



## APPLICATION FOR COMPREHENSIVE PLAN AMENDMENT

### APPLICATION

<b>APPLICANT:</b>	Nassau County BOCC
<b>AGENT:</b>	Planning + Economic Opportunity Department
<b>REQUESTED ACTION:</b>	Amend the Public Facilities, Conservation, Regional Coordination, And Capital Improvements Elements of the 2030 Nassau County Comprehensive Plan to Address Statutory Requirements for Water Supply Planning.

\*\*\* All required application materials have been received. All fees have been paid. All required notices have been made. All copies of required materials are part of the official record and have been made available on the County's website and at the Planning + Economic Opportunity Department Office. \*\*\*

### SUMMARY OF REQUEST AND BACKGROUND INFORMATION

Florida House Bill 59 went into effect on July 1, 2021. The legislation builds upon Florida's Bert Harris Act which is intended to protect property owners against government actions that "inordinately burden" their ability to benefit from their land. Each local government must adopt a property rights element into its comprehensive plan either as part of its next proposed plan amendment after July 1, 2021, or during the next scheduled evaluation and appraisal of its comprehensive plan pursuant to s. 163.3191 (whichever occurs sooner). The legislation also includes a prohibition on the consideration of any Comprehensive Plan amendment until the Property Rights Element is adopted.

In the Bert Harris Act (F.S. 70.001) as passed in 1995, the Legislature recognized that some laws of governmental entities may inordinately burden, restrict, or limit private property rights while not amounting to a taking under the State Constitution or the United States Constitution. This law provides as a separate and distinct cause of action from the law of takings for relief, or payment of compensation, when a new law results in an inordinate burden of property rights. The term "inordinate burden" means restrictions that limits the use of property such that the property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use, or that the allowable uses of the property are unreasonable to the point where the property owner bears a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large. The property owner must submit valid appraisal that supports the claim. In response the governmental entity can either make no accommodation to the claim, or can make a settlement offer that can include a variety of actions including:

- adjusting permit standards;
- modifying density, intensity, or use;
- transferring development rights;
- offering land swaps;
- locating development to the least sensitive part of the site;
- conditioning the amount of development or use;
- issuing relief through a development order; and/or
- purchasing the property.

If the parties do not agree, the matter shall be decided at the circuit court level.



The following language constitutes the proposed Property Rights Amendment. As set forth in the attached legislation, the four standards set forth under proposed Policy PR.01.01 represent the requirements of the statute. The County's outside legal counsel recommended the additional policies that clarify the scope of applicability of the Element.

**Goal**

Protect property rights as required by chapter 2021-195 Laws of Florida.

**Objective PR.01**

Consider the property rights of private property owners in the County's review of proposed actions.

**Policy PR.01.01**

When real property is the subject of and directly impacted by a proposed action being considered by Nassau County, the County shall consider property rights as part of its decision making in the following ways.

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.
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 law and local law.
3. The right of the real property owner to privacy and to exclude others from the property to protect the owner's legal interests in such property, subject to applicable federal, state, and local law.
4. The right of a real property owner to dispose of his or her property interest through sale or gift.

**Policy PR.01.02**

The County will not be involved in private disputes of interest in property ~~except if the Board of County Commissioners makes a finding that supporting a party would be in the best interest of the public.~~

**Policy PR.01.03**

Nothing herein shall require the County to ascertain or determine the existence of any purported private interest in real property; those matters are within the jurisdiction of the circuit courts not the County (see s. 26.012(g), Florida Statutes (2021), and Art. V, Sec. 20(c)(3), Fla. Const. as may be amended from time-to-time).



**Policy PR.01.04**

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.

**CONCLUSION**

At the Planning and Zoning Board meeting, the County Attorney advised eliminating the last part of Policy PR.01.02 as noted on the previous page.

The Property Rights Element is mandated by the Florida Legislature. Staff recommends APPROVAL of Application CPA21-005.