



Property Rights Element Support Document



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Support Document

Property Rights

Introduction

A. General

Chapter 163.3177(6)(i), Florida Statutes requires each local government to adopt a property rights element in its comprehensive plan to ensure that private property rights are considered in local decision-making. In accordance with the legislative intent expressed in ss. 163.3161(10), the purpose of the Broward County Comprehensive Plan's Property Rights Element is to:

1. respect judicially acknowledged and constitutionally protected private property rights,
2. ensure private property rights are considered in local decision-making.

The Florida Department of Economic Opportunity requires the legislative requirements to be addressed through a stand-alone comprehensive plan element. The element is not required to be in the form of goals, objective, and policies; the legislation provides for the format of the element to be at the discretion of the local government. Broward County developed the element in the format of the other Broward County Comprehensive Plan elements.

B. Service Area

The service area for the Property Rights Element is generally all of Broward County.

C. Planning Horizons

The short-term planning horizon is 2026 and the long-term planning horizon is ten years or 2031.

D. Definitions:

1. Action of a governmental entity: A specific action of a governmental entity which affects real property, including action on an application or permit.

2. Easement: Any strip of land or body of water created by an owner or subdivider for public or private travel, access, utilities, drainage, sanitation, or other specified uses having limitations, the fee title to which shall remain in the name of the property owner subject to the right of use designated in the document granting the easement, and which may be dedicated by plat, site plan, separate instrument, judgment, or other legal mechanism.
 - a. *Private easement or interest.* Any road, street, alleyway, utility, drainage, pedestrian, air, light, access, ingress or egress, flowage, or similar easement or interest that is dedicated to any person or entity other than the federal government, the state government, or any of their subdivisions or agencies.
 - b. *Public easement or interest.* Any road, street, alleyway, utility, drainage, pedestrian, air, light, access, ingress or egress, flowage, or similar easement that is dedicated to the public or Broward County. The term shall not include dedications made to specifically named utility companies, drainage districts, or other governmental entities.
3. Existing use:
 - An actual, present use or activity on the real property, including periods of inactivity which are normally associated with, or are incidental to, the nature or type of use; or
 - Activity or such reasonably foreseeable, nonspeculative land uses which are suitable for the subject real property and compatible with adjacent land uses and which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property.
4. Governmental entity: An agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority. The term does not include the United States or any of its agencies, or an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority, when exercising the powers of the United States or any of its agencies through a formal delegation of federal authority.
5. Inordinate burden and inordinately burdened:
 - An action of one or more governmental entities has directly restricted or limited the use of real property such that the property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole, or that the property owner is left with existing or vested uses that are unreasonable such that the property owner bears permanently a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large.
 - Do not include temporary impacts to real property; impacts to real property occasioned by governmental abatement, prohibition, prevention, or remediation of a public nuisance at common law or a noxious use of private property; or

impacts to real property caused by an action of a governmental entity taken to grant relief to a property owner under this section. However, a temporary impact on development, as defined in s. 380.04, that is in effect for longer than 1 year may, depending upon the circumstances, constitute an “inordinate burden” as provided in this paragraph.

- In determining whether reasonable, investment-backed expectations are inordinately burdened, consideration may be given to the factual circumstances leading to the time elapsed between enactment of the law or regulation and its first application to the subject property.
6. Property owner: The person who holds legal title to the real property that is the subject of and directly impacted by the action of a governmental entity. The term does not include a governmental entity.
 7. Real property: The term means land, including any appurtenances and improvements to the land, including any other relevant real property in which the property owner has a relevant interest. The term includes only parcels that are the subject of and directly impacted by the action of a governmental entity.
 8. Right-of-way. Land dedicated, deeded, used, or to be used for a boulevard, road, street, alley, walkway, drainage facility, access for ingress and egress, or other purposes by the public, certain designated individuals, or governing bodies.

Data Requirements

The Property Rights Element is based upon the requirements of Chapter 163.3177(6)(i), Florida Statutes which states 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.

A. Property Interests

Property interests include easements, leases, and mineral rights.

1. Easements.

The Broward County Land Development Code defines an easement as “any strip of land or body of water created by an owner or subdivider for public or private travel, access, utilities, drainage, sanitation, or other specified uses having

limitations, the fee title to which shall remain in the name of the property owner subject to the right of use designated in the document granting the easement.” At the time of platting, Broward County requires trafficways that are delineated on the Broward County Trafficways Plan to be conveyed to the public through dedication on the face of the plat, deed, or easement.

