEMORANDUM

To: Charter Review Commission

From: Daniel D. Eckert, County Attorney



Date: March 11, 2016

Re: Section 202.3, Volusia Growth Management Commission

In response to an inquiry by Chair Brown at the March 7, 2016, ad hoc committee meeting, I have concluded and advised him that a charter amendment would be necessary to dispense with growth management commission review of certain categories of plan amendments. Receiving this advice, and observing the schedule, Chair Brown asked that I prepare a draft charter amendment for consideration by the charter review commission. I submit the attached for discussion based on member comments thus far, respectful that differing views have been expressed. In other words, I recognize that the charter review commission has not provided direction on this charter section; but ask that it do so, if it determines that any amendment is appropriate.

The draft amendment provides that there shall be growth management commission review and certification of a comprehensive plan amendment only where there is an objection by the county or a municipality; that only the county and municipalities may be parties to commission proceedings; and that the membership of the commission shall consist of only county and municipal representatives. Charter section 206, School planning, separately provides a requirement that any increase in allowable residential density may become effective only if adequate public schools can be timely planned and constructed. In view of the intervening adoption of section 206, and if section 202.3 is to become more narrowly focused, the charter review commission could conclude that school board membership no longer is necessary.

AMENDMENT

The proposed amendment, in full, shall read as follows:

The Volusia County Home Rule Charter, Chapter 70-966, Laws of Florida (Sp. Acts), as previously amended, shall be further amended effective in in pertinent part as follows:

(Except as provided herein or as otherwise provided by separate amendment, charter provisions not shown are not amended.)

(Words ~~struck~~ are deletions; words underscored are additions.)

ARTICLE II. - POWERS AND DUTIES OF THE COUNTY

...

Sec. 202.3. - Volusia Growth Management Commission.

There is hereby created the Volusia Growth Management Commission (hereafter commission). Upon an objection by the county or a municipality, ~~±~~ the commission shall have the power and the duty to determine the consistency of the municipalities' and the county's comprehensive plans and any amendments thereto with each other. The commission may perform such other directly related duties as the commission from time to time deems necessary.

The parties to any commission proceeding shall be limited to the county and municipalities. The determination by the commission shall be binding on the submitting government. No plan, element of a plan, or amendment of a plan adopted after the date this article becomes law to which an objection has been made shall be valid or effective unless and until such plan, element of a plan, or amendment has been reviewed by the commission and has been certified as consistent. The review of any such determination of the commission shall be by certiorari.

The commission shall be composed of voting and nonvoting members. 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. ~~The Volusia County School Board, the St. Johns River Water Management District, and the Volusia County Business Development Corporation shall each designate one nonvoting member to serve on the commission.~~ The term of office of the commission members shall be fixed by the rules of procedures of the commission but shall not exceed four years.

Each voting member shall have a weighted vote. Each municipality represented shall have a vote equal to the percentage of its population with the overall county population. The unincorporated area representatives' combined vote shall not exceed the percentage of the unincorporated area's population with the overall county's population, and the individual vote of each unincorporated area representative shall be equal to the other. The determination of the weight of each vote shall be determined annually.

Rules of procedure for the commission's consistency review and for the manner in which this section is to be enforced and implemented, and amendments thereto, shall be proposed by the commission and shall not become effective until adopted by ordinance approved by a two-thirds vote of the entire membership of the council.

The commission, by a two-thirds vote, shall adopt an annual budget which may provide for independent staff and which shall be funded by the county. The budget may be amended upon two-thirds vote of the full council.

...

Memorandum

To: CRC Members

From: Mark Watts

Re: Case Analysis of Proposed VGMC Rule Amendments

Date: March 10, 2016

Fellow CRC members,

As you know, representatives of the VGMC and a coalition representing business and local government interests have been working on proposed VGMC rule revisions aimed at addressing some of the concerns raised in our earlier sessions. The rule amendments are aimed at finding compromise positions between the potential recommendation of Charter amendments relative to VGMC's existence or scope of authority and concerns expressed by several business and local government interests regarding the impacts of VGMC review on our County's competitiveness in the context of economic development and the erosion of local home rule authority. In order to help frame our review of the proposed rule amendments and how they might impact future interactions between VGMC, Volusia County's local governments and business interests in the context of VGMC's charter authority, I prepared a few case studies to review how the proposed rules may apply in the context of prior cases discussed in our meetings. My comments are based on the revised rule draft dated 2/26/16. I understand that additional revisions may be made prior to our meeting on March 14. In any event, I hope this helps frame our discussions moving forward regarding the need for any amendments to the Charter.

- 1) **DeLand – Athens Commons 2** – The Athens Commons 2 project is a recent example of a case that resulted in a VGMC hearing. It involved a private developer who applied for a small scale future land use map amendment to increase the potential residential density for an infill project. The property in question was contained entirely within the City of DeLand's boundaries and no objections or comments were received by VGMC from any "units of local government", as that term is defined in the proposed new rules.

A petition for hearing was filed by a neighborhood opposition group. The justifications cited in the petition for a hearing were outside of the scope of VGMC's review, but under the current procedural rules, a hearing was held to determine standing for the neighborhood group and review the petition. VGMC upheld the City of DeLand's decision to adopt the proposed amendment, however there was a delay of 30-45 days for the project and the developers incurred significant expenses.

Under the proposed rules, there would not have been a hearing in this case. Under the proposed §90-34(b), VGMC staff will not review small scale amendments unless an objection from a “unit of local government” is received. In addition, based on the proposed revision to §90-35(d)(4), standing to request a hearing is limited to “units of local government” and neighborhood groups or other third parties would not have standing to request a hearing.

- 2) **Daytona Beach Shores – Lady Godiva** – This case involved an infill property that was proposed for higher density residential development in the City of Daytona Beach Shores. The City approved the proposed land use amendment and transmitted the approval to VGMC. Initially, Volusia County objected to the proposed amendment based on several issues, including concerns expressed by residents of unincorporated areas of Wilbur-by-the-Sea adjacent to the property. Prior to a hearing before VGMC, the City and County (working with VGMC staff) agreed to terms that resolved the County’s objections. A group of neighboring residents, however, requested that a hearing still be held and VGMC scheduled the hearing.

At the VGMC hearing, the City and County agreement regarding consistency was presented, however the VGMC voted to deny certification. At the unified request of the City, County and property owner, the denial was ultimately reconsidered by VGMC and the amendment was certified and approved.

Under the proposed rules, the County could still request a hearing to address its objections under §90-35(c). Once an agreement was reached between the City and County, it is unclear if a hearing would still be required. While §90-34(c) provides for automatic certification in the event of a JPA under §163.3171, it is unlikely a settlement agreement between two jurisdictions in this context would meet the standards for a JPA. I think additional rule revisions may be needed to clarify that a settlement agreement that is reached prior to hearing is sufficient to cancel the hearing process and certify the proposed amendment.

The amended standard for standing under §90-35(d)(4) would not have allowed the neighborhood group’s request for a hearing in this case.

- 3) **Oak Hill – Project Panther** – The comprehensive plan amendments involved in the Oak Hill case included text amendments that sought to create an Activity Center within Oak Hill and allow for the substitution of industrial, conservation and agricultural uses in lieu of residential and commercial mixed use. Upon receipt of application, VGMC received a petition for hearing from the Florida Audubon Society, Inc. and Southeast Volusia Audubon Society, Inc. No objections or request for hearing were filed by any local governments (including the municipalities, county or school board). No comments were made by FDOT, FDOE, FDEO or SJRWMD. FDEP raised concerns relating to the lack of water quality protections for the Mosquito Lagoon, but those objections were subsequently resolved by revisions agreed to by the City and FDEP.

While the plan amendments were ultimately approved, with added conditions, there was a significant delay that some have suggested resulted in the loss of a significant economic development opportunity for the City and County.

Under the amended standing provisions of §90-35(d)(4), Florida Audubon Society and the Southeast Audubon would not have had standing to request a hearing. Absent their petition, it is unclear whether or not a hearing would have been necessary in this case.

I have attached a copy of the VGMC staff report for your information. If you review pages 3-6, you will see the VGMC staff analysis of the standards set forth in §90-37(c) regarding the factors used in determining whether or not a proposed amendment adversely affects intergovernmental cooperation and coordination and remain largely unchanged by the proposed rule amendments. On pages 5-6 of the staff report, you will note that VGMC's staff determined that the proposed amendments should be denied, or if approved, limited with certain conditions. I have no particular qualms with the analysis, but it did help illustrate a point to me. Under the current structure of §202.3 of the Charter, I think the VGMC has authority relating to consistency determinations that cannot be limited by rule revisions.

VGMC's Charter Authority

Section 202.3 of the Charter provides, in relevant part:

"There is hereby created the Volusia Growth Management Commission (hereafter commission). ***The commission shall have the power and the duty to determine the consistency of the municipalities' and the county's comprehensive plans and any amendments thereto with each other.*** The commission may perform such other directly related duties as the commission from time to time deems necessary."***[emphasis added]***

After reviewing the highlighted language in the context of the attached staff report, it seems clear to me that even in the absence of an objection filed under the terms of the proposed rules, if VGMC staff believes there is a consistency issue created by a proposed comprehensive plan amendment, they have a duty to raise that issue and set it for hearing so it can be considered by the VGMC. The VGMC has an obligation to determine the consistency of a proposed amendment based on their independent judgment. In other words, I do not think the duty created by the current Charter language can be bargained away through a set of rule changes. Rather, I think the Charter creates independent authority in the VGMC that cannot legitimately be restricted without a modification to the Charter. Consider the fact that any VGMC rule changes would have to be adopted by County ordinance. The County, according to the Charter and Florida Constitution, has all authority not inconsistent with general law or

the provisions of the Charter itself. If the Charter assigns the exclusive power and duty to make consistency determinations to the VMGC, then the County is without authority to adopt an ordinance that restricts that authority. Instead, that limitation most likely requires an amendment to the Charter itself.

From a practical standpoint, I think the current cooperation between the VGMC and other parties working to find common ground has produced an effective set of rule revisions that could prevent some of the circumstances that resulted in comments to the CRC. Nonetheless, I do think the CRC needs to understand the limitations of those rule changes in determining whether or not to propose any amendments to the Charter.



Volusia Growth Management Commission

Memo

To: Volusia Growth Management Commission
From: VHB, Planning Consultants to the VGMC
Date: 4/13/2015
Re: VGMC Case #15-009 – City of Oak Hill

I. Introduction

Application

On February 24, 2015, the Volusia Growth Management Commission (VGMC) received a large-scale comprehensive plan amendment application from the City of Oak Hill (**Exhibit 1**). This application, which was assigned VGMC #15-009, consisted of text amendments to Future Land Use Policies 1.1.2.H and 1.2.3.

The complete application and supporting documentation, as submitted by the City of Oak Hill, is available to the public at the VGMC office located at 140 S. Beach Street, Daytona Beach, Florida.

Correspondence and Actions

On March 23, 2015, the VGMC received a Petition for Hearing filed by the Florida Audubon Society, Inc. and the Southeast Volusia Audubon Society, Inc. for VGMC Case No. 15-009 (**Exhibit 2**).

On March 31, 2015, the VGMC issued a letter confirming the VGMC hearing for VGMC Case No. 15-009 will be held on April 22, 2015 (**Exhibit 3**).

On April 6, 2015, the VGMC received a letter dated March 26, 2015 from the Florida Department of Environmental Protection (DEP) issuing comments and recommendations for VGMC Case No. 15-009 (**Exhibit 4**).

On April 9, 2015, the VGMC received copies of review letters issued by the Florida Department of Transportation (FDOT), the Florida Department of Education (FDOE), Department of Economic Opportunity (DEO), St. Johns River Water Management District (SJRWMD) and an amended review letter issued by DEP relating to VGMC Case No. 15-009 (**Exhibit 5**).

On April 10, 2015, the VGMC received a copy of a memo from the Southeast Volusia Audubon Society and Florida Audubon Society regarding VGMC Case No. 15-009 (**Exhibit 6**).

Also on April 10, 2015, the VGMC received a copy of a Bald Eagle Reproduction Surveys 2013/2014 Final Report for the Kennedy Space Center/Merritt Island National Wildlife Refuge (**Exhibit 7**).

II. *Analysis and Findings*

Description of Amendment

The City of Oak Hill is requesting to amend two Future Land Use Element policies, 1.1.2.H and 1.2.3. Policy 1.1.2.H is being revised to change the title name from Special District #1 to Activity Center, adding an option of allowable land uses to now include industrial, conservation and agricultural uses, and adding a maximum floor area ratio of 1.0 for Industrial uses. Policy 1.2.3 is being revised to exclude the Activity Center from the thirty-five (35) foot building height limit.

VGMC Consistency Certification Criteria

Volusia County Code Section 90-37 outlines the criteria to be used to determine whether a proposed amendment meets consistency certification requirements. Consistency determination is a two part process addressing the proposed amendments compatibility with adjacent or affected jurisdiction's comprehensive plans and the probability that the proposed amendments may adversely affect intergovernmental cooperation and coordination.

Compatibility

A determination of consistency with adjacent or affected jurisdiction's comprehensive plans is often a complex task. Comprehensive plans are intricate documents containing numerous elements, goals, objectives and policies. Due to state statutory requirements which govern the content of plans, many facets are inherently compatible. On the other hand, each jurisdiction is unique and must address, through their plans, localized issues that have limited applicability in adjacent jurisdictions.

During the 30-day review period, VGMC received no comments from adjacent jurisdictions. However, a Petition of Hearing was timely filed by the Audubon Society and the Southeast Volusia Audubon Society. A hearing for a determination of whether those entities are substantially affected or aggrieved parties will occur immediately prior to the substantive hearing on this case.

In addition, while the original certification of the EAR based amendments to the City's Comprehensive Plan allowed for Residential and Commercial development to occur on the subject site, the additional Industrial development at an intensity of 1.0 FAR, as well as the types of uses permitted under the Industrial designation raises questions regarding the compatibility of these uses with the adjacent affected community. Specifically, incompatibility as it relates to the impact on water quality of Mosquito Lagoon and environmental impacts to the National Seashore, was pointed out in the additional information included in the amended review letter issued by DEP.

Intergovernmental Cooperation and Coordination

Volusia County Code Section 90-37(c) outlines six factors to be utilized in determining whether a proposed amendment adversely affects intergovernmental cooperation and coordination. Contained below is an analysis of the proposed amendment as it pertains to each of these factors.

1. The extent to which the plan, element, or plan amendment provides for areawide or central utility service solutions;

Currently, the City does not provide utility services. The City has entered into an interlocal agreement with Volusia County and the City of Edgewater for extension of central wastewater and potable water services to meet specified level of service standards to accommodate new growth in the City. The application does not provide a calculation of the proposed amendments overall potable water and sanitary sewer demands. Utilizing the City's adopted level of service (LOS) standards, the VGMC has calculated potential impacts under the subject site's existing development scenario. A comparison of existing impacts to proposed impacts are summarized in **Table 1**.

Table 1 – Utilities

Utility	Unit of Measurement	Existing Scenario A Impact	Proposed Scenario B Impact	Net Change
Potable Water	Gallons Per Day (GPD)	203,024	189,813	-13,211
Sanitary Sewer	Gallons Per Day (GPD)	181,124	189,813	+8,689

The proposed text amendment results in a net decrease in impacts to potable water and a net increase in impacts to sanitary sewer facilities. While City policy allows for an interlocal agreement to provide utility services, the Capital Improvement Program (CIP) for Edgewater, Volusia County nor Oak Hill contemplate the extension of utility lines to this site during the planning period. VGMC staff has concern regarding the ability to extend services in the near term and further believes any interim service using wells and septic would be inappropriate for this level of development.

Furthermore, Policy 1.1.3 of the City's Future Land Use Element (FLUE) allows for Industrial uses at an intensity of 0.5 FAR without central utilities. Therefore, using the development mix provided under proposed Scenario #2, approximately 950,000 square feet of industrial uses could be developed without central utilities. This amount of industrial development being serviced by a septic system creates a greater chance of surface and groundwater contamination, causing an adverse impact to the water quality of the surrounding area.

