



LEE COUNTY BOARD OF COUNTY COMMISSIONERS  
COMPREHENSIVE PLAN AMENDMENT  
and  
ZONING HEARING  
AGENDA

Wednesday, February 16, 2022

9:30AM

CPA2021-00007

PROPERTY RIGHTS ELEMENT - ADOPTION

CPA2021-00002

ALICO WEST AREA 9 CENTERPLACE – ADOPTION

CPA2021-00013

LUCKETT LANDING – ADOPTION

REZ2021-00008  
**Z-22-002**

KW ELECTRIC INC

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

The Lee County Board of County Commissioners will hold a public hearing to consider the adoption of proposed amendments to the Lee County Comprehensive Land Use Plan (Lee Plan) on Wednesday, February 16, 2022. 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.

The Board proposes to adopt an ordinance amending the Lee Plan as follows:

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).

Copies of this Notice and the proposed ordinance are available for inspection or copying during regular business hours at the Minutes Office of the Clerk of Courts of Lee County, by calling 239-533-2328. The Minutes Office is located in the Courthouse Administration Building, 2115 Second 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 Ordinance 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.

**Summary Sheet**  
**PROPERTY RIGHTS ELEMENT, CPA2021-00007**

**Request:**

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.

**Transmittal Hearing:**

A motion was made to transmit CPA2020-00007 as recommended by staff. The motion was passed 5 to 0.

**Public Comments:**

There was no public comment.

**State Reviewing Agency Objections, Recommendations, and Comments:**

Lee County received responses from the following review agencies addressing the transmitted amendment:

- Florida Department of Economic Opportunity (DEO),
- Florida Department of Environmental Protection (DEP),
- Florida Department of Transportation (DOT),
- Florida Fish and Wildlife Conservation Commission (FWC)

There were no objections or comments concerning the proposed amendments.

**Staff Recommendation:**

Staff recommends that the BoCC adopt the proposed amendments as shown underlined on page one of the staff report.

**LEE COUNTY ORDINANCE NO. \_\_\_\_\_**  
Property Rights Element  
(CPA2021-00007)

**AN ORDINANCE AMENDING THE LEE COUNTY COMPREHENSIVE PLAN, COMMONLY KNOWN AS THE “LEE PLAN,” ADOPTED BY ORDINANCE NO. 89-02, AS AMENDED, SO AS TO ADOPT AMENDMENT PERTAINING TO THE PROPERTY RIGHTS ELEMENT (CPA2021-00007) APPROVED DURING A PUBLIC HEARING; PROVIDING FOR PURPOSE, INTENT, AND SHORT TITLE; AMENDMENTS TO ADOPTED MAP AND TEXT; LEGAL EFFECT OF “THE LEE PLAN”; PERTAINING TO MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; GEOGRAPHICAL APPLICABILITY; SEVERABILITY, CODIFICATION, SCRIVENER’S ERRORS, AND AN EFFECTIVE DATE.**

WHEREAS, the Lee County Comprehensive Plan (“Lee Plan”) and Chapter XIII, provides for adoption of amendments to the Plan in compliance with State statutes and in accordance with administrative procedures adopted by the Board of County Commissioners (“Board”); and,

WHEREAS, the Board, in accordance with Section 163.3181, Florida Statutes, and Lee County Administrative Code AC-13-6 provide an opportunity for the public to participate in the plan amendment public hearing process; and,

WHEREAS, the Lee County Local Planning Agency (“LPA”) held a public hearing on the proposed amendment in accordance with Florida Statutes and the Lee County Administrative Code on October 25, 2021; and,

WHEREAS, the Board held a public hearing for the transmittal of the proposed amendment on December 8, 2021. At that hearing, the Board approved a motion to send, and did later send, proposed amendment pertaining to Property Rights Element (CPA2021-00007) to the reviewing agencies set forth in Section 163.3184(1)(c), F.S. for review and comment; and,

WHEREAS, at the December 8, 2021 meeting, the Board announced its intention to hold a public hearing after the receipt of the reviewing agencies’ written comments; and,

WHEREAS, on February 16, 2022, the Board held a public hearing and adopted the proposed amendment to the Lee Plan set forth herein.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, THAT:**

## SECTION ONE: PURPOSE, INTENT AND SHORT TITLE

The Board of County Commissioners of Lee County, Florida, in compliance with Chapter 163, Part II, Florida Statutes, and with Lee County Administrative Code AC-13-6, conducted public hearings to review proposed amendments to the Lee Plan. The purpose of this ordinance is to adopt map and text amendments to the Lee Plan discussed at those meetings and approved by a majority of the Board of County Commissioners. The short title and proper reference for the Lee County Comprehensive Land Use Plan, as hereby amended, will continue to be the “Lee Plan.” **This amending ordinance may be referred to as the “Property Rights Element Ordinance (CPA2021-00007).”**

## SECTION TWO: ADOPTION OF COMPREHENSIVE PLAN AMENDMENT

The Lee County Board of County Commissioners amends the existing Lee Plan, adopted by Ordinance Number 89-02, as amended, by adopting an amendment, 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.” This amendment is known as Property Rights Element (CPA2021-00007).