2. Leases.

A lease is generally described as a contract between a landlord and a tenant. The duties of landlords and tenants are prescribed in Section 83.49, Florida Statutes, including those for nonresidential, residential, and self-service storage space tenancies. The Broward County Code of Ordinances provides supplementary requirements in Article IX-A. – Landlord-Tenant Walkthrough Inspections.

3. Mineral Rights.

Natural resources in Broward County are peat, sand shall and marl, and limestone. The Broward County Land Use Plan includes a Mining Use future land use designation. Among other uses, it allows mining, including crushing, batching, mixing, and forming of mined minerals. Broward County is fully developed and mining operations are limited.

B. Property Use, Development, Maintenance, and Improvement.

Broward County recognizes the right to use property for personal use or for the use of any other person, subject to state law and local ordinances.

1. Broward County Charter

The Broward County Charter Section 1.02.-General Powers of the County provides for Broward County to have all the powers of local self-government not inconsistent with the United States Constitution, the Florida Constitution, general law, or other special law approved by vote of the electors and the Charter. Additionally, Section 1.04.-Citizen’s bill of rights provides for citizens protection against abuses and encroachments by County government, and to insure all persons fair and equitable treatment.

Through its authority under the Broward County Charter, Broward County Board of County Commissioners sets countywide policies regarding land use and trafficways. In accordance with the Broward County Charter, the Broward County Planning Council is established to prepare and administer the Broward County Land Use Plan and the Broward County Trafficways Plan.

In addition, the Charter provides for the Commission to regulate the platting of land, including the establishment of standards, procedures, and minimum requirements to regulate and control the platting of land throughout Broward

County. Plats must be approved by the Commission and subsequently recorded in the County's Official Records. At the time of platting, Broward County requires trafficways that are delineated on the Broward County Trafficways Plan to be conveyed to the public through dedication on the face of the plat, deed, or easement.

2. Broward County Comprehensive Plan

Broward County has local level land use planning authority in its unincorporated areas and sets policies regarding the development of these areas through various elements of the Broward County Comprehensive Plan. The Comprehensive Plan's Broward Municipal Services District Element sets land use policy in Broward County unincorporated areas. Each municipality within Broward County maintains its own local comprehensive plan.

3. Broward County Zoning Code.

The Broward County Code of Ordinances, Chapter 39-Zoning divides land within the Broward County's unincorporated areas into districts. The purpose is to limit the location, uses and occupancy of buildings, structures and land to be used for trade, industry, residence or other purposes, and also the location, height, bulk, occupancy and uses of buildings and other structures, including the percentage of plot occupancy and coverage, street setback lines, sizes of yards, and other open spaces. In addition, the Zoning Code includes provision for property maintenance, development, and improvement.

C. Property Privacy and Protection.

In certain circumstances, Broward County may need to "take" property for public purposes. Public purposes generally include the provision and roads, utilities, and other essential services and infrastructure. The United States Constitution's 5th Amendment provides that private property may not be taken for public use without just compensation, while the 14th Amendment provides for procedural due process such as notice and the opportunity to be heard.

In addition, Chapter 73-Eminent Domain, Florida Statutes addresses the condemnation process, including compensation. Chapter 74-Proceedings Supplemental to Eminent Domain provides provisions for a petitioner (Broward County) in an eminent domain case to take possession and title in advance of the entry of a final judgment.

D. Sale or Gift of Property.

A property owner has the right to dispense of property through sale or gift. Broward County does not impede this right through its law, rules, regulations, or practices.

Analysis

Laws relating to these rights are found in the State Constitution, Florida Statutes, local ordinances, and court decisions. The objectives and associated policies included with the Property Rights Element are not a comprehensive guide to property rights. The Property Rights Element does not:

- Create a civil cause of action,
- Neither expands nor limits any rights or remedies provided under any other law.
- Does not replace the need to seek legal advice in matters relating to property law.

Nearly two-thirds of Broward County is located in the Water Conservation Areas (WCAs), also referred to as the Everglades. The WCAs includes lands owned by multiple entities, including private, tribal, and public holdings. The WCAs provide flood protection, water storage, and groundwater recharge, as well as crucial wildlife habitat. The Broward County Land Use Plan and Map and the Future Unincorporated Area Land Use Element and Map designate the WCAs for Conservation future land use. Development is largely restricted to outdoor recreational, water management, and tribal uses.

Implementation

Broward County develops and implements various plans, codes, and procedures. To ensure judicially acknowledged and constitutionally protected private property rights are respected, Broward County adheres to the requirements of federal, state, and local statutes.