INDIAN RIVER COUNTY, FLORIDA

M E M O R A N D U M

TO: Jason E. Brown; County Administrator

FROM: Stan Boling, AICP; Community Development Director

DATE: June 11, 2019

SUBJECT: Consideration of Modifications to Regulations for Off-site Accessory Landscaping Services Uses in Agricultural Zoning Districts

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It is requested that the data herein presented be given formal consideration by the Board of County Commissioners at its regular meeting of June 18, 2019.

BACKGROUND

At its March 5, 2019 meeting, the Board of County Commissioners (BCC) heard a request to speak from Spencer Simmons and Tim Campbell who each live on 37th Street west of 66th Avenue in an agricultural zoning district (A-1, Agriculture 1; up to 1 unit per 5 acres). Mr. Simmons and Mr. Campbell spoke of their concerns regarding a landscaping services business (Caribbean Lawn and Landscaping owned by Brian and Kelly Stolze) that had been established on ± 9.9 acres at 7120 37th Street. Mr. Campbell and Mr. Simmons indicated that they were following an active code case against Caribbean Lawn and Landscaping for establishing an accessory landscaping services business ahead of establishing a wholesale nursery on the subject site. Both expressed concerns about traffic, effects on neighborhood character and property values, and the precedent for future similar situations on other agriculturally zoned properties.

During discussion with staff, Board members acknowledged Right to Farm Act protections and the code enforcement process but also expressed concern that under current procedures and code interpretation, a landscaping services business could "game the system" by minimally establishing a wholesale nursery in order to have an out-of-scale commercial business in an agricultural area. In the end, the Board acknowledged that the code enforcement case would proceed on its own track, and by consensus directed staff to research possible modifications to the land development regulations (LDRs) to balance the needs of agriculture and commercial business in agricultural areas with respect to landscaping services operations.

Since the March 5th meeting, staff has conducted research and drafted this report for the Board's consideration. In addition, staff has drafted a proposed LDR amendment for the Board's review and consideration as a "pending ordinance".

ANALYSIS

- **Land Use Conflicts in Agricultural Areas**

In 1990, Indian River County adopted its present comprehensive plan which, among other items, established the County's Urban Service Area and the associated Urban Service Area Boundary. As adopted, the Urban Service Area (USA) constitutes that area of the county where "urban" commercial, industrial, and residential uses are allowed and where urban services such as public water and sewer are provided to serve development. Conversely, the areas lying outside the USA (which are vast and cover roughly the western two-thirds of the county) are designated Conservation or Agricultural and are generally intended to be rural in nature with agricultural, conservation, and low density residential uses allowed. Agricultural areas are designated on the adopted future land use map as AG-1 (up to 1 unit/5 acres), AG-2 (up to 1 unit/10 acres), and AG-3 (up to 1 unit per 20 acres); those designations have corresponding zoning districts A-1, A-2, and A-3. Generally, AG-1/A-1 areas lie east of I-95 and within the Fellsmere Farms platted area that surrounds the original Town of Fellsmere, although a number of "remnant" A-1 properties still exist inside the Urban Service Area. AG-2/A-2 areas generally lie west of I-95 and east of the St. Johns marsh, while AG-3/A-3 areas generally lie west of the St. Johns marsh.

Although agriculturally designated areas are generally restricted to agricultural and associated accessory uses, and low density residential uses, the county's comprehensive plan and land development regulations (LDRs) allow certain types of commercial or industrial uses on agriculturally designated properties under certain conditions and criteria. Those uses are subject to special conditions and specific land use criteria and are reviewed and approved through the administrative permit or special exception processes.

