MEMORANDUM
FROM THE OFFICE OF THE CITY MANAGER

To: Mayor and City Commission

From: Pam Brangaccio, City Manager PDB

Re: **City Manager's Report – March 8, 2016**

Date: February 29, 2016

Wednesday, March 2 is the rescheduled date for the Marianne Clancy Park Groundbreaking. Also attached is the Notice of Intent to Issue Building Permit for the project which states that the building permit has been approved and is ready for issuance to the contractor.

Please find attached the draft of the Wetlands Ordinance amendments that were submitted to the County on Thursday, February 25th after a cumulative review/revisions from the Cities of New Smyrna Beach, Edgewater and Port Orange.

The CM, ACM and Maintenance Operations Director Faith Miller met with representatives of the Redman Consulting Group to review the Landfill Audit Report. The CM also met with the new Division Manager Ken DeForest and Susie Dolan of Waste Pro on Friday, February 26th to touch base on the current services to the City. An April Commission discussion on bidding out vs. contract renewal with Waste Pro is being scheduled.

Capital Improvement Project Manager Michelle Updike has requested a meeting with FDOT to discuss/review options for dealing with the issue of the fading/reduced visibility of the decorative crosswalks; installed at the intersection of North Causeway and Barracuda Boulevard.

The CM and Planning and Zoning Director Amye King met with representatives of Geosam who shared/discussed their project plans for 2016 for both Coastal Woods and Venetian Bay.

Please see the attached report from Scott E. Simpson, P.A. on the work of the city sub-committee looking at the VGMC current operating rules.

The CM, ACM, City Engineer Kyle Fegley and Leisure Services Director Nancy Maddox met to discuss a new sidewalk from 6th to 10th Street and Coast to Coast Trail.

A joint meeting of the City Commission and the Planning and Zoning board is anticipated by early May to present the results of the Planning and Zoning Board Workshop on February 25th. Planning Director Amye King will also present the recommendations on SR 44.

Economic Development/CRA Director Tony Otte reported that at the joint meeting of the Economic Development Advisory Board and the Neighborhood Council; the Neighborhood Council voted to endorse the Economic Development Plan; which will be presented to the City

Commission on 3/8/16. In March, the Economic Development Committees of Edgewater and NSB will be holding a Joint Meeting as well to continue with the regional SEV collaboration.

The purchase negotiations continued with Coronado Island Marina Village for the AOB property at a meeting held on Tuesday, March 1st.

Congressman DeSantis' Office will be reaching out to the Coast Guard regarding an update in response to the letters sent to them by the City asking for an amended bridge opening schedule.

Should you have any questions or need additional information or clarification, on any of the items presented in this report, please let me know.

City of New Smyrna Beach

February 26, 2016

Re: Marianne Clancy Park Project – NOTICE OF INTENT TO ISSUE BUILDING PERMIT
City of New Smyrna Beach, Florida

To whom it may concern:

The City Commission of New Smyrna Beach awarded the construction contract to Bean Construction for the Marianne Clancy Park project on February 9, 2016 at the City Commission Regular Meeting. Since the time of award, the City has hosted a pre-construction meeting with all key stakeholders to review project intent, expectations and next steps.

The awarded contractor and City have submitted all documentation for review and approval by the Chief Building Official for approval of a building permit, receiving confirmation today (2/26/16) that the permit has been approved and is ready for issuance to the contractor. This letter serves as overall notice of intent to finalize the issuance of the building permit in order to move forward with construction activities per the agreed to Notice to Proceed target date.

Sincerely,

Michelle Updike
Capital Projects Manager

cc: Pam Brangaccio, City Manager (email)
Khalid Resheidat, Asst. City Manager (email)
Mike Knotek, Chief Building Official (email)
Kyle Fegley, City Engineer (email)

ORDINANCE 2016 - TBD

AN ORDINANCE OF THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE COUNTY OF VOLUSIA, CHAPTER 50, ENVIRONMENT, ARTICLE III, MINIMUM STANDARDS FOR ENVIRONMENTAL PROTECTION, DIVISION 5, WETLANDS, BY PROVIDING FOR MINIMUM STANDARDS FOR WETLAND PROTECTION; BY STRIKING AND REPLACING DIVISION 5, WETLANDS, IN ITS ENTIRETY; BY PROVIDING FOR INCLUSION IN CODE; BY PROVIDING FOR SEVERABILITY; BY PROVIDING FOR CONFLICTING ORDINANCES; AND BY PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA AS FOLLOWS:

(Words in ~~strike through~~ type are deletions; words in <u>underscore</u> type are additions.)

