

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

**MINUTES OF THE MEETING OF  
JANUARY 4, 2016**

**CALL TO ORDER**

Subcommittee Chair Glenn Ritchey called the meeting to order at 12:10 p.m. in the Volusia Room at the Daytona Beach International Airport, 700 Catalina Drive, Daytona Beach, Florida.

**ROLL CALL**

Members present included Chair Glenn Ritchey Sr., Frank Bruno Jr., Patricia Drago, and Ambassador Stanley Escudero. Also present were Volusia Charter Review Commission Chair Hyatt Brown, County Attorney Dan Eckert, County Manager Jim Dinneen, Tammy Bong, Dona DeMarsh Butler, county support staff and members of the public.

**PUBLIC PARTICIPATION**

Chair Ritchey opened the floor to public participation regarding the Volusia Growth Management Commission and advised that no decisions would be made today.

Deanie Lowe, 1065 N. Halifax Drive, Ormond Beach, handed out a recommendation to the subcommittee (attached as Exhibit A). Ms. Lowe introduced Gerald Brandon, Volusia Growth Management Commission (VGMC) Vice-Chairman, and advised that neither could represent the VGMC officially as a meeting has not yet been held to discuss official recommendations. Ms. Lowe suggested that although many people have advised that the VGMC be abolished, there is a possibility that a ballot amendment would be again defeated. Ms. Lowe stated that she and Mr. Brandon have thoroughly reviewed the VGMC rules and believe that amendments to the rules could be made to assist with handling the discussed issues of party standing, and review time, although she concedes that she has yet to resolve the issue of appealing decisions to another body because of charter requirements. Ms. Lowe recommends that the subcommittee consider asking the Charter Review Commission to recommend the VGMC review their rules and propose amendments that will affect change with regards to the commonly discussed issues.

Chair Ritchey stated that questions asked of the speakers are not meant to be indicative of a position, but to help clarify information. Chair Ritchey asked Ms. Lowe a question regarding standing of persons who may have a business in one jurisdiction, but live in

another. Ms. Lowe responded that she believed they would have standing under the current rules. She advised that care must be taken with regards to standing changes and gave Consolidated Tomoka as a possible example that would cause issues.

Ambassador Escudero asked if Ms. Lowe expected the VGMC recommendations to be exclusively considered. Ms. Lowe responded that the VGMC rules could not be changed by the Charter Commission or a ballot amendment, but they would have to be recommended by the VGMC and approved by the county council and adopted by ordinance. Ambassador Escudero stated that rules could be ultimately changed by making a direct change to the charter. Ms. Lowe agreed that to be the case, but suggested that charter ballot amendments are not as widely advertised as general election issues. Ambassador Escudero stated that it is the responsibility of the subcommittee to consider all proposals considering that cities and business entities are the primary customer of the VGMC and most are requesting changes. Ambassador Escudero added that the subcommittee would certainly welcome proposals put forth by the VGMC themselves, but other recommendations should also be considered.

Mr. Bruno stated that he would be interested to know what the VGMC would recommend to the subcommittee. Ms. Lowe stated that the VGMC would consider a list of changes from the commission with regards to rule changes.

Ms. Drago stated that party standing is a very difficult issue with regards to placing limitations and any changes in regards to standing she will review very carefully. Ms. Drago noted that there had been no mention of thresholds to allow for better efficiency. Ms. Drago also stated that she felt that lack of appeal would be the case with or without the VGMC. Ms. Lowe responded that they had considered thresholds to be a part of the timeframe issue.

Clay Henderson, Stetson University Institute of Water and Environmental Resources. Mr. Henderson distributed a memo to the subcommittee showing differences between the VGMC and the Community Planning Act (CPA) (attached as Exhibit B). Mr. Henderson advised that there was no effort by the VGMC to make the rules compatible with the CPA. Under the VGMC rules, they have a 90 day timeframe to review a request, and the expedited review process by the CPA only takes about 75 days with planning and zoning done at the same time. Mr. Henderson reinforced that a better review of the rules is needed with regards to consistency with the CPA process. Mr. Henderson advised that rules changes with regards to de minimis should be considered and reminded that only one amendment passed ten years ago. Mr. Henderson stated that standing is a complicated constitutional issue and was one of the considerations when adopting consistency rules via the county council in 1987. He further advised that the standard for VGMC request for review by a citizen or group is a higher standard than claims made through the Department of Agriculture (DOA).

Ms. Drago stated that some believe that the streamlining at the state level was a reaction to a different political direction and suggested that the state review of projects is minimal. Mr. Henderson agreed that there is very little state oversight and rare for the

state to issue comments. Mr. Henderson also advised that the state does not really care about local inconsistencies between comprehensive plans. Ms. Drago stated that she believes it is important to retain any benefit for the county that the VGMC offers. Mr. Henderson stated that the VGMC process has helped parties avoid the DOA process which is an expensive and complicated endeavor.

Ambassador Escudero wondered if the threat of a hearing before the VGMC is sufficient to get parties to reach a compromise, would not the same be true for the state process. Mr. Henderson stated that it is a function of different types of processes and once you get into the DOA process it becomes harder to reach an agreement as timeframes are very structured and parties are generally in a litigation posture.

Chair Ritchey asked about the timing issue and adding another layer of bureaucracy and whether changes could be made to allow parallel processes to take place in order to expedite the VGMC process. Mr. Henderson responded that timeframes need to be similar to what would be done for adopting comprehensive plans. Mr. Henderson also mentioned that re-zoning and comprehensive plan changes can be done at the same time as well as standing requests.