2. The extent to which the plan, element, or plan amendment provides for areawide or regional transportation solutions;

Analyses of the proposed revisions to the City's FLU Element indicate a net reduction in daily trips and a net increase in PM Peak Hour trips to the regional transportation system. The analysis of impacts is summarized in **Table 2**.

Table 2 – Transportation

Unit of Measurement	Existing Scenario A		Proposed Scenario B		Total Change		Available Capacity
	AADT	PM Pk	AADT	PM Pk	AADT	PM Pk	
Annual Average Daily Traffic	21,547	2,065	14,077	2,557	-7,470	+492	Unknown

A traffic impact analysis was not provided with the application; therefore, it is unknown as to whether these new PM Peak Hour trips will have a significant adverse impact on the regional transportation network. In the absence of this information it may be reasonably presumed that the proposed amendment may fail to provide 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;*

The impact of the proposed amendment on potable water, sanitary sewer and transportation systems has been addressed in sections 1 and 2. The proposed amendment would result in a net decrease in residential entitlements; therefore, no new impacts to public school capacity are anticipated.

As previously mentioned, the subject area is not included in the CIP of Oak Hill, Volusia County or Edgewater. VGMC Staff has concerns with the ability of those jurisdictions providing infrastructure at the time development occurs; therefore it may be reasonably presumed that the proposed amendment may adversely impact 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;*

Two borders of the subject site are adjacent to the Canaveral National Seashore (National Seashore). The National Seashore contains approximately 58,000 acres of barrier island, open lagoon, coastal hammock, pine flatwoods and offshore waters along the east central coast of Florida. The National Seashore was authorized by the 93rd Congress in the Act of January 3, 1975. The National Seashore was established to “*preserve and protect the outstanding natural, scenic, scientific, ecologic, and historic values of certain lands, shoreline, and waters of the State of Florida and to provide for public outdoor recreation use and enjoyment of the same*”.

Additionally, because it contains ecological resources of statewide importance, the National Seashore is designated Outstanding Florida Waters¹ (OFW). Section 373.414(1)(a), Fla. Stat. (2010), states “*Projects regulated by the Department or a Water Management District (WMD) that are proposed within an OFW must not lower existing ambient water quality, which is defined for purposes of an OFW designation as the water quality*

at the time of OFW designation or the year before applying for a permit, whichever water quality is better.” The National Seashore is a critical component of the regions ecosystem. Data and analysis provided to support the proposed amendment fails to adequately address potentially significant impacts to regional water quality, wildlife habitat and corridors. Data and analysis supporting the proposed amendment fails to provide reasonable assurance that the amendments will not cause significant adverse impacts on natural resources which extend beyond the boundaries of one jurisdiction; therefore, adoption of the proposed amendment can reasonably be expected to adversely affect intergovernmental cooperation and coordination.

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*

The proposed amendment is not anticipated to result in the duplication of services or competition among providers.

6. *The existence of an agreement among all substantially affected local governments, substantially affected parties (if any) and the applicant, 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.*

No agreements of this type exist for the subject site or proposed amendment.

III. Conclusion and Recommendation(s)

Volusia County Code Section 90-37(e) states that “The Commission may deny certification where any applicant has failed to establish, by a preponderance of the evidence, its entitlement under this ordinance to the certificate.” Based upon the preceding information, the VGMC Planning Staff concludes that the proposed amendment may result in significant adverse impacts to the region’s central utility system, transportation system, and natural resources. We further conclude that the proposed amendment could adversely impact adjacent jurisdictions based on the Criteria of Consistency established in Volusia County Code; therefore, staff recommends the VGMC deny the application as submitted.

Should the Volusia Growth Management Commission determine there is a merit for approving VGMC Case No. 15-009, we recommend the following conditions be placed upon the certification of this amendment, such that the application and the comprehensive plan amendments contained therein can be certified consistent. Those condition(s) are as follows:

1. To address the lack of data and analysis available at this time, all development within the Activity Center shall occur as a Planned Development (PD) agreement to be submitted to the VGMC and must receive a certification of consistency before any development may proceed. This requirement allows VGMC and all adjacent jurisdictions the

additional opportunity to review development of the subject site for specific impacts at the time of rezoning.

2. To address the possible environmental impacts on the water quality of the Indian River Lagoon and the encroachment of wildlife habitat of the National Seashore, a Mitigation Plan must be submitted as part of the PD agreement.
3. Any proposed development shall demonstrate how connection to the nearest central utility line locations will be accomplished.
4. All proposed development uses shall be located towards the center of the subject site, and all building setbacks shall be a minimum of thirty-five (35) feet. Only conservation and agricultural uses shall be allowed towards the edge of the property.
5. Any proposed changes or amendments to be made or adopted to the City's Comprehensive Plan in response to a compliance agreement pursuant to Florida Statute Section 163.3184(6) or a directive from the Administrative Commission pursuant to Florida Statute Section 163.3184(8) (collectively referred to as "Remedial Amendment") must be submitted to the Volusia Growth Management Commission as additional information to the original application pursuant to Volusia County Code Section 90-37(i) and the VGMC may "determine in its sole discretion that the additional information changes the facts and circumstances of the prior certification." If such a determination is made, the VGMC shall hold a noticed public hearing on the Remedial Amendment. If the determination is made that the Remedial Amendment is consistent with the prior certification, no public hearing is required and a letter confirming consistency of the Remedial Amendment shall be issued to the City.
6. Failure to comply with any of the conditions of certification shall result in an automatic revocation of this certification, thereby rendering the amendment to the City's Comprehensive Plan, which is the subject of this certification, invalid and ineffective.

Exhibit #1

City of Oak Hill Large Scale Amendment Application Received February 24, 2015

VGMC #15-009



Office: 206 N. Beach St. Suite 205 / Daytona Beach, FL 32114
Mail: P.O. Box 4036 / Ormond Beach, FL 32175-4036
Ph. 407-491-9477

RECEIVED

February 24, 2015

FEB 24 2015

Ms. Merry Christine Smith, Coordinator
Volusia Growth Management Commission
140 South Beach Street, Suite 305
Daytona Beach, Florida 32114


VOLUSIA GROWTH MANAGEMENT COMMISSION

**Subject: VGMC Application for Comprehensive Plan Consistency Certification
CPA Case#15-005: Text Amendment – Policies 1.1.2.H and 1.2.3**

Dear Ms. Smith:

This letter is to advise you that the City of Oak Hill is considering adopting a *Comprehensive Plan* amendment constituting text amendments to Policies 1.1.2.H and 1.2.3. Enclosed please find one (1) original and five (5) copies (2 hard copies & 3 disk copies) of the following documents for the above referenced amendment:

1. VGMC Application for Comprehensive Plan Consistency Certification
2. Detailed staff report describing the proposed amendment
3. Policy Changes Excerpt from Comprehensive Plan (text amendment)

Please note that a public facilities analysis was not performed as a result of new text, policy 1.1.2.H.(d). The new policy language does not allow Scenario #2 to exceed the impacts created by Scenario #1 therefore the effect would be no new impacts as a result of the text amendment. Also, the strikeout and underline text are the only changes to the Comprehensive Plan, Future Land Use Element policies.

As noted on the application, the City's Planning and Land Development Regulations Commission (PLDRC) held a public hearing on February 12, 2015. This item was heard at first reading before the City Commission on February 23, 2015.

The City requests that the VGMC review and render a consistency certification for the *Comprehensive Plan* amendment. Should you have any questions or concerns, please call me at 407-491-9477 or e-mail me at blemke@planningsolutionscorp.com

Sincerely,



Beth G. Lemke
City Planning Consultant

Enclosures

cc: VGMC Consistency Certification Application
Staff Report Case# CPA15-005
FLUE Policy text amendments

VOLUSIA GROWTH MANAGEMENT COMMISSION
APPLICATION FOR COMPREHENSIVE PLAN AMENDMENT
CONSISTENCY CERTIFICATION

RECEIVED

JURISDICTION: City of Oak Hill

ADDRESS: 234 South US Highway 1

Oak Hill, FL 32759

FEB 24 2015

Merry C. Smith
VOLUSIA GROWTH MANAGEMENT COMMISSION

Applicant (CEO): Douglas Gibson
Name

Mayor
Title

Contact person: Beth Lemke
Name

City Planning Consultant
Title

Telephone & Fax #: (407) 491-9477

blemke@planningsolutionscorp.com

1. TYPE OF AMENDMENT: Please indicate below the elements of your comprehensive plan affected by this submittal.

Element(s):
☐ Future Land Use Map
☐ Traffic Circulation
☐ Gen. Sani. Sewer
Solid Waste, Drainage
Potable Water & Natural
Groundwater Aquifer Recharge
☐ Conservation
☐ Recreation & Open Space
☒ Other Text Amendment – Future Land Use Element
☐ Coastal Management
☐ Capital Improvements
☐ Intergovernmental
Coordination
☐ Housing
☐ Mass Transit
☐ Port Aviation &
Related Facilities

Is this submittal a Small-Scale Development as described under 163.3187 (1) (C)? ☒ Yes ☐ No

2. STATUS OF SUBMITTAL

Local Planning Agency Hearing date: February 12, 2015
Governing Body (transmittal hearing) date: February 23, 2015
Submitted to FDEO date: TBD
Governing Body Adoption scheduled date: TBD

3. SUBMITTAL TO THE VOLUSIA GROWTH MANAGEMENT COMMISSION:

Please submit (1) original and five (5) copies of this application and supporting documentation described below to: (The original and two copies of the application and supporting documents must be a hard copy in writing; the remaining copies may be in either hard copy or on disk.) Please provide colored copies of maps.

**MERRY CHRIS SMITH, COORDINATOR
VOLUSIA GROWTH MANAGEMENT COMMISSION
140 SOUTH BEACH STREET, SUITE 305
DAYTONA BEACH, FL 32114
(386)947-1875
FAX (386)947-1877
E-Mail address: VGMC@volusia.org**

- A. Notice summarizing the substance of the proposed plan amendment. For map amendments, please include acreage, location, current and proposed land uses.**
Case#CPA15-005: FLUE Text Amendment
A request to amend the City of Oak Hill's Comprehensive Plan by amending Chapter 1 Future Land Use Element, Policy 1.1.2.H and 1.2.3.
- B. Detailed report describing the proposed amendment.**
Attached
- C. Description of the Intergovernmental Coordination efforts used in preparation of the plan amendment.**
N/A
- D. Indicate and explain any recommendations contained in this application which may affect the plans for land use or infrastructure contained in the plans of the adjacent local governments within Volusia County.**
None have been identified at this time.
- E. Please provide the facts which support the recommendations identified in Paragraph D above and identify those measures which may be used to mitigate or eliminate any adverse impacts resulting from these recommendations.**
N/A – this is a text amendment.
- F. Identification of problems and needs noted within the comprehensive plans of adjacent governments that would benefit from improved or additional inter-governmental coordination and recommended solutions for resolving these potential problems and needs.**
None have been identified.

4. SUBMITTAL TO ADJACENT GOVERNMENTS:

A copy of the application and a complete set of the supporting documentation as described in Section 3 above must be submitted to all local governments that are contiguous to or may be substantially affected by the proposed amendment.

<u>Name of Government</u>	<u>Date submitted</u>	<u>Method of Delivery</u>
<u>County of Volusia</u>	February 24, 2015	<u>via Email</u>
<u>City of Edgewater</u>	February 24, 2015	<u>via Email</u>

5. SUBMITTAL OF SUMMARY NOTICE TO NON-ADJACENT MUNICIPALITIES AND OTHER GOVERNMENTAL UNITS:

A copy of the application and the summary notice required under Section 3(A) above must be submitted to non-adjacent municipalities and other governmental units. (Note: It is not necessary to submit an additional summary notice to municipalities identified in Section 4.)

<u>NAME OF MUNICIPALITY OR AGENCY</u>	<u>DATE SUBMITTED</u>	<u>METHOD OF DELIVERY</u>
DAYTONA BEACH	February 24, 2015	via Email
DAYTONA BEACH SHORES	February 24, 2015	via Email
DEBARY	February 24, 2015	via Email
DELAND	February 24, 2015	via Email
DELTONA	February 24, 2015	via Email
EDGEWATER	=====	=====
HOLLY HILL	February 24, 2015	via Email
LAKE HELEN	February 24, 2015	via Email
OAK HILL	=====	=====
ORANGE CITY	February 24, 2015	via Email
ORMOND BEACH	February 24, 2015	via Email
PIERSON	February 24, 2015	via Email
ST. JOHN RIVER WATER MGMT. DIST.	February 24, 2015	via Email
SOUTH DAYTONA	February 24, 2015	via Email
VOLUSIA COASTAL AREA MPO	February 24, 2015	via Email
VOLUSIA COUNTY SCHOOL BOARD	February 24, 2015	via Email

6. CERTIFICATION: This application is submitted pursuant to the Volusia Growth Management commission consistency Certification rules, the provision of which are incorporated in the application.

I HEREBY CERTIFY to the best of my knowledge that the application is complete and accurate to the submittals required under parts 3, 4, and 5, and have been submitted as described under the method to the appropriate agencies.

Beth A. Lemke
Signature of Applicant

2/24/2015
Date

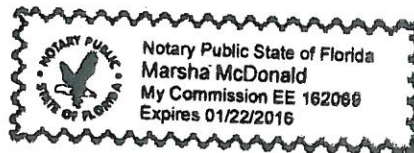
STATE OF FLORIDA
COUNTY OF VOLUSIA, to wit:

Subscribed and sworn before me this 24th day of February, 2015.

Personally known to me Or: Type of ID _____

Marsha McDonald
Notary Public, State of Florida at Large

My Commission expires: _____





City of Oak Hill

234 South U.S. Hwy. #1
Oak Hill, Florida 32759

Phone 386-345-3522

Fax 386-345-1834

To: Honorable Mayor Gibson and City Commission Members

From: Beth G. Lemke, Planning Consultant
Planning Solutions Corp.

Date: February 23, 2015

Subject: **Large Scale Comprehensive Plan Amendment – Text Amendment
and corresponding Land Development Code Revision
Case# CPA15-005**

Background/Overview:

A. Applicant: Steve Unatin, property owner, 767 S. Nova Road, Ormond Beach, FL 32176

B. Request:

- a. Approval of an amendment to the Future Land Use Element of the City's Comprehensive Plan, to revise the Special District #1 Future Land Use category, Policy 1.1.2.H, by changing the title name, adding an option of allowable land uses, and adding a maximum floor area ratio.
- b. The request also includes a corresponding code revision to add a compatible zoning classification, Activity Center Planned Development (ACPD), to Division 5, District Regulations, of the Land Development Code.

Findings:

- A. In 2014 the City of Oak Hill adopted its Evaluation and Appraisal (EAR) based Comprehensive Plan Amendments through Ordinance 2013-01. At that time a new Future Land Use category, *Special District #1*, was created with the EAR based comprehensive plan amendments. Additionally, the Future Land Use Map was amended to include an *Activity Center* Future Land Use designation.
- a. Both the Future Land Use category of *Special District #1* in the Comprehensive Plan and the Future Land Use map are specific to a 415 acre area which is identified on the Future Land Use Map as *Activity Center*. The Future Land Use category and the Future Land Use Map designation are inconsistent. This (text) comprehensive plan amendment will correct the inconsistency by

amending Special District #1 to Activity Center. The Future Land Use map designation will remain unchanged.

