

**CHARTER REVIEW COMMISSION
VOLUSIA COUNTY, FLORIDA**

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

CALL TO ORDER

Chair Brown called the meeting to order at 1:02 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., Patricia Drago, Ambassador Stanley Escudero, David Haas, Peter Heebner, Glenn Ritchey, Derek Triplett, Mark Watts and Lisa Ford Williams. Dr. Bailey attended via conference line. Dr. Phillip Fleuchaus, James Morris, and Patricia Northey arrived after roll had been taken. Also present were County Attorney Dan Eckert, County Manager Jim Dinneen, county support staff and members of the public.

CORRESPONDENCE RECEIVED

Chair Brown called attention to the copies of the correspondence received and opened the floor to any comments. There were none.

PUBLIC PARTICIPATION

Chair Brown opened the floor to public participation.

Suze Peace, 1571 Alanson Drive, DeLand, FL, spoke about citizen standing as relating to the Volusia Growth Management Commission (VGMC). She stated that there have been twenty-eight public hearings in the past ten years, of which only six were a result of a citizen petition. She recounted a VGMC meeting she attended where the Audubon Society protested a planned spaceport. She strongly believes that citizens should have standing before the VGMC.

Patricia Gadbow, 7 Venetian Circle, Port Orange, FL, member of the League of Women Voters, read a statement from the President of the League of Women Voters. The statement conveyed the League of Women Voters had worked very hard to ensure that citizens were represented on the VGMC. The League of Women Voters have supported the VGMC's independence and provision for standing of citizens. Having an unelected body hear a citizens concerns can often resolve concerns or issues.

Scott Simpson, asked to speak, if necessary, later in the meeting.

Jim Dinneen, County of Volusia County Manager, reminded the commission that he had previously brought items to them from county council members, one was a review of the VGMC, and the other was whether the council at large representative should be considered the council vice chair. He reviewed the two items that he had brought personally before the commission, compensation for expenses of county council members within the county, and the confirmation process for county division directors. He explained his reasoning for bringing forward the confirmation request, but to be as transparent as possible he no longer wished to pursue changing the confirmation process for county division directors. Ambassador Escudero asked if there was draft language covering Mr. Dinneen's original request. Mr. Dinneen stated that he thought it had been created, but ultimately did not want to encourage any voter confusion with other items.

Chair Brown confirmed that Mr. Dinneen was withdrawing his request, although if a member of the commission wanted to advance the request they could do so. Dan Eckert confirmed that the language relating to Mr. Dinneen's original request was in the agenda package from the last meeting, and it was not republished as the focus of the current meeting was the VGMC. Chair Brown asked to defer the issue to the next meeting. Mr. Dinneen reminded Chair Brown that April 11, 2016 is the one meeting of which he would not be able to attend. Chair Brown stated that it could be discussed at the next meeting and Mr. Dinneen could come to the following meeting if there were questions.

VOLUSIA GROWTH MANAGEMENT COMMISSION DISCUSSION

Chair Brown recapped the timeline of events relating to the commissions interest in the VGMC. The commission identified issues that were important and considered for change. The VGMC drafted a rules change resolution to address those issues. The commission was advised that in order to effectuate the rules change resolution, the county charter would need to be altered. The draft charter amendment raised issues with the Volusia County School Board as they felt that they were being excluded. Those issues have been addressed in collaboration with the attorneys for the county and the school board. The VGMC has voted and passed the draft rules change resolution with the condition that the rules revert to their previous version if the charter amendment does not pass with the voters. The VGMC had expressed early on that they would be willing to make changes to their rules, but did not support changes to the charter. There has been interest in supporting rules changes that did not require a change to the charter.

James Morris asked about the resolution provided by the VGMC as part of the agenda package correspondence which mentions repeal on event of voter disapproval. Chair Brown stated that the commission cannot draft VGMC rules, but by working together with the VGMC, something could be effectuated that would be in the best interest of the people.

