



Agriculture & Property Rights Subcommittee

**Wednesday, January 25, 2017
1:00 pm
12 HOB**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Agriculture & Property Rights Subcommittee

Start Date and Time: Wednesday, January 25, 2017 01:00 pm
End Date and Time: Wednesday, January 25, 2017 03:00 pm
Location: 12 HOB
Duration: 2.00 hrs

Presentation and Discussion of Property Rights Laws

NOTICE FINALIZED on 01/18/2017 4:02PM by Kaiser.Debbi



The Florida House of Representatives

Commerce Committee

Agriculture & Property Rights Subcommittee

Richard Corcoran
Speaker

Tom Goodson
Chair

AGENDA

January 25, 2017
12 House Office Building
1:00 PM – 3:00 PM

- I. **Call to Order & Roll Call**
- II. **Introduction and Welcome by Chair**
- III. **Presentation and Discussion on Property Rights Laws**
 - 1) Introduction and Defining of Property Rights
 - 2) Fundamental Property Rights Protections
 - 3) Brief History of Property Rights and Regulation
 - 4) Current Property Rights Issues in Florida
 - 5) Principles on Property Rights Policy for Consideration
- IV. **Adjournment**

Property Rights in Florida

Florida House of Representatives
Subcommittee on Agriculture & Property Rights

Dan Peterson, The James Madison Institute

David Smolker, Smolker Bartlett Loeb Hinds & Sheppard, P.A.

Christina Martin, Pacific Legal Foundation



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HINDS & SHEPPARD**

Presentation Outline

1. Definition and Importance of Property Rights
2. Fundamental Property Rights Protections as Limitations on Government's Police Power
3. Brief History of Property Rights and Regulation
4. Current Property Rights Issues in Florida
5. Principles on Property Rights Policy for Consideration



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Defining Property

Property includes:

- real property
- personal property,
- tangible property
- intangible property
- interests appurtenant to property
 - (e.g., riparian rights and rights of access)



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Fistful of Property Rights

The Right to:

Possess

Enjoy

Use

Exclude

Dispose



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Importance of Property Rights

“The Right of Property is the guardian of every other right, and to deprive a people of this, is in fact to deprive them of their liberty.”

Arthur Lee, Virginia Delegate to the Continental Congress

James W. Ely, Jr., *The Guardian of Every Other Right: The Constitutional History of Property Rights*
2d ed. 1998 at 5, 54



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1751-1836, FL

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Property Rights Make the Difference



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Fundamental Property Rights Protections

- Property rights are a natural, pre-political attribute of human beings
- Purpose of government is to protect natural rights
- Property rights limit the police power
 - *Police power is the authority of government to act out of necessity to promote the general public health, safety, welfare and morals.*



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Fundamental Property Rights Protections: Due Process

...nor shall any state deprive any person of life, liberty, or property, without due process of law

Requires

- Procedural due process
- Substantive due process



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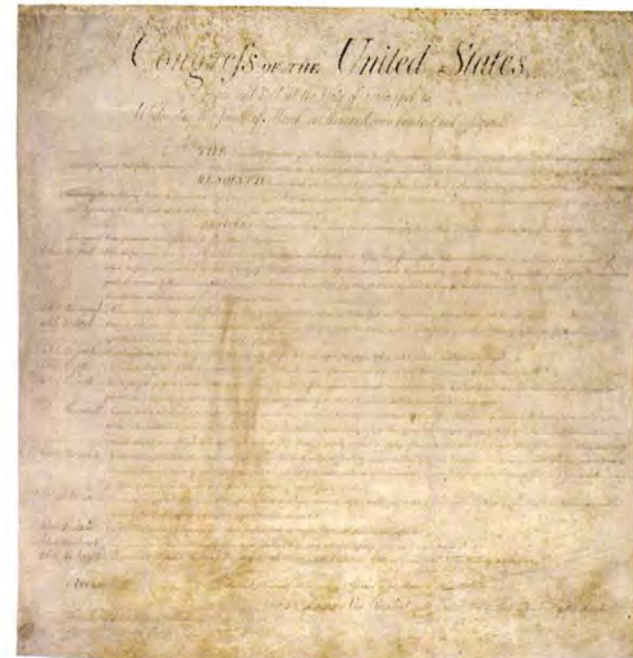
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Fundamental Property Rights Protections: Takings

