

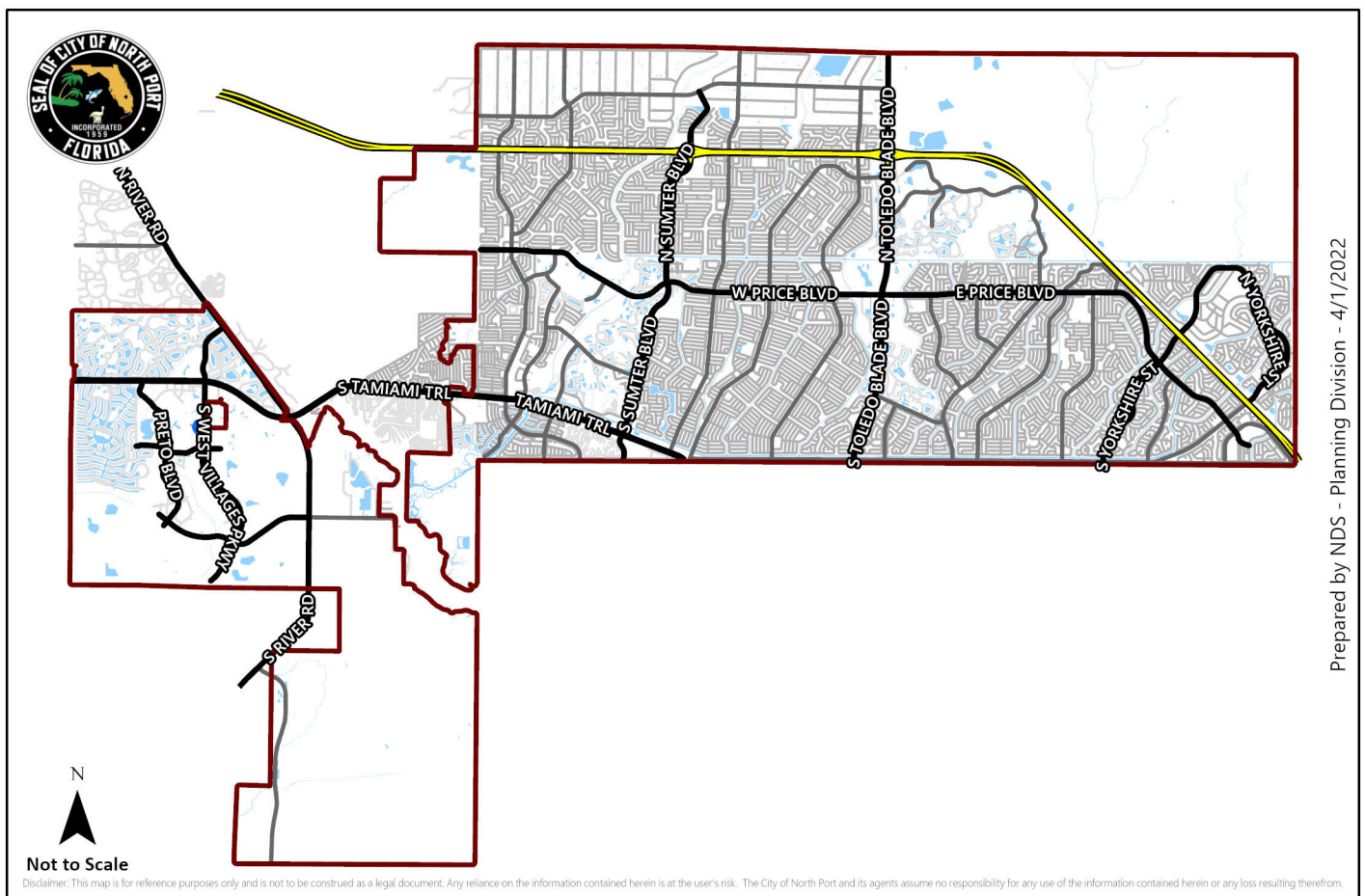


STAFF REPORT

Ordinance No. 2022-10

CPAL-22-003—Property Rights Element

- From:** Noah Fossick, Planner II
- Thru:** Lori Barnes, AICP, CPM, Planning and Zoning Division Manager
- Thru:** Alaina Ray, AICP, Neighborhood Development Services Director
- Thru:** Jason Yarborough, ICMA-CM, Assistant City Manager
- Thru:** A. Jerome Fletcher II, City Manager
- Date:** April 1, 2022



