

ORDINANCE NO. 2021 - 013

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEVY COUNTY, FLORIDA CREATING A NEW ELEMENT OF THE COMPREHENSIVE PLAN ENTITLED “PROPERTY RIGHTS ELEMENT”; ESTABLISHING GOALS, OBJECTIVES AND POLICIES TO ENSURE PRIVATE PROPERTY RIGHTS ARE CONSIDERED IN COUNTY DECISION-MAKING; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Art. I, Section 2 of the Florida Constitution declares that all-natural persons are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; and

WHEREAS, the United States Constitution amendment V, Florida Constitution Article I, Section 9, and, among others, chapters 70, 73 and 74 of the Florida Statute establish due process rights of property owners to ensure the protection of private property; and

WHEREAS, in furtherance of ensuring the protection of private property interests, the Community Planning Act, s. 163.3161(10), Fla. Stat. expressly establishes the intent of the Florida Legislature that all governmental entities the state recognize, and respect judicially acknowledged or constitutionally protected private property rights in its decision making; and

WHEREAS, all counties of the state are required to establish a comprehensive plan that shall provide the principles, guidelines, standards and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements (Section 163.3177(1), Fla. Stat.); and

WHEREAS, the Florida Legislature establishes in general law specific mandatory and optional elements that a local government must include in its comprehensive plan such as a future land use element and a capital improvements element (see Section 163.3177, Fla. Stat.); and

WHEREAS, during the 2021 Florida Legislative Session, the Legislature adopted new legislation signed into law by the Governor that created chapter 2021-195, Laws of Florida; and

WHEREAS, section 2 of chapter 2021-195, Laws of Florida adds an additional mandatory element to be included by local governments in their Comprehensive Plans known as the “Property Rights Element;” and

WHEREAS, the new element must be adopted by each local government by the earlier of the date of its adoption of its next proposed plan amendment that is initiated after July 1, 2021 or

the date of the next scheduled evaluation and appraisal of its comprehensive plan pursuant to s. 163.3191, Fla. Stat. Currently, the County has a proposed plan amendment that was initiated after July 1, 2021, triggering the necessity of presenting the Board with a new Property Rights Element; and

WHEREAS, the Florida Legislature has set forth in chapter 2021-195, Laws of Florida a minimum standard statement of rights within the Legislation which may be taken verbatim and included into the Property Rights Element or may be altered so long as the element does not conflict with the statement of rights established by the Legislature; and

WHEREAS, County Staff and County Legal have met and drafted the Property Rights Element maintaining the standard statement of rights with additional clarification and explanation as to its applicability in the community and these additions do not conflict with the minimum standard statement of rights established by the Legislature; and

WHEREAS, the County now finds it in the best interest of the citizens of the County to create the Property Rights Element in the Levy County Comprehensive Plan.

NOW THEREFORE, be it ordained by the Board of County Commissioners of Levy County, Florida (“Board”) as follows:

Section 1. The above recitals are true and correct and are hereby included and incorporated by reference as the findings of the Board in the adoption of the Real Property Element to the Levy County Comprehensive Plan.

Section 2. The Board hereby creates a new Chapter to the Levy County Comprehensive Plan entitled “Property Rights Element” as follows:

PROPERTY RIGHTS ELEMENT

Goal: Ensure private real property rights are considered in local decision-making and that judicially acknowledged and constitutionally protected private property rights are respected through the inclusion of a Property Rights Element within the Levy County Comprehensive Plan. For purposes of the Property Rights Element, the term “property owner” or “real property owner” means the person who holds legal title to the real property that is the subject of and directly impacted by the action of the County in its local decision-making. The term does not include another governmental entity.

Objective 1 Implement and maintain mechanisms to ensure that private property rights are considered in local decision-making. Provided, nothing in this Property Rights Element is intended to grant additional rights not already in existence or to supersede existing rights in accordance with the law. Further, nothing herein shall require the County to ascertain or determine the existence of any purported private interest in real property, which when disputed is within the jurisdiction of the circuit courts (see s. 26.012(g), Florida Statutes (2021), and Art. V, Sec. 20(c)(3), Fla. Const.).

Policy 1.1 The right of a real property owner to physically possess and control his or her interests in the real property, including easements, leases, or mineral rights.

Policy 1.2 The right of a real 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 applicable federal, state, and local law.

Policy 1.3 The right of a real property owner to privacy and to exclude others from the property to protect the property owner's legal interests in such real property, subject to applicable federal, state, and local law.

Policy 1.4 The right of a real property owner to dispose of his or her real property interest through sale or gift.

Section 3. This Ordinance shall become effective in accordance with the law.

PASSED, ADOPTED AND APPROVED THIS ____ day of _____, 2021.

**BOARD OF COUNTY
COMMISSIONERS
OF LEVY COUNTY, FLORIDA**

ATTEST: Clerk of the Court and
Ex-Officio Clerk to the Board

Danny J. Shipp, County Clerk

John Meeks, Chairman

Approved for Form and Correctness:

By: _____
Interim County Attorney