



## Legislation Text

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**File #:** 17-0777, **Version:** 1

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**TO:** Honorable Mayor & Members of the North Port Commission

**FROM:** Jonathan R. Lewis, ICMA-CM, City Manager

**TITLE:** Plantation and Panacea Blvds within the Woodlands Community Development District (CDD)

### **Recommended Action**

Discuss and provide direction on whether cutting back the Woodlands CDD's landscaping around the infrastructure the City Commission accepted constitutes a public purpose.

### **Background Information**

The City's Hearing officer made findings and rulings related to the code enforcement action against the Woodlands CDD. The amended order after rehearing is attachment 1 to this agenda item. On pages five and six of attachment 1 the Hearing Officer makes specific findings of fact regarding the maintenance responsibilities for the road, sidewalks, and bike lanes; the street lights; the irrigation system and the sod and landscape located within the boundaries of the ROW.

"...the Hearing Officer finds that the District is clearly responsible for the maintenance of the landscaping and grassy strips within the ROW, and Order the District to budget and expend funds to maintain the landscaping and grass within the ROW."

The Hearing Officer also ordered the district to submit a plan of maintenance to the City of North Port no later than December 1, 2016. The order of the hearing officer was signed on October 27, 2016. Since that date the majority of the ROW identified by the Hearing Officer still has not been maintained and no maintenance plan has been submitted by the CDD. On November 21, 2016 the City did receive a Notice of Appeal regarding the Hearing Officers order (attachment 2). To date there is no new information regarding the status of the appeal.

The City's Administrative Code in Section 42-21 states:

- (b) It shall be unlawful for any owner of a developed or undeveloped lot to permit the excessive growth of shrubs, trees, bushes or any other natural or cultivated species of foliage beyond the legal confines of said lot so as to impinge upon a public right-of-way such as sidewalks and or streets.

The Hearing Officer has specifically found the CDD in violation of this provision within the previously mentioned ROW.

Section 42-26 of the Administrative Code states:

- (a) If the property owner neither abates the nuisance nor requests a hearing within a reasonable period of time set forth in the notice of public nuisance, or if a hearing has been requested, held, and concluded adverse to the property owner, the property standards division is authorized to cause the condition to be abated at the expense of the property owner.
- (b) After causing the condition to be abated, the property standards division shall submit a bill to the property owner for all expenses incurred abating the condition, and include a copy of the notice of public nuisance and a copy of the decision...

In this case the hearing was held and found adverse to the property owner, the CDD. The laws of the State of Florida

prohibit the City from collecting on a lien filed against a CDD, Florida Statute 199.044. On this issue the Hearing Officer did not impose a fine or lien finding that there is no legal mechanism to collect from the CDD. With this in mind the City has not pursued, up to this point, abating the violation due to the inability to collect and the potential significant cost of abating the violations.

However, staff is concerned that the CDD's failure to maintain the landscaping and grassy areas of the ROW are starting to negatively impact the infrastructure the City did accept, including but not limited to the sidewalks, curbing, and lighting.

Staff recommends the City Commission consider whether the City can have the landscaping cut back sufficiently to protect the City infrastructure while preserving the City's interests in the ongoing issue with the CDD, and determine that the expenditure of funds in this way would constitute a public purpose.

If the Commission finds that cutting back the landscaping and grass from the sidewalks, curbing and around the lighting is a valid public purpose it should consider directing staff to send the appropriate bill to the CDD as the property owner.

The Commission should also consider whether this is a onetime action regarding the violation so any future situation would have to come back before the Commission again or is there some recurring direction being provided by the Commission.

### **Strategic Plan**

Financially Responsible City Providing Quality Municipal Services

### **Financial Impact**

To be determined

### **Procurement**

Not applicable

### **Attachments:**

1. Amended Order After Rehearing sign by Hearing Officer on October 27, 2016
2. Notice of Appeal from Straley Robin Vericker Attorneys At Law dated November 18, 2016
3. Article II, Section 42 North Port Administrative Code
4. Interoffice Memorandum from City Attorney dated 11282016

**Prepared by:** Jonathan Lewis

**Department Director:** Jonathan Lewis