

**INDIAN RIVER COUNTY, FLORIDA**  
**M E M O R A N D U M**

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**TO:** Jason E. Brown  
County Administrator

**FROM:** Phil Matson, AICP  
Community Development Director

**DATE:** September 28, 2020

**SUBJECT:** Consideration of Amendment to Land Development Regulations Changing the List of Uses in Agricultural Zoning Districts to Prohibit Commercial or Residential Lawn Care Services (first of two required public hearings)

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It is requested that the Board of County Commissioners formally consider the following information at the Board's regular meeting of October 6, 2020.

**BACKGROUND**

Over the past year, the Board of County Commissioners (BCC), the Agriculture Advisory Committee (AAC), and the Planning and Zoning Commission (PZC) have held public meetings and have considered four alternative proposals to amend County land development regulations (LDRs) to address accessory off-site landscaping services businesses in agricultural zoning districts. The four alternative LDR amendment proposals are summarized as follows:

- **Staff "1<sup>st</sup> Alternative" LDR Amendment** (presented to the BCC on 6/18/19): further define off-site landscaping services and allow the use, subject to criteria (e.g., buffering, minimum parcel size, setbacks); uses meeting the definition and criteria not subject to permit approval.
- **Staff "2<sup>nd</sup> Alternative" LDR Amendment** (recommended by the AAC and PZC): define the use and establish criteria (similar to Staff "1<sup>st</sup> Alternative") but require administrative permit site plan approval and PZC approval.
- **Hendrix Proposed LDR Amendment:** make off-site landscaping services in agricultural zoning districts a "special exception" use, subject to specific criteria and public hearings before the PZC and BCC, with notice to surrounding property owners.
- **Simmons/Campbell Proposed LDR Amendment:** eliminate the allowance of off-site accessory landscaping services in agricultural zoning districts (re: commercial use, not an agricultural use, more appropriate in commercial districts).

At a public hearing on March 3, 2020, after public input and consideration of recommendations by the AAC and PZC, the Board voted to direct staff to draft an ordinance that prohibits lawn care businesses in agricultural zoning districts, while still allowing certain landscaping services protected under the Florida Right to Farm Act (Florida Statutes Section 823.14). [See 3/3/2020 BCC minutes, Attachment 1 to this report.]

**Staff has since drafted an ordinance reflecting the Board’s direction and is now bringing it before the Board for approval consideration** (see proposed ordinance, Attachment 2 to this report).

### **Requirement of Two Advertised Public Hearings**

The proposed ordinance, if adopted, will change the list of permitted, conditional, or prohibited uses within agricultural zoning districts. In such cases where a proposed ordinance changes the list of uses within a zoning category, Florida Statutes Section 125.66 requires that the Board hold two advertised public hearings, with at least one hearing held after 5 p.m. on a weekday, unless the Board, by a majority plus one vote, elects to conduct that hearing at another time of day.

On April 7, 2020, the County opened the first of the two required advertised public hearings. In light of the ongoing COVID-19 pandemic, the BCC immediately adopted a motion to continue the Public Hearing on July 14<sup>th</sup>, 2020 (Attachment 4). On July 14, 2020, in light of continuing pandemic concerns, the BCC again adopted a motion to continue the Public Hearing to October 6, 2020 (Attachment 5).

### **ANALYSIS**

Of the four alternative LDR amendments previously considered by the Board, the now-proposed ordinance most closely reflects the Simmons/Campbell proposal, which calls for the elimination of off-site landscaping services as a component of nurseries and greenhouses in agricultural zoning districts. A distinction between the now-proposed ordinance and the Simmons/Campbell proposal, however, is that the proposed ordinance more specifically prohibits commercial or residential *lawn care* services, while allowing landscaping services (not including lawn care) ancillary to bona fide wholesale nurseries and greenhouses to continue as protected under the Florida Right to Farm Act (F.S. Section 823.14; see Attachment 3).

The Hendrix proposal and staff’s “1<sup>st</sup> Alternative” and “2<sup>nd</sup> Alternative” proposals, previously considered by the Board, the AAC, and PZC, contain criteria (e.g., buffering, minimum parcel size, setbacks) that are not included in the current proposed ordinance. Notwithstanding, a main concern expressed at previous meetings is that *lawn care*, in particular, is not an agricultural activity, either as a principal use or as accessory to a bona fide farm operation. The now-proposed ordinance eliminates lawn care, either as a principal use or as an accessory use to agricultural operations in agricultural zoning districts. [Note: although not explicit in the proposed amendment, lawn care authorized under a valid home occupation permit, incidental to a residence and limited as such, would be not be prohibited under the proposal.]

### **Grandfathering of Existing Legally Conforming Landscaping Services Uses**

As staff reported to the Board at the March 3, 2020 hearing, it is important to note that any LDR amendment would affect landscaping businesses with lawn care components “going forward” and would not eliminate existing off-site landscaping business in compliance with county regulations at the time of establishment. Such businesses (or certain aspects of the businesses) would become “legal nonconformities” as regulated under County LDR Chapter 904 (Nonconformities) and would be allowed to continue as “grandfathered” uses (but with certain limitations on expansion or increase in the nonconformity, with potential loss of grandfather status if discontinued for more than one year, as set forth in LDR Chapter 904).

### **RECOMMENDATION**

It is anticipated that the County will acquire greater telecommunications capabilities in the near future that will enable more robust public participation at Commission public hearings through electronic means. Therefore, staff recommends that the Board of County Commissioners:

1. Direct staff to make any changes necessary to the proposed ordinance (Attachment 2); and
2. By a vote of 4 or 5 members set the second, final adoption hearing for the regular BCC meeting of October 20, 2020 which is to begin at 9:00 AM.

### **ATTACHMENTS**

1. BCC 3/3/2020 Staff Report and Meeting Minutes.
2. Proposed Ordinance.
3. Florida Right to Farm Act (F.S. 823.14)
4. BCC 4/7/2020 Meeting Minutes.
5. BCC 7/14/2020 Draft Meeting Minutes.