

**SEMINOLE COUNTY
LOCAL PLANNING AGENCY/
PLANNING AND ZONING COMMISSION
COUNTY SERVICES BUILDING
1101 EAST FIRST STREET
SANFORD, FLORIDA
BOARD CHAMBERS, ROOM 1028**

MINUTES

**WEDNESDAY, AUGUST 4, 2021
6:00 PM**

Comprehensive Plan Text Amendment: Introduction Element and Property Rights Element - Consider an Ordinance amending the text of the Introduction Element of the Seminole County Comprehensive Plan, to revise the definition of Net Buildable Acres; and Creating a separate Property Rights Element of the Comprehensive Plan in accordance with mandates set forth in Chapter 163 of the Florida Statutes (Seminole County Planning and Development, Applicant) Countywide (Dagmarie Segarra, Project Manager).

Dagmarie Segarra, Senior Planner – Presented this item and stated that this is request is to consider an Ordinance amending the text of the Introduction Element of the Seminole County Comprehensive Plan to revise the definition of Net Buildable Acres and creating a separate Property Rights Element of the Comprehensive Plan in accordance to mandates set forth in Chapter 163 of the Florida Statutes. There are two proposed amendments. The first one is an amendment to the existing Introduction Element of the Comprehensive Plan. In 2014 the County adopted Ordinance 2014-46 amending the Introduction Ordinance to include a revision to the definition of the net buildable acres. At the request of the Board of County Commissioners (BCC), Staff proposed the revised definition in order to encourage re-development within the urban service area for in-fill properties and to support the How Shall We Grow in the Central Florida area. There are two separate definitions; one for the urban service area and one for the east rural area. The urban service area definition is the total number of acres within the boundary of a development excluding natural lakes and wetlands or flood prone areas. In the east rural area, the definition is the total number of acres within the boundary of a development excluding areas devoted to right-of-ways, easements, lakes, wetlands, or flood prone areas. At the request of the BCC, it was requested that Staff revise the proposed definition for net buildable acres to be defined as the total number of acres within the boundary of a development, excluding areas devoted for road rights-of-way, transmission of power lines, easements, natural lakes, wetlands, or flood prone areas. In addition to those amendments, there is going to be some consistent amendment that will exclude developments approved between December 2014 and August 24, 2021, in which the Net Buildable Acres were calculated based on the prior Net Buildable Acres definition.

Basically, we are going to define net buildable acreage as it is currently defined in the Rural Area. The second amendment to the Comprehensive Plan is creating a Property Rights Element. Currently, our Comp Plan has provisions that pertain to property rights in our Future Land Use Element. Those provisions are located in Objective 17 of the Future Land Use Element, which creates procedures for property rights, dispute resolutions, and adult uses. The criteria provided for the new HB 59 will be in addition to the existing language that is already included in our Comprehensive Plan. Right now, the Bill requires that the County adopt a separate element for property rights that is why we cannot just amend the Future Land Use Element, we have to create a separate element. This Element has four criteria included in the Bill, which are;

- The right of the property owner to physically possess and control his or her interest in the property includes easements, leases, and mineral rights.
- The right to use, maintain, develop, and improve his or her property for personal use or the use of any other persons subject to State Law in local ordinances.
- The right to privacy and to exclude other others from the property to protect owner's possessions and property
- The right to dispose of his or her property to sales or gift.

Staff is proposing to adopt the language created in HB 59 creating this element and meeting with the Statute. When we do the E.A.R., which is the Evaluation Appraisal Report, then we will amend the Future Land Use Element to take the language we currently have and combine it with the Property Rights Element and create a proper element to suffice and meet the policies of the County. This needs to be done to proceed with Future Land Use Amendments for the rest of the year.

Commissioner Richard Jerman asked what the definition of "flood prone areas". Ms. Segarra responded that flood prone areas that are under water not buildable. Mary Moskowitz, Planning & Development Manager, responded that in the Comp Plan it is within the 100 year flood plain. Commissioner Jerman asked if it is in the 100 year flood plain and you can LOMAR it out, fill it and compensate for it somewhere else, then you can take it out of the flood plain. If someone does that, then they're being penalized. Ms. Moskowitz responded that density would be calculated at post-development.

Commissioner Bob Turnage asked what is being recommended in regards to the Property Rights Elements. Ms. Segarra responded that we are creating a new Element into the Comprehensive Plan according to the recently adopted legislative bill (HB 59). This request is to meet the criteria of that bill. Commissioner Turnage asked, as a property owner, how this protects him and what actions does a property owner get to take to protect their property rights. Ms. Segarra responded that when Staff makes decisions regarding a Future Land Use Amendment, we have to make an analysis based on the four criteria established in the bill. In order for that to happen, the legislature make the decision that this has to be done as a separate Element and not part of just the Comprehensive Plan.

