



TOWN OF HIGHLAND BEACH

AGENDA MEMORANDUM

MEETING TYPE: Town Commission Meeting

MEETING DATE June 7, 2022

SUBMITTED BY: Ingrid Allen, Town Planner, Building Department

SUBJECT: AN ORDINANCE OF THE TOWN OF HIGHLAND BEACH, FLORIDA, AMENDING THE TOWN'S COMPREHENSIVE PLAN BY ADDING A NEW PROPERTY RIGHTS ELEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING AN EFFECTIVE DATE.

SUMMARY:

House Bill 59 which became effective on July 1, 2021 updated Section 163.3177(6), Florida Statutes (F.S.) by requiring each local government to adopt a Property Rights Element into its Comprehensive Plan. Pursuant to Section 163.3177(6)(i), F.S., this new element must be adopted "by the earlier of the date of its adoption" of its next proposed Comprehensive Plan amendment that is initiated after July 1, 2021 or the date of the next scheduled evaluation and appraisal of the Comprehensive Plan (*Note that the next scheduled evaluation and appraisal of the Town Comprehensive Plan is January 1, 2025*).

On January 18, 2022, the Town Commission adopted a small-scale amendment to the Comprehensive Plan in order to correct a scrivener's error pertaining to the Future Land Use designation of a 0.8315 acre parcel located in the Boca Cove development. The latter parcel was not designated with the Multi Family Low Density Future Land Use classification which corresponds to all other parcels within the Boca Cove development. Upon transmitting a copy of the adopted small-scale amendment to the State Land Planning Agency (Department of Economic Opportunity), staff received an acknowledgement letter from Department indicating that their records did not reflect that the Town adopted a Property Rights Element and therefore the Town should consult with legal staff to determine if the adopted amendment should be rescinded and readopted after the Property Rights Element is adopted. Staff advised the Department that given the small-scale amendment was to correct a scrivener's error, the consideration of a Property Rights Element was not triggered as a result of this amendment. The Department restated their position, as noted above, and the Town Attorney has indicated that the small-scale amendment to correct a scrivener's error can be re-adopted after the Town adoption of the Property Rights Element.

The following proposed goals, objectives, and policies of the Property Rights Element are based on the model element authored by the 1000 Friends of Florida (dated July 20, 2021) as well as the requirements of Section 163.3177(6)(i)1, F.S.:

Goal 1

The Town will make planning and development decisions with respect for property rights and with respect for people's rights to participate in decisions that affect their lives and property.

Objective 1.1 The Town will respect judicially acknowledged and constitutionally protected private property rights.

Policy 1.1.1. The Town will consider the following rights in its 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 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.*

Pursuant to Section 163.3184(3) Florida Statutes, this proposed amendment to the Comprehensive Plan requires both a transmittal and adoption public hearing under the Expedited State Review Process. Should the Town Commission agree to transmit the item, the State Land Planning Agency along with other State agencies shall have 30 days to provide comments. A second and final hearing (adoption hearing) is anticipated in August 2022.

PLANNING BOARD ACTION:

At the May 12, 2022 Planning Board meeting, the Board recommended approval of the Comprehensive Plan amendment to add a new Property Rights element (motion carried 7-0).

FISCAL IMPACT:

NA

ATTACHMENTS:

Ordinance

Department of Economic Opportunity acknowledgement letter

RECOMMENDATION:

Approve transmittal of Comprehensive Plan amendment to the State Land Planning Agency.