Currently, the "conditional uses" allowed in agriculturally designated areas include churches, schools, fruit/vegetable packing houses, golf courses, commercial kennels, airstrips, solar farms, utility facilities, communications towers, recycling centers, and mining operations. Those uses are allowed in agricultural areas for various reasons. Some uses, such as packing houses, are related to agricultural production and warrant more rural locations near agricultural production. Other uses, such as golf courses, airstrips, and solar farms, require large site areas which are more available and easier to assemble in agricultural areas. Still other uses, such as recycling centers and commercial kennels can be appropriately located in certain areas outside the USA where residential density is very low and facilities can be separated from concentrations of residences by significant distances and can be more effectively buffered from adjacent properties. Finally, some uses, such as schools and churches, are institutional uses that are traditionally allowed in rural areas and are considered generally compatible with agricultural and very low density residential uses subject to conditions. Overall, many conditional uses located outside the USA serve residents and businesses located within the USA.

Over the past decades, the Planning & Zoning Commission and the Board of County Commissioners have periodically discussed and evaluated land use conflicts in agricultural areas and have generally acknowledged that some conflicts are inevitable because residential uses (even low density residential)

are allowed in agricultural areas along with agricultural uses of various intensities and scale and a number of conditional uses that are warranted in agricultural areas under certain conditions. Where warranted, LDRs have sometimes been changed to address such conflicts through specific criteria and/or limitations.

In the end, County LDRs accommodate the wide and eclectic range of large and small scale agricultural uses, conditional uses, and low density "residential estate" uses that have historically existed and currently exist in the agriculturally designated areas. Through large minimum parcel size requirements (5, 10, and 20 acre minimums), significant open space requirements (60% and 80% of the site), special criteria and limitations, the LDRs address but do not (and will not) completely resolve all conflicts between competing uses and expectations in the agricultural areas.

- **State Pre-emptions & Protections of Agricultural Uses**

Like other states, Florida has strong "right to farm" state statues that pre-empt local government regulations of agricultural and associated uses. In recent years, the state of Florida has strengthened such pre-emptions. Current state law exempts from the Florida Building Code non-residential farm buildings, structures, and facilities located on farms. The term "farm" and "farm operations" are broadly defined (see Florida Statute references in attachment 2)

Under state law, commercial nurseries on agricultural property including wholesale plant nurseries are "protected" as a bona fide agricultural use that is pre-empted from local land use and building permit regulations. It is staff's understanding that current state law does not pre-empt the County from enacting reasonable regulations for uses customarily associated with wholesale nurseries such as off-site landscaping services.

- **Current IRC Regulation of Landscaping Services**

The County's current LDRs allow landscaping services as a principal "contractor's trades" type of use in heavy commercial and industrial districts where storage of vehicles, equipment, and various supplies and materials are allowed on intensely developed sites with low open space requirements (10% - 15% of the site). Current agricultural district regulations (Section 911.06(4) use table) allow commercial nurseries in the A-1, A-2, and A-3 districts, and specifically permit the following components/uses as part of a commercial nursery in the A-1, A-2, and A-3 districts: "… cultivation, wholesaling, and off-site landscaping services allowed; no retail sales allowed on-site." In its interpretation and application of this existing code provision, staff has had to make judgment calls as to what type use and facility constitutes an off-site landscape service operation that is allowable as a use associated with a wholesale nursery. In making these judgement calls, there have been cases that have "pushed the envelope" with respect to components of the operation, as well as the scale and lay-out of the landscaping services facility.

Because wholesale nurseries and associated off-site landscaping services are categorized as a permitted agricultural use, such uses are exempt from County site plan requirements (Section 914.04(1)(a)). In addition, since nurseries are a bona fide agricultural use, consistent with state statute and based on county practice, improvements and structures serving both nurseries and

permitted associated uses are exempt from building permit requirements but are not exempt from zoning setback and any applicable flood plain regulations. As a voluntary process to confirm compliance with the exemption, staff strongly encourages property owners who claim the exemption to file a Verification of Exemption for Non-residential Farm Building local form (see attachment 2). Persons submitting the form attach a site sketch showing the lay-out of uses and facilities; the sketch is not a formal site plan. Such a form was filed for the Caribbean Lawn and Landscaping business. Since the March 5th meeting, no acknowledgement form for any new nursery/landscaping service business has been filed. In practice, facilities serving agricultural operations may also serve associated permitted accessory uses. For example, a workshop/garage can serve wholesale nursery production, maintenance, delivery, and vehicles and equipment that serve off-site landscaping services operations. In staff's experience, it would be difficult to try to separate-out portions of a facility that serve a nursery use from what serves an accessary landscaping services use.

