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July 19, 2021

Discussion Item: Comprehensive Plan Amendment- Private Property Rights Element

The Florida Legislature passed a bill that is effective as of July 1st that requires all cities and counties to have a Private Property Rights Element in their Comprehensive Plans. Local governments will not be able to process other Comprehensive Plan Amendments without first having adopted the required Private Property Rights Element.

For the Board's review and discussion, attached is a draft Comprehensive Plan Amendment ordinance that adopts the language from this new statute. A copy of the enacting legislation, House Bill 59, is attached.

The ordinance will need to be adopted through the formal public hearing process.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF BELLE, FLORIDA,
AMENDING THE COMPREHENSIVE PLAN OF THE CITY OF
BELLE ISLE TO ADOPT A PRIVATE PROPERTY RIGHTS
ELEMENT TO COMPLY WITH SECTION 163.3177, FLORIDA
STATUTES; PROVIDING FOR CONFLICTS, SEVERABILITY,
CODIFICATION, AND EFFECTIVE DATE.**

WHEREAS, pursuant to Chapter 163, Part II, Florida Statutes, the City of Belle Isle, Florida (the “City”) proposes to amend the City’s Comprehensive Plan (the “Comprehensive Plan”) to adopt a Private Property Rights Element as set forth herein; and

WHEREAS, the Florida Legislature changed statutory provisions of chapters 163, Florida Statutes effective on July 1, 2021 to ensure that private property rights are considered in local decision making and requiring the adoption of a Property Rights Element into the Comprehensive Plan; and

WHEREAS, the City Council of the City of Belle Isle desires to update the Comprehensive Plan consistent with such statutory changes by adopting a “Property Rights Element”; and

WHEREAS, the Planning and Zoning Board as the City’s Land Planning Agency reviewed this Ordinance in accordance with the requirements of Chapter 163, Florida Statutes, and made a recommendation to the City Council; and

WHEREAS, the City determines that the Comprehensive Plan amendment set forth herein complies with the law and is in the best interest of the City.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BELLE ISLE, FLORIDA, AS FOLLOWS:

SECTION 1: RECITALS. The above recitals are true, correct and incorporated herein by this reference.

SECTION 2: ADOPTION. The Comprehensive Plan of the City of Belle Isle is hereby

amended to adopt a new Property Rights Element to read as follows:

PROPERTY RIGHTS ELEMENT

Goals, Objectives, and Policies

GOAL 1:

The purpose and overall goal for the Property Rights Element is to signify respect for judicially acknowledged and constitutionally protected private property rights, and to ensure that those rights are considered in the City of Belle Isle's decision-making concerning land use and zoning matters.

Objective 1.1:

The following objective provides a framework for ensuring that private property rights are considered in local decision-making concerning land use and zoning matters.

Policy 1.1. **The following rights shall be considered in decision-making by the City of Belle Isle concerning land use and zoning matters:**

- 1) The right of a property owner to physically possess and control their interests in 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.

SECTION 3: SEVERABILITY. The provisions of this Ordinance are declared to be separable and if any section, paragraph, sentence or word of this Ordinance or the application thereto any person or circumstance is held invalid, that invalidity shall not affect other sections or words or applications of this Ordinance. If any part of this Ordinance is found to be preempted or otherwise superseded, the remainder shall nevertheless be given full force and effect to the extent permitted by the severance of such preempted or superseded part.

SECTION 4: CONFLICTS. If any ordinance or part thereof is in conflict herewith, this Ordinance shall control to the extent of the conflict.

SECTION 5: CODIFICATION. Any goal, objective, and policy number, letter and/or any

heading may be changed or modified as necessary to effectuate the foregoing and/or to be consistent with the numbering system within the Comprehensive Plan. Grammatical, typographical, and similar or like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this Ordinance or the Comprehensive Plan may be freely made.

SECTION 6: EFFECTIVE DATE. This Ordinance shall become effective pursuant to a Notice of Intent issued by DEO finding the Comprehensive Plan amendment ("Amendment") set forth in this Ordinance to be in compliance as defined in Section 163.3184(1)(b), Florida Statutes. If timely challenged, the Amendment shall not become effective until DEO or the Administration Commission enters a final order determining the adopted Amendment to be in compliance.

FIRST READING AND TRANSMITTAL READING: _____

SECOND READING AND ADOPTION: _____

ADOPTED this ____ day of _____, 2021, by the City Council of the City of Belle Isle, Florida.