Prepared by NDS - Planning Division - 4/1/2022

PROJECT:	Property Rights Element, CPAL-22-003
REQUEST:	Consideration of Comprehensive Plan Amendment to Add the Property Rights Element to the Comprehensive Plan
APPLICANT:	City of North Port
LOCATION:	All lands within the municipal boundaries of the City of North Port
PROPERTY SIZE:	± 104.21 square miles

I. BACKGROUND

On July 1, 2021, Florida Governor Ron DeSantis signed Senate Bill 59 into law, requiring municipal and county governments adopt a property rights element into their comprehensive plan. On January 3, 2022, Staff initiated a Large-Scale Comprehensive Plan Amendment to add the requisite Property Rights Element by incorporating the language from Section 163.3177(6)(i)1., Florida Statutes, relocating property rights language from elsewhere in the Comprehensive Plan, and adapting language from the property rights elements of other local jurisdictions in the vicinity of the City of North Port.

II. PETITION

City Staff has introduced this petition to amend the Comprehensive Plan to add Chapter 12 Property Rights Element and shift Chapter 2 Future Land Use Element, Goal 4 and Objective 12 to the new Property Rights Element.

COMPREHENSIVE PLAN AMENDMENT

The applicant is proposing to Large-Scale Comprehensive Plan Amendment to adopt the Property Rights Element into the Comprehensive Plan. The Comprehensive Plan Amendment is implemented through **Ordinance No. 2022-10** as attached in **Exhibit A**.

III. REVIEW PROCESS

The proposed ordinance for the Comprehensive Plan Amendment has been reviewed and approved as to form and correctness by the City Attorney's Office.

IV. DATA & ANALYSIS

Staff has reviewed the proposed Large-Scale Comprehensive Plan Amendment for consistency with the Florida Statutes, the City's Comprehensive Plan, and the City's Unified Land Development Code (ULDC).

FLORIDA STATUTES

Florida Statutes § 163.3177 Required and optional elements of comprehensive plan; studies and surveys.

This Statute provides the required elements for Comprehensive Plans. Subsection (6)(i) provides the requirement for a Property Rights Element.

Staff has drafted the Property Rights Elements in accordance with the requirements of this Statute. The City Attorney's Office has also reviewed and approved that the draft language has met these requirements.

Florida Statutes § 163.3184 Process for adoption of comprehensive

IV. DATA & ANALYSIS (CONTINUED)

FLORIDA STATUTES

plan or plan amendment.

This Statute provides the requirements for transmittal of documents for State Coordinated Review and to nearby, local jurisdictions, and for transmittal of documents following adoption.

Staff will transmit documents to all relevant agencies and for a State Coordinated Review in accordance with this Statute following the first reading before the North Port City Commission and transmit documents to all relevant agencies following the adoption hearing.

Florida Statutes § 166.041 Procedures for adoption of ordinances and resolutions.

This Statute provides the notice requirements for ordinances.

A notice of public hearings was published in a newspaper of general circulation on Monday, April 4th. Staff concludes that the petition for a Large-Scale Comprehensive Plan Amendment has met the notice

V. PUBLIC NOTICE & HEARING SCHEDULE

PUBLIC NOTICE

The petition for a Large-Scale Comprehensive Plan Amendment was advertised in a newspaper of general circulation within the City of North Port on April 4, 2022 pursuant to the provisions of Section 166.041 (3)(a), Florida Statutes and Section 7.01 (c) of the Charter of the City of North Port, and Chapter 1, Article II., Section 1-12 of the City's Unified Land Development Code (ULDC) as amended (**Exhibit B**).

PUBLIC HEARING SCHEDULE

Planning & Zoning Advisory Board	April 21, 2022 9:00 AM or as soon thereafter
City Commission 1st Reading	May 10, 2022 10:00 AM or as soon thereafter
City Commission 2nd Reading	TBD

VI. RECOMMENDED MOTION

The Planning & Zoning Division recommends that the Planning & Zoning Advisory Board recommend approval of Ordinance No. 2022-10 and motion as follows:

VI. RECOMMENDED MOTION (CONTINUED)

I move to recommend approval of Ordinance No. 2022-10, Petition CPAL-22-003, and find that, based on competent substantial evidence, the Comprehensive Plan Amendment meets the standards in Florida Statutes § 163.3177, § 163.3184, and § 166.041.