James Morris, Volusia Charter Review Commission Member, asked for permission to ask a question to Clay Henderson. He stated that the standard for appeal is not clearly spelled out and that ordinarily the next step would be to a circuit court. Mr. Morris stated that he would not like to see an appeal go to another entity, but rather to a circuit court and he considers a fourth issue to be the budgetary process. Mr. Morris asked Mr. Henderson to comment regarding creating standards to allow the appeal to go to the circuit court. He also suggested that rule changes should not be made in an effort to avoid changes to the charter. Mr. Henderson responded that review is by certiorari. Mr. Morris stated that appeals should be clearly spelled out. County Attorney Dan Eckert added that the charter states that the review is done by certiorari. Mr. Henderson suggested that the VGMC is a quasi-judicial body and evidence must be weighed.

Joe Yarborough, City Manager of South Daytona, reminded the subcommittee that ten years ago the ballot amendment relating to the VGMC was only one of many amendments which was addressing a variety of issues including raises and schools. Most amendments were defeated. He stated that around the same time a group was formed to look at VGMC rule changes. None of the suggested changes were adopted by the VGMC. Mr. Yarborough stated that there is an issue with taking the sovereignty of elected positions and giving them to an appointed non-elected board to make final decisions and felt that this was circumventing local elected and popular votes. Scott Simpson, Attorney for South Daytona, has submitted suggested amendments (attached as Exhibit C). Mr. Yarborough felt that if changes only go to the county council, in five years it could all be changed again.

Mr. Bruno reinforced the fact that rules changes done by the council could be changed again in the future. He asked Mr. Yarborough if he were interested in doing more of a presentation on behalf of the Volusia Management Association as he had only had

three minutes in this, and in past meetings. Mr. Yarborough responded that he would do so if the subcommittee thought it would help.

Ambassador Escudero agreed with the majority of the cities in that it is wrong to create a quasi-judicial body that is not accountable to an elected body and that he would consider a recommendation for an appeals process to the county council. Ambassador Escudero asked if the VGMC was created purposefully as a quasi-judicial body without accountability. Mr. Yarborough advised that all cities have advisory boards, but they do not relegate final decision authority to those boards. He suggested that the screening process can be an issue for these citizen bodies and he could not remember a time when the VGMC has been a mediator between two public entities.

Mr. Bruno stated that annexation was the impetus for creating the VGMC. Mr. Eckert stated that it was not just annexations, but also comprehensive plan changes.

Chair Ritchey asked Mr. Yarborough to provide detailed information in a future meeting regarding positions and recommendations by cities. Mr. Yarborough responded that a list of resolutions had already been provided, but ballot recommendation language may be difficult to provide as a consensus between the cities would be needed. He stated that two of the largest cities have stated that it should be abolished.

Chair Ritchey asked that Mr. Yarborough be placed on the next agenda.

Mr. Brandon asked to address a couple of the issues presented. First, he stated that in 2008-2009 the VGMC held a series of open sessions for citizens and group, only seven cities at the time were in favor of making changes as suggested by Mr. Simpson. Second, members are appointed by each jurisdiction and the jurisdiction is responsible to review their appointees and elected officials cannot sit on the VGMC as they are not able to hold a dual office.

Mr. Simpson responded that the rules as Mr. Brandon stated were not all his suggestions but they came from multiple sources. Mr. Simpson stated that it was important for everyone to understand the land development process and asked what role the VGMC holds. Mr. Simpson suggested that if there is no dispute among local governments, the VGMC should not have to get involved. Mr. Simpson does not believe there is a constitutional issue of standing for an organization that is not required to exist and that the only parties that could petition for a hearing should be local governments who have comprehensive plans. Mr. Simpson added that it is too easy for VGMC board members to include personal feelings about a project when considering their decisions regarding consistency. Local governments should have discretion regarding their comprehensive plan decisions. Mr. Simpson stated that he heard what Ms. Drago said regarding concern about the state not doing a good job of reviewing projects and that the VGMC needs to fill that function. Ms. Drago responded that he was not accurate with her statement and that she said that if there is a benefit to be derived from the VGMC that many believe that we cannot rely on the state process to provide the external review so consistency may or may not be resolved by that review. Mr. Simpson

stated that Mr. Henderson was quoted as stating that the VGMC provides the opportunity for independent review for complicated land use cases. Mr. Simpson stated that this is where he loses grasp about the purpose of the VGMC. He further states that rule changes will not be effective as there is an interpretation by the VGMC that they must review every comprehensive plan amendment. The VGMC has cost \$2.6 million dollars over ten years with only 26 cases that have gone to hearing and with most money being spent on reviewing 600 applications.

Ambassador Escudero stated that Mr. Simpson's position is that the VGMC should focus almost entirely on issues of consistency and that the powers of the VGMC have been expanded over the years. He asked Mr. Simpson if the commission were to recommend removal of the charter language that allowed for the VGMC to review other items as deemed necessary, would that be adequate to address the issue of focusing the VGMC to cases of consistency. Mr. Simpson does not believe that eliminating that language would solve the issues entirely, but additional language is necessary and has been suggested.

## **VOLUSIA GROWTH MANAGEMENT COMMISSION DISCUSSION**

Chair Ritchey advised that he would now open the floor to discussion from the subcommittee.

