



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Rights Element and therefore the Town should consult with legal staff to determine if the adopted amendment should be rescinded and readopted after the Property Rights Element is adopted.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.

ORDINANCE NO.

**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.**

WHEREAS, House Bill 59, effective July 1, 2021, updated Section 163.3177(6)(i)1, Florida Statutes, to require each local government to include in its comprehensive plan a property rights element to ensure that private property rights are considered in local decision-making; and

WHEREAS, the Town Commission of the Town of Highland Beach desires to amend its Comprehensive Plan in order to add such property rights element consistent with Section 163.3177(6)(i)1, Florida Statutes; and

WHEREAS, on May 12, 2022 the Planning Board, sitting as the Local Planning Agency, conducted a public hearing to review the proposed amendment to the Town's Comprehensive Plan and providing a recommendation to the Town Commission; and

WHEREAS, having conducted all of the duly advertised public hearings required by Chapter 163, Florida Statutes, the Town Commission wishes to amend its Comprehensive Plan and determines that the adoption of this Ordinance is in the interests of the health, safety and welfare of the residents of the Town of Highland Beach.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF HIGHLAND BEACH, FLORIDA that:

SECTION 1. The Comprehensive Plan is hereby amended to create a "Property Rights Element," which shall read as follows:

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.

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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.

SECTION 2. The foregoing facts and recitations contained in the preamble to this Ordinance are hereby adopted and incorporated.

SECTION 3. In accordance with Section 163.3184(3), Florida Statutes, Town staff is hereby directed to transmit the Comprehensive Plan amendment documents to the Department of Economic Opportunity and other agencies within ten (10) working days after the initial public hearing.

SECTION 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 5. Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this Ordinance.

SECTION 6. This Ordinance shall become effective thirty-one (31) days after the Department of Economic Opportunity notifies the Town that the Comprehensive Plan amendment package is complete or, if timely challenged, this Ordinance shall become effective upon entry of a final order by the Department of Economic Opportunity or the Administration Commission determining the adopted amendment to be in compliance.

The forgoing Ordinance, on first reading, was moved by Commissioner _____, seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

Mayor Douglas Hillman	_____
Vice Mayor Natasha Moore	_____
Commissioner Peggy Gossett-Seidman	_____
Commissioner Evalyn David	_____
Commissioner John Shoemaker	_____

_____ on first reading at the Regular Commission meeting held on the ____ day of _____, 2022.

The forgoing Ordinance, on second reading, was moved by Commissioner _____, seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

Mayor Douglas Hillman _____
Vice Mayor Natasha Moore _____
Commissioner Peggy Gossett-Seidman _____
Commissioner Evalyn David _____
Commissioner John Shoemaker _____

_____ on second and final reading at the Regular Commission meeting held on the ____ day
of _____, 2022.

ATTEST:

Douglas Hillman, Mayor

REVIEWED FOR LEGAL SUFFICIENCY

Lanelda Gaskins, MMC
Town Clerk

Glen Torcivia, Town Attorney
Town of Highland Beach

Property Rights Element

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.

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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.

Ron DeSantis
GOVERNOR



Dane Eagle
SECRETARY

January 24, 2022

Ms. Ingrid Allen
Town Planner
Town of Highland Beach
3614 South Ocean Boulevard
Highland Beach, Florida 33487

Dear Ms. Allen:

Thank you for submitting copies of the Town of Highland Beach's Small Scale Development Plan Amendment, adopted by Ordinance No. 2022-001 on January 18, 2022, for our records. The reference number for this amendment package is DEO# 22S01.

The State Land Planning Agency **will not** conduct a compliance review or issue a Notice of Intent regarding the adopted small scale development plan amendment in accordance with procedures contained in Section 163.3187(1), Florida Statutes.

Please be aware that Chapter No. 2021-195 Laws of Florida adds Section 163.3177(6)(i), Florida Statutes. Effective July 1, 2021, each local government is now required to adopt a property rights element into its comprehensive plan. The Department's records do not reflect that the property rights element has been adopted and therefore you may wish to consult with your legal department to determine if the adopted small scale amendment should be rescinded and readopted after the property rights element is adopted.

If you have any questions, please contact me for the DRI and Plan Processing Section at (850) 717-8483.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Ray Eubanks', is written over a horizontal line.

D. Ray Eubanks, Administrator
Plan Review and Processing

DRE/ts

Florida Department of Economic Opportunity | Caldwell Building | 107 E. Madison Street | Tallahassee, FL 32399
(850) 245.7105 | www.FloridaJobs.org | [www.Twitter.com/FLDEO](https://twitter.com/FLDEO) | www.Facebook.com/FLDEO

An equal opportunity employer/program. Auxiliary aids and service are available upon request to individuals with disabilities. All voice telephone numbers on this document may be reached by persons using TTY/TTD equipment via the Florida Relay Service at 711.



Town of Highland Beach

3614 South Ocean Boulevard • Highland Beach, Florida 33487

January 20, 2022

Ray Eubanks
Plan Processing Administrator
State Land Planning Agency
Caldwell Building
107 East Madison – MSC 160
Tallahassee, Florida 32399

RE: Adoption of small-scale amendment to the Future Land Use Map of the Town of Highland Beach Comprehensive Plan to correct a scrivener's error.

Dear Mr. Eubanks:

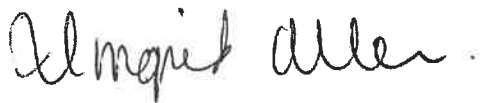
The Town of Highland Beach is submitting an adopted small-scale amendment pursuant to Section 163.3187(1), F.S. Enclosed please find a consolidated PDF document (pursuant to DEO's new electronic submittal platform) pertaining to this adopted small-scale amendment to the Future Land Use Map of the Town's Comprehensive Plan. This small-scale amendment corrects a scrivener's error for a 0.8315 acre parcel located within the Boca Cove development that did not have a future land use designation (see attached adopted Ordinance No. 2022-001). The following information is provided in accordance with the *Comprehensive Plan and Plan Amendment Processing and Submittal Guidelines* provided by the DEO's Community Planning Bureau:

1. The Town Commission held an adoption hearing on January 18, 2022 and voted unanimously (5-0) to approve the amendment (Ordinance No. 2022-001).
2. The Town of Highland Beach has only approved this small-scale amendment for this calendar year and therefore, the cumulative total number of acres for Town approved small-scale amendments is 0.8315.
3. The adopted small-scale amendment is not within an area of critical state concern and does not involve a site within a rural area of opportunity.

Please contact me regarding any questions pertaining to this amendment as follows:

Ingrid Allen, Town Planner
3614 South Ocean Boulevard
Highland Beach, FL 33487
561-637-2012
iallen@highlandbeach.us

Sincerely,

A handwritten signature in black ink that reads "Ingrid Allen". The signature is written in a cursive, flowing style.

Ingrid Allen
Town Planner

Enclosure

cc: Marshall Labadie, Town Manager