



***Property Rights Element - Comprehensive Plan Text Amendment***  
**Staff Report**  
**Planning, Zoning, and Design Board**

**CASE NAME:** Property Rights Element

**CASE NUMBER:** CPA2022-E001

**PZDB HEARING DATE:** June 14, 2022

**SUMMARY OF REQUEST**

Florida Statute §163.3177(6)(i), requires that “each local government shall include in its comprehensive plan a property rights element to ensure that private property rights are considered in local decision making.”

To comply with this requirement, staff has prepared a Comprehensive Plan Text Amendment. This amendment is reviewed through an Expedited Review process that requires a recommendation from PZDB (the Local Planning Agency) and a decision by the Village Council at two meetings: transmittal and adoption hearings.

**STAFF RECOMMENDATION**

Staff recommends approval of the Comprehensive Plan Text Amendment to include a property rights element, and to transmit it to the state.

**GENERAL INFORMATION**

**APPLICANT**

Community Development – Mary Gibbs, FAICP

**COMPREHENSIVE PLAN TEXT AMENDMENT**

**Background**

The Florida Legislature approved House Bill 59 in June 2021, amending the Community Planning Act to require each local government to “include in its comprehensive plan a property rights element.” The house bill creates §163.3177(6)(i) which requires each local government have a property rights element to ensure private property rights are considered in the local decision-making process. This element must be adopted prior to the earlier of the adoption of any other proposed plan amendments initiated after July 21, 2021, or the date of the next scheduled evaluation and appraisal of the comprehensive plan.

## **Comprehensive Plan**

A local government may adopt its own property rights language, consistent with the requirements of the statute. A variety of adjacent and nearby communities have recently adopted the statutory language, including the City Bonita Springs, the City of Cape Coral, and Lee County.

A “Model” Property Rights Element was developed by 1000 Friends of Florida in compliance with the requirements of the statute. The model code language contained additional components of “property rights” beyond the minimum required by the statute, with additional language that discusses transparency in the review process, and due process rights that include the right to receive notice, the right to be heard, the right to present or rebut evidence, and the right to be informed of the facts upon which the local government bases its decision. The Village of Estero processes require notification, transparency, and public hearings, requirements which are similar in many aspects to the model code.

Staff recommends consideration of a policy that meets the required statutory language (as shown below with policies A-D) and includes two additional policies regarding the notification of, and participation in, public hearings for land development applications (PRE – 1.2.1 A and B) consistent with the Village’s existing processes. This identifies the right to develop property, as well as the right of affected property owners to take part in the review process for development proposals.

The proposed comprehensive plan language is underlined below:

### **PROPERTY RIGHTS ELEMENT (PRE - 1)**

#### **PRE – 1.1**

**Goal: In accordance with §163.3177(6)(i), Florida Statutes, property rights will be considered in local decision making.**

#### **Policies PRE – 1.1.1**

- A. **The right of property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.**
- B. **The right of a property owner to use, maintain, develop, and improve his or her property for personal use or for the use of any other person.**
- C. **The right of the property owner to privacy and to exclude others from the property to protect the owner’s possessions and property, subject to state law and local ordinances.**
- D. **The right of property owner to dispose of his or her property through sale or gift.**

#### **PRE - 1.2**

**Goal: Respect people’s rights to participate in decisions that affect their lives and property.**

#### **Policies PRE - 1.2.1**

- A. **The right of property owners to be notified of land development applications that may impact their property.**
- B. **The right of affected persons to participate in the public hearing process on land development applications.**

The comprehensive plan contains existing language regarding public participation, which is one of the components of property rights and is directly related to policies PRE - 1.2.1 A and B, as proposed.

“Public Participation has been a strength of Estero, even before its incorporation. The emphasis remains on the importance of an inclusive, informative community planning process.”

**ATTACHMENTS**

A. Florida Statute §163.3177(6)(i)