... nor shall private property be taken for **public use**, without **just compensation**

Requires

- Taking for a public purpose
- Payment of just compensation



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Fundamental Property Rights Protections: Takings Clause

- **Traditional Eminent Domain**
- **Regulatory Taking: Government invades property or goes “too far” in restricting its use**
- **Exactions: extortionate permit conditions**



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Brief History of Property Rights and Regulation

- First 100 Years: “drain, fill-in and develop” policy
 - 2/3 of Florida deeded on this condition (Swamp and Overflowed Lands Act)
 - Riparian Acts (bulkhead and filling of submerged lands)
 - Government’s efforts to protect property from floods (e.g. Everglades)
- 1950s and 60s—growing recognition of impacts to environment



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Brief History of Property Rights and Regulation

1970s and 80s: reverse land use policy

- Federal Clean Water Act (1972)
- Environmental Land and Water Management Act (1972)
 - Developments of Regional Impact
 - Areas of Critical State Concern
 - Wetland permitting
 - Stormwater management
- Growth Management Acts



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Brief History of Property Rights and Regulation

1990s-2000s: Florida legislature responds to burdensome regulations

- Legislative response to *Kelo*
- Bert J. Harris Jr., Private Property Rights Protection Act
- Protections against excessive exactions
- Reduction of State control over local comprehensive planning and land use regulations



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Current Property Rights Issues

**What current landowners
have to say...**



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Current Property Rights Issues

Regulatory Taking Ripeness

- What must a landowner do before filing a regulatory takings claim in court?
- Expensive and hard to ripen claims
- E.g., *Beach Group Investments*



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Current Property Rights Issues

Customary Use

- Burden is on claimant to prove in court an ancient right of customary use
- Local governments are skipping court and declaring a public right of custom



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Current Property Rights Issues

- Federal coastal wetland regulations unreasonably restricting coastal development
- Delegation of federal wetland permitting authority



Obviously a wetland



Also a wetland, according to U.S. ACOE



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Current Property Rights Issues

FDOT Exactions

**Extortionate conditions on permits for
driveway connections and drainage permits**



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Current Property Rights Issues

- Local governments are taking all land use in exchange for Transferable Development Rights (TDRs)
- TDRs are not “just compensation”



Should family inheritance be lost to TDR?



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Current Property Rights Issues

Excessive fines by local code enforcement

- Fl. Stat. Chapter 162 authorizes code enforcement boards to impose fines of up to \$500/day (\$15,000/day for irreversible or irreparable violations)
- E.g., \$50,000 fine for failing to obtain a permit for a burglar alarm



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Current Property Rights Issues

- *Pacetta v. Town of Ponce Inlet*
- Bert J. Harris Act could explicitly define bad-faith government actions as an inordinate burden



Land dispute pits Ponce Inlet against local family



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Current Property Rights Issues

Ordinary High Water Mark Definition



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Property Rights Principles for Consideration

1. The right of property is foundational to what has made our nation the most powerful and prosperous in history.
2. It is government's role to protect property.
3. As much property as possible should be kept in private hands.
4. Owners of private property are the best stewards of property and the environment because they seek property's highest and best use to achieve an investment backed expectation.
5. Current regulations regarding property should be reviewed to determine whether or not they are unneeded, overreaching, overly burdensome, and/or duplicative.



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Property Rights Principles for Consideration

6. Remedies for mitigation should be proportionate to meeting a need.
7. Regulations should not diminish the value of private property without appropriate compensation.
8. When exercising the power of eminent domain, facts, cost benefit, and scientific data rather than opinion or the loudest voice should be keys in determining whether a subject property should be taken or another alternative considered.
9. When government's regulations begin to overly burden an owner's smaller improvement project, there should be some sort of intermediate, objective, arbitration vehicle to which appeal could be made before having to file a "Bert J. Harris" claim.
10. When litigation is necessary, safeguards should be in place to protect property owners from government's unfair advantages of full-time attorneys, time delays.



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