



LEE COUNTY BOARD OF COUNTY COMMISSIONERS

ZONING  
and  
COMPREHENSIVE PLAN AMENDMENT HEARING  
AGENDA

Wednesday, December 8, 2021

9:30AM

REZ2021-00005 & SEZ2021-00005  
Z-21-018

JAMAICA BAY AMENITY AREA

DCI2021-00018  
Z-21-015

CALUSA CAY CPD MINOR AMENDMENT

CPA2021-00007

PROPERTY RIGHTS ELEMENT – TRANSMITTAL

CPA2021-00002

ALICO WEST AREA 9 CENTERPLACE – TRANSMITTAL

**NOTICE OF PROPOSED AMENDMENT TO THE  
LEE COUNTY COMPREHENSIVE LAND USE PLAN  
(TRANSMITTAL HEARING)**

The Lee County Board of County Commissioners will hold a public hearing to consider proposed amendments to the Lee County Comprehensive Land Use Plan (Lee Plan) on Wednesday, December 8, 2021. The hearing will commence at 9:30 a.m., or as soon thereafter as can be heard, in the Board Chambers, 2120 Main Street in Downtown Fort Myers. At the hearing, the Board will consider the proposed amendments for transmittal to the Florida Department of Economic Opportunity:

CPA2021-00002 Alico West Area 9/Centerplace: Amend Policy 15.1.16 by striking paragraph 8 to remove the twenty-five percent unit limitation on single family and zero lot line dwelling units.

CPA2021-00007 Property Rights Element: Amend the Lee Plan to add a Property Rights Element as required by Florida Statute § 163.3177(6)(i).

This transmittal hearing is the first step in a two step public hearing process to amend the Lee Plan. A second hearing will follow the Department of Economic Opportunity's review of the application.

Documentation for the Proposed Comprehensive Plan Amendment is available at <https://www.leegov.com/dcd/planning/cpa> or at the Department of Community Development located at 1500 Monroe Street, Fort Myers, Florida. This meeting is open to the public. Interested parties may appear at the meeting and be heard with respect to the proposed plan amendment. A verbatim record of the proceeding will be necessary to appeal a decision made at this hearing.

It is the intent of the Board of County Commissioners that the provisions of this Comprehensive Plan Amendment may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

Lee County will not discriminate against individuals on the basis of race, color, national origin, sex, age, disability, religion, income or family status. To request language interpretation, document translation or an ADA-qualified reasonable modification at no charge to the requestor, contact Joan LaGuardia, (239) 839-6038, Florida Relay Service 711, at least five business days in advance. El Condado de Lee brindará servicios de traducción sin cargo a personas con el idioma limitado del inglés.

**CPA2021-00007**

**PROPERTY RIGHTS  
ELEMENT**

**Summary Sheet**  
**Property Rights Element, CPA2021-00007**

**Purpose:**

Incorporate a Property Rights Element into the Lee Plan as required by Florida Statute § 163.3177(6)(i), which states that “each local government shall include in its comprehensive plan a property rights element to ensure that private property rights are considered in local decision making.” The element must be adopted prior to the adoption of any other plan amendment initiated after July 1, 2021.

**Public Comments:**

There was no public comment concerning the proposed amendment at the LPA Hearing.

**LPA Motion:**

A motion was made to recommend that the Board of County Commissioners **transmit** CPA2021-00007. The motion passed 4 to 0.

<b>RAYMOND BLACKSMITH</b>	<b>AYE</b>
<b>DUSTIN GARDNER</b>	<b>AYE</b>
<b>JAMES M. INK</b>	<b>ABSENT</b>
<b>ALICIA OLIVO</b>	<b>ABSENT</b>
<b>DON SCHROTENBOER</b>	<b>AYE</b>
<b>STAN STOUDE</b>	<b>AYE</b>
<b>HENRY ZUBA</b>	<b>ABSENT</b>

**Staff Recommendation:**

Staff recommends that the BoCC ***transmit*** the proposed amendment as provided on page 1 of the staff report.

# STAFF REPORT FOR CPA2021-00007: PROPERTY RIGHTS ELEMENT



## Text Amendments to the Lee Plan

### Recommendation:

**Transmit**

### Amendment Type:

County-Initiated

BoCC Direction: 8/17/21

### Hearing Dates:

LPA: 10/25/2021

BoCC #1: 12/8/2021

BoCC #2: TBD

### PURPOSE

The purpose of these amendments is to incorporate a Property Rights Element into the Lee Plan as required by Florida Statute § 163.3177(6)(i), which states that “each local government shall include in its comprehensive plan a property rights element to ensure that private property rights are considered in local decision making.” The element must be adopted prior to the adoption of any other plan amendment initiated after July 1, 2021.

### SUMMARY

A Property Rights Element is now a compulsory component of Florida Statutes that regulate local comprehensive plans. The statute provides a Model Statement of Rights to incorporate into local comprehensive plans, but also allows each local government to adopt its own property rights element as long as it does not conflict with the language provided in the Model Statement. Staff’s recommendation is to incorporate the Model Statement of Rights provided by the Florida Legislature verbatim into a new *Property Rights Element* of Lee Plan.