SECTION I. Chapter 50, *Environment*, Article III, *Minimum Standards for Environmental Protection*, Division 5, *Wetlands*, of the Code of Ordinances, County of Volusia, is hereby struck in its entirety and replaced as follows:

Chapter 50

ENVIRONMENT

. . .

Article III. Minimum Standards for Environmental Protection

. . .

<u>Division 5. Wetlands</u>

DRAFT

Sec. 50-201. Definitions. For the purpose of this division, all words shall be defined as provided in section 50-71, and shall be consistent with F.S. ch. 373.

Sec. 50-202. Findings. The county council finds the following facts to be true and a sufficient basis, either individually or in combination, to justify the restrictions which are set forth in this division:

(a) Wetlands and buffers serve important functions in the hydrologic cycle and ecological system.

(b) Riverine wetlands and adjacent floodplain lands provide natural storage and conveyance of floodwaters.

(c) Coastal wetlands and inland wetlands adjoining larger lakes and rivers act as barriers to waves and erosion.

(d) Inland wetlands provide temporary storage of surface waters during times of flood, thereby ~~regulating~~ attenuating flood elevations and the timing, velocity and rate of flood discharges.

(e) Wetlands temporarily store flood flows and reduce the velocity of floodwaters, thus reducing erosion and facilitating the settling of suspended sediment. Wetland vegetation filters and detains sediment, organic matter and chemicals which would otherwise enter lakes and streams.

(f) Wetlands and buffers may protect water bodies by providing assimilation of nutrients, uptake of other natural and manmade pollutants, and housing microorganisms which dissolve nutrients and break down organic matter.

DRAFT

(g) Coastal wetlands are important sources of nutrients for fish and shellfish, and as spawning grounds. Inland wetlands adjacent to rivers, streams and lakes are important to freshwater fisheries as spawning grounds.

(h) Coastal wetlands and inland wetlands provide essential breeding and predator escape habitats for many mammals, birds, reptiles, amphibians, fishes and invertebrates.

(i) Wetlands and buffers provide essential habitat for many rare, endangered and threatened species.

(j) Wetlands and their adjacent water bodies provide many recreational opportunities, including, but not limited to, fishing, hunting, camping, photography, boating and nature observation.

(k) Wetlands, especially those in karst terrain, contribute to surface water storage and may contribute to groundwater recharge.

(l) The loss of wetland and buffer function is contrary to the public health, safety and welfare.

(m) Even though current federal, state and regional regulations protect wetland and buffer function, local governments have the authority to adopt regulations affording additional protection.

Sec. 50-203. Purpose and intent. It is the purpose and intent of this division to provide for the protection, maintenance, enhancement and utilization of wetlands and buffers within the county, recognizing the rights of individual property owners to use their lands in a reasonable manner, as well as the rights of all citizens to protection and purity of the waters of the county and their associated wetland ecosystems. It is the policy

DRAFT

of the county to minimize the disturbance of wetlands and buffers in the county and to encourage their use only for the purposes which are compatible with their natural functions and environmental benefits.

Sec. 50-204. Jurisdiction. All wetlands and buffers within the unincorporated County and those specifically noted herein as surviving annexation by local governments are subject to the jurisdiction of this division.

Sec. 50-205. Enforcement; appeals; penalties.

(a) It is hereby unlawful for any person to engage in any activity which will remove, fill, drain, dredge, clear, burn, destroy or alter any wetland or buffer or the native vegetation therein without obtaining a permit from the applicable local government, in compliance with this division.

(b) The local government shall provide procedures to implement this division, including application and permitting procedures.

(c) The local government shall provide for enforcement of this division, including enforcement of conditions in a federal, state, regional or local permit.