VII. ALTERNATIVE MOTIONS

1. **DENIAL** of Ordinance No. 2022-10, Petition CPAL-22-003, Property Rights Element.

I move to recommend denial of Ordinance No. 2022-10, Petition CPAL-22-003, and find that, based on the competent substantial evidence:

- The proposed Comprehensive Plan Amendment **DOES NOT COMPLY** with the Florida Statutes § 163.3177, § 163.3184, and § 166.041.

VIII. EXHIBITS

A.	Ordinance No. 2022-10
B.	Legal Advertisement



City of North Port

ORDINANCE NO. 2022-10

AN ORDINANCE OF THE CITY OF NORTH PORT, FLORIDA, AMENDING THE CITY OF NORTH PORT COMPREHENSIVE PLAN TO ADD CHAPTER 12 PROPERTY RIGHTS ELEMENT; ADDING GOALS, OBJECTIVES, AND POLICIES PURSUANT TO FLORIDA STATUTES SECTION 163.3177; REPEALING CITY OF NORTH PORT COMPREHENSIVE PLAN CHAPTER 2, GOAL 4, OBJECTIVE 12 OF THE FUTURE LAND USE ELEMENT RELATING TO BALANCING PROPERTY OWNER INTERESTS; PROVIDING FOR FINDINGS; PROVIDING FOR ADOPTION; PROVIDING FOR TRANSMITTAL OF DOCUMENTS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

1 **WHEREAS**, the City of North Port is committed to planning and managing the future growth and
2 development of the City; and

3
4 **WHEREAS**, pursuant to Article VIII, Section 2(b) of the Constitution of the State of Florida, the North Port
5 City Charter, and the Community Planning Act (“Act”), Florida Statutes Chapter 163, Part II, the City is
6 authorized and required to adopt a Comprehensive Plan; and

7
8 **WHEREAS**, on March 15, 1989, the City Commission adopted Ordinance No. 89-3, establishing the North
9 Port Comprehensive Plan (“Comprehensive Plan”), as amended; and

10
11 **WHEREAS**, on June 27, 2017, the City Commission adopted Ordinance No. 2016-34, approving the
12 Evaluation and Appraisal Report-based Amendments to the Comprehensive Plan; and

13
14 **WHEREAS**, Florida Statutes Section 163.3177(6)(i)2 requires the City to adopt a property rights element
15 in its comprehensive plan by the earlier of: (i) the date of the adoption of its next proposed plan
16 amendment that is initiated after July 1, 2021; or (ii) the date of the next scheduled evaluation and
17 appraisal of the comprehensive plan; and

18
19 **WHEREAS**, property rights are currently addressed in North Port Comprehensive Plan Chapter 2 Future
20 Land Use, Goal 4, Objective 12; and

21
22 **WHEREAS**, the City Commission desires to create a new Comprehensive Plan Chapter 12 to include the
23 element required by Florida Statutes Section 163.3177(6)(i) and to relocate the property rights portion
24 from Chapter 2; and

25

26 **WHEREAS**, the Planning and Zoning Advisory Board, designated as the local planning agency, held a properly
27 noticed public hearing on _____, 202__ to receive public comment on the subject matter of this
28 ordinance and to make its recommendation to the City Commission; and

29
30 **WHEREAS**, the City Commission of the City of North Port held properly noticed public hearings at first and
31 second reading of this ordinance to review the recommendations of the Planning and Zoning Advisory
32 Board and to receive public comment on the subject matter of this ordinance; and

33
34 **WHEREAS**, pursuant to Florida Statute Section 163.3184(3)(b)4.h., the State Land Planning Agency of the
35 Florida Department of Economic Opportunity reviewed the proposed amendments for impacts to important
36 state resources and facilities not within the jurisdiction of other state agencies; and

37
38 **WHEREAS**, the City Commission determined that the proposed amendment serves the public health,
39 safety, and welfare of the citizens of the City of North Port, Florida.

40
41 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF NORTH PORT, FLORIDA:**

42
43 **SECTION 1 – FINDINGS**

44
45 1.01 The above recitals are true and correct and are incorporated in this ordinance by reference.

