

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

TO: Jason E. Brown
County Administrator

THROUGH: Phil Matson, AICP
Community Development Director

FROM: Roland M. DeBlois, AICP
Planning Director

DATE: March 25, 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)

It is requested that the Board of County Commissioners formally consider the following information at the Board's regular meeting of April 7, 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 "1st 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 "2nd Alternative" LDR Amendment** (recommended by the AAC and PZC): define the use and establish criteria (similar to Staff "1st 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.

This (April 7, 2020) hearing represents the first of the two required advertised public hearings. A second hearing has been tentatively scheduled for the Board’s regular morning meeting on Tuesday, April 21, 2020. Conducting the second required hearing at the Board’s regularly scheduled April 21, 2020 meeting requires the Board’s majority plus one vote approval; otherwise, the second hearing is tentatively scheduled for 5:01 p.m. on Wednesday, April 22, 2020.

In light of the ongoing COVID-19 pandemic, staff recommends that the Board open the first public hearing, take any public input and continue the public hearing until April 21st. Staff recommends that the Board authorize staff, when timely, to advertise a second public hearing on the matter to occur at the Board’s regular meeting on May 5, 2020, or otherwise at a time certain on a weekday after 5 p.m., at which time the Board may consider final adoption of the ordinance.

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 “1st Alternative” and “2nd 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

Staff recommends that the Board of County Commissioners:

1. Open the public hearing, receive public comments and continue the public hearing until April 21, 2020; and
2. Authorize staff, when timely, to advertise a second public hearing on the matter to occur at the Board’s regular meeting on May 5, 2020 (requires a majority plus one vote), or otherwise at a time certain on a weekday after 5 p.m., at which time the Board may consider final adoption of the ordinance.

ATTACHMENTS

1. BCC 3/3/2020 Meeting Minutes.
2. Proposed Ordinance.
3. Florida Right to Farm Act (F.S. 823.14).