The corresponding Staff Reports and Analysis, along with all attachments and application submittals for this amendment are adopted as “Support Documentation” for the Lee Plan. Proposed amendments adopted by this Ordinance are attached as Exhibit A.

## SECTION THREE: LEGAL EFFECT OF THE “LEE PLAN”

No public or private development will be permitted except in conformity with the Lee Plan. All land development regulations and land development orders must be consistent with the Lee Plan as amended.

## SECTION FOUR: MODIFICATION

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

## SECTION FIVE: GEOGRAPHIC APPLICABILITY

The Lee Plan is applicable throughout the unincorporated area of Lee County, Florida, except in those unincorporated areas included in joint or interlocal agreements with other local governments that specifically provide otherwise.

SECTION SIX: SEVERABILITY

The provisions of this ordinance are severable and it is the intention of the Board of County Commissioners of Lee County, Florida, to confer the whole or any part of the powers herein provided. If any of the provisions of this ordinance are held unconstitutional by a court of competent jurisdiction, the decision of that court will not affect or impair the remaining provisions of this ordinance. It is hereby declared to be the legislative intent of the Board that this ordinance would have been adopted had the unconstitutional provisions not been included therein.

SECTION SEVEN: INCLUSION IN CODE, CODIFICATION, SCRIVENERS' ERROR

It is the intention of the Board of County Commissioners that the provisions of this ordinance will become and be made a part of the Lee County Code. Sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," or other appropriate word or phrase in order to accomplish this intention; and regardless of whether inclusion in the code is accomplished, sections of this ordinance may be renumbered or relettered. The correction of typographical errors that do not affect the intent, may be authorized by the County Manager, or his designee, without need of public hearing, by filing a corrected or recodified copy with the Clerk of the Circuit Court.

SECTION EIGHT: EFFECTIVE DATE

The plan amendments adopted herein are not effective until 31 days after the State Land Planning Agency notifies the County that the plan amendment package is complete. If timely challenged, an amendment does not become effective until the State Land Planning Agency or the Administrative Commission enters a final order determining the adopted amendment to be in compliance. No development orders, development permits, or land uses dependent on this amendment may be issued or commence before the amendment has become effective. If a final order of noncompliance is issued by the Administration Commission, this amendment may nevertheless be made effective by adoption of a resolution affirming its effective status.

THE FOREGOING ORDINANCE was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_. The vote was as follows:

Kevin Ruane	_____
Cecil L Pendergrass	_____
Raymond Sandelli	_____
Brian Hamman	_____
Frank Mann	_____

DONE AND ADOPTED this 16<sup>th</sup> day of February 2022.

ATTEST:  
LINDA DOGGETT, CLERK

LEE COUNTY BOARD OF  
COUNTY COMMISSIONERS

BY: \_\_\_\_\_  
Deputy Clerk

BY: \_\_\_\_\_  
Cecil L Pendergrass, Chair

DATE: \_\_\_\_\_

APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

\_\_\_\_\_  
County Attorney's Office

Exhibit A: Adopted revisions to Property Rights Element (Adopted by BOCC February 16, 2022)

CAO Draft 1/11/2022

## EXHIBIT A

**Note: Text depicted with underscore represents additions to the Lee Plan. Strike-through text represents deletions from the Lee Plan.**

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.”

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.



# 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: 2/16/2022

### 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 **adopt** 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>

**PART 4**  
**STATE REVIEWING AGENCIES'**  
**OBJECTIONS, RECOMMENDATIONS, AND COMMENTS**

Comments from the State Reviewing Agencies were due to Lee County by January 12, 2022.

**A. OBJECTIONS, RECOMMENDATIONS AND COMMENTS:**

Lee County received responses from the following review agencies addressing the transmitted amendment:

- Florida Department of Economic Opportunity (DEO),
- Florida Department of Environmental Protection (DEP),
- Florida Department of Transportation (DOT),
- Florida Fish and Wildlife Conservation Commission (FWC)

There were **no objections or comments** concerning the proposed amendments.

**B. STAFF RECOMMENDATION**

Staff recommends that the Board of County Commissioners ***adopt*** the proposed amendments as shown underlined on page one of the staff report.