- B. The Special District #1 (Activity Center) Future Land Use category was created to allow a mix of uses for development while requiring a City approved Planned Development Agreement. Activity Centers are typically areas planned to accommodate a range of activities and/or uses including employment based offices, industrial activities, commercial services, recreational facilities, and housing. The Special District#1/Activity Center does not currently allow for flexibility among uses. It requires a mix of 75% residential and 25% commercial. The commercial uses permitted are related to the City's current commercial zoning classifications: B-1 General Commercial, B-2 Marine Oriented Commercial, and B-3 Waterfront Recreation/Leisure Business. These commercial categories are somewhat specific and limited. The Special District#1/Activity Center does not contain percentage requirements related to recreation, agriculture, industrial or conservation areas. The option of allowing industrial, conservation and agriculture provides flexibility in the development of the property. Additionally, Scenario #2 impacts will be limited and cannot exceed the public facilities and services impacts that would be associated with Scenario #1. This means that Scenario #2 impacts will be required to be less than the impacts of Scenario #1.
- C. A maximum floor area ratio of 1.0 FAR was added for the allowable industrial use. This is **not** an increase in the FAR it is more clarification as a result of inconsistencies within the Land Development Code. The comprehensive plan currently contains floor area ratio guidelines for nonresidential development. FLUE Policy 1.1.3 currently contains intensity standards for nonresidential land uses with and without central utilities. A development without central utilities would be limited to a FAR of 0.50 or less. To allow a nonresidential use to implement a larger FAR would require the installation of central utilities.
- D. The Special District#1/Activity Center contains approximately 415 acres currently zoned Agriculture (A-1). This zoning classification is inconsistent with the current Future Land Use designation; therefore, requiring an Official Zoning Map Amendment. The current zoning classification that may be consistent is Residential Planned Unit Development (RPUD). This zoning classification, as with the future land use, does not allow flexibility and could limit the uses permitted. Typically, at the time a Future Land Use category is created a corresponding zoning classification is identified or created for consistency purposes. The proposed zoning classification of Activity Center Planned Development would be specific to the approximate 415 acre area.

Recommendation:

Staff recommends approval of the comprehensive plan text amendment and the addition of the Activity Center Planned Development Zoning Classification with the following changes:

1. Regarding the Comprehensive Plan text amendment – the addition of the language of ‘public facilities and’ in Policy 1.1.2.H(d) (see attached) for consistency of the plan language, and;
2. Regarding the Land Development Code revision to add compatible zoning classification - the deletion of paragraph (f) Maximum Height of Structures in its entirety. This could be addressed in a Planned Development Agreement. (See attached)

PLDRC Action:

The PLDRC on February 12, 2015 recommended the following:

Regarding the Comprehensive Plan Text Amendment:

The PLDRC voted (5-0) to forward the comprehensive plan amendment, with Staff's Recommendation, to the City Commission for approval.

Regarding the Land Development Code Revision:

The PLDRC voted (5-0) to forward the Land Development code amendment, with Staff's Recommendation, to add the Activity Center Planned Development (ACPD) zoning classification to City Commission for approval.

Updated Recommendation:

Staff recommends approval of the comprehensive plan text amendment, and the addition of the corresponding Activity Center Planned Development Zoning Classification, as attached (Applicant changes noted in ~~strike-through~~ and underline. Staff changes noted in **red**):

1. Approval of the Comprehensive Plan Future Land Use Text Amendment
 - a. Update since PLDRC - Policy 1.2.3 of the Comprehensive Plan will need to be amended to allow a building height of greater than 35 feet.
2. Addition of the Activity Center Planned Development Zoning Classification
 - a. Update since PLDRC - The recommendation to PLDRC was to delete the applicant proposed paragraph - (f) Maximum Height of Structures - in its entirety, since this could be addressed in the Planned Development Agreement. However, since the PLDRC meeting, discussions among City Staff and the City Attorney have indicated a desire for additional specificity at this stage of the process. As such, the recommendation is to include this paragraph in the Activity Center Planned Development classification as revised to place a limit of 100' on the building height.
 - b. Update since PLDRC – added language to clarify that Scenario #1, in its entirety OR Scenario #2 in its entirety were the permitted uses.
 - c. Update since PLDRC – Added Maximum Building Coverage.
 - d. Update since PLDRC – Added Minimum Setback requirements.

City of Oak Hill – Comprehensive Plan Text Amendment (CPA-15-005)

FLUE Excerpts

Policy 1.1.2.H. ~~Special District #1—The Special District #1~~ Activity Center – The Activity Center Future Land Use is specific to a 415 acre area as identified on the Future Land Use Map and shall be developed as a mixed use development with a City approved Planned Development Agreement. The following standards shall apply ~~to the net developable acres:~~

(a) Allowable Uses:

Scenario #1 - Net Developable Acreage
75% Residential and
25% Commercial.

OR

Scenario #2 - A mix of the following uses on the Gross Acreage:
30% Industrial
70% Conservation & Agricultural

- (b) 4 to 8 Residential units per acre (net developable with central utilities).
- (c) Maximum of .50 FAR (floor area ratio) Commercial (net developable with central utilities).
- (d) Maximum of 1.0 FAR (floor area ratio) Industrial (net developable with central utilities). Further, Scenario #2, above will not exceed the impacts on public facilities and services of Scenario #1, above.

Policy 1.2.3. A building height limit of 35 feet shall be maintained throughout the city, except in the Activity Center.

Exhibit #2

Petition for Hearing

Filed on March 23, 2015 by:

**Florida Audubon Society, Inc. &
Southeast Volusia Audubon Society, Inc.**

VGMC #15-009

**BEFORE THE VOLUSIA GROWTH MANAGEMENT
COMMISSION** **RECEIVED**

In re: City of Oak Hill, Florida

MAR 23 2015

VGMC Case No. 15-009

Merry C. Smith
VOLUSIA GROWTH MANAGEMENT COMMISSION

PETITION FOR HEARING

1. Petitioner is Florida Audubon Society, Inc. and Southeast Volusia Audubon Society, Inc. care of Charles Lee Director of Advocacy, 1101 Audubon Way, Maitland, FL 32751 (407) 644-0190, and Don Picard President, 1530 Queen Palm Drive Edgewater, Fl. 32132, respectively.

2. The subject of this petition (VGMC Case No. 15-009) is a Comprehensive Plan Amendment identified as Ordinance# 2015-07 of the City of Oak Hill, Florida, a text amendment that only pertains to a single 423 acres parcel within the City of Oak Hill and is adjacent to unincorporated Volusia County.

3. Petitioners obtained notice of this application through legal advertisement published in the Daytona Beach News-Journal on February 16, 2015 and March 2, 2015.

4. Petitioners are non-profit corporations whose mission is protection of birds, wildlife, and habitat within Volusia County and the State of Florida. Petitioners are membership organizations that include dues paying members within Oak Hill and Volusia County, as well as members and staff from throughout the State of Florida who come to Oak Hill and Volusia County to observe birds and wildlife for enjoyment, scientific research, environmental education, and ecotourism. Petitioners are substantially affected or aggrieved parties because they have a substantial interest in the matters set forth above and their members, volunteers, and professional staff have been involved in the protection of birds and wildlife in the Oak Hill area for over 100 years. Petitioners submitted written comments at the transmittal hearing in the City of Oak Hill, Florida, and Petitioner

Don Picard as President of Southeast Volusia Audubon was in attendance at the City Commission hearing but was not allowed to speak. He did, however, place written comments into the record. Petitioners are “affected persons” as that term is defined by the Community Planning Act.

5. Petitioners dispute a number of allegations within the transmittal packet provided by the City of Oak Hill with regard to VGMC Case No. 15-009, as follows:

a. There is insufficient data and analysis associated with the proposed ordinance to meet the requirements of the Community Planning Act. Section 163.3177, Florida Statutes requires that all plan amendments “shall be based upon relevant and appropriate data and an analysis by the local government that may include, but not be limited to, surveys, studies, community goals and vision, and other data available at the time of adoption of the comprehensive plan or plan amendment.” The type of data and analysis typically submitted in support of a major plan change such as this appears to be entirely missing. Section 163.3177 Florida Statutes requires that for any amendment to the Future Land Use Element surveys, studies, and data are required regarding the “character of undeveloped land” as well as “the availability of water supplies, public facilities, and services.”

b. The amendment is fatally flawed because the hearing on the Comprehensive Plan Amendment was not properly noticed and advertised prior to its consideration by the Oak Hill Planning and Land Development Regulation Commission. The plan amendment was considered at a special called meeting on February 12, 2015, with no notice to the general public or adjoining property owners. The only notice that was given was an agenda posted on the City’s bulletin board at city hall which includes an item called “Discussion of a Comprehensive Plan Text Change (Please see Map), but no map was included. Sec. 163.3174(1), Fla. Stat. requires review of a comprehensive plan amendment by the local planning agency after “hearings to be held after public notice.” The legal advertisement for the proposed comprehensive plan amendment was not published until February 16, 2015.

c. The application states that the existing use of the property is “activity center,” when in fact the existing use of the property is an abandoned landfill.

d. The application and planning report fails to disclose that the adjoining property owner is the United States Government, Canaveral National Seashore, which received no notice of this proposed amendment.

e. Petitioners have become aware that at least two members of the city commission of the City of Oak Hill signed confidentiality agreements which prohibit them from disclosing what they know about this comprehensive plan amendment. This appears in conflict with Sec. 163.3181(2), Fla. Stat, which provides “during consideration of the proposed plan, amendments thereto by the local planning agency or by the local governing body, the procedures shall provide for broad dissemination of the proposals and alternatives, opportunity for written comments, public hearings as provided herein, provisions for open discussion, communications programs, information services, and consideration of and response to public comments.”

6. The proposed comprehensive plan amendment of the City of Oak Hill violates the consistency criteria as set forth in Sec. 90-37 in the following respects:

a. The proposed plan amendment is not compatible with and not in furtherance of the comprehensive plan of the adjacent local government. The proposed comprehensive plan amendments would convert an existing Special District of 75% Residential and 25% commercial with, 50 F.A.R, and height limits of 35 feet, to an “Activity Center” land use including “industrial” with 1.0 F.A.R. and height limits to 100 feet. This is inconsistent and incompatible with the adjacent land use of “conservation” within the County of Volusia. Conservation lands within Volusia County are limited to .10 F.A.R. and are so designated “for the preservation and protection of Volusia County’s natural resources.” These lands are also designated on the Future Land Use Map as within the “environmental core overlay” and such lands have “the highest degree of protection and suffer the least impact from development” within the Volusia County Comprehensive Plan.

b. The plan amendment violates requirements for intergovernmental cooperation and coordination as set forth in the Oak Hill Comprehensive Plan. The Oak Hill plan acknowledges that portions of Canaveral National Seashore are within and adjacent to the city. The Comprehensive Plan sets forth policies to establish a coordinating process with the National Park Service to provide for consistent and coordinated policies to protect important resources. The National Park Service was not given any actual, constructive, or informal notice from the City of Oak Hill that it was considering a proposed

comprehensive plan amendment which would allow industrial uses on lands adjacent to Canaveral National Seashore.

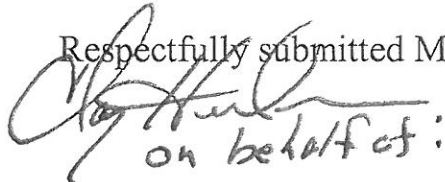
c. The proposed comprehensive plan amendment adversely affects intergovernmental cooperation and coordination in that it may reasonably be expected to cause significant adverse impacts on natural resources which extend beyond its jurisdiction. Lands adjacent to the area of the comprehensive plan amendment are part of Canaveral National Seashore as established by Congress as a unit of the National Park System and is subject to the General Management Plan as required by law. The General Management Plan requires these lands to protect important natural resources including the significant estuarine resources of Mosquito Lagoon and habitat for listed species. Lands adjacent to the area of the proposed comprehensive plan amendment are habitat for Gopher Tortoise, Eastern Indigo Snake, Florida Scrub Jay, American Kestrel, and Wood Stork, all of which are protected under the Endangered Species Act. Due to the lack of any minimum data and analysis, there is no way to objectively gauge the impacts from an undefined, and potentially unlimited industrial activity adjacent to a national park.

d. Upon information and belief, Petitioners understand that the reason for the secrecy surrounding this comprehensive plan amendment is that it is being considered for offsite ground support for the proposed Shiloh Launch Complex, currently under review by the Federal Aviation Administration for two vertical launch facilities and two off-site operation support areas. According to information provided during the two scoping hearings conducted by the FAA in February 2014, the launch complex would accommodate up to 24 launches per year, as well as up to 24 static fire engine tests or wet dress rehearsals per year. The vehicles to be launched include liquid fueled, medium- to heavy-lift class orbital and suborbital vertical launch vehicles. Rules of the FAA for licensing of commercial space flight allow storage, use, and testing of both hazardous and highly flammable materials at an off-site operation support area. The proposed comprehensive plan amendment provides no means to control adverse impacts from hazardous materials, flammable materials, noise or vibration on nationally significant habitat for listed species on adjacent properties, or the incomprehensible affects of exploding fuels and hazardous materials on the pristine waters of Mosquito Lagoon.

7. Petitioners request that a hearing be held on the proposed comprehensive plan amendment, identified as VGMC Case No. 15-009 Ordinance# 2015-07 of the City of Oak Hill, and the Volusia Growth Management Commission should reject a certificate of consistency for the amendment. The amendment is fatally flawed for its lack of transparency and failure to provide due public notice to adjoining

property owners or the public, fails to promote intergovernmental coordination, and fails to protect significant natural resources which belong not only to the citizens of Volusia County and the State of Florida, but to the nation as a whole.

Respectfully submitted March 23, 2015

A handwritten signature in dark ink, appearing to be "John H. ...", written over the date.

on behalf of:
FLORIDA AUDUBON SOCIETY

A handwritten signature in dark ink, appearing to be "John H. ...", written below the Florida Audubon Society signature.

SOUTHEAST VOLUSIA AUDUBON SOCIETY

A handwritten signature in dark ink, appearing to be "John H. ...", written below the Southeast Volusia Audubon Society signature.

Exhibit #3

**VGMC letter dated March 31, 2015
confirming the Public Hearing to be
held on April 22, 2015**

VGMC #15-009



Volusia Growth Management Commission

March 31, 2015

Beth Lemke, Planning Consultant
Planning Solutions Corp
Post Office Box 4036
Ormond Beach, Florida 32175-4036

**Re: VGMC Case #15-009 – City of Oak Hill
Large Scale Amendment Application – CPA Case #15-005: Text Amendment
Policies 1.1.2.H and 1.2.3**

Dear Ms. Lemke:

We are in receipt of your email dated March 26, 2015, regarding VGMC Case No. 15-009 and will honor your request for the public hearing on this case to occur at the April 22, 2015 regular meeting of the Volusia Growth Management Commission ("VGMC"). The meeting is scheduled to begin at 7:00 p.m. in the City Commission Chambers in Daytona Beach.

Please be advised that pursuant to the Volusia Growth Management Commission Certification Rules, Volusia County Code Section 90-37(a), the burden is on the applicant jurisdiction to affirmatively provide the VGMC with reasonable assurance based upon competent substantial evidence that the amendment is consistent with the other comprehensive plans. The VGMC may direct that conditions be imposed as part of its consistency determination. Pursuant to Volusia County Code Section 90-37(e), the VGMC may deny certification where the applicant has failed to establish by a preponderance of the evidence, its entitlement under the rules to the certificate.

Evidence may be taken by the VGMC up through the public hearing pursuant to Volusia County Code Section 90-35(d)(5). The applicant jurisdiction or its representative may consult with VGMC staff concerning the application pursuant to Section 90-36.

To facilitate an orderly and productive hearing on April 22, 2015, the following is a timeline of events leading up to the hearing date:

Ms. Beth Lemke
VGMC #15-009, City of Oak Hill
March 31, 2015

<u>DATE</u>	<u>EVENT</u>
April 9, 2015	VGMC Agenda for April 22, 2015, hearing is published and distributed.
April 10, 2015	Last day to submit material to the VGMC staff regarding the application prior to staff report being written. Last day to meet/consult with VGMC staff prior to staff report being written.
April 13, 2015	Notice of Public Hearing on Case #15-009 is published. VGMC staff issues Staff Report for Case #15-009.
April 15, 2015	Draft VGMC Resolution regarding Consistency Certification is issued and distributed to VGMC members.
April 17, 2015	Last day to file a Petition for Leave to Intervene into Case #15-009 pursuant to Section 90-38.
April 22, 2015	VGMC Public Hearing on Case #15-009.

Once the Agenda and Staff Report relating to this item are finalized, I will be sure to forward them to you.

If you have any questions in the meantime, please do not hesitate to contact me.