Mr. Bruno asked Mr. Brandon when their next meeting would be so they could bring back recommendations regarding all of the issues mentioned today and in previous charter commission meetings. Mr. Brandon responded that the personnel and operating procedures committee was chaired by himself and he could call a meeting at any time as long as there was time to notice it publicly. The regular commission meeting is scheduled for January 27, 2016. Mr. Bruno stated that he would like to know what rule changes the VGMC would consider. He also stated that if rule changes were recommended by the VGMC, at least the elected county council would have final authority of the adoption of those rules.

Ms. Drago stated that issues included weighted vote, standing, budget, appeals, appointments, thresholds, and charter language of other duties as necessary. She wondered how many times the additional duties clause has been used by the VGMC as well as how many VGMC appointees have been rescinded over time. Ms. Drago also stated that the VGMC has a use with regards to school planning, utilities, and infrastructure and that all of these items need to be weighed into the subcommittee's consideration.

Ambassador Escudero commented that many people believe that the VGMC plays a valuable role. He stated that there are three counties in Florida with a similar organization and suggested that if it were such a good idea that it should be duplicated in all sixty-seven counties. Ambassador Escudero stated that he was not sure that the VGMC is needed at all, or at least in its present form.

## **DISCUSSION OF MATTERS NOT ON THE AGENDA**

Charter Commission Chair Hyatt Brown asked Mr. Eckert if rule changes presented to the council would take a two-thirds majority vote before becoming effective. Mr. Eckert confirmed that to be correct. Chair Brown asked if Mr. Henderson assisted with drafting charter section 202.3. Mr. Henderson advised that he did not, it was a committee. Chair Brown read section 202.3 aloud to the group. Chair Brown added that Wayne Bailey had previously stated the original intent of the VGMC was to resolve alleged inconsistencies between the cities and the county.

Mr. Henderson advised that he believed there was an annotation for this section done when the VGMC language was created in 1986.

Chair Brown stated that there is an inconsistency between what the VGMC was supposed to do, and what it is actually doing today. He suggested that whoever wrote section 202.3 either wanted it that way, or did not write it very well initially and that the original intent is still in question.

Dona DeMarsh Butler stated that staff would find the report from when the charter was amended and provide it to the commission.

Chair Ritchey thanked all for coming and spoke about opportunities for growth in Volusia. He asked whether the VGMC is something that will encourage growth or is it outdated. He advised that he did not know how many additional subcommittee meetings there will be as he was unsure as to the number of additional stakeholder's recommendations that the group would need to consider.

Mr. Lowe asked for direction from the group for the VGMC and items they should consider.

Mr. Bruno advised that the VGMC already has a list of issues as presented.

Ms. Drago stated that the group has not discussed what items have fallen under the broader category of other duties of the VGMC.

Ms. Lowe provided a short list of other operational duties.

Chair Ritchey advised that he did not want to ask the VGMC when there are other stakeholders with recommendations to consider.

Mr. Eckert provided comments regarding the charge of the subcommittee and its responsibility to provide recommendations to the Charter Review Commission as a whole and allow that body to make requests of the VGMC regarding rules changes.

Ambassador Escudero stated that it is the subcommittee's broad charge to make recommended changes to the full charter commission and that it cannot be done without hearing from other stakeholders. He advised that the group could ask the VGMC to offer any changes that are willing to make and the subcommittee could consider those in their recommendations.

Chair Brown advised that the VGMC has made an offer, and the group should take them up on the offer of rule modifications.

Ms. Lowe advised that rule changes would take a majority of their weighted votes.

Chair Ritchey had concerns that the group is giving the VGMC a charge with expectations attached.

Ambassador Escudero moved to request the VGMC provide the subcommittee with rules changes they would be willing to accept for consideration with further review to the Charter Review Commission. Mr. Bruno seconded the motion and requested that recommendations made at the December 14, 2015 meeting as well as issues presented today be included.

Ms. Lowe asked that if this request needed to be made by the full Charter Review commission.

Mr. Eckert stated that the subcommittee welcomed their input, but it is not in substitution of any charter proposal.

Chair Brown stated that the group welcomes their recommendations, whatever they are.

Chair Ritchey asked for the motion to be read back to the group. He requested that the language in the motion be changed from "request the VGMC to provide" to "welcome the VGMC to provide". Ambassador Escudero agreed to the requested change. A vote was taken and the motion passed unanimously.

## **ADJOURNMENT**

There being no further business for discussion, the meeting was adjourned at 1:37 p.m. The next meeting date is to be determined, and will be discussed during the Charter Review Commission meeting on January 11, 2016.

EXHIBIT A

Deanie Lowe Handout

To: Volusia County Charter Review Commission Subcommittee  
From: Deanie Lowe  
Date: January 4, 2016

Jerry Brandon also is here, to respond to questions. He has alternately served as Chairman and Vice Chairman of the Volusia Growth Management Commission off and on for the past 23 years.

Neither of us can represent the VGMC, as a whole, because of the Sunshine Law. Jerry has not had the opportunity to meet with and discuss the issues with the VGMC membership, and I have been careful not to speak to other VGMC members, to avoid being perceived as a conduit. So, please keep in mind that Jerry and I speak today only as individuals.