Chair Brown stated that a straw vote would be taken regarding the draft amendment by Dan Eckert. Chair Brown asked Gerald Brandon, VGMC POP Committee Chair, to come forward in case there needed to be additional information provided. Chair Brown asked Mr. Brandon for their next meeting date. Mr. Brandon replied that the next meeting of the

POP Committee has been set for Thursday, April 7, 2016, 10:30am at the Daytona Beach City Hall, with a full VGMC meeting set for April 13, 2016. Chair Brown asked VGMC attorney, Heather Ramos, to also come forward, to confirm that they the revised set of rules, A.2 (Exhibit 4), would accomplish the same objectives as the previously approved resolution. Ms. Ramos, confirmed that they would, except that there would be limited review of small scale amendments.

Chair Brown suggested that a straw vote be taken on the amendment after Mr. Eckert has had a chance to discuss it. If that passes, he would like an expression of opinion that if the rules under A.2 are adopted by the VGMC, the Charter Review Commission would be willing not to pursue a charter change. Chair Brown asked for the date of the first County Council meeting in May. Mr. Eckert responded that the first meeting is set for May 5, 2016, and the next scheduled Charter Review Commission meeting is May 9, 2016. Chair Brown also asked if there would be time for proper public notice to allow for a vote on the VGMC rules at the May 5, 2016 meeting. Mr. Eckerd responded that there would be sufficient time.

Mr. Eckert spoke about the draft charter amendment (Exhibit 1). Much discussion had gone into the sentence addressing the school board which allows for party status as relating to Section 206 of the Charter. The school board superintendent and the VGMC counsel have approved the added language. The draft substitutes Team Volusia for the defunct Volusia County Business Development Corporation. Language has been added to allow for the VGMC to dispense with required review of applications in certain circumstances to align with the VGMC proposed rules change. Mr. Eckert confirmed that the school board approved the proposed amendment language.

Chair Brown asked for questions relating to the draft charter amendment. Mr. Heebner was concerned that the VGMC rules could be changed again in the future without charter language directly addressing the issues of the development community and who has party status. Mr. Eckert responded that the first two sentences address who has party status. The role of the school board is also clarified. The current proposed rules of procedure allow for the VGMC to request a hearing when there is a change that violates a previous VGMC requirement. Mr. Heebner stated that it is currently a subjective internally controlled process as opposed to one where the process has certainty with who can request a hearing.

Chair Brown asked if the county council could change the VGMC rules by their own accord. Mr. Eckert replied that the VGMC would say no, but that is not a definitive answer as the County Council is the legislative governing body. The Charter, however, states that the Rules of Procedure are initiated by the VGMC. Chair Brown reiterated that it is possible then, that the county council could change the rules. Mr. Eckert stated that it could be possible in certain circumstances, but it has not needed to be done in the past. Chair Brown asked if the VGMC could change rules without two-thirds majority vote of the county council. Mr. Eckert stated that they could not.

Mr. Heebner asked if the proposed amendment would allow a private person or entity to petition the VGMC. Mr. Eckert stated that he believed that is what the amendment states. Mr. Heebner added that the amendment should go forward as rules could be changed in the future.

Ambassador Escudero proposed that an amendment be added to the final paragraph stating that the county council may, by ordinance adopted by two-third vote, amend the rules of procedure of the VGMC. Mr. Morris asked if the VGMC could undo a rule change without approval of the county council. Mr. Eckert stated that any change would need to be approved by a two-third vote of the county council. Ambassador Escudero stated that the group should do everything they can to increase the capacity of the people, through their elected representatives, to have something to say about what the VGMC does. Chair Brown asked to talk about the request prior to making a motion.

Pat Drago asked what would happen to citizen standing if the amendment fails before the voters. Mr. Eckert responded that if the charter amendment language failed, the county council could still adopt rules of procedure which eliminate citizen standing.