City of Belle Isle

Nicholas Fouraker, Mayor

ATTEST:

Yolanda Quiceno, CMC-City Clerk

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2 An act relating to growth management; amending s.
3 163.3167, F.S.; specifying requirements for certain
4 comprehensive plans effective, rather than adopted,
5 after a specified date and for associated land
6 development regulations; amending s. 163.3177, F.S.;
7 requiring local governments to include a property
8 rights element in their comprehensive plans; providing
9 a statement of rights which a local government may
10 use; requiring a local government to adopt a property
11 rights element by the earlier of its adoption of its
12 next proposed plan amendment initiated after a certain
13 date or the next scheduled evaluation and appraisal of
14 its comprehensive plan; prohibiting a local
15 government's property rights element from conflicting
16 with the statement of rights contained in the act;
17 amending s. 163.3237, F.S.; providing that the consent
18 of certain property owners is not required for
19 development agreement changes under certain
20 circumstances; providing an exception; amending s.
21 337.25, F.S.; requiring the Department of
22 Transportation to afford a right of first refusal to
23 certain individuals under specified circumstances;
24 providing requirements and procedures for the right of
25 first refusal; amending s. 380.06, F.S.; authorizing

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26 certain developments of regional impact agreements to
27 be amended under certain circumstances; providing
28 retroactive applicability; providing a declaration of
29 important state interest; providing an effective date.

30
31 Be It Enacted by the Legislature of the State of Florida:

32
33 Section 1. Subsection (3) of section 163.3167, Florida
34 Statutes, is amended to read:

35 163.3167 Scope of act.—

36 (3) A municipality established after the effective date of
37 this act shall, within 1 year after incorporation, establish a
38 local planning agency, pursuant to s. 163.3174, and prepare and
39 adopt a comprehensive plan of the type and in the manner set out
40 in this act within 3 years after the date of such incorporation.
41 A county comprehensive plan is controlling until the
42 municipality adopts a comprehensive plan in accordance with this
43 act. A comprehensive plan for a newly incorporated municipality
44 which becomes effective ~~adopted~~ after January 1, 2016 ~~2019~~, and
45 all land development regulations adopted to implement the
46 comprehensive plan must incorporate each development order
47 existing before the comprehensive plan's effective date, may not
48 impair the completion of a development in accordance with such
49 existing development order, and must vest the density and
50 intensity approved by such development order existing on the

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51 effective date of the comprehensive plan without limitation or
52 modification.

53 Section 2. Paragraph (i) is added to subsection (6) of
54 section 163.3177, Florida Statutes, to read:

55 163.3177 Required and optional elements of comprehensive
56 plan; studies and surveys.—

57 (6) In addition to the requirements of subsections (1)–
58 (5), the comprehensive plan shall include the following
59 elements:

60 (i)1. In accordance with the legislative intent expressed
61 in ss. 163.3161(10) and 187.101(3) that governmental entities
62 respect judicially acknowledged and constitutionally protected
63 private property rights, each local government shall include in
64 its comprehensive plan a property rights element to ensure that
65 private property rights are considered in local decisionmaking.
66 A local government may adopt its own property rights element or
67 use the following statement of rights:

68
69 The following rights shall be considered in local
70 decisionmaking:

71
72 1. The right of a property owner to physically
73 possess and control his or her interests in the
74 property, including easements, leases, or mineral
75 rights.

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77 2. The right of a property owner to use, maintain,
78 develop, and improve his or her property for personal
79 use or for the use of any other person, subject to
80 state law and local ordinances.

81
82 3. The right of the property owner to privacy and to
83 exclude others from the property to protect the
84 owner's possessions and property.

85
86 4. The right of a property owner to dispose of his or
87 her property through sale or gift.

88
89 2. Each local government must adopt a property rights
90 element in its comprehensive plan by the earlier of the date of
91 its adoption of its next proposed plan amendment that is
92 initiated after July 1, 2021, or the date of the next scheduled
93 evaluation and appraisal of its comprehensive plan pursuant to
94 s. 163.3191. If a local government adopts its own property
95 rights element, the element may not conflict with the statement
96 of rights provided in subparagraph 1.