Sincerely,



Merry C. Smith
VGMC Operations Manager

cc: James Wachtel, VGMC Chairman
Paul Chipok, VGMC Legal Counsel
Erika Hughes, VGMC Planning Consultant
James Sellen, VGMC Planning Consultant
Kohn Evans, City of Oak Hill Administrator
Scott Simpson, Oak Hill City Attorney
Charles Lee, Director of Advocacy, Florida Audubon Society, Inc.
Don Picard, President, Southeast Volusia Audubon Society, Inc.
Clay Henderson, Holland & Knight, Counsel for Audubon Society, Inc.

Exhibit #4

Florida Department of Environmental Protection (DEP) Letter dated March 26, 2015

VGMC #15-009



FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

MARJORY STONEMAN DOUGLAS BUILDING
3900 COMMONWEALTH BOULEVARD
TALLAHASSEE, FLORIDA 32399-3000

RICK SCOTT
GOVERNOR

CARLOS LOPEZ-CANTERA
LT. GOVERNOR

JONATHAN P. STEVERSON
SECRETARY

March 26, 2015

Amended Review Letter

Ms. Beth Lemke, City Planner
City of Oak Hill
234 S US Highway 1
Oak Hill, FL 32759

Re: Oak Hill 15-1ESR - Expedited Review of Proposed Comprehensive Plan
Amendment

Dear Ms. Lemke:

The Department of Environmental Protection (Department) has reviewed the above-referenced proposed comprehensive plan amendment in accordance with the provisions of Chapter 163, Florida Statutes (F.S.). The Department's review focused on potential impacts to: air and water pollution; wetlands and other surface waters of the state; federal and state-owned lands and interests in lands, including state parks, greenways and trails and conservation easements; solid waste; and water and wastewater treatment.

The Department provides the following comments and recommendations on the proposed amendment and requests that the City of Oak Hill (City) address these issues prior to adopting the amendment.

PROPOSED AMENDMENT

The City proposes to amend Future Land Use Element (FLUE) Policy 1.1.2.H by allowing additional uses on a 415-acre parcel currently designated Activity Center. The existing policy allows 75% residential (4-6 du/ac), 25% commercial mixed use development. The amendment would allow an alternative mixed use scenario consisting of 30% industrial uses and 70% conservation or agricultural uses. Two borders of the parcel are adjacent to the Canaveral National Seashore (National Seashore). The National Seashore contains 58,000 acres of barrier island, open lagoon, coastal hammock, pine flatwoods and offshore waters along the east central coast of Florida. Because it contains ecological resources of statewide importance, the National Seashore is designated Outstanding Florida Waters¹ (OFW).

COMMENTS AND RECOMMENDATIONS

The proposed amendment does not provide sufficient guidance to predict the form or location of industrial development to be allowed within the parcel and, thus, does not adequately protect against adverse impacts to the National Seashore, an important state

¹ Rule 62-302.700(9), F.A.C.

Beth Lemke
Page 2 of 2
March 26, 2015
Amended Review Letter

resource and OFW. The Department recommends the City modify Policy 1.1.2.H by identifying the areas where industrial development will be allowed and specifying the protective measures that will be taken to decrease the potential for adverse impacts to the National Seashore. Sufficient data and analysis should be provided to support this modification.

The Department offers its technical assistance to the City in developing sound solutions to address DEP's concerns about the potential for adverse impacts to important state resources. If you should require assistance or additional information, please contact me at (850) 245-2172 or Suzanne.e.ray@dep.state.fl.us.

Sincerely,

A handwritten signature in cursive script, appearing to read "Suzanne E. Ray".

Suzanne E. Ray, AICP, LEED AP
Office of Intergovernmental Programs

Exhibit #5

Review Letters:

- . Florida Department of Transportation (FDOT) dated March 12, 2015**
- . Florida Department of Education (FDOE) dated March 12, 2015**
- . Florida Department of Economic Opportunity (DEO) dated March 27, 2015**
- . St. Johns River Water Management District (SJRWMD) dated March 24, 2015**
- . Florida Department of Environmental Protection (DEP) dated April 9, 2015**

VGMC #15-009



Florida Department of Transportation

RICK SCOTT
GOVERNOR

719 South Woodland Boulevard
DeLand, Florida 32720

JIM BOXOLD
SECRETARY

March 12, 2015

Beth Lemke
City Planner
234 South U.S. Hwy #1
Oak Hill, FL 32759

SUBJECT:	PROPOSED COMPREHENSIVE PLAN AMENDMENT
LOCAL GOVERNMENT:	CITY OF OAK HILL
DCA #:	15-1ESR

Dear Ms. Lemke:

The Department of Transportation has completed its review of the above proposed Comprehensive Plan Amendment as requested in your memorandum dated February 24, 2015.

We appreciate the opportunity to participate in this review process and we offer our comments with this letter. Since the amendment does not appear to have significant adverse impacts to the State Highway System or the Strategic Intermodal System, the Department does not have any concerns at this time.

If you have any questions, you may contact Judy Pizzo at 386-943-5167 or by e-mail at judy.pizzo@dot.state.fl.us.

Sincerely,

A handwritten signature in blue ink that reads "Heather S. Garcia".

Heather S. Garcia
Planning and Corridor Development Manager

C: Becky Mendez, Volusia County
Melissa Winsett, Volusia County
Sandra Jackson, Volusia County
Jon Cheney, Volusia County
Andrew Landis, ECFRPC

Jim Wood, FDOT
Maria Cahill, FDOT
James Stansbury, DEO
Ray Eubanks, DEO

COMPREHENSIVE PLAN AMENDMENT PROPOSED REVIEW COMMENTS

Local Government: City of Oak Hill
DEO Amendment #: 15-1ESR
Date Amendment Received FDOT: 02/23/2015
Review Comments Deadline: 03/26/2015
Today's Date: 03/12/2015

GENERAL BACKGROUND INFORMATION

The City of Oak Hill has submitted the proposed Oak Hill 15-1ESR large scale comprehensive plan amendment for a land use designation change for approximately 415 acres generally located east of SR 5/US 1, south of Halifax Ave, and north of Bills Hill Road. The proposed amendment to the Future Land Use Element of the City of Oak Hill's Comprehensive Plan revises the Special District #1 Future Land Use category, Policy 1.1.2.H, by changing the title name to Activity Center to comply with the future land use map, adding an option of allowable land uses, and adding a maximum floor area ratio.

The pertinent FLUM designations and descriptions for the future land use amendments include the following:

- **CITY OF OAK HILL – SPECIAL DISTRICT #1**

Intent: This designation is specific to a 415 acre area as identified on the Future Land Use Map and shall be developed as mixed use with a City approved Planned Development Agreement.

Maximum allowed density: *Residential* – Not to exceed seventy-five (75) percent of the net developable area nor eight (8) dwelling units per one (1) acre
Commercial – Not to exceed twenty-five (25) percent of the net developable area nor a floor area ratio (FAR) of fifty percent (0.50 FAR)

- **CITY OF OAK HILL – ACTIVITY CENTER**

Intent: This designation is specific to a 415 acre area as identified on the Future Land Use Map and shall be developed as mixed use with a City approved Planned Development Agreement.

Maximum allowed density: *Residential* – Not to exceed seventy-five (75) percent of the net developable area nor eight (8) dwelling units per one (1) acre
Commercial – Not to exceed twenty-five (25) percent of the net developable area nor a floor area ratio (FAR) of fifty percent (0.50 FAR)
OR
Industrial – Not to exceed thirty (30) percent of the gross acreage nor a floor area ratio (FAR) of one-hundred percent (1.0 FAR)
Conservation & Agricultural – Not to exceed seventy (70) percent of the gross acreage

FDOT Contact:	Judy Pizzo, MS, GISP Planning Project Manager FDOT District 5, Office of Intermodal Systems Development	Reviewed by:	Melody Butler, P.E. (Georgia) Rohan Sadhai, AICP Vanassee Hangen Brustlin, Inc.
Telephone:	386-943-5167		407-839-4006
Fax:	386-943-5713		407-839-4008
E-mail:	judy.pizzo@dot.state.fl.us		mbutler@vhb.com
File:	H:\OOC\Planning\Growth Management\CPA Project Files\Oak Hill_Volusia\Review\2015\15-1ESR\Proposed\Oak Hill 15-1ESR Review 031215.docx		

COMPREHENSIVE PLAN AMENDMENT PROPOSED REVIEW COMMENTS

Local Government: City of Oak Hill
DEO Amendment #: 15-1ESR
Date Amendment Received FDOT: 02/23/2015
Review Comments Deadline: 03/26/2015
Today's Date: 03/12/2015

TEXT AMENDMENT

Elements: Future Land Use Element
Rule Reference: Chapter 163, Florida Statutes

Background:

The proposed amendment consists of approximately 415 total acres generally located east of SR 5/US 1, south of Halifax Ave, and north of Bills Hill Road. The text amendment changes the future land use designation from Special District #1 to Activity Center. The tables below show the maximum trip generation potential for the currently adopted and proposed land use scenarios, and the change in trips as a result of the amendment.

Table 1: Trip Generation Potential of Parcels Affected by FLUM Amendment (Scenario 1)

Scenario	Land Use Designation	Maximum Allowed Intensity	ITE Land Use Code	Size of Development		Daily Trips	P.M. Peak Hour Trips
				Acres	Allowed Development		
Adopted	Special District #1	0.5 FAR 25% of developable acres ¹	820	31.13	237,304 s.f.	11,909	1,069
		8 dwelling units/1 acre 75% of developable acres ¹	220	93.38	747 d.u.	4,650	463
Proposed	Activity Center (Scenario 1)	0.5 FAR 25% of developable acres ¹	820	31.13	237,304 s.f.	11,909	1,069
		8 dwelling units/1 acre 75% of developable acres ¹	220	93.38	747 d.u.	4,650	463
Change in Trips						0	0

Source: ITE Trip Generation Manual 9th Edition
D.U. = dwelling units, S.F. = square feet

1. Net developable acreage is assumed to be 30% of 415-acre site

The analysis shows that for Scenario 1, the amendment would not change the trip generation potential of the 415 acres of Activity Center land use because the density and intensity of the residential and commercial land uses were not changed as part of the text amendment.

<p>FDOT Contact: Judy Pizzo, MS, GISP Planning Project Manager FDOT District 5, Office of Intermodal Systems Development Telephone: 386-943-5167 Fax: 386-943-5713 E-mail: judy.pizzo@dot.state.fl.us File: H:\OOC\Planning\Growth Management\CPA Project Files\Oak Hill_Volusia\Review\2015\15-1ESR\Proposed\Oak Hill 15-1ESR Review 031215.docx</p>	<p>Reviewed by: Melody Butler, P.E. (Georgia) Rohan Sadhai, AICP Vanassee Hangen Brustlin, Inc. 407-839-4006 407-839-4008 mbutler@vhb.com</p>
--	---

COMPREHENSIVE PLAN AMENDMENT PROPOSED REVIEW COMMENTS

Local Government: City of Oak Hill
DEO Amendment #: 15-1ESR
Date Amendment Received FDOT: 02/23/2015
Review Comments Deadline: 03/26/2015
Today's Date: 03/12/2015

Table 2: Trip Generation Potential of Parcels Affected by FLUM Amendment (Scenario 2)

Scenario	Land Use Designation	Maximum Allowed Intensity	ITE Land Use Code	Size of Development		Daily Trips	P.M. Peak Hour Trips
				Acres	Allowed Development		
Adopted	Special District #1	0.5 FAR 25% of developable acres ¹	820	31.13	237,304 s.f.	11,909	1,069
		8 dwelling units/1 acre 75% of developable acres ¹	220	93.38	747 d.u.	4,650	463
Proposed	Activity Center (Scenario 2)	1.0 FAR 30% of gross acreage	110	124.5	1,898,127 s.f.	14,077	2,557
		N/A 70% of gross acreage	N/A	290.5	0 s.f.	1	1
Change in Trips						-2,481	1,026

Source: ITE Trip Generation Manual 9th Edition
D.U. = dwelling units, S.F. = square feet

1. Net developable acreage is assumed to be 30% of 415-acre site

The analysis shows that for Scenario 2, the amendment would decrease the trip generation potential of the 415 acres of Activity Center by approximately 2,481 daily trips and increase the trip generation potential by approximately 1,026 p.m. peak hour trips. However, the text amendment includes a stipulation for Scenario 2 that states, "Scenario #2 will not exceed the impacts on public facilities and services of Scenario #1." Therefore, given the condition that Scenario 2 cannot exceed the impacts of Scenario 1, the changes in trip generation in Scenario 1 produce the maximum potential impacts to the transportation network.

The State roadway segments within three miles of the site that could be impacted by the amendment are shown in the following table with year 2015 and 2035 projected volumes.

FDOT Contact:	Judy Pizzo, MS, GISP Planning Project Manager FDOT District 5, Office of Intermodal Systems Development	Reviewed by:	Melody Butler, P.E. (Georgia) Rohan Sadhai, AICP Vanassee Hangen Brustlin, Inc.
Telephone:	386-943-5167		407-839-4006
Fax:	386-943-5713		407-839-4008
E-mail:	judy.pizzo@dot.state.fl.us		mbutler@vhb.com
File:	H:\OOC\Planning\Growth Management\CPA Project Files\Oak Hill_Volusia\Review\2015\15-1ESR\Proposed\Oak Hill 15-1ESR Review 031215.docx		

COMPREHENSIVE PLAN AMENDMENT PROPOSED REVIEW COMMENTS

Local Government: City of Oak Hill
DEO Amendment #: 15-1ESR
Date Amendment Received FDOT: 02/23/2015
Review Comments Deadline: 03/26/2015
Today's Date: 03/12/2015

Table 3: State Roadway Segments Affected by FLUM Amendment

Roadway(s)	Segment(s)	SHS/ SIS?	2015				2035			
			LOS Stan- dard	Service Volume at LOS Standard	AADT	Ac- cept- able?	LOS Stan- dard	Service Volume at LOS Standard	AADT	Ac- cept- able?
SR 5/US 1	Brevard County Line to Kennedy Pkwy	Y	C	40,300	3,200	Y	C	60,400	6,200	Y
	Kennedy Pkwy to Putnam Grove Dr	Y	C	49,600	3,200	Y	C	49,600	6,200	Y
	Putnam Grove Dr to Halifax Ave	Y	C	49,600	3,700	Y	C	49,600	7,200	Y
	Urban Boundary to SR 514/ Malabar Rd	Y	C	49,600	5,300	Y	C	49,600	10,500	Y

Source: FDOT District Five 2014 LOS_ALL Report

Review Comments:

No State facilities within three miles of the proposed amendment site are projected to exceed the LOS standards through year 2035. The proposed land use amendment results in no net change in the trip generation potential of the 415 acres designated Activity Center.

Future development within the Activity Center requires a City approved Planned Development Agreement, which will consist of a traffic study that will further ensure that the transportation network not be significantly impacted by the development.

Therefore, it is anticipated that no State and SIS facilities located within three miles of the parcel will be significantly impacted as a result of the proposed land use amendment.

Recommendations:

The FDOT has no recommendations at this time for this proposed amendment and respectfully requests a copy of the adopted plan. Please provide the adopted plan within two weeks of adoption, in order to assist in facilitating review within the required 30-day time frame from adoption, as required by Statutes (Expedited State review Amendment Process Section 163.3184(3) and (5), Florida Statutes).