Pat Northey stated that Mr. Eckert had been adamant that this language must go to voters to make changes. Mr. Eckert responded that he had been, only in respect to determining if the proposed VGMC rules of procedure, which dispensed for review of certain categories of plan amendments, would require a charter change. The initially proposed VGMC rules changes are not consistent with the charter text. Ms. Northey stated that the VGMC rules without a charter amendment seem to say the same thing. Mr. Eckert stated that the commission has been provided with rules that provide a continuation of review for all plan amendments including small scale. Mr. Watts clarified that the initial draft stated that there would not be a review of applications in certain circumstances, but the charter states that there must be a review so there was an inconsistency. The VGMC has, in version A.2, removed the inconsistency. Ms. Northey asked whether public standing has been eliminated in both versions. Mr. Eckert stated that to address his consistency concern, public standing did not need to be eliminated, but that has been the proposal of the VGMC. Ms. Northey asked whether the county council has the responsibility to set the VGMC Rules of Procedure because they did so originally. Mr. Eckert responded that the county council is required to amend the procedure if there is an amendment to be accomplished. Ms. Northey asked for clarification as to whether version A.2 is just a recommendation to the county council. Mr. Eckert responded that the VGMC is proposing an ordinance to the county council. Ms. Northey asked how long the public has had the ability to request standing on VGMC applications. Mr. Eckert stated that he has been the county attorney for twenty seven years, and the initial action happened prior to that time. Ms. Northey reiterated that the public has had standing for twenty seven years. Mr. Eckert stated that it was the view of the VGMC at the time that the property owner should have standing in order to advocate for their interests. Ms. Northey asked whether this happened during the comprehensive plan changes in the 1990s. Mr. Eckert stated that it was probably adopted in or around 1987, although he did not work directly on that draft.

Ms. Drago asked whether the issue of citizen standing, staff review, the authority of VGMC to call for a public hearing on their own, all of the items that mattered to her, were out of the rules with or without a charter amendment. Ms. Ramos stated that was correct.

Chair Brown asked whether the School Board has the same posture in the proposed rules change as they do currently. Ms. Ramos responded that they currently have not limit as to what they can raise as an issue. Chair Brown read from Section 206 of the Charter. Ms. Ramos stated that Section 206 is capacity related.

Chair Brown asked for Ms. Ramos to explain the two versions of the rules. Ms. Ramos reviewed the summary of changes (Exhibit 2) for both versions. Chair Brown asked if a change was recommended by a unit of local government, and there were no objection, could the VGMC staff review and sent to that government a critique of why the large scale application may be good/bad. Ms. Ramos stated that she believed that is how the process currently works and would continue to do so. Merry Chris Smith, VGMC Operations Manager, stated that under the 3/30/16 proposed rules, the VGMC staff would not review any small scale or JPA unless there was an objection. Under large scale proposals, staff would continue to review the applications and could request additional information within fourteen day. If issues were found, they could notify jurisdictions of issue, but could not call a hearing directly. Ms. Ramos stated that the 3/31/16 version enhances small scale reviews.

Mr. Morris stated that the he believes the A.2 rules version accomplishes the majority of the objective and it does not require a charter amendment which he believes is a better path than a charter amendment which may not be passed by the voters.

Ambassador Escudero disagreed with Mr. Morris' point of view. He stated the matter should be put to a vote before the people in the form of a charter amendment.

Ambassador Escudero made a motion to amend the draft charter amendment by adding a final sentence which states that the VGMC Rules of Procedure may be amended by ordinance approved by a two-thirds vote of the Volusia County Council. Dr. Fleuchaus seconded the motion. Mr. Haas stated that there are more issues with rules version A.2 other than just the issue identified in the motion. He believes it is open to interpretation as to when staff of VGMC could get involved with an application, and wonders if enough time has been taken to read through all of the other changes made between the versions. Ms. Ramos confirms the only change made was for the review of small scale applications. Chair Brown asks for discussion relating to Ambassador Escudero's motion.