(d) The local government shall provide an internal appeal process for all determinations made pursuant to this division, except appeals pursuant to sections 50-208(d) ~~or 50-211(e)~~ shall[881] be reserved to the county.

(e) Violations of this division are punishable:

(1) as provided in section 1-7; or

(2) as provided by a municipality by ordinance; or

(3) as otherwise permitted by law.

Sec. 50-206. Adoption of standards by municipalities.

(a) By January 1, 2017, the governing body of each municipality in the county

DRAFT

~~24~~23 shall amend its municipal code to include standards in compliance with this division.

Alternatively, prior to this date, a municipality may authorize the county to enforce this division and chapter 72, article III, division 11[BB2], within said municipality.

(b) If a municipality does not comply with subsection (a) of this section, then the county may enforce this division and chapter 72, article III, division 11, within said municipality[DL3].

Sec. 50-207. Exemptions. A local government may adopt any of the exemptions provided in this section. Such exemptions shall apply in all review areas. No additional exemptions shall be adopted by a local government unless approved by the county council. Exemptions:

(a) Nonmechanical clearing of wetland or buffer vegetation from an area of ~~five-hundred (500[BB4])~~two-thousand (2000) square feet or less, not to exceed twenty-five (25) feet in width, for access to open water; provided that the vegetation is removed from the wetland or buffer and disposed of on a suitable upland site.

(b) Minor maintenance or emergency repair to existing structures or improved areas.[BB5]

(c) Clearing and construction of walking trails, including trails constructed over wetlands using bridge methods and timber catwalks ~~for direct access to water bodies~~; provided no fill is used, and such walking trail or timber catwalk is ~~six (6[BB6])~~twelve (12) feet wide, or less.

(d) Overhead utility crossings; provided, however, associated access roads shall be subject to the requirements of this division.

~~18~~19 (e) Underground public utilities constructed in the best interest of the public.

~~19~~20 (ef) Maintenance, together with incidental dredge and fill activities, in ditches, ~~20~~21 retention and detention areas, public road and other rights-of-way, and other related 1 drainage systems.

DRAFT

(fg) Bona fide mosquito control activities permitted by federal, state, regional, or local agencies.

(gh) Development within a wetland one-half (1/2) acre or smaller; provided, however, if the entire wetland exceeds one-half (1/2) acre, whether on one or more lots, then the entire wetland shall be subject to the requirements of this division.

(hi) Development within an artificial wetland created as part of a manmade treatment system.

(ij) Bona fide agricultural activities that follow best management practices adopted by the Florida Department of Agriculture and Consumer Services for the specific activity.

(jk) Bona fide silvicultural harvesting activities that follow the best management practices as outlined in the publication titled, "Silviculture Best Management Practices Manual," Florida Department of Agriculture and Consumer Services, Division of Forestry, most recent edition. The use of the "Management Guidelines for Forested Wetlands in Florida," Florida Department of Agriculture and Consumer Services, shall be encouraged.

(kl) Fences, except privacy fences or walls, provided that no fill is used.

(lm) Federal, state, regional or local public road projects, provided that the work is performed by or for a government entity and all required permits are obtained from applicable federal, state, regional or local agencies.

(mn) Land management activities performed by or for a government entity on publicly owned lands designated for conservation purposes; provided, however, that

DRAFT

construction or installation of buildings, hardscape or related infrastructure shall be subject to the requirements of this division.

(~~n~~o) Development, where a federal, state, regional, or local agency completed dredge and fill, or a wetland permit application was tendered to said agency on or before the adoption of a local government's implementing ordinance.

~~5~~6 (p) City Mitigation Bank lands.

~~6~~7 **Sec. 50-208. Official county wetland review map.**

~~7~~8 (a) The county is divided into priority, intermediate and basic review areas, as ~~8~~9 depicted on the official county wetland review map dated , and ~~9~~10 incorporated in this code by reference. Amendments to the official county wetland ~~10~~11 review map shall be made only by the county and in compliance with this section. The ~~11~~12 official county wetland review map and any amendments shall be maintained in digital ~~12~~13 format by the county at the Volusia County Administration Building, 123 West Indiana ~~13~~14 Avenue, DeLand, Florida, 32720 and publicly available via the County's website.

