

INDIAN RIVER COUNTY, FLORIDA

M E M O R A N D U M

TO: Jason E. Brown; County Administrator

THROUGH: Phillip J. Matson, AICP; Community Development Director

FROM: John Stoll; Chief Long Range Planning

DATE: December 21, 2021

SUBJECT: TRANSMITTAL HEARING: County Initiated Request to Amend the Text of the County's Comprehensive Plan to add a new Chapter 13 Property Rights Element.

It is requested that the data herein presented be given formal consideration by the Board of County Commissioners at its regular meeting of January 18, 2022.

DESCRIPTION AND CONDITIONS

This is a county-initiated request to approve a Comprehensive Plan Text Amendment, creating the Property Rights Element, including Goals, Objectives and Policies. During the 2021, Florida Legislative Session, Ch. 2021-195, Fla. Laws, was passed providing for amendments to Section 163.3177, Florida Statute (F.S.) requiring local governments to include a Property Rights Element in their comprehensive plan; providing a statement of rights which a local government may use; requiring a local government to adopt a Property Rights Element upon its next proposed plan amendment initiated after July 1, 2021. The legislation also limits the ability to adopt any other Comprehensive Plan amendments initiated after July 1, 2021 until the Property Rights Element is adopted.

Comprehensive Plan Amendment Review Procedures

The procedures for reviewing a comprehensive plan amendment involve several steps. First, the Planning and Zoning Commission (PZC), as the Local Planning Agency, conducts a public hearing to review the request. At the public hearing, the PZC makes a recommendation to the Board of County Commissioners (Board) to approve, approve with modifications, or deny the requested amendment.

Following PZC action, the Board conducts two public hearings. The first of those hearings is for a preliminary decision on the amendment request. At that hearing, the Board determines whether or not the amendment warrants transmittal to state and regional review agencies for their consideration.

If the amendment is transmitted, state and regional review agencies review the amendment as it pertains to each agency's area of focus. Review agencies then send their comments directly to the county and the State Land Planning Agency. Subsequent to staff and/or the applicant addressing any issues raised in the review agency comments, a second and final Board public hearing is conducted. If the Board approves the request at the final hearing, then the approved amendment is submitted to the State Land Planning Agency and to the other review agencies. The amendment becomes effective 31 days after the State Land Planning Agency determines that the approved amendment submittal is complete, unless a challenge is filed by an affected party.

The subject public hearing is the second step in the Comprehensive Plan amendment process. At this time, the BCC must decide whether or not to transmit the proposed amendment to state and regional review agencies.

ANALYSIS

This proposed amendment will add a new Element to the Comprehensive Plan. House Bill 59 states that a local government may adopt the statement of rights, included below, as set forth in Chapter 163. Local Governments may also adopt their own Property Rights Element, so long as the element does not conflict with the statement of rights list below. The proposed Property Rights Element includes no changes from the language included in Florida Statutes, as stated below:

The following rights be considered in local decision making:

1. The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.
2. 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, subject to state law and local ordinances.
3. The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.
4. The right of a property owner to dispose of his or her property through sale or gift.

Consistency with Comprehensive Plan

Comprehensive Plan amendment requests are reviewed for consistency with all applicable policies of the comprehensive plan. As per section 800.07(1) of the county code, the "Comprehensive Plan may only be amended in such a way as to preserve the internal consistency of the plan.

For a proposed amendment to be consistent with the plan, the amendment must be consistent with the goals, objectives and policies of the Comprehensive Plan. Policies are statements in the plan, which identify actions the county will take in order to direct the community's development. As courses of action committed to by the county, policies provide the basis for all county land development related decisions, including plan amendment decisions. While all Comprehensive Plan objectives and policies are important, some have more applicability than others in reviewing plan amendment requests. Of particular applicability for this request is Policy 14.3.

Future Land Use Element Policy 14.3

In evaluating a Comprehensive Plan amendment request, the most important consideration is Future Land Use Element Policy 14.3. This policy requires that one of four criteria be met in order to approve a comprehensive plan amendment request. These criteria are:

- The proposed amendment will correct an oversight in the approved plan;
- The proposed amendment will correct a mistake in the approved plan;
- The proposed amendment is warranted based on a substantial change in circumstances; or
- The proposed amendment involves a swap or reconfiguration of land use designations at separate sites, and that swap or reconfiguration will not increase the overall land use density or intensity depicted on the Future Land Use Map.

In this case, the proposed Comprehensive Plan amendment meets Policy 14.3's third criteria. The proposed amendment is warranted based on a substantial change in circumstances. In this case, the State of Florida has required the County to adopt a Property Rights Element in its Comprehensive Plan.

Summary of Consistency with the Comprehensive Plan

While Policy 14.3 is particularly applicable to this request, other Comprehensive Plan policies and objectives also have relevance. For that reason, staff evaluated the subject request for consistency with all applicable plan policies and objectives. Based upon that analysis, staff determined that the request is consistent with the County's Comprehensive Plan.

CONCLUSION

The proposed amendment is required due to new legislative mandates, effective July 1, 2021. In particular, House Bill 59 – Growth Management requires all local governments to have a Property Rights Element included in their Comprehensive Plan. The legislation modified Chapter 163.3177 of the Florida Statutes to add a Property Rights Element as one of the required elements in all Comprehensive Plans. The legislation also limits the ability to adopt any other Comprehensive Plan amendments initiated after July 1st from being adopted until the Property Rights Element is adopted. The State defines amendments initiated after July 1, 2021 as those amendments which had their first public hearing after that date.

Planning and Zoning Commission (PZC) Recommendation:

At its meeting of December 9, 2021, the PZC voted 5-0 to recommend that the Board of County Commissioners approve the proposed Comprehensive Plan text amendment for transmittal to state and regional review agencies.

RECOMMENDATION:

Based on the analysis, staff and the Planning and Zoning Commission recommend that the Board of County Commissioners approve the proposed Comprehensive Plan text amendment for transmittal to state and regional review agencies.

ATTACHMENTS:

1. Proposed Chapter 13 Property Rights Element
2. Draft Property Rights Element Ordinance
3. Transmittal Resolution