46
47 1.02 Pursuant to Florida Statutes Section 163.3184(3), the City followed the expedited state review
48 process for text changes to a local government’s comprehensive plan goals, objectives, and
49 policies, as follows:

- 50
- 51 1. Within ten (10) working days after the initial public hearing, the City transmitted the
- 52 amendment and appropriate supporting data and analyses to the reviewing agencies and
- 53 other local governments that filed a written request;
- 54
- 55 2. Not later than thirty (30) days after the date the reviewing agencies and local governments
- 56 first received the amendment, the City received the reviewing agencies’ and local
- 57 governments’ comments;
- 58
- 59 3. The adoption hearing was held within 180 days after receipt of the agency comments; and
- 60
- 61 4. Within ten (10) working days after the second public hearing, the City transmitted the
- 62 adopted comprehensive plan amendment and supporting data and analyses to the state land
- 63 planning agency and any affected person that provided comments; and
- 64
- 65 5. The City did not receive notice of any deficiencies within five (5) working days after the
- 66 agency’s receipt of the amendment.
- 67

68 **SECTION 2 – ADOPTION**

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70 2.01 The City Commission hereby amends the City of North Port Comprehensive Plan to add
71 Chapter 12 Property Rights to read as follows:

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73 “CITY OF NORTH PORT COMPREHENSIVE PLAN

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CHAPTER 12 PROPERTY RIGHTS

GOALS, OBJECTIVES, & POLICIES

GOAL 1: To consider judicially acknowledged and constitutionally protected private property rights, as well as the right of property owners to participate in the planning and development process and in all local decision making that affects their lives and property.

Objective 1: To ensure that private property rights are considered in local decision-making.

Policy 1.1: The City shall encourage the participation of the property owner and the public in all local decision-making that affects their lives and property.

Policy 1.2: The City shall consider the following rights in all local decision-making processes, consistent with Florida Statutes Section 163.3177(6)(i):

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.**

Objective 2: To ensure fairness and balance for all property owners.

Policy 2.1: Vested property rights shall be protected, as provided by law.

Policy 2.2: Replats shall meet current codes, including incentives and bonuses.

Policy 2.3: When a specific action of the City has inordinately burdened an existing use of real property or a vested right to a specific use of real property, the property owner is entitled to relief, which may include compensation for the actual loss to the fair market value of the property caused by the action of the City.

Policy 2.4: The City shall amend the Unified Land Development Code to provide a mechanism whereby land use controversies are solved without formal court action and resulting excessive costs. The mechanism shall establish an informal, non-judicial

118 settlement procedure with a hearing process overseen by a neutral hearing examiner
119 (Special Master) who attempts to resolve the dispute.

121 **Policy 2.5:** To apply the takings balancing test, the City shall require property owners to
122 produce evidence of an inordinate burden on the subject property, prior to filing a legal
123 action. This administrative procedure shall require property owners to support claims by
124 producing relevant information, including:

- 125
- 126 • An explanation of the property owners’ interest in the property;
- 127 • Price paid or option price;
- 128 • Terms of purchase or sale;
- 129 • All appraisals of the property;
- 130 • Assessed value;
- 131 • Taxes and assessments on the property;
- 132 • Offers to purchase;
- 133 • Rent, income, and expense statements for income-producing property.

135 **Policy 2.6:** The property owner shall have the burden of proof on hardship and takings
136 issues.”

137
138 **SECTION 3 – REPEAL**

139
140 3.01 The City Commission hereby repeals the City of North Port Comprehensive Plan Chapter 2, Goal 4,
141 Objective 12 in its entirety as follows.

142
143 “CITY OF NORTH PORT COMPREHENSIVE PLAN

144 . . .

145 **CHAPTER 2 FUTURE LAND USE**

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147 **GOALS, OBJECTIVES, & POLICIES**

148 . . .

149 ~~Goal 4: The City shall identify and re-evaluate how to promote urban development through a~~
150 ~~sustainable mix of new communities and GDC pre-platted lots.~~

151 ~~---~~

152 ~~Objective 12: The City shall develop policies for establishing a rational basis for land development~~
153 ~~decisions and environmental regulations to ensure fairness and balance for all property owners.~~

154
155 ~~Policy 12.1: Vested property rights shall be protected, as provided by law.~~

156
157 ~~Policy 12.2: Any replatting of an area shall meet current codes, including incentives and~~
158 ~~bonuses.~~

159
160 ~~Policy 12.3: When a specific action of the City has inordinately burdened an existing use of~~
161 ~~real property or a vested right to a specific use of real property, the property owner is entitled~~
162 ~~to relief, which may include compensation for the actual loss to the fair market value of the~~
163 ~~property caused by the action of the City.~~

