

RESOLUTION NO. 535-09

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA RECOMMENDING CERTAIN CHANGES TO THE RULES OF PROCEDURE FOR THE VOLUSIA GROWTH MANAGEMENT COMMISSION (VGMC) AS SET FORTH HEREIN; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Volusia Growth Management Commission (VGMC) was created in 1986 by referendum approving an amendment to the Volusia County Charter.

WHEREAS, the Volusia County Charter provides that the purpose of the VGMC is to determine the consistency of the municipalities' and the County's comprehensive plans.

WHEREAS, the Ordinance adopted in 1987 by the Volusia County Council establishing the rules of procedure for the VGMC states that the main purpose of the VGMC is to provide an effective means for coordinating the plans of municipalities and the County by providing a forum for the local governments to cooperate with each other in coordinating the provisions of their respective comprehensive plans.

WHEREAS, based on the language of the County Charter and the County Code of Ordinances it is clear that the VGMC was intended to be a forum through which local governments could try to resolve claims of inconsistency between comprehensive plans and if no resolution can be reached, the VGMC would make a final determination as to consistency.

WHEREAS, local governments have the statutory right pursuant to the Growth Management Act to determine the future growth for their respective jurisdictions through the adoption and amending of their comprehensive plans, which the law views as the local government exercising its legislative authority. Legislative action is not overturned by a Court unless the local government clearly abuses its discretion.

WHEREAS, under the existing VGMC rules, the adopting local government has the burden of proving that the comprehensive plan amendment is consistent with the comprehensive plans of adjacent local governments thereby shifting the burden of proof that exists in a court of law. Furthermore “consistency” is defined as compatible with and in furtherance of adjacent comprehensive plans. A plan amendment can be consistent with an adjacent local governments’ comprehensive plan even though it does not further the goals and objectives of said comprehensive plans.

WHEREAS, the City is concerned that the VGMC is exceeding the purpose for which the VGMC was created by: (1) reviewing comprehensive plan amendments when no dispute as to consistency exists between local governmental entities; (2) not limiting its review to issues that deal with the consistency between the proposed comprehensive plan amendment and the adjacent local governments’ comprehensive plans; (3) placing conditions on findings of consistency which are basically site planning criteria, such as building height, density and setback; (4) placing conditions on findings of consistency for comprehensive plans and plan amendments requiring future VGMC review of rezonings and other development orders, which is not within the purview of

VGMC's charter role; (5) granting party status to individuals who are not local governmental entities nor the owner of the property that the amendment to the future land use map is directly applicable.

WHEREAS, if allowed to continue to exceed the purpose for which it was created, the City is concerned that the VGMC could effectively become a county-wide planning board, thereby divesting local governments of their planning authority as set forth in the Growth Management Act.

NOW, THEREFORE, BE IT RESOLVED AND ENACTED BY THE CITY COUNCIL OF THE CITY OF ORANGE CITY, FLORIDA:

Section 1. The above WHEREAS are hereby incorporated as if specifically asserted herein.

Section 2. To assure that the VGMC operates within the parameters of its original purpose, there are certain fundamental principles that should be adhered to, which are:

(1) The VGMC's jurisdiction should be limited to determining whether a comprehensive plan amendment is consistent with adjacent jurisdictions' comprehensive plans when the adopting and objecting local governments are unable to resolve the dispute.

(2) A plan amendment should be presumed consistent and the objecting local government has the burden of proving, by clear and convincing evidence, that the plan amendment is inconsistent.

(3) Only a local governmental entity has the authority to file an objection for lack of consistency thereby triggering the VGMC involvement. The VGMC should not review any comprehensive plan amendment until an objection is filed.

(4) The timeframes within which the VGMC operates must be consistent with the timeframes set forth in the Growth Management Act for the adoption of comprehensive plan amendments.

(5) Only the applicant jurisdiction, adjacent jurisdictions and the property owner (or contract purchaser of subject property) that the future land use map amendment is applicable shall be granted party status in a hearing before the VGMC and the right to appeal VGMC decisions. All other individuals shall be allowed to participate pursuant to the Sunshine Law without the right of appeal.

(6) The members appointed to the VGMC should not cause a violation of the dual office holding and should serve at the pleasure of the appointing local government.

(7) A plan amendment should only be found inconsistent with an adjacent local government's comprehensive plan if the amendment results in the adjacent local government being out of concurrency or compliance with its comprehensive plan.

(8) VGMC should not evaluate or make determinations on proposed rezonings and other proposed development permits as defined in Section 163.3164(7), Florida Statutes and should not impose as a condition of issuance of a certificate of consistency on a proposed comprehensive plan or comprehensive plan amendment the requirement that a subsequent proposed rezoning or other proposed development permit be evaluated or reviewed by the VGMC

(9) VGMC should not evaluate or make consistency determinations on whether a proposed comprehensive plan amendment is consistent with the comprehensive plan of the applicant jurisdiction, since such is the role of the governing body of the applicant jurisdiction.

Section 3. The City Council of the City of Orange City, Florida hereby recommends that Volusia County Council adopt the attached revised rules of procedure for the VGMC.

Section 4. If any section, subsection, sentence, clause, phrase, or portion of this Resolution, or application hereof, is for any reason held invalid or unconstitutional by any Court, such portion or application shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions or application hereof.

Section 5. That all resolutions made in conflict with this Resolution are hereby repealed.

Section 6. That this resolution shall take effect immediately upon its adoption by the City Council of the City of Orange City, Florida.

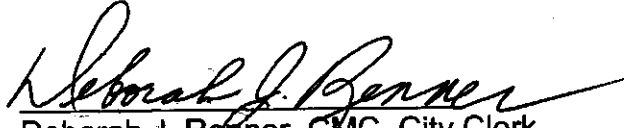
ROLL CALL VOTE AS FOLLOWS (Resolution No. 535-09):

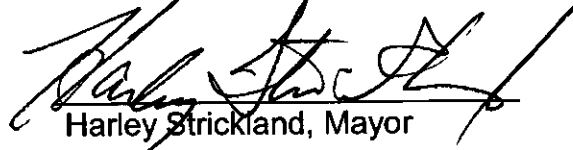
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|--------------------------|------------|------------------------------|------------|
| Jim Mahoney | <u>yes</u> | Donald C. Sherrill | <u>yes</u> |
| Tom Laputka | <u>yes</u> | Tom Abraham | <u>yes</u> |
| Vacant | <u>—</u> | Jeff H. Allebach, Vice Mayor | <u>yes</u> |
| Harley Strickland, Mayor | <u>yes</u> | | |

ADOPTED THIS 10th DAY OF March, 2009.


ATTEST:

AUTHENTICATED:


Deborah J. Renner, CMC, City Clerk


Harley Strickland, Mayor

This Resolution approved
as to form and legal sufficiency:


William Reischmann, City Attorney