~~14~~15 (b) The Volusia County Environmental Management Division may ~~15~~16 administratively reclassify a parcel of land, or portion thereof, from one review area to ~~16~~17 another review area for the following reasons:

~~17~~18 (1) Mapping error, if correcting such error reclassifies a parcel of land, ~~18~~19 or portion thereof, to a lower minimum standard of review; or

~~19~~20 (2) Acquisition of a parcel of land, or portion thereof, by the county; ~~20~~21 or

~~21~~22 (3) Annexation of a parcel of land, or portion thereof, by a ~~22~~23 municipality; provided, however, that priority review areas shall survive annexation.

23

(c) A property owner may petition the Volusia County Environmental Management Division to reclassify a parcel of land, or portion thereof, from one review area to another review area for the following reasons:

(1) Mapping error; or

(2) The parcel or land, or portion thereof, is split between two review areas.

(d) Appeals of determinations of the Volusia County Environmental Management Division made pursuant to this section shall be to the Volusia County Development Review Committee. The Volusia County Development Review Committee may uphold, modify, or reverse the determination of the Volusia County Environmental Management Division. Appeals of determinations of the Volusia County Development Review Committee made pursuant to this section shall be made pursuant to section 72-502(g).

Sec. 50-209. Review areas described.

(a) Priority review areas are generally described as lands within the county's Natural Resource Management Area or Environmental Core Overlay, lands designated as Outstanding Florida Waters, or lands adjacent to other county priority waterways, as depicted on the official county wetland review map.

(b) Intermediate review areas are generally described as lands within the unincorporated county, not located in priority review areas or basic review areas, as depicted on the official county wetland review map.

- (1) Intermediate review areas become reclassified as basic review areas for the purposes of this Division upon annexation by a local government.

DRAFT

(c) Basic review areas are generally described as existing urban areas and future infill areas within the unincorporated and incorporated county, as depicted on the official county wetland review map.

Sec. 50-210. Wetland delineation and assessment.

(a) Wetlands shall be delineated pursuant to F.S. §373.421 and Rule 62-340, Florida Administrative Code.

(b) If an undeveloped area has been cleared, the wetland boundary may be determined by a study of soils, aerial mapping, photography, hydrology and other historical information.

(c) If a permit applicant proposes to impact a wetland, then wetland quality and function shall be assessed using a qualitative analysis prepared by a permit applicant and currently accepted by the state for wetland permitting purposes, including, but not limited to, the Uniform Mitigation Assessment Method (UMAM).

(d) If a permit applicant proposes to impact a wetland, then wetland impacts and calculations for mitigation shall be assessed using a qualitative analysis prepared by a permit applicant and currently accepted by the state for wetland permitting purposes, including but not limited to, the Uniform Mitigation Assessment Method (UMAM).

Sec. 50-211. Buffer location and assessment.

(a) The buffer in priority review areas shall be no less than ~~fifty~~ twenty-five (~~50~~25) feet at all points.

(b) The buffer in intermediate review areas shall be no less than ~~twenty-five~~fifteen (~~25~~15) feet ~~at all points~~perpendicular to the wetland line.

(c) There is no minimum required buffer for basic review areas unless such is required by local, regional, state, or federal requirements.

DRAFT

(ed) Notwithstanding subsections (a) and (b) of this section, a property owner within unincorporated Volusia County may petition the Volusia County Environmental Management Division to reduce the size of any buffer to remove areas of low or no quality, or low or no function, based on the qualitative analysis required by subsection (df) of this section. Appeals of determinations of the Volusia County Environmental Management Division made pursuant to this section shall be to the Volusia County Development Review Committee. The Volusia County Development Review Committee may uphold, modify, or reverse the determination of the Volusia County Environmental Management Division. Appeals of determinations of the Volusia County Development Review Committee made pursuant to this section shall be made pursuant to section 72-502(g).

- (e) Notwithstanding subsections (a) and (b) of this section, a property owner within the incorporated Citites may petition the various responsible departments and/or local governing bodies to reduce the size of any buffer to remove areas of low or no quality, or low or no function basedon the qualitative analysis required by subsection (f) of this section. Appeals of determinations made by the Cities will remain within the governing bodies of the Cities and will not be directed to Volusia County Council or any County department.