97 Section 3. Section 163.3237, Florida Statutes, is amended
98 to read:

99 163.3237 Amendment or cancellation of a development
100 agreement.—A development agreement may be amended or canceled by

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101 mutual consent of the parties to the agreement or by their
102 successors in interest. A party or its designated successor in
103 interest to a development agreement and a local government may
104 amend or cancel a development agreement without securing the
105 consent of other parcel owners whose property was originally
106 subject to the development agreement, unless the amendment or
107 cancellation directly modifies the allowable uses or
108 entitlements of such owners' property.

109 Section 4. Subsection (4) of section 337.25, Florida
110 Statutes, is amended to read:

111 337.25 Acquisition, lease, and disposal of real and
112 personal property.—

113 (4) The department may convey, in the name of the state,
114 any land, building, or other property, real or personal, which
115 was acquired under subsection (1) and which the department has
116 determined is not needed for the construction, operation, and
117 maintenance of a transportation facility. When such a
118 determination has been made, property may be disposed of through
119 negotiations, sealed competitive bids, auctions, or any other
120 means the department deems to be in its best interest, with due
121 advertisement for property valued by the department at greater
122 than \$10,000. A sale may not occur at a price less than the
123 department's current estimate of value, except as provided in
124 paragraphs (a)-(d). The department may afford a right of first
125 refusal to the local government or other political subdivision

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126 in the jurisdiction in which the parcel is situated, except in a
127 conveyance transacted under paragraph (a), paragraph (c), or
128 paragraph (e). Notwithstanding any provision of this section to
129 the contrary, before any conveyance under this subsection may be
130 made, except a conveyance under paragraph (a) or paragraph (c),
131 the department shall first afford a right of first refusal to
132 the previous property owner for the department's current
133 estimate of value of the property. The right of first refusal
134 must be made in writing and sent to the previous owner via
135 certified mail or hand delivery, effective upon receipt. The
136 right of first refusal must provide the previous owner with a
137 minimum of 30 days to exercise the right in writing and must be
138 sent to the originator of the offer by certified mail or hand
139 delivery, effective upon dispatch. If the previous owner
140 exercises his or her right of first refusal, the previous owner
141 has a minimum of 90 days to close on the property. The right of
142 first refusal set forth in this subsection may not be required
143 for the disposal of property acquired more than 10 years before
144 the date of disposition by the department.

145 (a) If the property has been donated to the state for
146 transportation purposes and a transportation facility has not
147 been constructed for at least 5 years, plans have not been
148 prepared for the construction of such facility, and the property
149 is not located in a transportation corridor, the governmental
150 entity may authorize reconveyance of the donated property for no

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151 consideration to the original donor or the donor's heirs,
152 successors, assigns, or representatives.

153 (b) If the property is to be used for a public purpose,
154 the property may be conveyed without consideration to a
155 governmental entity.

156 (c) If the property was originally acquired specifically
157 to provide replacement housing for persons displaced by
158 transportation projects, the department may negotiate for the
159 sale of such property as replacement housing. As compensation,
160 the state shall receive at least its investment in such property
161 or the department's current estimate of value, whichever is
162 lower. It is expressly intended that this benefit be extended
163 only to persons actually displaced by the project. Dispositions
164 to any other person must be for at least the department's
165 current estimate of value.

166 (d) If the department determines that the property
167 requires significant costs to be incurred or that continued
168 ownership of the property exposes the department to significant
169 liability risks, the department may use the projected
170 maintenance costs over the next 10 years to offset the
171 property's value in establishing a value for disposal of the
172 property, even if that value is zero.

173 (e) If, at the discretion of the department, a sale to a
174 person other than an abutting property owner would be
175 inequitable, the property may be sold to the abutting owner for

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the department's current estimate of value.

Section 5. Paragraph (d) of subsection (4) of section 380.06, Florida Statutes, is amended to read:

380.06 Developments of regional impact.—

(4) LOCAL GOVERNMENT DEVELOPMENT ORDER.—

(d) Any agreement entered into by the state land planning agency, the developer, and the local government with respect to an approved development of regional impact previously classified as essentially built out, or any other official determination that an approved development of regional impact is essentially built out, remains valid unless it expired on or before April 6, 2018, and may be amended pursuant to the processes adopted by the local government for amending development orders. Any such agreement or amendment may authorize the developer to exchange approved land uses, subject to demonstrating that the exchange will not increase impacts to public facilities. This paragraph applies to all such agreements and amendments effective on or after April 6, 2018.

Section 6. The Legislature finds and declares that this act fulfills an important state interest.

Section 7. This act shall take effect July 1, 2021.