Several people have suggested to you that abolishment of the VGMC should be placed on the ballot. However, we believe that the majority of those who have expressed opinions have recognized that such an amendment has a strong likelihood of failing, resulting in no solutions to perceived problems being achieved. Therefore, perhaps it would be better to try to improve matters through amendments to the VGMC's rules of procedure.

Jerry and I have put in many hours over the past couple of months, researching possibilities along these lines. We believe the primary complaints that have been brought to you concern the issues of:

#1 - "Standing"

#2 - Time involved with review and approval of applications

#3 - Lack of procedure for appeal, other than through the court system.

During our research, we have identified areas of the VGMC rules that could be modified, regarding standing and expediting the process. To date, we have not been able to find a feasible avenue for an appeal at the local level, because the Charter specifically states that the consistency of the comp plans/amendments being submitted must be determined by the VGMC. However, there could be a way to shorten the time period between original submission and resubmission of an application, to serve as a second opportunity before resorting to the courts.

We are here today to suggest that your committee recommend to the full Charter Review Commission that, at its meeting on January 11, the Commission formally ask the VGMC to consider proposing rule amendments to address issues that have been raised. Jerry could then call a meeting of the VGMC's Personnel, Operations and Procedures Committee, which could bring a proposal to the full VGMC membership, possibly at a January 27 meeting.

If the full VGMC approves such amendments, they could be brought to the Charter Review Commission, for its review and endorsement. Should the CRC recommend changes, the VGMC could consider making those, prior to taking the changes to the County Council for adoption. This process conceivably could be accomplished before the Charter Review Commission's May deadline and could be part of the CRC's report on matters that do not require a vote by the electorate.

EXHIBIT B

Clay Henderson Handout

To: CRC growth management subcommittee

From: Clay Henderson: Stetson Institute for Water and Environmental Resilience

Re: Volusia Growth Management Commission

December 31, 2015

At your December 14, 2015 Charter Review Commission meeting, we presented a white paper on the Volusia Growth Management Commission (VGMC). Chairman Brown asked series of questions relating to a comparison of the requirements of the Growth Management Act (1985) and the Community Planning Act (2011) as they relate to the local obligations under Sec. 202.3 of the Volusia County Home Rule Charter which established the VGMC.

As previously noted the VGMC was established by Sec. 202.3 Volusia County Charter upon recommendation of the Charter Review Commission to refine the concept of “consistency” under the Growth Management Act (Chapter 85-55 Laws of Florida). “Consistency” was a major requirement of the Act defined as internal consistency between elements of a comprehensive plan, consistency between state, regional, and local government comprehensive plans, and consistency between a comprehensive plan and land development regulations and orders. Members of the 1985-86 CRC were concerned that the Act did not spell out means to achieve “consistency” among the county and various local governments within the county. The VGMC was proposed as a means to create a “level playing field” amongst the county and local governments for consistency review of comprehensive plans. Their concern was that a city or county could establish levels of service for capital improvements or increase densities or intensities in land use which would have an adverse effect on an adjacent jurisdiction. There was also a concern that cities with aggressive annexation policies could essentially invite landowners to annex by lowering planning standards. Materials provided by the VGMC staff show that most of the VGMC hearings over life of the commission have been for these reasons.

Between 1985 and 2011, the Growth Management Act regulated all local government comprehensive plans. The Act spelled out required elements of a comprehensive plan and required levels of service, capital improvement funding, and requirements for concurrency for a range of infrastructure. Comprehensive Plans could only be amended twice per year and all plan amendments including “small scale” amendments were required to go through compliance review and approval by the Florida Department of Community Affairs. Local governments, applicants, and affected persons also had the right to review compliance determinations by an Administrative Law Judge. Under this process, the average time for approval of a comprehensive plan amendment was 18 months and also true that several comprehensive plan amendments in Volusia County took several years to achieve compliance at the state level.

The Volusia County Council adopted the consistency rules for the VGMC in 1987 as Ord. No. 87-24. These rules were designed to fit within the requirements and timeline of compliance review under the Growth Management Act. Because all comprehensive plan amendments required compliance review by DCA, all amendments were required to be reviewed by the

VGMC. The review by the VGMC staff generally took place during the same time frame as compliance review by the DCA staff in Tallahassee. With few exceptions, compliance review by the state was a longer process than VGMC review.

One of the impacts of “great recession” was the Florida Legislature’s review of the process of growth management in order to streamline the process. In 2011, the Legislature passed the Community Planning Act (Chapter 2011-139 Laws of Florida) which substantially re-wrote the process of growth management. Key provisions of the new law were the elimination of the Department of Community Affairs, repeal of Rule 9J-5, limitation of the scope of state review, elimination of the twice per year amendment requirement, and creation of a new “expedited review” and “coordinated state review” process. Under the new expedited process, state agencies have only 30 days to review a plan amendment and their review is limited to specific issues of statewide concern. Another change in the law authorizes zoning approval to run concurrent with plan approval also as a means of streamlining the process. Under the new law a comprehensive plan amendment can be filed, processed and approved within 75 days. Attached to this memo are “flow charts” prepared by DEO which illustrate the new process for comprehensive plan review.

While the new law made sweeping changes, there are still fundamental aspects of growth management that remain. All units of local government are required to adopt comprehensive plans and those plans as well as land development regulations and development orders must be consistent with the plan. Other key concepts such as data and analysis requirements, levels of service standards, compatibility, suitability, intergovernmental cooperation, and concurrency remain. Perhaps most important to this discussion is that a broadly defined “affected person” may still challenge a comprehensive plan amendment through an administrative hearing.

