

## **CHAPTER 10**

### **PROPERTY RIGHTS ELEMENT**

#### **SUMMARY**

Private property rights in Florida are protected by constitutional provisions and statutory laws, including the Bert J. Harris Jr. Private Property Rights Protection Act. This act provides property owners with an avenue to seek compensation for the diminution in property value resulting from government actions that impose an inordinate burden on their property rights.

In Florida, state law mandates that local governments include a "Property Rights Element" as a fundamental component. The Property Rights Element is designed to ensure the protection and preservation of private property rights in land use planning and regulatory decision-making processes.

The inclusion of a Property Rights Element in local comprehensive plans serves several purposes:

- **Recognize Constitutionally Protected Private Property Right:** The Property Rights Element articulates the importance of private property rights and establishes goals, objectives, and policies to safeguard these rights.
- **Balancing Public and Private Interests:** The Property Rights Element seeks to strike a balance between the interests of property owners and the broader public interest in land use planning. It recognizes that while government regulation is necessary to address community needs and objectives, it should not unduly infringe upon the rights of property owners without just cause.
- **Legal Compliance:** Incorporating a Property Rights Element into local comprehensive plans helps municipalities comply with state laws and constitutional provisions related to private property rights. It ensures that local land use regulations and decisions are consistent with statutory requirements and constitutional principles, including the protection against uncompensated takings.
- **Conflict Resolution:** By explicitly addressing property rights issues within the comprehensive planning process, the Property Rights Element provides a framework for resolving conflicts and provides for vested right determination and protects legal non-conforming structures and uses.

This Element underscores the City's commitment in protecting private property rights as essential components of land use planning and governance. It reflects a recognition of the importance of property rights in fostering economic growth, individual liberty, and the overall well-being of Palm Coast.

#### **GOAL 10.1 – RESPECT PROPERTY RIGHTS AND RIGHTS TO PARTICIPATE IN THE DECISION-MAKING PROCESS**

**The City shall consider and recognize the constitutionally protected private property rights of all property owners and seek to strike a balance between the interest of property owners and the broader public interest in land use planning**

**with the intent of Florida Statutes, the State Comprehensive Plan and all other applicable statutory requirements.**

**Objective 10.1.1 – Recognize Constitutionally Protected Private Property Rights**

The City shall recognize that each property owner has constitutionally protected private property rights, and shall consider these property rights in local decision making by referring to a set of statement of rights identified in this element.

**Policy 10.1.1.1** - The following rights shall be considered in local decision making:

- A. The right of a property owner to physically possess and control their interests in the property, including easements, leases, or mineral rights.
- B. The right of a property owner to use, maintain, develop, and improve their property for personal use or for the use of any other person, subject to state law and local ordinances.
- C. The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.
- D. The right of a property owner to dispose of their property through sale or gift.

**Policy 10.1.1.2** – The City will continue to provide for conflict resolution by providing for an appeal process for private property owners and persons aggrieved by an administrative decision or a Planning and Land Development Regulation Board decision. The appeal process shall be included in the Unified Land Development Code.

**Objective 10.1.2 – Protect the Vested and Entitled Rights of Property Owners**

**Policy 10.1.2.1** – Property owner’s rights shall be deemed vested when a final development order is issued by the City, and the development order has not expired, or development has commenced and is continuing in good faith prior to any new policy or land development regulation that changes the entitled right. In addition, a structure shall be considered vested for construction after a building permit is issued and remains valid.

**Policy 10.1.2.2** – Land uses which were lawful prior to the adoption of this Plan or a subsequent amendment, but which are no longer lawful as a result of the adoption of the Plan or a subsequent amendment, shall be considered non-conforming. Non-conforming uses and structure regulations shall be included in the Unified Land Development Code.

## **GOAL 10.2: VESTED DEVELOPMENT RIGHTS**

**The City will recognize a property owner's vested rights in instances where the Comprehensive Plan, including subsequent updates or amendments, effects any change in the density or intensity of land use, or any other change in the use or regulation of land development (e.g. public facility level of service standards).**

### **Objective 10.2.1 Recognize Vested Development Rights**

Recognize a property owner's vested rights in developing, enjoying, and maintaining their property.

**Policy 10.2.1.1** – Property owners shall be vested from changes, updates, amendments or other type of modifications of the 2050 Comprehensive Plan provided that a property owner is able to demonstrate by substantial competent evidence one of the following:

- A. The development was authorized as a development of regional impact, pursuant to Chapter 380, Florida Statutes, prior to the adoption of the 2050 Comprehensive Plan and the development of regional impact continues to be effective;
- B. A final development order, including a Master Planned Development, development agreement, site plan or other similar type of approval, was issued for the development and adherence to the development order is continuing in good faith;
- C. A property owner or similarly situated person:
  - i. Has acted in good faith and in reasonable reliance;
  - ii. Upon a valid, unexpired act or omission of the government; and
  - iii. Has made a substantial change in position, committed to provide substantial mitigation for the impacts of the development or incurred such extensive obligations and expenses that it would be highly inequitable or unjust to destroy the rights the property owner has acquired; or
- D. Concurrency approvals, including a concurrency certificate, development agreement, proportionate share agreement or other similar approval, is obtained and not expired shall vest a development and be recognized and accepted until expiration.

**Policy 10.2.1.2** – A property owner claiming vested rights from the 2050 Comprehensive Plan shall follow Land Development Code Section 2.15 or incorporate any vested rights finding by the City Council in an approved development agreement.