<p>FDOT Contact: Judy Pizzo, MS, GISP Planning Project Manager FDOT District 5, Office of Intermodal Systems Development Telephone: 386-943-5167 Fax: 386-943-5713 E-mail: judy.pizzo@dot.state.fl.us File: H:\OOC\Planning\Growth Management\CPA Project Files\Oak Hill_Volusia\Review\2015\15-1ESR\Proposed\Oak Hill 15-1ESR Review 031215.docx</p>	<p>Reviewed by: Melody Butler, P.E. (Georgia) Rohan Sadhai, AICP Vanasse Hangen Brustlin, Inc. 407-839-4006 407-839-4008 mbutler@vzb.com</p>
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FLORIDA DEPARTMENT OF
EDUCATION
fldoe.org

Pam Stewart
Commissioner of Education

March 12, 2015

Ms. Beth Lemke, City Planner
City of Oak Hill
234 South U.S. Highway 1
Oak Hill, Florida 32759
Via E-mail: blemke@planningsolutionscorp.com

Re: City of Oak Hill 15-1ESR

Dear Ms. Lemke:

Thank you for the opportunity to review the City of Oak Hill's proposed 15-1ESR amendment package, which the Florida Department of Education received on February 24, 2015. According to the department's responsibilities under section 163.3184(3)(b), Florida Statutes, I reviewed the amendment considering the provisions of chapter 163, part II, F.S., and to determine whether the proposal, if adopted, would have the potential to create adverse effects on public school facilities.

The proposal would amend Future Land Use Element policy 1.1.2.H, which relates to Special District #1. The proposal revises the name of the land use category to be "Activity Center," authorizes additional allowable uses and clarifies the applicable floor area ratio. Because the proposal does not appear to affect public school facilities, I offer no comment.

Again, thank you for the opportunity to review and comment. Please contact me at 850-245-9312 or Tracy.Suber@fldoe.org, if you have questions about this letter, or if I may be of assistance.

Sincerely,

Tracy D. Suber
Growth Management and Facilities Policy Liaison

TDS/

cc: Ms. Saralee Morrissey, Volusia County Schools
Mr. James Stansbury, DEO/State Land Planning Agency

Thomas H. Inserra
Director, Office of Educational Facilities

Rick Scott
GOVERNOR



Jesse Panuccio
EXECUTIVE DIRECTOR

March 27, 2015

The Honorable Douglas A. Gibson
Mayor, City of Oak Hill
234 U.S. Highway 1
Oak Hill, Florida 32759

Dear Mayor Gibson:

The Department of Economic Opportunity has completed its review of the proposed comprehensive plan amendment for Oak Hill (Amendment 15-1ESR), which we received on February 26, 2015. We reviewed the proposed amendment pursuant to Sections 163.3184(2) and (3), Florida Statutes (F.S.), and identified no comments related to important state resources and facilities within the Department of Economic Opportunity's authorized scope of review that would be adversely impacted by the amendment if adopted.

The City is reminded that pursuant to Section 163.3184(3)(b), F.S., other reviewing agencies have the authority to provide comments directly to the City. If other reviewing agencies provide comments, we recommend the City considers appropriate changes to the amendment(s) based on those comments. If unresolved, such reviewing agency comments could form the basis for a challenge to the amendment(s) after adoption.

The City should act by choosing to adopt, adopt with changes, or not adopt the proposed amendment. Also, please note that Section 163.3184(3)(c)1, F.S., provides that if the second public hearing is not held within 180 days of your receipt of agency comments, the amendment shall be deemed withdrawn unless extended by agreement with notice to the Department of Economic Opportunity and any affected party that provided comment on the amendment. For your assistance, we have enclosed the procedures for adoption and transmittal of the comprehensive plan amendment.

If you have any questions concerning this review, please contact Barbara Lenczewski, Planning Analyst at (850) 717-8502 or by email at Barbara.Lenczewski@deo.myflorida.com.

Sincerely,

Ana Richmond, Chief
Bureau of Community Planning

AR/bl

Enclosure(s): Procedures for Adoption

cc: Beth Lemke, City Planner, City of Oak Hill
Hugh Harling, P.E., Executive Director, East Central Florida Regional Planning Council

Florida Department of Economic Opportunity | Caldwell Building | 107 E. Madison Street | Tallahassee, FL 32399
866.FLA.2345 | 850.245.7105 | 850.921.3223 Fax
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**SUBMITTAL OF ADOPTED COMPREHENSIVE PLAN AMENDMENTS
FOR EXPEDITED STATE REVIEW**

Section 163.3184(3), Florida Statutes

NUMBER OF COPIES TO BE SUBMITTED: Please submit three complete copies of all comprehensive plan materials, of which one complete paper copy and two complete electronic copies on CD ROM in Portable Document Format (PDF) to the Department of Economic Opportunity and one copy to each entity below that provided timely comments to the local government: the appropriate Regional Planning Council; Water Management District; Department of Transportation; Department of Environmental Protection; Department of State; the appropriate county (municipal amendments only); the Florida Fish and Wildlife Conservation Commission and the Department of Agriculture and Consumer Services (county plan amendments only); and the Department of Education (amendments relating to public schools); and for certain local governments, the appropriate military installation and any other local government or governmental agency that has filed a written request.

SUBMITTAL LETTER: Please include the following information in the cover letter transmitting the adopted amendment:

_____ Department of Economic Opportunity identification number for adopted amendment package;

_____ Summary description of the adoption package, including any amendments proposed but not adopted;

_____ Identify if concurrency has been rescinded and indicate for which public facilities. (Transportation, schools, recreation and open space).

_____ Ordinance number and adoption date;

_____ Certification that the adopted amendment(s) has been submitted to all parties that provided timely comments to the local government;

_____ Name, title, address, telephone, FAX number and e-mail address of local government contact;

_____ Letter signed by the chief elected official or the person designated by the local government.

ADOPTION AMENDMENT PACKAGE: Please include the following information in the amendment package:

_____ In the case of text amendments, changes should be shown in strike-through/underline format.

_____ In the case of future land use map amendments, an adopted future land use map, **in color format**, clearly depicting the parcel, its future land use designation, and its adopted designation.

_____ A copy of any data and analyses the local government deems appropriate.

Note: If the local government is relying on previously submitted data and analysis, no additional data and analysis is required;

_____ Copy of the executed ordinance adopting the comprehensive plan amendment(s);

Suggested effective date language for the adoption ordinance for expedited review:

The effective date of this plan amendment, if the amendment is not timely challenged, shall be 31 days after the Department of Economic Opportunity notifies the local government that the plan amendment package is complete. If timely challenged, this amendment shall become effective on the date the Department of Economic Opportunity or the Administration Commission enters a final order determining this adopted amendment to be in compliance. No development orders, development permits, or land uses dependent on this amendment may be issued or commence before it has become effective. If a final order of noncompliance is issued by the Administration Commission, this amendment may nevertheless be made effective by adoption of a resolution affirming its effective status, a copy of which resolution shall be sent to the Department of Economic Opportunity.

_____ List of additional changes made in the adopted amendment that the Department of Economic Opportunity did not previously review;

_____ List of findings of the local governing body, if any, that were not included in the ordinance and which provided the basis of the adoption or determination not to adopt the proposed amendment;

_____ Statement indicating the relationship of the additional changes not previously reviewed by the Department of Economic Opportunity in response to the comment letter from the Department of Economic Opportunity.



St. Johns River Water Management District

Hans G. Tanzler III, Executive Director

4049 Reid Street • P.O. Box 1429 • Palatka, FL 32178-1429 • (386) 329-4500
On the Internet at floridaswater.com.

March 24, 2015

Beth Lemke
City of Oak Hill
234 South U.S. Highway 1
Oak Hill, FL 32579

Re: City of Oak Hill Proposed Comprehensive Plan Amendment #15-1ESR

Dear Ms. Lemke:

St. Johns River Water Management District (District) staff have reviewed the above-referenced proposed comprehensive plan amendment. District staff review, as outlined in *Florida Statutes*, focused on flood protection and floodplain management, wetlands and other surface waters, and regional water supply as they relate to important state resources and facilities that will be adversely impacted by the amendment if adopted. District staff have no comments on the proposed amendment because no adverse impacts to important state resources and facilities were identified.

If you have any questions or need additional information, please contact me at (386) 312-2369 or sfitzgib@sjrwmd.com.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Steve', followed by a stylized flourish.

Steve Fitzgibbons, AICP, Intergovernmental Planner
Office of Communications and Intergovernmental Affairs

cc: James Stansbury, Florida Department of Economic Opportunity
Andrew Landis, East Central Florida Regional Planning Council
Ann Benedetti, St. Johns River Water Management District

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FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

MARJORY STONEMAN DOUGLAS BUILDING
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TALLAHASSEE, FLORIDA 32399-3000

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GOVERNOR

CARLOS LOPEZ-CANTERA
LT. GOVERNOR

JONATHAN P. STEVERSON
SECRETARY

MEMORANDUM

TO: Beth G. Lemke, Planning Solutions Corp.
FROM: Suzanne Ray, Office of Intergovernmental Programs
SUBJECT: Oak Hill 15-1ESR Proposed Amendment
DATE: April 9, 2015

Dear Ms. Lemke,

In our letter dated March 26, 2015, the Department of Environmental Protection (Department) expressed its concerns about proposed changes to Future Land Use Element (FLUE) Policy 1.1.2.H. The Department recommended the city modify Policy 1.1.2.H identifying areas where industrial development would be allowed and specifying protective measures that would be taken to decrease the potential for adverse impacts to Canaveral National Seashore, an important state resource.

Discussions with you about addressing our concerns led to your submittal of amended FLUE Policy 1.1.2.H below.

(e) Development Scenarios and buffers.

- (1) Scenario #1 – The net developable acreage may consist of 75% Residential & 25% Commercial, with the remaining areas designated as ~~open space~~ conservation and agricultural to provide a buffer to adjacent uses.
- (2) Scenario #2 – The net developable acreage may consist of industrial uses with the remaining areas designated as conservation and agricultural to provide a buffer to adjacent uses.

(f) Orientation of Permitted Uses and Structures.

Industrial, commercial or residential uses shall be oriented toward the center of the site.

The changes to FLUE Policy 1.1.2.H(e)(2) and addition of (f) would address the Department's concerns. Furthermore, the Department recommends FLUE Policy 1.1.2.H(e)(1) retain the original language.

Sincerely,

Suzanne E. Ray, AICP
Office of Intergovernmental Programs
(850) 245-2172
suzanne.e.ray@dep.state.fl.us

Exhibit #6

**Memorandum from the Southeast
Volusia Audubon Society & Florida
Audubon Society dated April 9, 2015**

VGMC #15-009

Memo:

To: Volusia Grown Management Commission

From: Southeast Volusia Audubon Society and Florida Audubon Society

April 9, 2015

Re: VGMC #15-009 City of Oak Hill Large Scale Amendment

I have been asked to provide the following information for staff consideration. The property adjacent to the property subject to the Oak Hill Comprehensive Plan Amendment is designated as Conservation and Environmental Core Overlay under the Volusia County Comprehensive Plan. The property is owned by the United States Government and is a unit of the National Park System.

In 1974, Congress approved the establishment of Canaveral National Seashore, "In order to preserve and protect the outstanding natural, scenic, scientific, ecologic, and historic values of certain lands, shoreline, and waters of the State of Florida, and to provide for public outdoor recreation use and enjoyment of the same," Title 16 USC §459j. Congress established the boundaries for Canaveral National Seashore which includes lands within Oak Hill and adjacent to the property subject to the Plan Amendment.

As required by law, the lands within CNS are subject to the General Management Plan and the last iteration of this plan was formally adopted on August 2014. The General Management Plan can be found at the following link:

<http://parkplanning.nps.gov/document.cfm?parkID=360&projectID=13534&documentID=62205>

Lands adjacent to the lands subject to this comprehensive plan amendment are managed for protection of habitat for listed species and as a buffer to Mosquito Lagoon. Species listed as found within the lands in this section of CNS include Gopher Tortoise, Eastern Indigo Snake, Florida Scrub Jay, American Kestrel, and Wood Stork. The proposed industrial use adjacent to these lands poses an adverse affect on habitat for listed species.

The Superintendent of Canaveral National Seashore has provided me with the following information: The Bills Hill section of Canaveral National Seashore contains several bald eagle nests, Florida Scrub Jays, Gopher Tortoise, Eastern Indigo Snakes. Staff biologists have identified vulnerable freshwater swales which contain 7 species of reptiles and amphibians (including rare sirens) and 1 fish species only found in these swales. The site also contains rare maritime hammock. In addition there are significant cultural resources on site including portions of Ross Hammock and Old King Road. Ross Hammock was added to the National Register of Historic Places on February 5, 1981. Canaveral National Seashore makes the lands available for hiking, access to Mosquito Lagoon and other recreational activities.

The proposed Plan Amendment makes no effect to mitigate against adverse affects of intense industrial uses adjacent to a national park.

Policy 1.7.8. of the Oak Hill Comprehensive Plan provides as follows:

The City shall establish continue a coordinating process with the National Park Service and the County of Volusia for the purpose of providing consistent and coordinated management of the marine resources within the North Indian River and the Mosquito Lagoon.

The National Park Service, which is the adjoining property owner to the land subject to the Plan Amendment, has been given no notice of the proposed Plan Amendment, and the City of Oak Hill has not consulted with the National Park Service in any manner concerning this proposal.

Exhibit #7

KSC/MINWR Bald Eagle Reproduction Surveys 2013/2014 Final Report

VGMC #15-009

KSC/MINWR Bald Eagle Reproduction Surveys 2013/2014 Final Report

Submitted by Becky Bolt, InoMedic Health Applications

Four bald eagle reproduction surveys were done during the 2013/2014 season to determine the reproductive output on Kennedy Space Center/Merritt Island National Wildlife Refuge. All surveys were done using a NASA Huey helicopter. The first survey was done on 18 December 2013, the second survey was on 12 February 2014, the third flight was on 20 March, and the fourth flight was on 23 April. Becky Bolt, Stephanie Weiss, and Russ Lowers of InoMedic Health Applications (IHA) were the observers on the first three flights and Russ was the lone observer on the fourth flight. Resa Cancro (IHA) also flew the first three flights to verify GIS coordinates for all nest locations. Volunteers from Merritt Island National Wildlife Refuge provided additional data for some nests outside the NASA security area. This information was gathered on foot and by direct observation of the nests.

Twenty-one territories known to be active in previous years were surveyed on the first flight and one new territory was found (Table 1, Figure 1). No nests were found in four of the territories; attempts were made to find new nests by surveying areas with large pine trees and snags, and by looking for adult eagles. In four territories there were empty nests with no adults observed in the vicinity. One territory had adults sitting in the nest tree, but the nest was empty. Ten territories had an adult sitting on the nest in incubation posture, and three territories had nests with eggs. One territory had a former eagle nest taken over by a great-horned owl.

Twenty-eight territories were surveyed on the second flight in February. There were no nests found in six territories. One of these was in a snag that had recently broken off and the nest remnants were on the ground; there was no sign of the two eggs that were seen in it during the December flight, so the nest was classified as failed. Ten nests were empty with no adults attending and there were three empty nests with adults nearby. The remaining nine nests had chicks. One territory had small yellow fuzzy chicks, two had larger grey chicks, one had small black-feathered chicks, and the remaining five territories had large, black-feathered chicks.

During the March flight, 25 territories were surveyed. No nests were found in three of these 25, but adults were observed in one of the territories. There were 11 territories with empty nests. Based on the time passed since the February survey, one of these was presumed to have failed (New #1) and the other ten never had contents. Adults were seen in the vicinity of one of the empty nests. Three nests had an adult sitting in incubation posture, one nest had small grey chicks, and five nests had large black-feathered chicks. Fledglings were seen near the nest in one territory. One nest had been used by great-horned owls and contained two small hatchlings.

An abbreviated flight was done in April to check the three nests that had eagles sitting in incubation posture during the March flight. One nest had an adult sitting on it, but no contents were observed, one nest had two fuzzy yellow hatchlings, and one territory had a fledgling sitting on the nest tree.

There are several interesting observations from this nesting season. The nesting cycle was much more spread out than is typical; there were black-feathered nestlings in February (early) and yellow fuzzy nestlings in April (late). There were also eight nests that were attended by adult eagles during the season that never produced any eggs or young. One nest box that was installed last year on a tower (BE050) was inactive. Another nest box that was installed last year in a live pine (BE038) produced (and presumably fledged) one young. This box replaced a nest that was destroyed in a storm in 2013. Two nestlings were rescued and one was returned to the nest box within two days. The other nestling was deemed unable to be released and was donated to an education facility. Several new nests have been found and monitored during the last two seasons thanks to the efforts and cooperation of Merritt Island National Wildlife Refuge volunteers.