Consistency, compatibility, and intergovernmental cooperation remain key concepts of growth management. Key provisions of the Community Planning Act provide:

The several elements of the comprehensive plan shall be consistent. Sec. 163.3177(2), Fla. Stat.

Future Land Use plans shall “Provide for the compatibility of adjacent land uses,” Sec. 163.3177 (6)(a)2.g, Fla. Stat.

Intergovernmental cooperation elements “...must demonstrate consideration of the particular effects of the local plan, when adopted, upon the development of adjacent municipalities, the county, adjacent counties, or the region, or upon the state comprehensive plan, as the case may require,” Sec. 163.3177 (6)(a) 2.h.1, Fla. Stat.

The intergovernmental coordination element shall provide for a dispute resolution process, as established pursuant to s. 186.509, for bringing intergovernmental disputes to closure in a timely manner. Sec. 163.3177(6)(a) 2.h.1.b, Fla. Stat.

The adoption of the Community Planning Act does not eliminate the need for a VGMC but it does provide an opportunity to review the consistency rules to make sure they are consistent with the new process. In other words, the consistency rules of the VGMC are still designed under the process of the Growth Management Act and should be more closely conformed to the process of the Community Planning Act. Nevertheless, the VGMC remains an opportunity for complex, complicated, or controversial plan amendments to resolve differences and avoid far more costs of an administrative hearing. VGMC provides a neutral third party review and forces early discussion and collaboration when there is a conflict. It gives the county, neighboring cities, and substantially affected persons the opportunity to reign in an overly aggressive applicant or city with its own agenda. Because no one city or the county controls the process it forces parties to seek agreement.

The following are provisions of the consistency rules which could be considered for revision in light of the requirements of the Community Planning Act:

Sec. 90-30 uses the term "Large scale comprehensive plan amendment" which is no longer applicable. The new law refers to small scale amendments, expedited review, and coordinated state review.

Sec. 90-34 requires all comprehensive plan amendments be reviewed for consistency and a certificate of consistency is required to be issued in order for a comprehensive plan to be deemed effective. Rather than reviewing all comprehensive plans, the consistency rules could be amended to deem certain amendments as consistent. At the very least, small scale amendments could be deleted from this requirement. Further, the council and VGMC could deem other amendments slated for expedited review as consistent. For instance, applications for map amendments of 30 acres or less, or applications that did not increase residential density or overall intensity could be deemed consistent. If indeed, the real concern is recruitment of economic opportunity projects, then certain areas within the county could be planned for economic development in advance and these areas could be deemed consistent. The precedent for this is the Rural Areas of Critical Economic Concern which have long been available for "fast track" review. The Community Planning Act also encourages interlocal agreements for joint planning areas. By the same token, the VGMC could be required to review all land use changes associated with the coordinated state process and amendments to newly annexed lands which increase density or intensity. The latter would be consistent with Volusia County's other unique charter revision which requires review for school concurrency for land use amendments which increase residential density.

Sec. 90-35(f) requires determination by the VGMC within 90 days. The timelines within the rules could be trued up to conform to the requirements of the Community Planning Act.

Sec. 90-37 sets forth standards for determining "consistency." These standards could be revised to more closely track requirements of the Community Planning Act to include criteria for "suitability," "compatibility of adjacent uses," or factors which contribute to "urban sprawl."

At the last CRC meeting there was significant discussion about citizen intervention in the process. The VGMC consistency rules provide: "Any substantially affected or aggrieved party 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

rules do not define “substantially affected or aggrieved party” but that has been interpreted by legal staff and the commission as the Renard standard as defined by the Florida Supreme Court. *Renard v. Dade County* 261 So.2d 832 (1972). Therein, the court found:

An aggrieved or adversely affected person having standing to sue is a person who has a legally recognizable interest which is or will be affected by the action of the zoning authority in question. The interest may be one shared in common with a number of other members of the community as where an entire neighborhood is affected, but not every resident and property owner of a municipality can, as a general rule, claim such an interest. An individual having standing must have a definite interest exceeding the general interest in community good share in common with all citizens.

The Renard standard is a higher threshold than the right of an “affected person” to challenge a comprehensive plan amendment through the Division of Administrative Hearings. Sec. 163.3184(1)(a) Fla. Stat. defines an affected person as follows”:

“Affected person” includes the affected local government; persons owning property, residing, or owning or operating a business within the boundaries of the local government whose plan is the subject of the review; owners of real property abutting real property that is the subject of a proposed change to a future land use map; and adjoining local governments that can demonstrate that the plan or plan amendment will produce substantial impacts on the increased need for publicly funded infrastructure or substantial impacts on areas designated for protection or special treatment within their jurisdiction. Each person, other than an adjoining local government, in order to qualify under this definition, shall also have submitted oral or written comments, recommendations, or objections to the local government during the period of time beginning with the transmittal hearing for the plan or plan amendment and ending with the adoption of the plan or plan amendment.

Citizen standing has been a core principle of growth management since the original Growth Management Act and survives under the Community Planning Act. An “affected person,” which includes a local government, may challenge a comprehensive plan amendment through the Division of Administrative Hearings. As noted in the previous memo, the VGMC process has been used in several controversial comprehensive plan cases to correct deficiencies in a plan and/or reach agreement with substantially affected parties.