### RECOMMENDATION

Staff recommends the Board of County Commissioners **transmit** the following language to the State Reviewing Agencies for adoption into the Lee Plan:

In accordance with §163.3177(6)(i), Fla. Stat., the following rights will 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.

## PART 1 BACKGROUND

Adoption of a property rights element into the County's comprehensive plan is a new requirement of House Bill 59 (§ 163.3177(6)(i), Fla. Stat.), passed during the 2021 Florida Legislative Session, signed into law by the Governor, and incorporated into Florida's Community Planning Act. This new statutory requirement provides that "each local government shall include in its comprehensive plan a property rights element to ensure that private property rights are considered in local decision making." The statute goes on to require this new element to be adopted prior to the adoption of any other Lee Plan amendment (public or private) initiated after July 1, 2021.

The Board of County Commissioners directed staff to draft a property rights element to incorporate into the Lee Plan at their August 17, 2021 regular board meeting. This direction authorized staff to prepare the amendments needed to maintain consistency with Florida Statutes and to route the draft amendments through the required public hearings.

## PART 2 DISCUSSION AND ANALYSIS

Effective July 1, 2021 every county in Florida is required to include in its comprehensive plan a property rights element. The purpose of the element is to ensure that private property rights are considered in local decision making.

As listed in § 163.3177(6)(i), Fla. Stat., a local government may adopt its own property rights element or use the following statement of rights:

*The following rights shall 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.*

Although use of alternate language or modifications to the Model Statement of Rights provided in the statutes is permitted, staff recommends adopting the Model Statement of Rights into the Lee Plan as the County's new Property Rights Element. This recommendation is made with consideration of advice from the Lee County Attorney's Office that adoption of the Model Statement would provide the County with the best legal defense against any challenges to its adoption. Adopting the Model Statement decreases the chance of the proposed amendments being challenged or considered to not be in compliance with state statutes. In addition to

avoiding possible legal or compliance challenges, using the provided language will result in the shortest possible review and adoption time, thereby avoiding delaying other publicly or privately initiated amendments.

The proposed statement of rights is consistent with Lee County's current practices concerning private property rights and will not substantially affect review time or application requirements. Florida Statutes already require Lee County to consider private property rights as provided in the sections below:

*163.3161(10) - It is the intent of the Legislature that all governmental entities in this state recognize and respect judicially acknowledged or constitutionally protected private property rights. It is the intent of the Legislature that all rules, ordinances, regulations, comprehensive plans and amendments thereto, and programs adopted under the authority of this act must be developed, promulgated, implemented, and applied with sensitivity for private property rights and not be unduly restrictive, and property owners must be free from actions by others which would harm their property or which would constitute an inordinate burden on property rights as those terms are defined in s. 70.001(3)(e) and (f). Full and just compensation or other appropriate relief must be provided to any property owner for a governmental action that is determined to be an invalid exercise of the police power which constitutes a taking, as provided by law. Any such relief must ultimately be determined in a judicial action.*

*187.101(3) - The goals and policies contained in the State Comprehensive Plan shall be reasonably applied where they are economically and environmentally feasible, not contrary to the public interest, and consistent with the protection of private property rights. The plan shall be construed and applied as a whole, and no specific goal or policy in the plan shall be construed or applied in isolation from the other goals and policies in the plan.*

An analysis of the House Bill 59 confirms that the explicit purpose of the property rights element is to further the protections of private property rights from Government actions; the new provisions of § 163.3177 add to the previously existing sections of the statutes by specifically requiring a property rights element in the County's comprehensive plan.

## **CONCLUSION**

Staff recommends that the Board of County Commissioners ***transmit*** the proposed amendments as shown underlined on page one of this staff report. These amendments address the new statutory requirements of § 163.3177(6)(i), Fla. Stat., are consistent with Lee County policies and practices, further the protections of private property rights, and, without adoption of a property rights element, Lee County would not be able to process any future amendments to the Lee Plan.

**PART 3**  
**AGENCY REVIEW AND RECOMMENDATION**  
DATE OF PUBLIC HEARING: October 25, 2021

**A. LOCAL PLANNING AGENCY REVIEW**

Staff provided a presentation of the proposed amendment, which detailed the purpose of the amendment, the content, and the decision by County staff to utilize language provided by the State. Following the applicant's presentation, Mr. Blacksmith made a comment regarding the purpose of the amendment. Mr. Stouder asked staff if the amendment deviates from what the County currently does regarding property rights. Staff responded that the County already currently considers property rights as required by state statutes, but that recent legislation necessitates this amendment.

There was no public comment concerning the proposed amendment at the LPA hearing.

**B. LOCAL PLANNING AGENCY RECOMMENDATION:**

A motion was made to recommend that the Board of County Commissioners transmit CPA2021-00007. The motion passed 4 to 0.

<b>RAYMOND BLACKSMITH</b>	<u><b>AYE</b></u>
<b>DUSTIN GARDNER</b>	<u><b>AYE</b></u>
<b>JAMES M. INK</b>	<u><b>ABSENT</b></u>
<b>ALICIA OLIVO</b>	<u><b>ABSENT</b></u>
<b>DON SCHROTENBOER</b>	<u><b>AYE</b></u>
<b>STAN STOUDE</b>	<u><b>AYE</b></u>
<b>HENRY ZUBA</b>	<u><b>ABSENT</b></u>