Staff's interpretation of the previously quoted 911.06(4) use table provisions is that an off-site landscaping service is allowed as an "accessory use" to a wholesale plant nursery. Under LDR Chapter 901, an "accessory use" is defined as:

"Accessory use a use which:

(a) Is clearly incidental to, customarily found in association with, and serves a principal use;
(b) Is subordinate in purpose, area, and extent to the principal use served; and
(c) Is located on the same lot as the principal use, or on an adjoining lot in the same ownership as that of the principal use."

Staff's interpretation of "accessory use" as applied to off-site landscaping services associated with a wholesale nursery is that such use is limited to installation and maintenance mowing/trimming of landscaping material and must cover less site area than the nursery area. Under that interpretation, for example, the site area of the landscaping services operation (total parking, driveway, and building area) must be less than the nursery area (area under cultivation including green houses, grow houses, shade houses, and similar structures). Consequently, under the current interpretation, a landscaping services area to nursery area ratio of slightly less that 1:1 would comply. Based on discussion at the March 5th meeting, it is staff's understanding that Board members believe that a lower ratio of landscaping services area to nursery area would more appropriately reflect the "incidental to" and "customarily found in association with" characteristics of an accessory landscaping services use. Staff's research of existing landscaping services in the County, and the proposed draft ordinance, address site area ratio which is a valid tool for evaluating an appropriate scale for both uses.

Staff's current interpretation, supported by Code Enforcement Board action, is that the wholesale nursery use, as the principal agricultural use, is required to be established prior to or at the same time as the landscaping services use and that the landscaping services use cannot involve burying, mulching, or burning off-site debris on the premises. It is also staff's current interpretation that pest control services are not accessory to a wholesale nursery use and are not allowed. These aspects of staff's current interpretation are incorporated into the proposed draft ordinance to clarify and codify those interpretations.

- <u>Small-scale home-occupation landscaping services</u>

Under the County's home occupation regulations (section 912.05(6)), landscaping services in agricultural areas operated out of a "home office" and on-site accessory structures are permitted as a home occupation with limitations that restrict the operation to a small-scale "family business". Such specific limitations include a prohibition of non-resident employees on the premises and a prohibition on outdoor display of signs or display of equipment and materials. Consequently, a proposed regulation change could specifically reference the "carve-out" for home occupation landscaping services in agricultural areas to clearly preserve the status of such small-scale services operations.

- **Regulations of Other Counties**

Staff researched regulations of nearby counties for nursery and landscaping services in agricultural districts. Research results are summarized in a comparison chart for Brevard, Osceola, Palm Beach, St. Lucie, and Indian River counties (see attachment 3). In summary, compared to the other counties, IRC has more stringent requirements for retail nurseries and has similar allowances permitting wholesale nurseries and landscaping services in agricultural areas. All jurisdictions appear to allow lawn mowing as a component of landscaping services. Palm Beach County has specific criteria for landscaping services in agricultural districts including a 3 acre minimum site size, an accessory to a nursery criterion, and a prohibition on outdoor debris storage. For context, staff's research also indicates that IRC's minimum lot sizes in its agricultural districts are significantly larger than Brevard's and St. Lucie's and are the same as Martin County's (see attachment 4). Larger minimum parcel sizes tend to raise the minimum level of investment needed for a new property owner to start a business in an agricultural area.