164 ~~Policy 12.4: The City shall amend the Unified Land Development Code to provide a~~
165 ~~mechanism whereby land use controversies are solved without formal court action and~~
166 ~~resulting excessive costs. The mechanism shall establish an informal, non-judicial settlement~~
167 ~~procedure with a hearing process overseen by a neutral hearing examiner (Special Master)~~
168 ~~who attempts to resolve the dispute.~~

170 Policy 12.5: In order to apply the takings balancing test, the City shall require property owners
171 to produce evidence of an inordinate burden on the subject property, prior to filing a legal
172 action. This administrative procedure shall require property owners to support claims by
173 producing relevant information, including:

- 174 • ~~an explanation of the property owners interest in the property;~~
- 175 • ~~price paid or option price;~~
- 176 • ~~terms of purchase or sale;~~
- 177 • ~~all appraisals of the property;~~
- 178 • ~~assessed value;~~
- 179 • ~~tax on the property;~~
- 180 • ~~offers to purchase;~~
- 181 • ~~rent, income and expense statements for income producing property and the like.~~

182
183 Policy 12.6: The property owner shall have the burden of proof on hardship and takings issues.
184 ...”

186 **SECTION 4 – TRANSMITTAL OF DOCUMENTS**

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188 4.01 Pursuant to Florida Statutes Section 163.3184, the City Manager or designee is directed to
189 transmit, within ten (10) days after first reading, this ordinance and the appropriate supporting
190 data and analyses to:

- 192 a. Florida Department of Economic Opportunity;
- 193 b. Southwest Florida Regional Planning Council;
- 194 c. Southwest Florida Water Management District;
- 195 d. Florida Department of Environmental Protection;
- 196 e. Florida Department of State;
- 197 f. Florida Department of Transportation;
- 198 g. Sarasota County, Florida; and
- 199 h. Any other local government or governmental agency who has filed a request with the City.

200
201 4.02 Pursuant to Florida Statutes Section 163.3184, the City Manager or designee is directed to
202 transmit, within ten (10) days of final adoption of this ordinance, all documents to the Florida
203 Department of Economic Opportunity and any other agency or local government that provided
204 timely comments.

205 SECTION 5 – CONFLICTS

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207 5.01 In the event of any conflict between the provisions of this ordinance and any other ordinance, in
208 whole or in part, the provisions of this ordinance will prevail to the extent of the conflict.

209

210 SECTION 6 – SEVERABILITY

211

212 6.01 If a court of competent jurisdiction finds that any section, subsection, sentence, clause, phrase,
213 or provision of this ordinance is for any reason invalid or unconstitutional, that provision will be
214 deemed a separate, distinct, and independent provision and will not affect the validity of the
215 remaining portions of the ordinance.

216

217 SECTION 7 – CODIFICATION

218

219 7.01 In this ordinance, additions are shown as underlined and deletions as ~~striketrough~~. Any
220 additional codification information and notations appear in *italics*. These editorial notations are
221 not intended to appear in the codified text.

222

223 SECTION 8 – EFFECTIVE DATE

224

225 8.01 If not timely challenged, this ordinance takes effect thirty-one (31) days after the Florida
226 Department of Economic Opportunity notifies the City that the Comprehensive Plan Amendment
227 package is complete, as provided in Florida Statutes Section 163.3184(3)(c).

228

229 8.02. If timely challenged, this ordinance takes effect upon the Florida Department of Economic
230 Opportunity or Administration Commission entering a final order determining the adopted
231 amendment is in compliance, as provided in Florida Statutes Section 163.3184(3)(c).

232

233
234 READ BY TITLE ONLY at first reading by the City Commission of the City of North Port, Florida, in public
235 session on _____, 202__.

236

237 ADOPTED by the City Commission of the City of North Port, Florida, on the second and final reading in
238 public session on _____, 202__.