(f) If a permit applicant proposes to impact a buffer, or reduce a buffer, then buffer quality and function shall be assessed using a qualitative analysis prepared by a permit applicant and based upon, or currently accepted by, the state or local government for wetland permitting purposes, including, but not limited to, the Uniform Mitigation Assessment Method (UMAM).

(eg) If a permit applicant proposes to impact a buffer, then buffer impacts and calculations for mitigation shall be assessed using a qualitative analysis prepared by a

DRAFT

permit applicant and based upon, or currently accepted by, the state or local government for wetland permitting purposes, including, but not limited to, the Uniform Mitigation Assessment Method (UMAM).

Sec. 50-212. Minimum standards for impacts to a wetland.

(a) If a wetland in a priority review area is proposed to be impacted by development, then the following minimum standards shall apply:

(1) Development shall avoid the wetland and minimize impacts to the wetland, to the extent practicable; and

(2) Local governments shall accept mitigation for an impact to a wetland required by a state issued permit; and

(3) Local governments may require additional mitigation for an impact to a wetland, if such impact is not already mitigated through a state issued permit.

(b) If a wetland in an intermediate review area is proposed to be impacted by development, then the following minimum standards shall apply:

(1) Local governments shall accept mitigation for an impact to a wetland required by a state issued permit; and

(2) Local governments may require additional mitigation for an impact to a wetland assessed as medium to high quality and medium to high function pursuant to the qualitative assessment required by section 50-210(c), if such impact is not already mitigated through a state issued permit.

Sec. 50-213. Minimum standards for impacts to a buffer.

(a) If a buffer in a priority review area is proposed to be impacted by development, then the following minimum standards shall apply:

(1) Development shall avoid the buffer and minimize impacts to the buffer, to the extent practicable; and

(2) Local governments shall accept mitigation for an impact to a buffer required by a state issued permit; and

(3) Local governments may require additional mitigation for an impact to a buffer, if such impact is not already mitigated through a state issued permit; and

DRAFT

(4) Local governments shall not require any mitigation for an impact to a buffer assessed as non-functioning pursuant to the qualitative assessment required by section 50-211(d).

(b) If a buffer in an intermediate review area is proposed to be impacted by development, then the following minimum standards shall apply:

(1) Local governments shall accept mitigation for an impact to a buffer required by a state issued permit; and

(2) Local governments shall not require any mitigation for an impact to a buffer assessed as non-functioning pursuant to the qualitative assessment required by section 50-211(d).

Secs. 50-214 – 50-240. Reserved.

SECTION II. AUTHORIZING INCLUSION IN CODE. The provisions of this ordinance shall be included and incorporated into the Code of Ordinances, County of Volusia, as additions or amendments thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the code.

SECTION III. SEVERABILITY. Should any word, phrase, sentence, subsection or section be held by a court of competent jurisdiction to be illegal, void, unenforceable, or unconstitutional, then that word, phrase, sentence, subsection or section so held shall be severed from this ordinance and all other words, phrases, sentences, subsections, or sections shall remain in full force and effect.

SECTION IV. CONFLICTING ORDINANCES. All ordinances, or parts thereof, in conflict herewith are, to the extent of such conflict, repealed.

DRAFT

SECTION V. EFFECTIVE DATE. This ordinance shall take effect upon electronic filing of a certified copy with the Department of State.

ADOPTED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, IN OPEN MEETING DULY ASSEMBLED IN THE COUNTY COUNCIL CHAMBERS AT THE THOMAS C. KELLY ADMINISTRATION CENTER, 123 WEST INDIANA AVENUE, DELAND, FLORIDA THIS _____ DAY OF _____, A.D. 2016.