Vice Chairman Stephen Smith asked for instance if someone came into meter wells, under this request, they wouldn't be able to put a meter on anybody's well. Ms. Segarra responded that it is to protect the property.

Commissioner Richard Jerman stated that he is opposed to this request, at least to some of the language that has been provided. He further stated that recently a mobility fee was adopted and those fees were trying to encourage higher density in urban service areas. Now with this request, an area has been added that can't be counted anymore, such as rights-of-way. He considers right-of-way a developable area. For example, if you have 10 acres of land and it is all buildable without wetlands, you can technically build 40 units. However, considering the new right-of-way language, the number of units are reduced to only 34 using a 15% calculation. Density and value are lost in this scenario for no other reason than somebody is trying to cut density in the County. He continued by stating that with an apartment site, if you count parking areas, which are considered rights-of-way, they could lose 20% of their acreage, resulting in lost density. He doesn't know why the Commissioners are proposing this. He thinks the way it was without rights-of-way being included is better, with the exception of appropriate reasons with power lines, natural waters, and wetlands, but not adding the "right-of-way" provision. This is why he is opposed to this Ordinance.

Chairman Carissa Lawhun stated that she has the same question and asked why this is being proposed and what the intent is here. Ms. Moskowitz responded that at the request of the Board of County Commissioners, Staff was asked to look at the net buildable density. In 2014, the definition was changed to exclude the right-of-way. Since that time we have been tracking development entitlements and there has been approximately a 15-20% increase in the number of units built from the proposed definition versus the existing definition. The BCC requested that Staff develop this Ordinance for the right-of-way to be amended back to the old definition and also to add the second part for the Property Rights requirement, which has been bundled together.

Public Comment included the following:

Cindy Haller, of Sanford, stated that she is in support of this request. She thanked Staff on their hard work on the net buildable definition and she wants to go back to the old definition. She wants as much open space as possible and not squish as much density as possible into Seminole County causing increased traffic, flooding, and accidents involving wildlife and people. We want the County to support the Land Development Code that they've envisioned for Seminole County and the rights of our existing residents.

Wafa Esposito, of Sanford, stated that communities with sidewalks are appropriate and hopefully small shade trees should be the trend. If the 2014 definition had shade trees and sidewalks included, then it should be brought back. Retention ponds should not be behind a few houses to be exclusive to a few, but considered as enmity for the whole community. She is in support of this request.

Board discussion ensued.

Ms. Moskowitz stated that a private parking lot would not be part of the calculation, but if there was a dedicated public right-of-way it would be. It depends on how a property is

developed. She confirmed that the calculation is approximately 15-20% of the development is dedicated to a road infrastructure.

Vice Chairman Smith asked if there was a subdivision with a private road, then it would not be part of this calculation and Ms. Moskowitz responded that right now it is all excluded. A private easement would be counted as a road/right-of-way too. Commissioner Jerman stated then you lose it. Vice Chairman Smith asked if someone had 10 acres and they wanted to divide it into two 5-acre parcels and a road needed to be added, they would not be able to divide it, because the road would reduce the parcels less than the required 5-acre parcels. He said he had a problem with that.

Additional board discussion ensued.

Ms. Segarra stated that the Board can make a recommendation to move forward with the Property Rights Element, as that really needs to be passed.

Paul Chipok, Deputy County Attorney, stated that with the Property Rights Element, House Bill 59 was passed by the legislature this past year and it gives two years for these to be rolled into Comprehensive Plans. However, there has been an advisory opinion from the Department of Economic Opportunity that said they're not going to be processing any land development applications/Comprehensive Plan Amendment changes unless the Property Rights Element has been established within that jurisdiction. They are sort of forcing our hand a little bit to move quickly on that, so if the Board wishes to make a motion to deny Exhibit A and approve Exhibit B, which is the Text Amendment Property Rights Element.

A motion was made by Vice Chairman Stephen Smith, seconded by Commissioner Tim Smith to approve and refer the Property Rights Element (Exhibit B, 2021.TXT.04) in accordance with the mandates set forth in Chapter 163 of the Florida Statute and recently approved House Bill 59 Local Municipalities as provided.

Ayes 7: Chairman Carissa Lawhun, Vice Chairman Stephen Smith, Commissioner Richard Jerman, Commissioner Dan Lopez, Commissioner Tim Smith, and Commissioner Bob Turnage

A motion was made by Commissioner Richard Jerman, seconded by Vice Chairman Stephen Smith to deny and refer the Transmittal of the Comprehensive Plan Text Amendments to the Introduction Element revising the definition of net buildable acres (Exhibit A, 2021.TXT.03).

Ayes 6: Chairman Carissa Lawhun, Vice Chairman Stephen Smith, Commissioner Richard Jerman, Commissioner Dan Lopez, and Commissioner Tim Smith

Nay 1: Commissioner Bob Turnage