239

CITY OF NORTH PORT, FLORIDA

PETE EMRICH
MAYOR

ATTEST

HEATHER TAYLOR, MMC
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS

AMBER L. SLAYTON
CITY ATTORNEY

PUBLIC NOTICE - CITY OF NORTH PORT NOTICE OF PUBLIC HEARINGS FOR ORDINANCE NUMBER 2022-10

Exhibit B

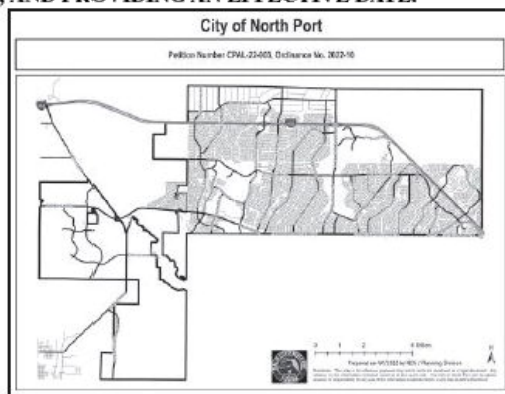
NOTICE IS HEREBY GIVEN, pursuant to Chapters 166 and 163 of the Florida Statutes, Section 7.01(c) of the Charter of the City of North Port, Florida that the City of North Port proposes to adopt Ordinance No. 2022-10, amending the comprehensive plan to add Chapter 12 Property Rights Element.

A Public Hearing will be held before the Planning and Zoning Advisory Board designated as the Local Planning Agency (LPA) on Thursday, April 21, 2022, at 9:00 a.m. in the City Hall Commission Chambers, 4970 City Hall Boulevard, North Port, Florida 34286.

A Public Hearing for the first reading of Ordinance No. 2022-10 will be held before the North Port City Commission on Tuesday, May 10, 2022, at 10:00 a.m., in the City Hall Commission Chambers, 4970 City Hall Boulevard, North Port, Florida 34286. The second and final reading will be held before the North Port City Commission in Commission Chambers at a date to be determined to consider enactment of Ordinance No. 2022-10.

ORDINANCE NO. 2022-10

AN ORDINANCE OF THE CITY OF NORTH PORT, FLORIDA, AMENDING THE CITY OF NORTH PORT COMPREHENSIVE PLAN TO ADD CHAPTER 12 PROPERTY RIGHTS ELEMENT; ADDING GOALS, OBJECTIVES, AND POLICIES PURSUANT TO FLORIDA STATUTES SECTION 163.3177; REPEALING CITY OF NORTH PORT COMPREHENSIVE PLAN CHAPTER 2, GOAL 4, OBJECTIVE 12 OF THE FUTURE LAND USE ELEMENT RELATING TO BALANCING PROPERTY OWNER INTERESTS; PROVIDING FOR FINDINGS; PROVIDING FOR ADOPTION; PROVIDING FOR TRANSMITTAL OF DOCUMENTS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.



Note: Proposed Ordinance No. 2022-10 (boundary of the amendment area) is depicted on this map.

All interested parties are invited to appear and be heard in respect to this Ordinance at the public hearings in the City Hall Commission Chambers. Written comments filed with the City Commission will be heard and considered and will be made a matter of public record at the meeting. These public hearings may be continued from time to time as announced at the hearings, as may be found necessary. The files pertinent to Ordinance No. 2022-10, CPAL-22-003, may be inspected by the public at the City of North Port Neighborhood Development Services Department, Planning & Zoning Division, and in the City of North Port City Clerk's Office, 4970 City Hall Boulevard, North Port, Florida 34286, during regular business hours.

NO STENOGRAPHIC RECORD BY A CERTIFIED COURT REPORTER IS MADE OF THESE MEETINGS. ACCORDINGLY, ANY PERSON WHO MAY SEEK TO APPEAL A DECISION INVOLVING THE MATTERS NOTICED HEREIN WILL BE RESPONSIBLE FOR MAKING A VERBATIM RECORD OF THE TESTIMONY AND EVIDENCE AT THESE MEETINGS UPON WHICH ANY APPEAL IS TO BE BASED (SEE F.S.S. 286.0105).

NOTE: PERSONS WITH DISABILITIES NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT THE CITY CLERK'S OFFICE 48 HOURS IN ADVANCE OF THE MEETING (SEE F.S.S. 286.26).

NONDISCRIMINATION: The City of North Port does not discriminate on the basis of race, color, national origin, sex, age, disability, family or religious status in administration of its programs, activities or services.

AMERICAN WITH DISABILITIES ACT OF 1990 - The North Port City Hall is wheelchair accessible. Special parking is available on the west side of City Hall and the building may be accessed from the parking area. Persons with hearing difficulties should contact the City Clerk to obtain a hearing device for use during meetings.

/s/
Heather Taylor, MMC
City Clerk

Publish: April 4, 2022

adno=3841253-1