

# **PROPOSED AMENDMENT TO THE MARTIN COUNTY COMPREHENSIVE PLAN**

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**REQUEST NUMBER:** CPA 20-16 Property Rights Element

Report Issuance Date: September 7, 2021

**APPLICANT:** Martin County Board of County Commissioners

**REPRESENTED BY:** Paul Schilling  
Director, Growth Management Department

**PLANNER-IN-CHARGE:** Clyde Dulin, Comprehensive Planning Administrator  
Growth Management Department

<b><u>PUBLIC HEARINGS</u></b>	<b><u>Date</u></b>	<b><u>Action</u></b>
Local Planning Agency:	September 16, 2021	
BCC Transmittal Hearing:	October 5, 2021	
BCC Adoption Hearing:	TBD	

**APPLICANT REQUEST:** A text amendment to the Comprehensive Growth Management Plan (CGMP), to create a property rights element in compliance with Chapter 2021-195, Laws of Florida.

## **STAFF RECOMMENDATION:**

Staff recommends approval of creating a new Chapter 19, Property Rights as well as amending Chapter 1 Preamble and Chapter 2, Overall Goals and Definitions.

## **EXECUTIVE SUMMARY**

On June 29, 2021 the Governor signed House Bill 59, now codified into law as Chapter 2012-195, Laws of Florida. The legislation requires each local government in the State to adopt a property rights element into its comprehensive plan. The Board adopted the attached resolution to initiate a text amendment to any chapters of the Comprehensive Growth Management Plan necessary to create a property rights element and to any other chapters of the Plan necessary for consistency. In addition to the draft Property Rights Element, staff has reviewed Chapters of the Plan for internal consistency and recommended changes are discussed for Chapter 1, Preamble and Chapter 2, Overall Goals and Definitions.

## **ISSUES:**

- A. The statement of rights found in Chapter 2012-195, Laws of Florida, will be codified in Section 163.3177, Florida Statutes and must be placed in local Comprehensive Plans “to ensure that private property rights are considered in local decision making.”

“In accordance with the legislative intent expressed in ss. 163.3161(10) and 187.101(3) that governmental entities respect judicially acknowledged and

constitutionally protected private property rights, 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 language quoted above cites existing Section 163.3161(10), Florida Statutes:

“(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.”

The existing language, quoted above, describes the legislative intent for all governmental entities. However, the new statutory requirement emphasizes “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.**” To emphasize the legislative intent, the words “considered in local decision making” appear twice.

Chapter 2021-195, attached, represents the necessary data and analysis supporting the adoption of Chapter 19, Property Rights. Staff has also reviewed text in other chapters of the Plan for internal consistency and recommends changes to Chapter 1, Preamble and Chapter 2, Overall Goals and Definitions. No changes are proposed to Chapters 3 through 18.

- B. Chapter 1, Preamble is unlike most of the other chapters that describe the specific policy requirements for land development. The Preamble describes the very purpose of the Plan. It introduces the reader to the chapters of the Plan and the basis for decision making throughout the Plan. Thus Chapter 1 is the appropriate place to reference Chapter 19 and the new State requirement that local decision making consider private property rights. Chapter 1 also requires internal consistency between the various Elements of the Plan.

For example, Section 1.6. Consistency of Elements and Policies, contains the following proposed text:

“All elements of the CGMP shall be consistent and coordinated with policies of other local governments; the Martin County School Board; Treasure Coast Regional Planning Council; South Florida Water Management District; **state** and federal governments; and other public agencies charged with significant responsibilities for land management and resource conservation. The County may adopt provisions that are more restrictive than those of other local governments and regional, state and federal agencies.” However, Martin County shall ensure that private property rights are considered in local decision making consistent with Chapter 19, Property Rights.

The underlined text proposed for Section 1.6 provides internal consistency with Chapter 19 and it counter-balances the potential for policies that are more restrictive than regional, state and federal agencies. Staff also recommends a clarifying change to the last sentence in Section 1.3., Legal Status.

C. Chapter 2, Overall Goals and Objectives.

Text similar to the amendments proposed for Chapter 1 is proposed for Section 2.1 of Chapter 2. The existing text quoted below refers to planning decisions and what those decisions are based upon. The underlined text is proposed to include the requirement that local decision making consider property rights.

“Martin County has been proclaimed a 'Sustainable County' by the state land planning agency. Sustainable means meeting the needs of the present without compromising the ability of future generations to meet their needs. All planning decisions made by the County shall be based upon a consideration of impacts on the ecology, quality of life and fiscal sustainability of such actions, including the long term cumulative impacts.” Additionally, Martin County shall ensure that private property rights are considered in local decision making consistent with Chapter 19, Private Property Rights.

D. Staff also recommends deleting some of the Objectives and Policies under the Overall Goals found in Chapter 2. The Goals, Objectives and Policies in Chapter 2 attempt to “summarize Goals, Objectives and Policies in other parts of the Plan.” This summarizing of Objectives and Policies in the other 16 chapters requires also determining what policies are stricter. The following text from Section 1.6 must be considered whenever Plan policies or Land Development Regulations are amended.

“Where one or more policies diverge, the stricter requirement shall apply. Where a subject is addressed by two or more provisions of the Comprehensive Plan, all provisions apply, and the stricter provision shall prevail to the extent of the conflict. Plan policies addressing the same issue shall be considered consistent when it is possible to apply the requirements of both policies with the stricter requirements governing.”

Reducing duplication within the Plan reduces the need to determine which policy is stricter and how it will prevail. This will also reduce the potential for conflict with Chapter 19, Property Rights.

## FIGURES/ATTACHMENTS

- Draft of Chapter 19, Property Rights Element
- Draft changes to Chapter 1, Preamble.
- Draft changes to Chapter 2, Overall Goals and Objectives
- Resolution 21-8.22 initiating an amendment to the Comprehensive Growth Management Plan.
- Chapter 2021-195
- Notice from the Department of Economic Opportunity
- Notice of Public Hearing.