In summary, of the 28 territories surveyed, ten nests produced 11 – 15 fledglings. No nests were found in six territories, and eight nests were present but empty. Two nests failed; one of these had eggs, but disappeared when the pine snag it was in was destroyed. Two nests were used by great horned owls; one of them produced two chicks. Table 2 shows a summary of eagle nesting survey results from KSC beginning with the 1992/1993 season through 2013/2014.

Table 1. Summary of bald eagle reproduction surveys flown on Kennedy Space Center/Merritt Island National Wildlife Refuge during the 2013/2014 nesting season.

Territory	Fate 2012/2013	Status 18 Dec 2013	Status 12 Feb 2014	Status 26 Mar 2014	Status Apr 2014	Fate 2013/2014
VO018 live pine	Inactive; no nest found	1 adult incubating; 2 eggs	2 small black- feathered nestlings	2 large black- feathered nestlings	Not surveyed	2 fledged
VO060 live pine	1 fledgling	Not surveyed	Nest empty; 2 adults nearby	1 adult sitting; 1 adult nearby	2 yellow fuzzy nestlings	0-2 fledged
VO079 live pine	0-1 fledgling	Nest empty	Nest empty; 2 adults nearby	Nest empty; 2 adults nearby	Not surveyed	Inactive
VO129 pine snag	Nest failed	1 adult sitting	Nest empty	Nest empty	Not surveyed	Inactive
VO057 pine snag	Inactive; nest empty	2 eggs; adult nearby	Nest tree destroyed; nest remnants observed	Nest not found	Not surveyed	Failed
New #7	n/a	Not surveyed	Nest empty	Nest empty	Not surveyed	Inactive
BE066	0-2 fledglings	1 adult sitting	2 grey nestlings; 1 adult, 1 juvenile nearby	2 large black- feathered nestlings	Not surveyed	2 fledged
New #1	2 fledglings	3 eggs; 1 adult incubating	Nest empty; 2 adults nearby	Nest empty	Not surveyed	Failed
BE052	Inactive; nest empty	Nest empty; 2 adults nearby	Nest empty	Nest empty	Not surveyed	Inactive
New #3	n/a	Nest occupied by adult great- horned owl	Nest empty	Nest empty	Not surveyed	Inactive
BE057	Nest used by great- horned owls	No nest found	No nest found	No nest found	Not surveyed	Inactive
BE009	0-2 fledglings	1 adult sitting	2 grey nestlings; 1 adult sitting	1 large black- feathered nestling	Not surveyed	1 fledged
New #6 pine snag	n/a	Not surveyed	Nest empty	1 adult sitting	Not surveyed	Inactive
BE050 tower w/ platform	Inactive; nest empty	Nest empty	Nest empty	Nest empty	Not surveyed	Inactive
BE070 live pine	0-2 fledglings	Nest empty	2 fuzzy yellow nestlings; 1 adult nearby	2 grey nestlings	1 fledgling	1 fledged
BE054	Inactive; no nest found	No nest found	No nest found	Not survey	Not surveyed	Inactive

Table 1 (continued). Summary of bald eagle reproduction surveys flown on Kennedy Space Center/Merritt Island National Wildlife Refuge during the 2013/2014 nesting season.

Territory	Fate 2012/2013	Status 18 Dec 2013	Status 12 Feb 2014	Status 26 Mar 2013	Status Apr 2013	Fate 2013/2014
BE038 nest box, live pine	Nest destroyed; 2 fledglings rescued; nest box placed in nearby tree	1 adult sitting in nest box	1 fuzzy yellow chick; 1 adult nearby	1 small black- feathered nestling; 1 adult nearby	Not surveyed	0-1 fledged
New #2 pine snag	1 fledgling; nest destroyed	1 adult sitting; 1 adult nearby	Nest empty	Nest empty	Not surveyed	Inactive
BE013 live pine	1 fledgling	1 adult sitting	1 large black- feathered nestling	Nest empty	Not surveyed	1 fledged
BE010	Used by great- horned owls	Not surveyed	No nest	Not surveyed	Not surveyed	Inactive
BE063	Inactive; no nest observed	Not surveyed	No nest	Not surveyed	Not surveyed	Inactive
BE075 live pine	2 fledglings	1 adult sitting	1 small black- feathered nestling; 1 adult nearby	Nest empty	Not surveyed	0-1 fledged
BE044 pine snag	Nest destroyed; 1 fledgling	2 eggs; 1 adult incubating	2 large black feathered nestlings; 2 adults nearby	2 fledglings; 1 adult nearby	Not surveyed	2 fledged
BE015 pine snag	2 fledglings	1 adult sitting	Nest empty	1 adult sitting	1 adult sitting	Inactive
BE079	Inactive; nest empty	No nest found	No nest found	Not surveyed	Not surveyed	Inactive
BE051	Nest empty	No nest seen	No nest seen	No nest seen; 2 adults in area	Not surveyed	Inactive
New #5 live pine	n/a	Nest empty	Nest empty	2 great-horned owl nestlings	Not surveyed	Inactive
BE060 live pine	2 fledglings	1 adult sitting	2 small black- feathered nestlings	2 large black- feathered nestlings	Not surveyed	2 fledged

Table 2. History of bald eagle reproduction survey results from Kennedy Space Center/Merritt Island National Wildlife Refuge, 1992/1993 through 2012/2013.

Season	Active Territories	Estimated # Fledglings
1992/1993	8	
1993/1994	10	
1994/1995	7	
1995/1996	10	
1996/1997	12	
1997/1998	14	
1998/1999	13	
1999/2000	18	
2000/2001	14	
2001/2002	14	
2002/2003	16	
2003/2004	9	8-11
2004/2005	8	5-11
2005/2006	11	12-20
2006/2007	8	10-13
2007/2008	7	9
2008/2009	11	16-18
2009/2010	12	15-20
2010/2011	13	15-21
2011/2012	11	9-18
2012/2013	13	11-20
2013/2014	10	11-15

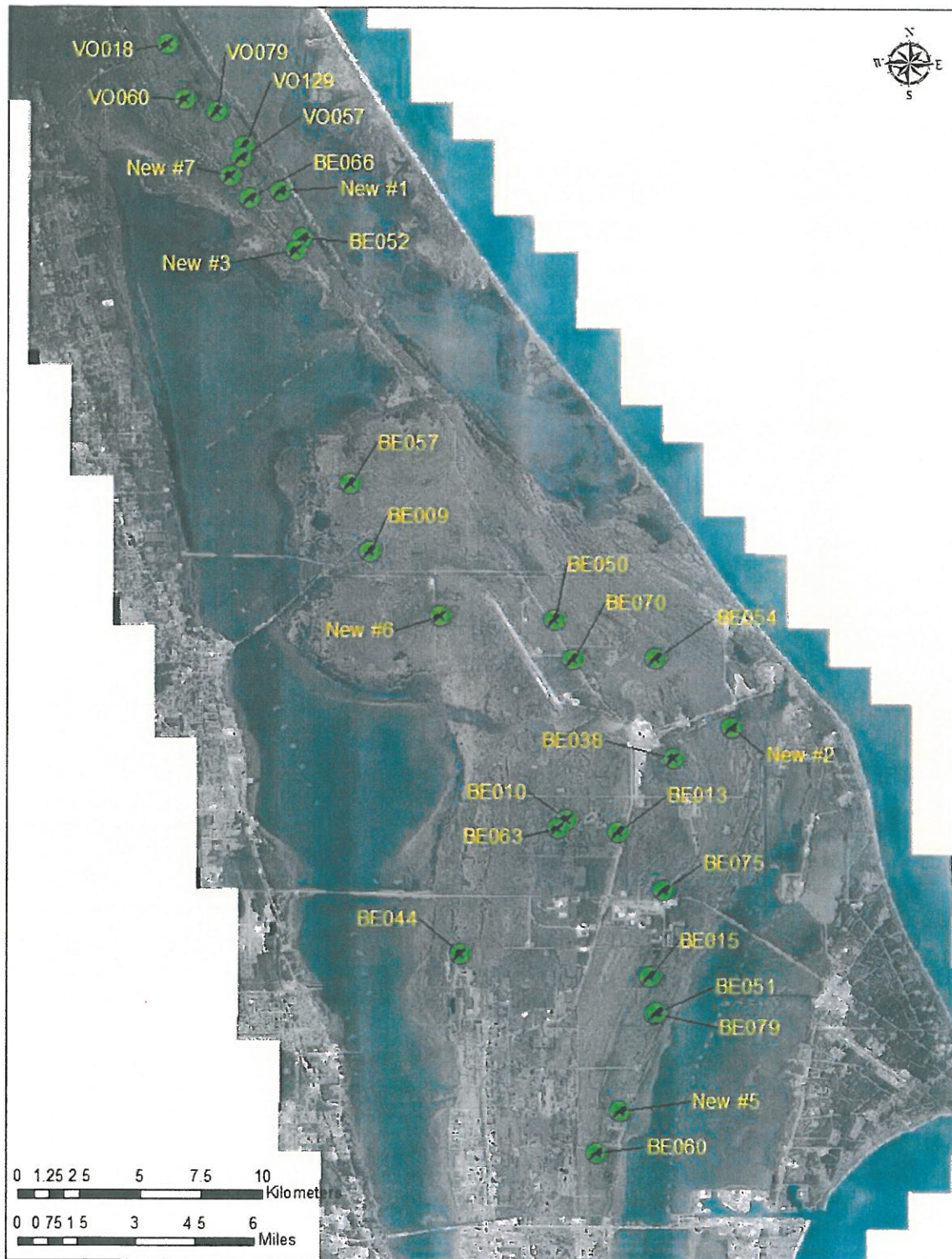


Figure 1. Bald eagle nest locations on Kennedy Space Center/Merritt Island National Wildlife Refuge during the 2013/2014 nesting season.

March 9, 2016

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Re: Draft VGMC Rules of Procedure, March 9, 2016

As a member of the subcommittee charged with reviewing proposed changes to the Volusia Growth Management Commission, I hereby submit my comments on the most recent proposed draft as presented by the Personnel, Operations and Procedures Committee of the VGMC.

1. I strongly support the recommendation to declare small scale comprehensive plan amendments **consistent**, which has the effect of removing these routine matters from VGMC review.
2. I strongly support a streamlined time frame for review and consistency determination, with assurance from the professional staff that these time frames can be **kept**. This is more closely aligned with the legislatively established time frame.
3. I strongly **oppose** removing the “substantially affected or aggrieved party” from the rules of **procedure**, thereby eliminating the right of substantially affected or aggrieved parties from seeking a hearing. The VGMC meets as a “quasi-judicial” body that makes decisions in a process that can affect private property rights. They affect property rights of the landowners, but neighboring landowners as well. Only a “substantially affected or aggrieved party” has standing before the VGMC. The Florida Supreme Court has held that such an individual “must have an interest in the community good shared with all citizens.” To remove this right by rewriting the Rules of Procedure is to deny Volusia citizens a right they have had **previously**.
4. I also strongly support the right and responsibility of the professional staff to request a public hearing when the staff deems it necessary. This would include review for internal **consistency** because there is no longer a third party review at the state level.
5. Lastly, public notice in a newspaper of local distribution is needed for large scale map amendments. Posting on the web site is inadequate notice for large scale plan **changes**. The rules for public notice have been reduced such that local governments no longer have to give notice with public advertising or posting a property.

Commented [CH1]: Which has the effect of removing these routine matters from from VGMC review.

Commented [CH2]: This will more closely align the VGMC with the more streamlined process enacted by the Legislature

Commented [CH3]: Eliminating the right of a substantially affected or aggrieved party from seeking a hearing.

Commented [CH4]: Good!

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Commented [CH5]: This is needed because there is no longer a third party review at the state level.

Commented [CH6]: This is a huge issue that most people are not aware of. Local Governments do not have to give advertised notice or post property as they did in the past. Some next door neighbors don't even learn about a change in the comp plan until it's too late!

As noted in the prior correspondence there have been ten public hearings in the last ten years. This has not been an onerous burden. The proposed changes reduce some of the costs associated with multiple small scale reviews and should have a favorable impact on the VGMC annual budget. Also, the streamlined time frame for review should assist with predictability.

Volusia has not had major land use plans come forward since the drastic changes made to the state’s land use planning statutes. There is no longer a regional review because Developments of Regional Impact no longer exist. Large projects such as Victoria Park, Restoration and Ormond Crossing went through DRI review with major public benefit. The Farnton Plan assumes periodic regional review even though no ~~such~~ agency exists to conduct it. The Department of Economic Opportunity only reviews for ~~state~~ impact to state resources.

My greatest concern is with the virtual elimination of a concurrency requirement, citizens may be faced with substantial infrastructure improvement costs that are assumed to be in a 5 year capital plan, but are not funded. These costs then go directly to the public or derail a good project. Strong, coordinated planning makes our community more attractive for investment.

The VGMC was created ~~is an agency of local creation that has served too~~ review and reconcile Volusia County issues. Public hearings have been rare and citizen participation while permitted, is narrowly drawn. I urge the Charter Review Commission to retain the limited role of the public in the process and ~~the~~ the current responsibilities of the professional staff.

Commented [CH7]: Impacts to state resources
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Commented [CH8]: This was one of the reasons the VGMC was established in the first place.
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From: Tammy Bong
To: King, Chandra; VCCharterReview
Date: 3/14/2016 1:11 PM
Subject: Fwd: RE: VGMC Rule Amendments - Case Studies

>>> Peter Heebner <pheebner@lawdaytona.com> 3/12/2016 7:32 PM >>>
Members of the CRC

Marks Watts welcome analysis and case studies underscores the difficulties with piecemeal modifications to the Charter to ameliorate the uncertainty created by of the broad grant of authority to the VGMC by the charter. Simple rule changes by the VGMC isn't going to work. I will work on some specific proposals but the CRC is going to need to establish policy for the staff to craft an amendment to the charter which may include abolishing the existing VGMC and creating a new entity with very clear and acceptable authority. I believe that would be cleaner and better received by the electorate. (staff: please place on county's website or otherwise in conformance with the Sunshine law) Pete Heebner
From: Mark Watts [mailto:Mark.Watts@cobbcole.com]

Sent: Saturday, March 12, 2016 10:33 AM

To: Pat Drago <patddrago@aol.com>; ptbud@att.net; estrobeck@cfl.rr.com; Frank Darden <fdarden@cfl.rr.com>; Mark Watts <Mark.Watts@cobbcole.com>; David Haas <dhaas@icihomes.com>; Glenn Ritchey <gritchey@jonhall.com>; Peter Heebner <pheebner@lawdaytona.com>; Stanley Escudero <stanleyescudero@msn.com>; Bailey <wbailey@stetson.edu>; David Hass <CRCDHaas@volusia.org>; Derek Triplett <CRCDTriplett@volusia.org>; Frank Bruno <CRCFBruno@volusia.org>; Frank Darden <CRCFDarden@volusia.org>; Glenn Ritchey <CRCGRitchey@volusia.org>; Hyatt Brown <CRCHBrown@volusia.org>; James Morris <CRCJMorris@volusia.org>; Lisa Ford Williams <CRCLFWilliams@volusia.org>; Mark Watts <CRCMWatts@volusia.org>; Patrician Drago <CRCPDrago@volusia.org>; Phillip Fleuchaus <CRCPFleuchaus@volusia.org>; Peter Heebner <CRCPHeebner@volusia.org>; Patricia Northey <CRCPNorthey@volusia.org>; Stanley Escudero <CRCEscudero@volusia.org>; T. Wayne Bailey <CRCTWBailey@volusia.org>
Cc: Brittany Scott <BScott@volusia.org>; Corry Brown <CABrown@volusia.org>; Christine Beccaris <CBeccaris@volusia.org>; Dona DeMarsh Butler <DDButler@volusia.org>; John Duckworth <JDuckworth@volusia.org>; Tammy Bong <TBong@volusia.org>; deckert@volusia.org
Subject: VGMC Rule Amendments - Case Studies

Good morning,

In preparation for our meeting on Monday, our Chairman asked if I would look at the draft VGMC rules and offer some case analysis so we can see how they might apply. I used several of the cases that have been discussed in our prior meetings as the cases to review how the new rules might have resulted in different results. Attached is my memo and a staff report from the Oak Hill VGMC matter we have talked about and which is referenced in my memo. I look forward to seeing everyone on Monday and talking about this further. Thank you and have a good weekend.