Mr. Heebner stated that he would like to make a motion to amend the amendment as he did not think the language is as clear as it should be. Mr. Heebner made a motion to add to paragraph two of 202.3 that no petition to determine consistency of a large scale comprehensive plan may be filed except by the county or a municipality. Dr. Fleuchaus seconded the motion. Scott Simpson asked if the School Board would then be exempt from participating in the VGMC process. Mr. Heebner stated that the School Board should be included. Chair Brown asked Mr. Heebner for clarification of his motion. Mr. Morris

stated that the amendment as written currently states the same as Mr. Heebner's request, and sees no reason for the motion. Dr. Fleuchaus withdrew his second, and as such the motion did not carry.

Chair Brown asked for the original motion to be restated. Ambassador Escudero repeated the motion.

Deanie Lowe asked to speak to the motion. She stated that one of the teams cannot be allowed to make up the rules. In her view, the motion would allow the County to write their own rules and they are one of the units of local government that have to come before the VGMC.

Mr. Watts agreed with Ms. Lowe's point. He stated that the VGMC is a body that has jurisdiction between the County and municipalities and if you give the County the authority over the rules then it creates a disparity under the structure.

Mr. Morris also expressed that he was opposed to the motion and questioned whether a charter change would ultimately be adopted by voters. He continued that rules changes would be an improvement in the current circumstances. It may not be the specific methodology that some members were envisioning as to how we improve the circumstances in the county, but it is a significant improvement with how things are done. He expressed that he will vote no to the current motion, and will vote no on rules revision A.1 (Exhibit 3) but he will support rules revision A.2.

Ambassador Escudero closed by stating that in referring to the teams, the elected team should be considered superior by virtue of the political philosophy by which our country operates. He believes that the VGMC has shown itself capable of altering the nature and extent of its rules of operation which is why we have spent several months considering changes to make the activities of the VGMC more productive, efficient, effective, and with the desires of the people of this area. He gave an example where groups have made their voices be heard by electing those who agree with their desires. Ambassador Escudero stated that the VGMC can interpret the rules without any accountability to elected officials, and that his motion would rectify that problem.

A vote was taken on the motion. Mr. Heebner and Ambassador Escudero voted in favor of the motion. The remaining members who were present, including Dr. Bailey via phone, voted against the motion. The motion did not pass.

Mr. Watts stated that he was of the same opinion as Mr. Morris of the two rules revisions. Mr. Watts suggested that a motion should be made to table any charter amendment relating to VGMC until the May 9, 2016 meeting. Chair Brown stated that he would not yet recognize that type of motion and suggested that a straw vote be taken to approve the VGMC rules revision A.1 and a tacit approval of the rules that follow that. Assuming that straw vote is positive, he would like to consider a motion to give guidance to the VGMC that revision A.2 is the proper approach to take. The VGMC would then have the ability to effectuate those rules with a two-thirds vote of the county council. If that occurs,

then the Commission may not want to press the charter amendment. A clarification was made between the revisions.

Chair Brown asked for a straw vote to indicate support to approve VGMC rules revision A.1 which includes a charter amendment. Mr. Watts initiated the motion. Mr. Heebner seconded the motion. There was no discussion. Ms. Drago and Ms. Northey voted against the motion. Dr. Bailey abstained via phone. The remaining present members voted for the motion. The motion carried.