We continue to maintain that the VGMC has stood the test of time by improving the quality of comprehensive planning in our community. It is a good working example of intergovernmental cooperation and provides substantially affected citizens the opportunity to address planning conflicts locally rather than through the state administrative procedure process. The items set forth above are examples of how the current VGMC process could be tweaked through the consistency rules without the necessity of amendment to the Volusia County Charter.

As requested by Chairman Brown, I intend to be present at the subcommittee meeting on Monday to help address any of these issues.

**Clay Henderson**

Executive Director

Institute for Water and Environmental Resilience

Stetson University

421 North Woodland Blvd Unit 8262

Sage Hall Room 212

DeLand, Florida 32723

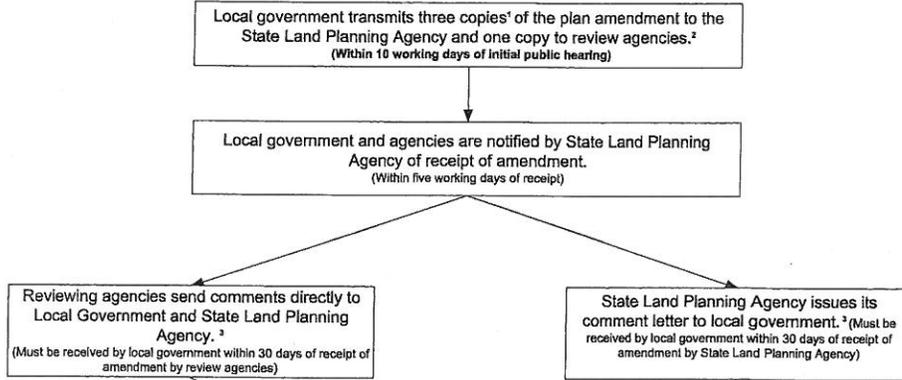
386.822.7961

[clay.henderson@stetson.edu](mailto:clay.henderson@stetson.edu)

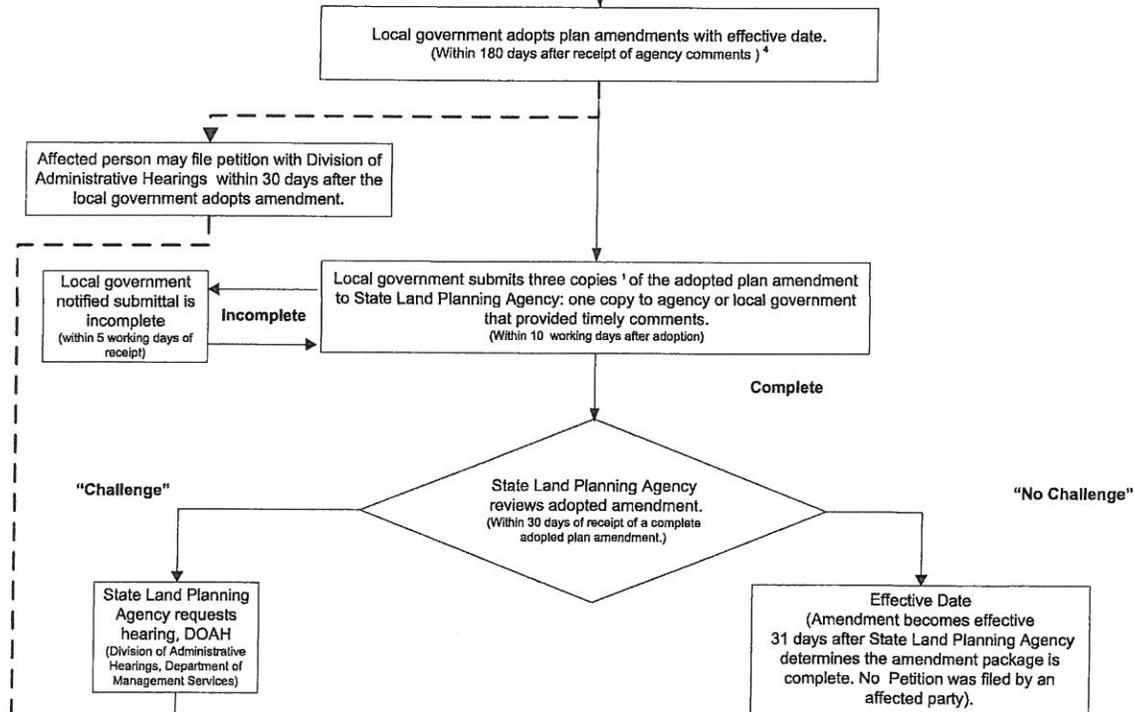
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# Expedited State Review Amendment Process Section 163.3184(3) and (5), Florida Statutes