Confidentiality Notice: The information contained in this email message is legally privileged and confidential and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this facsimile is strictly prohibited. If you have received this email in error, please immediately notify us by telephone or by responding to this email. Thank you.

AMENDMENT

[Endnotes are for the information of the charter review commission. They are not intended for inclusion in the text of any proposed amendment which the commission may recommend.]

The proposed amendment, in full, shall read as follows:

The Volusia County Home Rule Charter, Chapter 70-966, Laws of Florida (Sp. Acts), as previously amended, shall be further amended in pertinent part as follows:

(Except as provided herein or as otherwise provided by separate amendment, charter provisions not shown are not amended.)

(Words ~~struck~~ are deletions; words underscored are additions.)

ARTICLE III. - LEGISLATIVE BRANCH—COUNTY COUNCIL

...

Sec. 308. Legislative procedures.

The council may take official action only by the adoption of ordinances, resolutions or motions. Except as otherwise provided by this charter, all ordinances, resolutions or motions shall be adopted by majority vote in accordance with the provisions of the Constitution and laws of Florida. A majority of the full council shall constitute a quorum and shall be required to adopt, amend or repeal any ordinance. A majority of those present shall be required to adopt, amend or repeal a resolution or motion under the terms of this provision. All members in attendance, ~~including the chairman or presiding officer,~~ shall vote on all council actions except as otherwise provided by state law.¹

...

ARTICLE VI. ADMINISTRATIVE DEPARTMENTS OF THE GOVERNMENT

...

Section 604. Administrative Code.

~~The county manager shall prepare the initial administrative code which shall set forth the department organization of the government and the nature and scope of each department together with all required rules and procedures for the operation of said departments. The administrative code shall then be submitted to the council for review, amendment and adoption. The council shall adopt the code within three (3) months of the date submitted. If not adopted within three (3) months, the code as originally prepared by the county manager shall be considered approved and shall remain in force until such time as it may be formally amended by the council.²~~

ARTICLE VII. ADJUSTMENT, REGULATORY AND ADVISORY BOARDS

Sec. 701. Initial bBoards.³

...

ARTICLE IX. ELECTIONS

...

Sec. 904. Nonpartisan elections.

Elections for all offices shall be on a nonpartisan basis. No candidates shall be required to pay any party assessment or be required to state the party of which they are a member or the manner in which they voted or will vote in any election. All candidates names shall be placed on the ballot without reference to political party affiliation. ~~School board members elected after~~

~~January 1, 1995 shall be elected on a nonpartisan basis in the manner provided in section 901.1(3) of the charter.~~ ⁴

ARTICLE X. PERSONNEL ADMINISTRATION

...

Sec. 1004. - ~~Personnel~~ Human resources director.⁵

Sec. 1004.1. - Qualifications.

The ~~personnel~~ human resources director shall be chosen on the basis of professional training and experience in personnel administration.

Sec. 1004.2. - Powers and duties.

The ~~personnel~~ human resources director shall have all of the powers and duties as described in the merit system rules and regulations as adopted by the council.

...

~~Sec. 1007. Employee representatives.~~

~~Classified service employees as provided in the administrative code may elect annually, representatives who may attend the personnel board meetings to bring to the attention of the personnel board complaints, requests and considerations of the employees.~~ ⁶

Sec. 10078. Oaths.

For the purpose of the administration of the personnel provisions of this charter, any member of the personnel board shall have the power to administer oaths.

Sec. 10089. Amendment to rules and regulations.

A two-thirds (2/3) vote of the full council shall be required to amend the rules and regulations of the merit system.

(Modification of legislative procedures;
repeal of obsolete provisions)

~~Sec. 1010. Retirement system.~~

~~All officers and employees of the charter government shall be covered by the "state and county officers retirement system" as provided by law. ⁷~~

~~Sec. 10091. Adoption of merit system.~~

The county manager shall be responsible for the preparation and presentation to the council of the proposed merit system complete with classification, pay plan or amendments thereto. The initial proposal shall be presented prior to the adoption of the first budget by the charter government.⁸

ARTICLE XI. FINANCE

...

~~Sec. 1103.4. Reduction of millage.~~

~~In the event that the council shall determine that the millage to be levied for county purposes in any year will be such that said millage together with all special district millages subject to the millage limitation fixed by Article VII, Section 9 of the Florida Constitution for county purposes will exceed that limitation, then the council shall have the power to reduce the millage requested by any or all of such districts after a public hearing so that the total shall not exceed the maximum millage for county purposes. ⁹~~

Sec. 1104. Bonds.

~~Sec. 1104.1. Outstanding bonds.~~

~~All outstanding bonds issued by former governments including the board of county commissioners of Volusia County and all special districts or authorities abolished or altered by this charter are obligations of the county government; however, payment of such obligations and the interest thereon shall be made solely from and charged solely against funds derived~~

~~from the same sources from which such payment would have been made had this charter not become effective.~~ ¹⁰

Sec. 1104.12. Authority to issue.

The charter government shall have the authority to issue any bonds, certificate of indebtedness or any form of tax anticipation certificates authorized by the Constitution which cities, counties or districts are empowered by law to issue.

Sec. 1104.23. Bond administration.

The charter government shall have the necessary authority to administer the collection of funds and the payments of amounts due on any bonds.

ARTICLE XIII. - MISCELLANEOUS PROVISIONS

...

Sec. 1312. No revival by implication.

The repeal of any provision of this charter which repealed all or any portion of a former charter section or special act shall not be construed to revive those former charter sections or special acts; provided that the transfer of functions, responsibilities, duties, and obligations of former special districts and authorities which were repealed upon adoption of the charter are hereby ratified and confirmed. ¹¹

...

ARTICLE XIV. - SPECIAL TAX DISTRICTS AND AUTHORITIES

~~Sec. 1401. -- East Volusia Navigation District.~~

~~The functions, duties and obligations of the East Volusia Navigation District as provided in Chapter 37-18967, Laws of Florida as amended are hereby transferred and vested in the~~

(Modification of legislative procedures;
repeal of obsolete provisions)

~~charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

~~Sec. 1402. -- Halifax Area Research Commission.~~

~~The functions, responsibilities, duties and obligations of the Halifax Area Research Commission as provided in Chapter 59-1950, Laws of Florida as amended are hereby repealed.~~

~~Sec. 1403. -- Halifax Drainage District.~~

~~The functions, responsibilities, duties and obligations of the Halifax Drainage District as provided in Chapter 19-7968, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

~~Sec. 1404. -- Halifax River Waterways Improvement District.~~

~~The functions, responsibilities, duties and obligations of the Halifax River Waterways Improvement District as provided in Chapter 53-29596, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

~~Sec. 1405. -- Lake Ashby Drainage District.~~

~~The functions, responsibilities, duties and 5 obligations of the Lake Ashby Drainage District as provided in Chapter 18-7760, Laws of Florida are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

~~Sec. 1406. -- New Smyrna Inlet District.~~

~~The functions, responsibilities, duties and obligations of the New Smyrna Inlet District as provided in Chapter 25-10448, Laws of Florida as amended are hereby transferred and vested~~

(Modification of legislative procedures;
repeal of obsolete provisions)

~~in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

~~Sec. 1407. -- North Ormond Drainage District.~~

~~The functions, responsibilities, duties and obligations of the North Ormond Drainage District as provided in Chapter 27-12107, Laws of Florida are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

~~Sec. 1408. -- Northeast Volusia Development Authority.~~

~~The functions, responsibilities, duties and obligations of the Northeast Volusia Development Authority as provided in Chapter 61-02977, Laws of Florida are hereby transferred and vested in the charter government and said authority shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

~~Sec. 1409. -- South County Drainage District.~~

~~The functions, responsibilities, duties and obligations of the South County Drainage District as provided in Chapter 67-1022, Laws of Florida are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

~~Sec. 1410. -- Turnbull Hammock Drainage District.~~

~~The functions, responsibilities, duties and obligations of the Turnbull Hammock Drainage District as provided in Chapter 17-7611, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

~~Sec. 1411. -- Volusia County Sanitary District.~~

~~The functions, responsibilities, duties and obligations of the Volusia County Sanitary District as provided in Chapter 53-29587, Laws of Florida are hereby transferred and vested in~~

(Modification of legislative procedures;
repeal of obsolete provisions)

~~the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

~~Sec. 1412. -- Volusia County Water and Sewer District.~~

~~The functions, responsibilities, duties and obligations of the Volusia County Water and Sewer District as provided in Chapter 59-1951, Laws of Florida are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

~~Sec. 1413. -- Volusia County Water District.~~

~~The functions, responsibilities, duties and obligations of the Volusia County Water District as provided in Chapter 51-27960, Laws of Florida are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

~~Sec. 1414. -- Water Conservation and Control Authority.~~

~~The functions, responsibilities, duties and obligations of the Water Conservation and Control Authority as provided in Chapter 63-1019, Laws of Florida are hereby transferred and vested in the charter government and said authority shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

~~Sec. 1415. -- Daytona Beach Special Road and Bridge District.~~

~~The functions, responsibilities, duties and obligations of the Daytona Beach Special Road and Bridge District as provided in Chapter 25-11783, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on October 1, 1971, and said act is thereupon repealed.~~

~~Sec. 1416. -- DeLand-Lake Helen Special Road and Bridge District.~~

~~The functions, responsibilities, duties and obligations of the DeLand-Lake Helen Special Road and Bridge District as provided in Chapter 25-11275, Laws of Florida as amended are~~

(Modification of legislative procedures;
repeal of obsolete provisions)

~~hereby transferred and vested in the charter government and said district shall cease to exist on October 1, 1971, and said act is thereupon repealed.~~

~~Sec. 1417. -- DeLeon Springs-Glenwood Special Road and Bridge District.~~

~~The functions, responsibilities, duties and obligations of the DeLeon Springs-Glenwood Special Road and Bridge District as provided in Chapter 27-13493, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

~~Sec. 1418. -- DeLeon Springs-Seville Special Road and Bridge District.~~

~~The functions, responsibilities, duties and obligations of the DeLeon Springs-Seville Special Road and Bridge District as provided in Chapter 21-8851, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on October 1, 1971, and said act is thereupon repealed.~~

~~Sec. 1419. -- Halifax-St. Johns River Road and Bridge District.~~

~~The functions, responsibilities, duties and obligations of the Halifax-St. Johns River Road and Bridge District as provided in Chapter 27-498, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

~~Sec. 1420. -- Halifax Special Road and Bridge District.~~

~~The functions, responsibilities, duties and obligations of the Halifax Special Road and Bridge District as provided in Chapter 27-13514, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on October 1, 1971, and said act is thereupon repealed.~~

~~Sec. 1421. -- Lake Helen-Osteen Special Road and Bridge District.~~

~~The functions, responsibilities, duties and obligations of the Lake Helen-Osteen Special Road and Bridge District as provided in Chapter 23-9654, Laws of Florida as amended are~~

(Modification of legislative procedures;
repeal of obsolete provisions)

~~hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

~~Sec. 1422. -- New Smyrna-Coronado Beach Special Road and Bridge District.~~

~~The functions, responsibilities, duties and obligations of the New Smyrna-Coronado Beach Special Road and Bridge District as provided in Chapter 27-13497, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

~~Sec. 1423. -- New Smyrna Beach Special Road and Bridge District.~~

~~The functions, responsibilities, duties and obligations of the New Smyrna Beach Special Road and Bridge District as provided in Chapter 19-8205, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

~~Sec. 1424. -- Orange City-Enterprise Special Road and Bridge District.~~

~~The functions, responsibilities, duties and obligations of the Orange City-Enterprise Special Road and Bridge District as provided in Chapter 23-9653, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on October 1, 1971, and said act is thereupon repealed.~~

~~Sec. 1425. -- Orange City-Lake Helen Special Road and Bridge District.~~

~~The functions, responsibilities, duties and obligations of the Orange City-Lake Helen Special Road and Bridge District as provided in Chapter 27-13496 Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on October 1, 1971, and said act is thereupon repealed.~~

~~Sec. 1426. -- Osteen-Enterprise Special Road and Bridge District.~~

~~The functions, responsibilities, duties and obligations of the Osteen-Enterprise Special Road and Bridge District as provided in Chapter 29-14447, Laws of Florida as amended are~~

(Modification of legislative procedures;
repeal of obsolete provisions)

~~hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

~~Sec. 1427. -- Osteen-Maytown, Oak Hill Special Road and Bridge District.~~

~~The functions, responsibilities, duties and obligations of the Osteen-Maytown, Oak Hill Special Road and Bridge District as provided in Chapter 27-13491, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

~~Sec. 1428. -- Port Orange-Inlet Special Road and Bridge District.~~

~~The functions, responsibilities, duties and obligations of the Port Orange-Inlet Special Road and Bridge District as provided in Chapter 27-13492, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

~~Sec. 1429. -- Port Orange-South Peninsula Special Road and Bridge District.~~

~~The functions, responsibilities, duties and obligations of the Port Orange-South Peninsula Special Road and Bridge District as provided in Chapter 49-26288, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

~~Sec. 1430. -- Port Orange Special Road and Bridge District.~~

~~The functions, responsibilities, duties and obligations of the Port Orange Special Road and Bridge District as provided in Chapter 41-21057, Laws of Florida as amended are hereby transferred and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

~~Sec. 1431. -- Special Road and Bridge District.~~

~~The functions, responsibilities, duties and obligations of the Special Road and Bridge District as provided in Chapter 61-2973, Laws of Florida as amended are hereby transferred~~

(Modification of legislative procedures;
repeal of obsolete provisions)

~~and vested in the charter government and said district shall cease to exist on the effective date of this charter and said act is hereby repealed.~~

~~Sec. 1432. -- Turnbull Special Road and Bridge District.~~

~~The Turnbull Special Road and Bridge District, Chapter 23-9051, Laws of Florida as amended is hereby amended by adding a new section to read:~~

~~Section _____. The Turnbull Special Road and Bridge District shall continue in effect with all necessary powers, including the power to levy taxes and special assessments, solely for the purpose of fulfilling the contractual obligations of the district to the holders of bonds or certificates of indebtedness and to the former state road department of Florida (now the department of transportation), including lease purchase agreements which exist on the effective date of this act or thereafter arise from such existing contracts, bonds, certificates or agreements. All other powers or duties and all real or personal property not included in the performance of such contracts, bonds, certificates or agreements are hereby transferred and vested in the charter government on October 1, 1971. From and after October 1, 1971, said district shall not levy any tax, special assessment or millage for any purpose except as hereinabove expressly authorized.~~

~~Sec. 1433. -- Special road and bridge districts; transfer of assets, etc.~~

~~Upon the abolishment of each and every special road and bridge district by this charter, all assets, rights-of-way of public roads and bridges and all agreements, including lease purchase agreements between such district and the former state road department, now the department of transportation of Florida, shall become vested in the county of Volusia and the county of Volusia shall automatically become a party to all such agreements in lieu of said districts and shall be entitled to all of the benefits thereof and the county of Volusia shall perform all obligations of said districts under said agreements. ¹²~~

~~Sec. 1434. 1401. - Other special districts and authorities.~~

~~The special acts of the legislature related to Volusia County listed below are hereby amended to add the following section: [In furtherance of the orderly exercise of the power of~~

(Modification of legislative procedures;
repeal of obsolete provisions)

local government for the benefit of the people in Volusia County, the act creating this district may be amended by the legislative procedures and powers vested in the charter government of Volusia County and by the Constitution and laws of Florida.]

(1) East Volusia Mosquito Control District, Chapter 37-18963, Laws of Florida as amended.

(2) Ponce DeLeon Inlet and Port Authority, Chapter 65-2363, Laws of Florida as amended.