Chair Brown asked for motion to show support of the VGMC rules revision A.2 which shall be considered by review of the VGMC and if passed, taken to the county council for consideration. Mr. Haas initiated the motion. Mr. Ritchey seconded the motion. Ambassador Escudero stated that he would only favor a proposal that favors the charter amendment and would not support a revision which did not. Mr. Haas stated that in its current form, version A.2 needs work, but he supports the process and concept. Chair Brown suggested Mr. Haas get with the VGMC and Ms. Ramos to review and suggest changes as necessary. Mr. Eckert asked for clarification regarding Ambassador Escudero's vote. Mr. Morris clarified that Ambassador Escudero stated he would vote no on the current motion. Dr. Fleuchaus asked if there would be a possibility for third ballot question, such as should the VGMC be dissolved. Dr. Fleuchaus stated he would make that motion after this vote had been taken. Mr. Triplett asked for clarification on what would happen if the charter amendment was voted down. Chair Brown stated that nothing happens at it would revert to status quo. The motion was repeated. A vote was taken. Ms. Drago, Ms. Northey, Mr. Escudero, and Mr. Heebner voted against the motion. Dr. Bailey abstained via phone. The motion carried.

Dr. Fleuchaus made a motion to dissolve the VGMC. Ambassador Escudero seconded the motion. Dr. Fleuchaus stated that with the amount of time spent trying to resolve this problem and because there has been such an improvement with the planning departments of the cities, there is little need for the expense of the VGMC. Almost every issue can be resolved by the elected local governments. Mr. Haas agreed with everything Dr. Fleuchaus stated but he saw little chance for a ballot question passing with the voters, and he would like to move the needle a little to accomplish some change with the VGMC. Ambassador Escudero asked if we put this on the ballot would that exclude all of the other suggestions put forward, and if so, that might be a valid argument. He continued that the VGMC is no longer necessary and it has become an impediment. Mr. Morris stated that he would support the compromises brought forward and vote no on Dr. Fleuchaus' motion. Mr. Watts stated that he would also be voting no, and that there is certainty with the rules changes that have been reached through compromise. Mr. Triplett stated he is not sure that we have decided how the VGMC should function going forward. He continued that the issue is whether the VGMC should exist, and how should it function if it exists. He stated that he sees a shell game right now, with the Commission trying to figure out how much power they can control and who is going to control that power, rather than how the VGMC should function for the good of development as well as the protection of the environment. He states that the issue has become muddy for him. Dr. Fleuchaus provided his closing comments, and reminded that in 2006 the Commission proposed an

amendment to dissolve the VGMC and no one was really opposed to it at that time. Now, every city is opposed so there would be a better chance of it passing a vote to dissolve. A vote was taken. Dr. Fleuchaus and Ambassador Escudero voted for the motion. The remaining commission members present voted against the motion. The motion did not carry.

Chair Brown asked county at large representative, Joyce Cusack, to come forward to discuss her request to amend the Charter to allow for the at large member to be named as the vice chair of the county council.

Representative Cusack stated that the at large member is elected county-wide. There are five districts that have between 80,000 to 100,000 people each. The county chair position has a half million people, and so the at large position also has half million people. She stated that the county chair moved from an appointed to an elected position. The at large position has to be elected the same way and wonders why then, is the at large position not the vice chair and believes it was an oversight. She also believes it takes the politics from the council. She suggests to let the voters decide if they would like an elected vice chair in the at large position.

Chair Brown restated Rep. Cusack's request, in that they consider a Charter amendment to name the at large member as the vice chair of the county council. Ms. Northey stated that an amendment went before the voters ten years ago and it was turned down. Mr. Bruno agreed with Rep. Cusack on this issue. He stated that she is not asking for more money, just a title. Mr. Bruno made a motion to create an amendment to name the at large council position as the vice chair of the County Council. Mr. Morris seconded the motion. Dr. Fleuchaus stated that the at large position is more costly, and there are no other benefits. He also stated that there should be additional thought in the future with how the charter recognizes the at large position and this is the minimum recognition. Chair Brown stated that the motion was to ask the county attorney to create an amendment to be considered at the next meeting. Mr. Bruno confirmed that was the correct motion being made. Ms. Northey wanted to confirm that they are just requesting language from Mr. Eckert to be provided for consideration at the next meeting. The motion passed unanimously.