## Proposed Phase



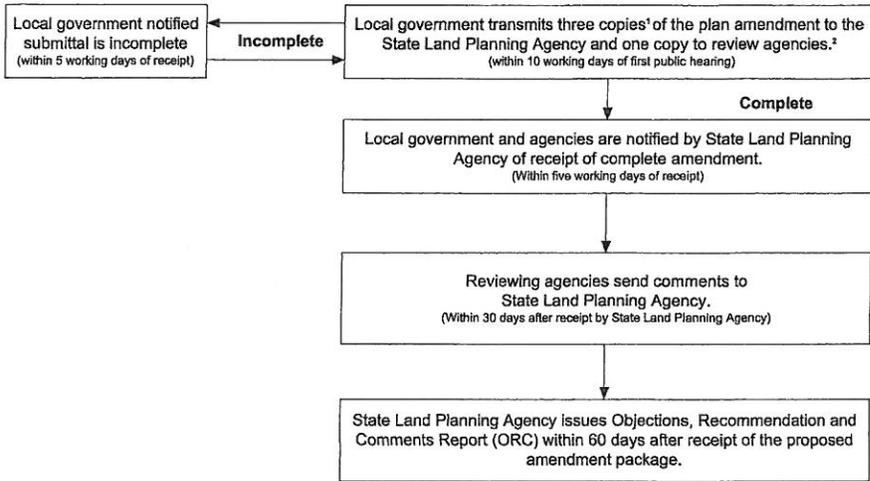
## Adopted Phase



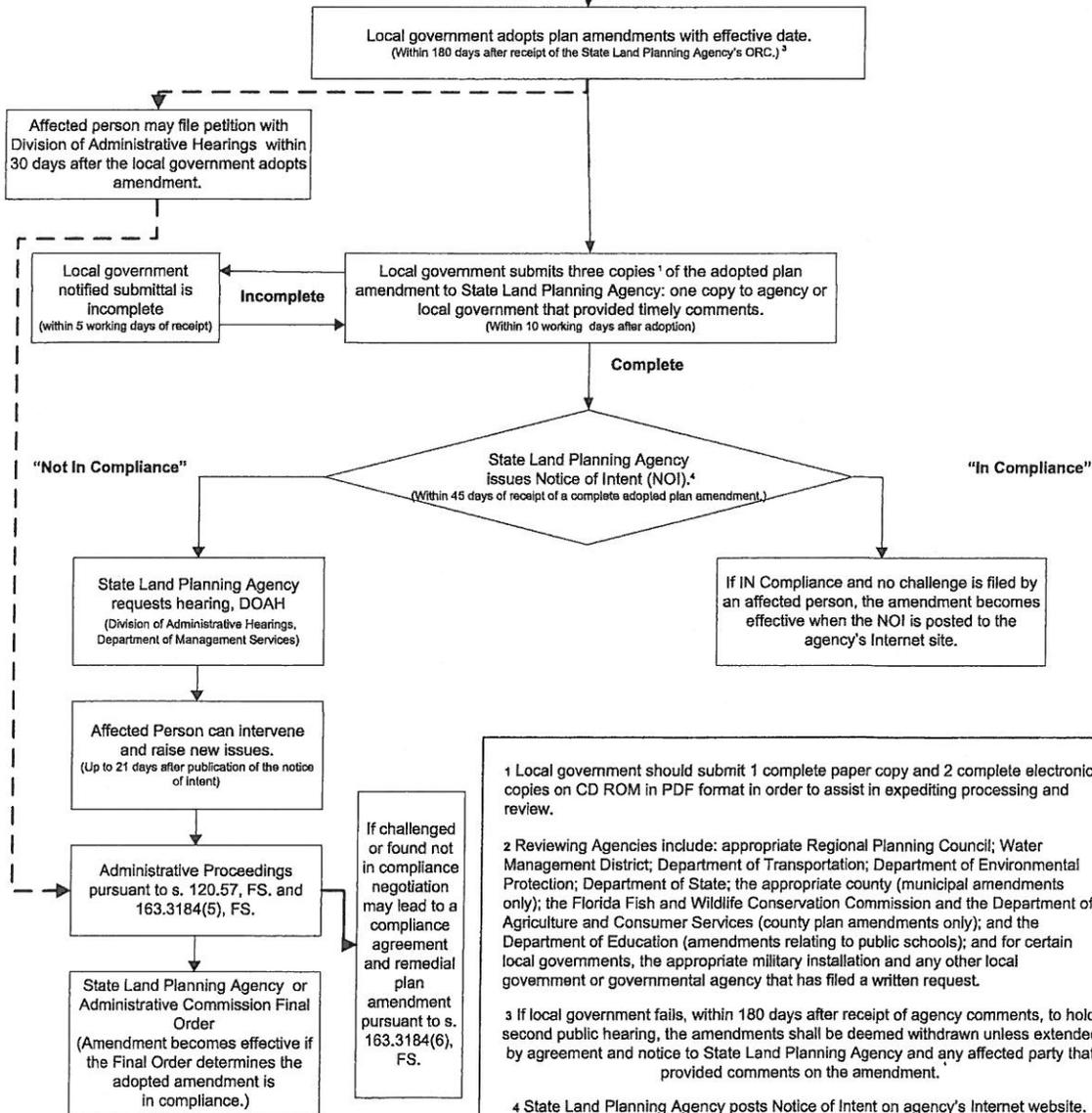
- 1 Local government should submit 1 complete paper copy and 2 complete electronic copies on CD ROM in PDF format in order to assist in expediting processing and review.
- 2 Reviewing Agencies include: appropriate Regional Planning Council; Water Management District; Department of Transportation; Department 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.
- 3 Comments must be received by local government no later than 30 days from the date on which the agency or local government received amendment.
- 4 If local government fails, within 180 days after receipt of agency comments, to hold second public hearing, the amendments shall be deemed withdrawn unless extended by agreement and notice to State Land Planning Agency and any affected party that provided comments on the amendment.