~~(3) Halifax Advertising Tax District, Chapter 49-26294, Laws of Florida as amended.~~

In no event shall such special acts be amended to re-establish a governing body other than the county council.¹³

The title and ballot question shall be as follows:

**MODIFICATION OF LEGISLATIVE
PROCEDURES TO CONFORM TO
LAW; AND REPEAL OF
SUPRESEDED OR OBSOLETE
PROVISIONS.**

Shall the Volusia County Home Rule Charter be amended to repeal provisions which either have been superseded by state law or have become obsolete by other conditions; and to conform county council voting procedures to state law regarding voting conflicts?

YES - FOR APPROVAL

NO - AGAINST APPROVAL

¹ Section 308 is amended to conform to the provisions of section 112.3143, Florida Statutes, which preclude a county council member from voting in circumstances where the member has conflict as defined by the statute; and of section 286.012, Florida Statutes. Like the charter section, section 286.012 requires voting, but permits abstention where there is, or appears to be a possible conflict of interest under sections 112.311, 112.313, or 112.3143, Florida Statutes, or under more stringent local standards adopted pursuant to section 112.326, Florida Statutes; or to assure a fair quasi-judicial proceeding free from prejudice or bias.

² Section 604 pertains to the initial adoption of the administrative code, a duty fulfilled by the county council. Section 307 provides continuing authorization and procedures for amendment of an administrative code.

³ Section 701 is amended to delete the word "Initial" from its title. The substantive provisions are not limited only to the boards first appointed by the county council.

⁴ Section 904 was amended in 1994 by the addition of the last sentence to provide for non-partisan school board elections. It has been preempted. Article IX, section 4 of the Florida constitution was amended in 1998 to provide for statewide non-partisan election of school board members, according to general law. Chapter 105, Florida Statutes, provides for such elections at the time of the primary election; and for any runoff at the time of the general election, times which vary from those provided by charter section 901.1(3).

⁵ Section 1004 is amended to change the title of personnel director to human resources director to conform to modern usage.

⁶ Section 1007 establishes a procedure for election of employee representatives which has not been utilized for several years, if ever. The inclusion of this section in the 1970 charter special act preceded 1974 general law implementation, by part II, Chapter 447, Florida Statutes, of the right of public employees to collectively bargain included in article I, section 6 of the 1968 Florida constitution. The legal concern that brings into question the viability of section 1007 is whether its implementation would create what may be considered an employer dominated labor organization; and thus would constitute an unfair labor practice under state law. The Florida Public Employee Relations Commission, which administers the governing state law, has not addressed itself to a similar circumstance. However, the commission likely would follow a National Labor Relations Board 1992 order, applying federal law to a private employer, and so find. Because section 1007 has not served a continuing practical purpose, and there is uncertainty whether it legally could, its repeal is appropriate.

⁷ Section 1010 has been preempted by Chapter 121, Florida Statutes, the Florida Retirement System Act, participation in which is compulsory for counties.

⁸ Section 1011 renumbered to section 1009, is amended to delete a sentence, which required an initial proposal for the merit system to be presented prior to adoption of the first budget of the charter government. The requirement having been fulfilled, the text no longer is needed.

⁹ Section 1103.4 provides authority for the county council to reduce special district millage to assure adherence to the limitation of 10 mills levy for county purposes provided by article VII, section 9 of the Florida constitution. The special districts subject to the county millage limitation which continue to exist are the East Volusia Mosquito District and the Ponce de Leon Port District, each of which formerly had independent governing boards. Section 1434 of the charter provides that the county council by ordinance may amend the special acts which created those districts. The county council exercised that authority and became the district governing board of both districts. Because the county council now is directly responsible for the levy of these

district millages, the authority provided by section 1103.4 to override the taxing authority of the formerly independent boards is no longer needed.

¹⁰ Section 1104.1 pertaining to bonds issued by former governments, including the board of county commissioners, has fulfilled its intended purpose. There no longer is any outstanding debt within its scope. The section may be repealed.

¹¹ Section 1312 is added to provide that the common law rule of revival by implication does not apply where a repealer is removed from the charter.

¹² Sections 1401-1433 various special taxing districts and authorities are repealed. Former section 1434 is renumbered as 1401.

¹³ Former section 1434 is renumbered as 1401. As renumbered, the section is amended to delete reference to the Halifax Advertising Tax District. Pursuant to section 212.0305(4)(c)3, Florida Statutes, the authority to level the tourist advertising ad valorem tax in the district expired January 1985, the year following the 1984 levy within the district of the convention development tax authorized by that statute.

The authority provided by this section to amend by ordinance the special acts creating the mosquito control and port authority districts has been exercised to provide that the county council is the governing body of both. This section is amended to preclude a different governing body.

AMENDMENT

[Endnotes are for the information of the charter review commission. They are not intended for inclusion in the text of any proposed amendment which the commission may recommend.]

The proposed amendment, in full, shall read as follows:

The Volusia County Home Rule Charter, Chapter 70-966, Laws of Florida (Sp. Acts), as previously amended, shall be further amended effective in in pertinent part as follows:

(Except as provided herein or as otherwise provided by separate amendment, charter provisions not shown are not amended.)

(Words ~~struck~~ are deletions; words underscored are additions.)

ARTICLE III. LEGISLATIVE BRANCH - COUNTY COUNCIL

...

TRANSITION PROVISION 2017-2020.

Notwithstanding the provisions of sections 303.1-303.3, the four year terms of council members which but for amendment of section 303.4, would have concluded on the last day of December 2018 instead shall conclude on the first Sunday of December of that year; and those that would have concluded on the last day of December 2020 instead shall conclude on the first Sunday of December of that year, after which time this section shall stand repealed.

Sec. 303.4. Terms.

The term of the county chair or a council member shall begin the first ~~day of January~~ Monday after the first Sunday in December after election. The county chair or a

council member shall continue in office after the end of the term until a successor is duly elected and qualified.¹

TRANSITION PROVISION 2017-2018.

Notwithstanding the provisions of section 303.4, the term of the county chair and those council members elected in November 2016 shall begin the first day of January 2017, after which time this section shall stand repealed.

...

Sec. 306. - Meetings and organization.

The organizational meeting of the council shall be held on the first Thursday after the first ~~Monday~~ Sunday of January ~~December~~. The council shall provide for the manner, time and place for holding all regular council meetings. The county manager shall prepare and the county chair may supplement an agenda prior to each meeting. Upon the commencement of the meeting, the agenda is subject to action of the council.

TRANSITION PROVISION 2017-2018.

Notwithstanding the provisions of section 306, there shall be an organizational meeting of the county council the first Thursday after the first Monday in January 2016 and 2017, after which time this section shall stand repealed.

...

Sec. 307.1. - The county chair.

The office of the county chair shall have all jurisdiction and powers which are now and which hereafter may be granted to it by the Constitution and laws of Florida provided that such powers shall be exercised in a manner consistent with this charter. The county chair, in addition to the powers and duties provided by this charter, shall have the specific powers and duties to:

1. Serve as the official and ceremonial representative of the government.
2. Issue proclamations on behalf of the government, which shall be reported to the county council upon issuance.
3. Preside as chair of and in all other respects participate in the meetings of the county council and have an equal vote on all questions coming before it.
4. Execute ordinances, resolutions and other authorized documents of the government.
5. Serve ex-officio as the county government's representative, and appoint others to serve in the county chair's stead, on other bodies external to county government.
6. Serve as the county council representative, and appoint county council members to serve in the county chair's stead, on other bodies internal to county government.

The county council shall elect at its first organizational meeting ~~in January~~ a council member to serve at its pleasure for a one-year term as vice chair of the county council to preside in the temporary absence, disqualification or disability of the county chair at county council meetings and perform other duties assigned by the county chair.

ARTICLE VI. - ADMINISTRATIVE DEPARTMENTS OF THE GOVERNMENT

...

Sec. 602.1. - Election of directors.

The directors of the following departments shall be elected every four (4) years at the general election:

- 1) The sheriff, who shall serve as the director of the department of public safety.

- (2) The supervisor of elections, who shall serve as the director of the department of elections.
- (3) The property appraiser, who shall serve as the director of the department of property appraisal.

The terms of the directors for whom election is provided by this section shall begin the first day of January after election. The department head shall continue in office after the end of the term until a successor is duly elected and qualified.

...

The title and ballot question shall be as follows:

**COMMENCEMENT OF TERMS OF COUNTY
COUNCIL MEMBERS AND ELECTED
DEPARTMENT DIRECTORS**

Shall the Volusia County Home Rule Charter be amended effective November 6, 2018, to advance the date on which all county council members shall take office to the first Monday after the first Sunday in December, such change to take effect after the 2018 general election; and to clarify that the terms of elected department directors shall continue to begin on the first day of January following election?

YES - FOR APPROVAL
NO - AGAINST APPROVAL

¹ The proposed amendment advances the beginning date of the terms of office of all county council members from the first day of January following the election to the first Monday after the first Sunday in December after election. The change would be effective following the November 2018 election. The previous beginning date for the term of a council member coincided with the January 1 effective date of the charter.

Under section 100.041(2)(a), Florida Statutes, the term of a county commissioner commences on the second Tuesday "following such election. A county commissioner is

‘elected’ for the purpose of this statute when the county canvassing board certifies the results of the election pursuant to s. 102.151.” Under section 102.112(2), Florida Statutes, the canvassing board must certify results by the twelfth day following the general election, but may do so somewhat earlier. Charter counties which have retained a board of commissioners may fix by ordinance the beginning date of a term under section 100.041(2)(b), Florida Statutes, but no later than the first Tuesday after the first Monday following election.

Where a canvassing board certifies an election on the twelfth date following the election, only nine days elapse before the default date on which a county commissioner would take office. Section 102.168, Florida Statutes, allows ten days for the filing of an election contest. Thus any election contest necessarily would not have been filed; and certainly would not have been judicially resolved, prior to the statutory default date for a county commissioner to take office. Further, transition to a term beginning in November may cause current office holders to fall short of the statutory retirement vesting period of eight years. An early December date allows the time for commencement of an election contest to have passed; and avoids the unintended retirement vesting consequence. The four year terms which would have ended on December 31 of 2018 and 2020 are shortened to accommodate the new beginning date for the terms of office of those county council members elected in those years.

The charter does not specify the time for commencement of the terms of elected department heads. The construction given to the charter has been that those terms also begin January 1, the date the charter took effect. This amendment makes explicit that understanding; and eliminates doubt whether section 100.041(4), Florida Statutes, might apply when the beginning date for county council members is revised. Section 100.041(4) if it were controlling, would provide that such terms would begin the first Tuesday after the first Monday in January.

AMENDMENT

[Endnotes are for the information of the charter review commission. They are not intended for inclusion in the text of any proposed amendment which the commission may recommend.]

The proposed amendment, in full, shall read as follows:

The Volusia County Home Rule Charter, Chapter 70-966, Laws of Florida (Sp. Acts), as previously amended, shall be further amended in pertinent part as follows:

(Except as provided herein or as otherwise provided by separate amendment, charter provisions not shown are not amended.)

(Words ~~struck~~ are deletions; words underscored are additions.)

ARTICLE III. LEGISLATIVE BRANCH - COUNTY COUNCIL

...

Sec. 304. Compensation.

The salary of a council member shall be 50 percent of that prescribed by law for the office of county commissioner. The salary for the county chair shall be 60 percent of that prescribed by law for the office of county commissioner. The salaries shall constitute full compensation for all services ~~and in-county expenses, except that out-of-county expenses, as permitted by law, shall be authorized.~~

...

Section 307. Powers.

...

(4) Adopt by ordinance policies and procedures for payment or reimbursement of expenses by county council members determined by the ordinance to be incidental to official

business, including out-of-county travel; in-county mileage; parking; meals; event admissions; seminar, conference, or training fees; and sundries.¹

(4 5) Adopt, amend and repeal an administrative code by a two-thirds (2/3) vote of the full council.

(5 6) In addition to the state audit provided by law, shall cause an annual independent post-audit by a certified public accountant of any and all government operations of the charter government.

(6 7) Adopt and amend a merit system which shall include a salary schedule for all personnel in accordance with the provisions of this charter.

(7 8) Adopt by a two-thirds (2/3) vote of the full council such rules of parliamentary procedures as shall be necessary for the orderly transaction of the business of the council.

(8 9) The council shall designate which officers and employees shall be bonded and shall fix the amount and approve the form of the bond.

(9 10) Appoint by a two-thirds (2/3) vote of the full council and remove by a majority vote of the full council, the county attorney.

...

The title and ballot question shall be as follows:

**AUTHORIZATION FOR
PAYMENT OF IN-COUNTY EXPENSES
OF COUNTY COUNCIL MEMBERS**

Shall the Volusia County Home Rule Charter be amended to provide for payment or reimbursement by the county for in-county expenses of county council members incidental to official business according to policies and procedures to be established by ordinance?

YES - FOR APPROVAL
NO - AGAINST APPROVAL

¹ Section 307(4) is revised to provide authorization for adoption by ordinance of policies and procedures for payment or reimbursement of expenses of county council members determined by the ordinance to be incidental to county business, including out-of-county travel which has been allowed under section 304. Under current charter provisions, county council members have been provided office space, computers, and communication devices. Further, the county council has purchased tables at events where support of an organization was deemed to have a public purpose. The expenses which may be authorized that previously were not allowed include in-county mileage; parking; event admissions; seminar, conference, or training fees; and sundries. Such expenses for example might include events where county council members are individually invited to attend because of their official status, but expected to pay admission or meal charges. Nothing in this section would authorize provision of a vehicle for routine use; or the hiring by the county council member of personal assistants.

AMENDMENT

[Endnotes are for the information of the charter review commission. They are not intended for inclusion in the text of any proposed amendment which the commission may recommend.]

The proposed amendment, in full, shall read as follows:

The Volusia County Home Rule Charter, Chapter 70-966, Laws of Florida (Sp. Acts), as previously amended, shall be further amended in pertinent part as follows:

(Except as provided herein or as otherwise provided by separate amendment, charter provisions not shown are not amended.)

(Words ~~struck~~ are deletions; words underscored are additions.)

ARTICLE IV. ADMINISTRATIVE BRANCH - COUNTY MANAGEMENT

...

Sec. 405. Deputy or assistant county managers.

If authorized by the administrative code and approved as a budgetary expenditure, the county manager may appoint one or more deputy or assistant county managers who shall be subject to confirmation by the council and shall serve at the pleasure of the county manager. The requirement for confirmation shall apply to like positions of a different title.¹

Sec. 405 6. - Temporary absence.

The county manager may, subject to the approval of the council, appoint one of the other officers or department heads of the county government to serve as county manager in the manager's absence.

...

ARTICLE VI. ADMINISTRATIVE DEPARTMENTS OF THE GOVERNMENT

...

Sec. 602. - Department directors.

The director of each department shall be the principal officer of the department and responsible for all its operations and such division heads as may be necessary. Each director and division head except as otherwise provided in this charter shall be appointed by the county manager subject to confirmation by the council and shall serve at the pleasure of the county manager.

...

The title and ballot question shall be as follows:

**REVISION OF REQUIREMENTS FOR COUNTY COUNCIL
CONFIRMATION OF COUNTY MANAGER APPOINTMENTS**

Shall the Volusia County Home Rule Charter be amended to eliminate a requirement for the county council to confirm county manager appointments of division directors; and to institute a charter requirement that the county council confirm the appointment by the county manager of any deputy or assistant manager?

YES - FOR APPROVAL
NO - AGAINST APPROVAL

¹ It has been common since inception of charter government to have one or more deputy or assistant county managers or a comparable position of chief operating officer. The administrative code currently provides for the position of deputy county manager, of which there have been two since 2001; and for the county manager's appointments to such positions to be confirmed by the county council. The proposed amendment formalizes this code requirement within the charter; and provides that if such positions are created and funded, the appointment by the county manager shall be confirmed by the county council. The proposed amendment also eliminates the charter requirement for confirmation of division directors, recognizing that there is now an additional level of senior management with oversight over county operations, that was not present in initial charter implementation. This change reinforces the position of the county manager as head of the administrative branch of county government, responsible for its daily operation; and aligns the text with the practice of county council not to confirm the appointment of division directors within departments the heads of which are elected.