Rep. Cusack thanked the commission members for their service.

ADJOURNMENT

There being no further business for discussion, Chair Brown adjourned the meeting at 2:52 p.m. The next meeting will take place on April 11, 2016 at 5:30 p.m. in the Dennis R. McGee Room at the Daytona Beach International Airport, 700 Catalina Drive, Daytona Beach, Florida.

Attachment to the minutes of the meeting of April 4, 2016

407-244-5670

HEATHER.RAMOS@GRAY-ROBINSON.COM

MEMORANDUM

TO: Volusia County Charter Review Commission
FROM: Heather M. Ramos
DATE: April 4, 2016
SUBJECT: VGMC Proposed Rules of Procedure

Status of Rules of Procedure

- On March 23, 2016, the VGMC Commission approved the March 30, 2016 version (requires Charter amendment) of the Rules in the Commission package beginning at page 27.
- On April 7, 2016, the VGMC POP Committee will review the March 31, 2016 version (does not require a Charter amendment) of the Rules in the Commission package beginning at page 50.
- On April 13, 2016, the VGMC Commission will review and take action on the March 31, 2016 version of the Rules.

Summary of the March 30, 2016 Version of the Rules – Charter Amendment Required

1. **Small scale comprehensive plan amendments and large-scale comprehensive plan amendments subject to a joint agreement or other similar type of interlocal agreement [Sec. 90-341]:**
 - Presumed consistent unless a unit of local government files an objection within 21 days.
 - Applicant jurisdiction still has duty to submit notice of amendment to VGMC and other jurisdictions.
 - In the case of an objection, VGMC reviews the application and prepares a staff report, and a hearing is held unless the objection is withdrawn.
2. **All other large scale comprehensive plan amendments [Sec. 90-35]:**
 - No change, except that staff must issue an RAI within 14 days after receipt of the completed application.
3. **Standing [Sec. 90-35(c)(4)]:**

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- Limited to “units of local government” defined as “county, municipalities and school board”.
 - Standing is automatic for adjacent jurisdictions and the “school board” [Secs. 90-31 & 90-35(c)(4)].
 - Non-adjacent units of local government have to prove standing.
4. **School Board Review [Sec. 90-37(d)]:**
 - Limited to whether adequate public schools can be timely planned and constructed to serve the proposed increase in student population, as set forth in Sec. 206 of the County Charter.
 5. **Notice of applications [Sec. 90-35(c)]:**
 - Deleted 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.
 6. **VGMC’s ability to call a public hearing [Sec. 90-38]:**
 - Only if an application is received by the commission and the plan element, amendment, or portion thereof is subject to a prior resolution adopted by the commission and it is inconsistent with the prior resolution.
 7. **Intervention [Sec. 90-38]:**
 - Process has been removed.
 8. **Commission member removal [Sec. 90-53]:**
 - Appointing governing body has the right to remove the appointed voting representative as set forth in the appointing body’s code of ordinances.

If the Charter amendment is not approved by a majority of the electors of the county, the resolution adopting the rules expires and is repealed without further actions by the Commission.

Summary of the March 31, 2016 Version of the Rules – No Charter Amendment Required

1. **Small scale comprehensive plan amendments and large-scale comprehensive plan amendments subject to a joint agreement or other similar type of interlocal agreement [Sec. 90-341]:**
 - Presumed consistent unless a unit of local government files an objection within 21 days.
 - Applicant jurisdiction still has duty to submit notice of amendment to VGMC and other jurisdictions.
 - Planning staff prepares a report based on the information provided in the application package (does not request additional information).
 - In the case of an objection, a hearing is held unless the objection is withdrawn.

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2. All other amendments to the rules remain the same as the March 30 version outlined above.

If this version of the rules are adopted by the VGMC Commission at the April 13 VGMC Commission meeting, this version will require approval by 2/3rds of the members of the County Council.