# State Coordinated Review Amendment Process Section 163.3184(4) and (5), Florida Statutes

## Proposed Phase



## Adopted Phase



1 Local government should submit 1 complete paper copy and 2 complete electronic copies on CD ROM in PDF format in order to assist in expediting processing and review.

2 Reviewing Agencies include: 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.

3 If local government fails, within 180 days after receipt of agency comments, to hold second public hearing, the amendments shall be deemed withdrawn unless extended by agreement and notice to State Land Planning Agency and any affected party that provided comments on the amendment.

4 State Land Planning Agency posts Notice of Intent on agency's Internet website.

EXHIBIT C

Scott Simpson Correspondence

**From:** Dona DeMarsh Butler <ddemarshbutler@volusia.org>  
**To:** VCCharterReview@volusia.org, CABrown@volusia.org, TBong@volusia.org  
**Date:** 1/4/2016 7:29 PM  
**Subject:** Fwd: VGMC Talking Points

Sent from my iPhone

Begin forwarded message:

> From: "Scott Simpson" <scott.scottsimpsonlaw@gmail.com>  
> Date: January 4, 2016 at 6:39:26 PM EST  
> To: "Dona DeMarsh Butler" <DDeMarshButler@volusia.org>  
> Subject: Fwd: VGMC Talking Points

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> From: Scott Simpson <scott.scottsimpsonlaw@gmail.com>  
> Date: Thu, Dec 17, 2015 at 9:18 AM  
> Subject: VGMC Talking Points  
> To: ksharples@ceobusinessalliance.com, Joe Yarbrough <jyarbrough@southdaytona.org>

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> Kent:

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> Below are some thoughts regarding the VGMC:

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> 1) VGMC violates local government sovereignty. What does that actually mean? Reference to sovereignty means that elected officials are responsible for establishing laws and policies and those decisions should not be overturned unless the elected officials clearly abuse their discretion. A comp plan is a policy determination regarding growth management within that community. As a policy decision it should be afforded the substantial discretion afforded other policy decisions. Just so you understand the comp plan policies are implemented by land development regulations. When the local government applies the land development regulations to individual properties the courts have said that the local government is no longer establishing policy but is applying the policy to a particular set of facts. The local government is acting like a judge and therefore the reference to "quasi-judicial" hearings. In quasi-judicial hearings, such as rezoning, special exceptions, variances, site plan approval, etc., the local government does not have discretion any more and must support the decision by substantial competent evidence. In summary, when a local government sets policy there is substantial discretion, but when the local government applies the policy that was set, then there is no discretion and the decision must be supported by evidence. The VGMC reviews the comp plan, which is a policy decision, but the the VGMC rules requires the adopting local government to show that there is consistency by substantial competent evidence. This applies quasi-judicial standards to a policy decision. By allowing an appointed board to invalidate policy determinations of elected officials absent a showing of substantial competent evidence to support that policy is violating the sovereignty of the local government and elected officials.

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> 2) What is the role of the VGMC? Is it s forum for the local governments to resolve disputes between comp plans? That is what the primary purpose says. This is also clear when people talk about why the VGMC was created. However the perception of the VGMC jurisdiction is obviously viewed by many to be broader. Look at the statements from various individuals, including Clay, representatives on the Board and members of environmental groups. Clay was quoted in the paper as saying "This is the only opportunity for an independent third-party review of a comp plan amendment in a complicated case." First of all that is not a true statement as the State reviews comp plan amendments. Secondly, and more importantly, is this really the purpose and role of the VGMC? It is clear the public views the VGMC as a forum to raise objections by the public with a comp plan amendment. In my opinion this is the result of

allowing the public to file objections to comp plans with the VGMC.

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> 3) Not all issues can be resolved by changes in VGMC rules. The Charter states that the VGMC has the duty to determine consistency. The VGMC has interpreted this to require the VGMC, or at least its staff, to review every comp plan submitted. I would think that it would be defensible to state that if there are no local government objections then the amendment is deemed consistent thereby eliminating the review of every comp plan. However, I cannot say that the interpretation requiring a review of every comp plan is wrong. There is also the catch-all provision that allows the VGMC to perform other duties it deems necessary. I think the intent of this provision was to allow the VGMC to perform other duties as necessary to do the primary duty, ie. comp plan consistency. The additional duties should be related to determining consistency, but unfortunately the charter is not worded that way and this provision could be interpreted broadly.

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> 4) Although this is ultimately a decision for either the Charter Review Committee or the County, we need to give some thought to a ballot title and ballot summary. The ballot title is limited to 15 words and the ballot summary is limited to 75 words. The ballot summary is the chief purpose of the measure. It does not have to include every change and can be worded in a way that is slanted. Obviously this cannot be done until the actual wording is finalized. However I think we should be giving some thought to how the question will be presented on the ballot when we are proposing changes to the Charter..

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> 5) I have been thinking about some of the language that has been proposed. The language about requiring qualified people to serve may make this issue more antagonistic than it already is as we are basically saying that some of the board members are not qualified to serve. Also, it is difficult for some local governments to find volunteers and people identified as qualified may not want to serve as if they may appear before the VGMC. Secondly we are proposing to put in the charter that the members must do certain reporting back to the appointing local government. Although I understand what we are trying to accomplish, these are really issues for the appointing governmental entity. Each local government could establish qualifications for appointees and reporting requirements. I think the less we change in the charter the better chance of approval. Just a personal opinion.

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