

**August 17, 2021
ITEM 14.D.**

**INDIAN RIVER COUNTY
BOARD OF COUNTY COMMISSIONERS
INTER-OFFICE MEMORANDUM**

TO: Members of the BOCC

DATE: August 9, 2021

SUBJECT: Potential changes to the current practice of allowing offsite landscaping permitted as an accessory use on agricultural zoned land, within the LDR Code 911.06

FROM: Joseph H. Earman, Commissioner, District 3

Discussion Item:

I'd like the Board to reexamine the current practice of allowing offsite landscaping permitted as an accessory use on agricultural-zoned land.

Background:

Currently, commercial offsite landscaping operations are permitted as an accessory use in A-1, A-2, and A-3 zoning. Since late 2015 (or before), the presence of active, off-site, commercial lawn and landscaping businesses in agricultural-zoned lands has become controversial. Complaints have been raised -- specifically by owners of homes and "ranchettes" located on adjacent agricultural-zoned land -- that these businesses and their associated crews, vehicles, and heavy equipment produce substantial noise and road deterioration, among other issues. Community Development's Code Enforcement Division received complaints that prompted investigation and mitigation; some cases/complaints had merit, while others did not. Regardless of outcome, these complaints brought attention to the matter of whether non-agriculture commercial businesses should be operating from properties that are zoned for agricultural use.

Some commercial and offsite landscaping businesses located/relocated to these ag areas due to the convenient size (five acres or more) of agricultural-zoned properties, thus giving them the space to operate and store the equipment and products needed for their services. Single family homes, built either before or after the businesses were established, served as a personal residence on the property and as a home office for the

commercial business operated from that same location. Other individuals/companies have built “ag barns” and other agricultural structures which are permitted on agriculture lands under State of Florida law and do not require permits from IRC except if located within a flood zone. The ag barns can similarly be used to store and maintain equipment and sometimes have business offices located within.

Landowners owning “ag-zoned” lands are asked, when seeking permission for an agriculturally-exempt structure, to file an affidavit with the Community Development office attesting to their “ag exemption” status; this is done in good faith and not specifically checked unless an issue is reported to code enforcement.

Analysis:

The State of Florida clearly defines the term "Agricultural" in Chapter 570 and 570.02, further defines "Agricultural Purposes" in Chapter 193, and covers "assessment" in 193.461. In addition, Chapter 823 of the Right to Farm Act, as recently signed by Governor DeSantis on April 29, 2021, clearly states how agriculture is to be considered. Commercial lawn services are not considered "agriculture" by definition.

While a single-family home can be built on "ag-zoned land," it should be noted that agricultural business and adjacent residential homes/ranchettes are not always compatible with each other; after all, any type of agricultural business or business that supports agriculture (and even those that may be considered as "heavy workload") could be located next to that home. As the name implies, "ag-zoned land" is not truly residential land, even though a residence is allowable within the law. When building a home on agricultural-zoned land, homeowners have to sign an "Agriculture Acknowledgement Form," which essentially attests to their understanding of current or future agriculture business practices being conducted near or adjacent to the home site.

Under the “Right to Farm Act” these businesses have every right to operate within this zoning as long as they are “agricultural” and meet the proper criteria. Thus, the adjacent homeowner shall have no basis for complaint as long as the business follows best practices.

Offsite commercial businesses have taken advantage of the agricultural tax exemption given to “ag-zoned” properties by paying far less than other commercial landscaping businesses located in different zoning districts, such as industrial or commercial. Attached is a comparison of some of the current properties with regards to taxes paid in 2020. Offsite landscaping businesses frequently claim that their "lawn business" is secondary to a plant nursery or tree farm business, and that these additional operations should qualify for the agriculture exemption. It is reasonable that IRC staff should be able to decide on the merits of these claims and issue a renewable administrative permit, subject to annual follow-up (or as required to ensure compliance).

The current "County code verification method" used to permit offsite commercial lawn businesses to operate in agricultural-zoned land is complex and multi-faceted, and County staff can face difficulties in determining what constitutes agriculture and what does not. (This may need to be resolved even if the BCC decides not to make any changes to the current zoning.) The Property Appraiser's Office does its best to "carve out" single family homes or large work area buildings located on agricultural-zoned properties, separating them from the agricultural business as defined by the State and IRC zoning, but sometimes the code makes it difficult to classify structures. It should be noted that the Property Appraiser determines use-classification for tax purposes but does not set or enforce the zoning policies of the County; zoning and any related issues are the task of the BCC.

Exactly who may reside on or establish a business on "ag-zoned land" may not presently seem like a major issue for the County, but it should be noted that, with increasing land use for residential development, keeping "ag-zoned" properties specific to their defined purpose is the best practice. To allow commercial, non-agricultural uses on these lands and then attempt to further enforce and apply regulations or make accommodations on a per-case basis is not a good practice. In my opinion, the BCC should not dismiss possible zoning changes or administrative permitting to "ag land" that might be near or adjacent to other compatible properties or locations, where these would be in the best interest of the County.

It is also important to note that properties currently used for offsite commercial landscaping businesses must be "grandfathered" at the time of any changes in the LDR, and continue to operate as they have been accustomed. Any changes to the LDR must be "clear, concise and enforceable".

Funding:

There is no funding needed as this time.

Potential Courses of Action:

- Option #1: Leave the current application of the ordinance in place, making no changes
- Option #2: Eliminate the ordinance which allows any commercial business that would more appropriately be located in Commercial or Industrial Zoning Districts, including offsite commercial lawn services, on agricultural zoned properties. Permit those commercial landscaping or other non-defined businesses currently operating on ag-zoned land to operate as previously accustomed ("grandfathered").
- Option #3: Find a compromise between offsite commercial lawn services and adjacent residential homes through the use of setbacks, buffers, or other means.

Recommendation:

I recommend the BOCC consider and adopt Option #2 as the best choice, clearly defining that agriculture-related and other appropriate businesses should only be allowed to operate on agricultural-zoned lands. This action eliminates the need for staff to determine setbacks, buffers, and other additional costs that the landowner could incur even though they might not be needed; makes the zoning enforceable, clear, and concise; and protects agricultural land for its proper use.

Attachments:

Attachment 1 -- Comparison of current properties with regards to taxes paid in 2020