COUNTY COUNCIL
COUNTY OF VOLUSIA, FLORIDA

ATTEST:

_____
James T. Dinneen, County Manager

_____
Jason P. Davis, County Chair

DRAFT

Comments:

1. Pursuant to Section 50-205 and Section 50-206, the Cities are required to adopt the county wetland standards and enforce them. However Section 50-206 does provide that if a municipality does not adopt the wetland requirements then the County can enforce these requirements within the municipality. The County Charter does grant the County the authority to adopt environmental regulations that apply county-wide, including within the municipalities, and that municipalities can adopt more stringent requirements. However I am not sure that the Charter grants the County the power to require municipalities to adopt and enforce the county's regulations. I know there is a provision that the County can enforce its regulation within a municipality, but I think the intent is for the municipalities to adopt and enforce these requirements and that provision was not intended to make the adoption and enforcement of the County's regulation optional by the municipalities. That provision is probably intended to deal with a situation where the County disagrees with the City's interpretation and application of the County's regulations.
2. The enforcement of wetland regulations, including requiring mitigation, can be the subject of litigation and due to a recent US Supreme Court Opinion, can result in takings claims. Is there a reason why the County does not just adopt the wetland requirements and enforce them itself instead of requiring us to adopt and enforce their regulations? Is there some benefit to the city adopting and enforcing the county's wetland mitigation requirements?
3. There are many components of the County's proposed rule changes that we support, in fact the majority of the ordinance is acceptable with emphasis on avoidance and minimization of wetlands and evaluating wetland impacts using the Uniform Mitigation Assessment Method, exemption provisions, etc., but there are a few conditions that need to be further reviewed to correlate with City objectives and not necessarily the unincorporated areas that have distinctly different habits and land management objectives.
4. The minimum buffer width of 25' is not compliant with St. Johns River Water Management District guidelines and creates an unnecessary burden on future developments for compatibility as wetlands being non-linear in nature provide inherent challenges that can sufficiently addressed using an average width in lieu of a steadfast off-set and still provide adequate protection via additional plantings or fencing. This criteria is already within the District's rules based upon their biologists/environmental scientists application and find no detriment to the wetland as a result of the reduced buffer widths (min. 15' perpendicular to the wetland line). Furthermore why have different criteria for buffer requirements than the District, making the design and permitting process more cumbersome and certainly not permitting friendly (i.e. just adopt FAC 62-330 rules)?
5. The buffer areas for priority wetlands being 50' is fine in the unincorporated areas, but within City limits this can create issues with zoning setbacks for residential and commercial properties. Although quantitative analysis would suggest the area is prone to significant wetland habitat/vegetation and possibly endangered/protected species, requiring such an extended buffer distance carte blanche throughout the County does not seem reasonable and should be reduced to a more manageable width possibly being the minimum 25' (does not apply to intermediate or basic wetlands).
6. When will the Ordinance be effective? The Cities have an array of significant PUD's, site plans, preliminary plats and major capital improvement projects in various design stages that simply cannot be redesigned in mid-stream due to the extraneous planning and design efforts as well as Planning & Zoning Board approvals that would have taken place prior to adoption of the

wetland rules that subsequently would require re-evaluating all these projects. This is an undue burden on the Cities and various boards that can be avoided if we simply provide a list of such planned improvements to County staff prior to County Council approval that would be exempt from the new guidelines.

7. It should be stated in the ordinance that projects are not required to get County Wetland Alteration permits ~~both~~ if a SJRWMD, and/or other applicable agency, permit is obtained ~~and County Wetland Alteration permits~~. This burden of double permitting will severely hamper economic development.
8. It should also be stated within the ordinance that the County will not require review of site plans, plats, etc. within municipalities once said ordinance is adopted.
9. Port Orange requests Volusia County exempt the City's Mitigation Bank lands from the Ordinance since there are already substantial strings attached for the Operation and Maintenance of a Mitigation Bank in the Bank's Permit from the FDEP. Please align the Draft Ordinance and the Draft Map with the exemption of City's Mitigation Bank.
10. Consider adding underground and subaqueous utilities as exemptions under Section 50-207. The ordinance makes multiple references to overhead utilities; specifically, Sec. 50-207 (d) provides for an exemption for those overhead utility crossings. However, most all coastal communities, Daytona and Port Orange in particular, have subaqueous crossings of major utilities crossing the Intracoastal Waterway and Spruce Creek. In some areas, the cable crossings navigate under mangrove areas. These cable crossings are in select locations and are critical to maintaining infrastructure to the barrier island and the north-south connections.

~~1.~~11.