- **Existing Landscaping Services in IRC Agricultural Areas**

Staff's research identified 17 existing landscaping/nursery/property management businesses in IRC's A-1 agricultural district (see attachment 5). Staff focused its research on the A-1 district since that district has the highest concentration of residential estate/"ranchette" properties and the highest incidence of land use conflicts. Research indicates that most existing nursery/landscaping services in the A-1 district have a landscaping services site area to nursery site area ratio of less than 1:2. In other words, 14 out of the 17 nursery/landscaping services businesses have a landscaping services site area that is less than 50% of the nursery site area. Research also indicates that 12 out of the 17 nursery/landscaping services businesses are located on sites having at least 400,000 sq. ft. (9.183 acres). For all 17 existing businesses, site sizes ranged from 4.8 acres to 270+ acres. The 400,000 sq. ft. threshold is a good quantitative standard for capturing original "10 acre" tracts and parcels that have been reduced in size by right-of-way dedications for canals and roads. For the A-1 nursery/landscaping services businesses identified, dirt roads provide access to 9 out of the 17 businesses with the remaining 8 other businesses accessed by paved roads.

Building setbacks vary greatly for the existing businesses although staff's observations and code enforcement experience suggest that sites with nursery plantings and/or visual buffering along road frontages with parking/building areas located "in back" generate few if any complaints. Currently, all these agricultural zoning districts have a 30' building setback and no specific setback for driveways or parking areas. Staff's experience is that larger setbacks (such as 50') between landscaping services

facilities and property lines can also mitigate potential adverse impacts by providing separation from neighbors and ample area for buffering.

- **Proposed Draft Ordinance**

For the Board's consideration, staff has drafted an ordinance that attempts to clarify and specify an interpretation of the code consistent with input from Board members at the March 5th meeting and based on staff's recent research. The approach of the draft ordinance is to simply clarify that in agricultural districts an "off-site landscaping services" use associated with a commercial nursery is accessory to the commercial nursery use, and to carefully define the term "off-site accessory landscaping services". By a careful and thorough definition, the proposed code change would qualify what constitutes an allowable landscaping services use. Through the proposed definition, an off-site accessory landscaping services use in compliance with the proposed code change would:

1. Include installation and mowing/trimming maintenance services involving a broad range of landscape material, including grass (lawns), consistent with the code's existing Chapter 901 definition of "landscaping".

2. Not include pest control services.

3. Not include (and consequently, would not further regulate) services authorized and conducted in compliance with a home occupation permit.

4. Be associated with a legally established nursery.

5. Be located on an agriculturally zoned site of at least 400,000 sq. ft. (9.183 acres).

6. Be set back (total parking/driveway/building area) at least 50 ft. from property lines.

7. Be limited (total parking/driveway/building area) to no more than 50% of the nursery area located on site (total area under cultivation including green houses, grow houses, shade houses, and similar structures).

8. Be visually screened (parking area) from adjacent properties and streets.

9. Not include or allow for burning, mulching, or dumping off-site debris on the nursery/ landscaping services site.

In staff's opinion, the draft ordinance can be used by the Board as a "pending ordinance", applicable to any proposed or future landscaping services use in the A-1, A-2, and A-3 districts while proceeding with the formal LDR amendment process.

RECOMMENDATION

Staff recommends that the Board of County Commissioners:

1. Consider the proposed draft ordinance, provide input to staff, and direct staff to initiate the formal land development regulation amendment process; and

2. Invoke the pending ordinance doctrine for the proposed draft ordinance during the formal adoption process.

ATTACHMENTS

1. Minutes from March 5, 2019 BCC Meeting
2. Voluntary Agricultural Exemption Acknowledgement Form
3. Chart: Comparison of County Nursery/Landscaping Services in Ag
4. Chart: Agricultural Zoning Districts Comparison
5. Chart: Existing Landscape/Nursery Businesses in Ag
6. Proposed Draft Ordinance