SCOTT E. SIMPSON, P.A.
of
KOREY, SWEET, McKINNON & SIMPSON
Attorneys and Counselors at Law

Suite A, Granada Oaks Professional Building
595 West Granada Boulevard
Ormond Beach, Florida 32174
(386) 677-3431-Telephone
(386) 673-0748-Telefax
Website: ormondlegal.com
Email: scott.scottsimpsonlaw@gmail.com

To: Joe Yarbrough
From: Scott E. Simpson
Date: February 16, 2016
Re: VGMC Summary Points

****MEMORANDUM****

After the concerns of the cities were presented to the Charter Review Committee, the VGMC indicated that these issues could be addressed by rule changes. Deanie Lowe was tasked with meeting with representatives of the cities and the Sub-Committee of the VGMC to determined if rule changes could be agreed upon to address the concerns raised by the cities. Below I will outline the issues that the cities have with how the VGMC currently operates, the proposed rule changes from the VGMC Sub-Committee to address the cities concerns and the cities response to these proposed changes. Ultimately the VGMC Sub-Committee will make a recommendation to the full VGMC board regarding the proposed rule changes. The full VGMC board must approve and recommend the rule changes to the County, which must be approved by the County Council with the adoption of an ordinance.

OBJECTIONS TO CURRENT VGMC OPERATING PROCEDURE

-VGMC staff reviews every comprehensive plan amendment.

-Any third party can file an objection and cause there to be a VGMC hearing.

-Even if the party objecting is determined not to have standing, the VGMC still conducts the hearing.

-Burden of proof is on the local governmental entity adopting the plan amendment.

SUB-COMMITTEE'S PROPOSED REVISIONS

-Small-scale amendments and amendments for property recently annexed and covered by a joint planning agreement would not be reviewed unless an objection is filed.

-Large-scale comprehensive plan amendments would still be reviewed by VGMC staff, who could request a hearing before the VGMC.

-The only parties that have standing are local governmental entities, including the School Board.

-Burden of proof would be neutral as neither party would have the burden of proof. The VGMC would review all the evidence and determine if there is consistency by a preponderance of the evidence presented.

CITIES RESPONSE TO POP COMMITTEE'S PROPOSED RULE CHANGES

-No basis for treating small-scale amendment and large-scale amendments differently. The VGMC should be a conflict resolution board and therefore should not review any comprehensive plan amendment until an objection is filed.

-School Board does not have a comprehensive plan therefore there is no reason for the School Board to have standing. Also there is a Volusia County Charter provision and an interlocal agreement requiring school concurrency for new residential development. Therefore, the School Board's concerns are reviewed by a separate process.

-If the School Board is going to have standing as a local governmental entity before the VGMC, the School Board should only review amendments that increase residential density and only object to issues that impact school concurrency. Also, the School Board should be bound by the VGMC's determination as to school concurrency so an applicant does not have to go through the School Board for another review.

-The objection filed by a local governmental entity should establish the scope of review by the VGMC. Only the issues raised in the objection shall be reviewed and ruled upon by the VGMC.

-Appointing local governmental entities should have the right to remove an appointee with or without cause.

-The proposed amendment regarding the burden of proof does not make any real change. There has to be a preponderance of evidence of consistency and the objecting party will not present any evidence of consistency. Therefore the adopting local government must present the evidence of consistency and therefore bears the burden.

-VGMC should recommend and support a County Charter amendment to implement the agreed upon rule changes if it is determined that a Charter amendment is necessary.

-Another option that has been discussed is to provide local governments the option to enter into an interlocal agreement with all adjacent jurisdictions to provide an alternate procedure for consistency review and dispute resolution process. If such an interlocal agreement was executed by all necessary parties, the local government would be exempt from VGMC jurisdiction. This would require an amendment to the County Charter to accomplish.

In summary, the proposed amendments to the rules by the POP Committee do address many of the issues, but not all. Even if the VGMC is willing to amend the rules as we have requested, I am not confident that the revised rules would not violate the County Charter. The Charter requires the VGMC to review every amendment that is proposed. I am concerned that limiting the review to only when objections are filed would mean that very few amendments would actually be reviewed even though the Charter requires all amendments be reviewed. It may be that a Charter amendment is still necessary to implement the agreed upon rule changes.