

Meeting Date
<b>March 3, 2015</b>



AGENDA	
Section	Consent
Item No.	<b>II.A.3</b>

**AGENDA REPORT**  
*BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS*

SUBJECT:	LEGISLATIVE INTENT AND PERMISSION TO ADVERTISE RE: AMENDMENTS TO NORTH MERRITT ISLAND (NMI) AND PORT ST. JOHN (PSJ) DEPENDENT SPECIAL DISTRICT ORDINANCES (DISTRICTS 1 & 2)
DEPT/OFFICE:	PLANNING AND DEVELOPMENT DEPARTMENT

**Requested Action:**  
 It is requested that the Board of County Commissioners approve legislative intent and grant permission to advertise two ordinances that will enable advisory Comprehensive Plan review authority by the North Merritt Island and Port St. John Dependent Special District Boards to the Local Planning Agency.

**Summary Explanation & Background:**

On February 3, 2015, the Board of County Commissioners was considering a Comprehensive Plan Amendment for a parcel of land in the North Merritt Island Dependent Special District. Following the Board's action on the Comprehensive Plan Amendment, they directed staff to prepare an agenda item for the Board to consider legislative intent and permission to advertise an amendment to Section 98-145 of the Brevard County Code in order to allow the North Merritt Island Dependent Special District ("NMI Board") the ability to provide the Local Planning Agency (LPA) with an advisory recommendation for Comprehensive Plan changes within the NMI Special Dependent District. Additionally, in order to ensure consistency with current Florida Statutes, the proposed ordinance would clarify that the NMI Board has the authority to provide the Planning & Zoning (P&Z) Board with an advisory recommendation regarding rezoning requests that increase residential density allowances on property. Lastly, the ordinance would clarify that the NMI Board is authorized to continue to provide advisory recommendations to the Board of County Commissioners for rezoning requests that do not increase residential density allowances.

Given that the Port St. John Dependent Special District Ordinance contains similar language that conflicts with current State Statutes and lacks clarity regarding their advisory role, staff is seeking legislative intent and permission to advertise appropriate changes to Section 98-105 of the Brevard County Code.

In summary, the two attached ordinances would accomplish the Board's direction for both the North Merritt Island and Port St. John Dependent Special Districts.

**Clerk to the Board instruction:**

**Exhibits Attached:** Ordinances amending Section 89-145 and 98-105 of the Brevard County Code.

<b>Contract /Agreement (If attached):</b>	<b>Reviewed by County Attorney</b>	<b>Yes</b>	<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>PR</b>	<input type="checkbox"/>
---	------------------------------------	------------	--------------------------	-----------	--------------------------	-----------	--------------------------

County Manager  Stockton Whitten	Assistant County Manager  Mel Scott, AICP	Department Director / Extension  Robin M. Sobrino, AICP 5-2069
--	---	---



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001  
Fax: (321) 264-6972

March 4, 2015

MEMORANDUM

TO: Robin Sobrino, Planning and Development Director

RE: Item II.A.3., Legislative Intent and Permission to Advertise Amendments to North Merritt Island (NMI) and Port St. John (PSJ) Dependent Special District Ordinances

The Board of County Commissioners, in regular session on March 3, 2015, approved legislative intent and granted permission to advertise amendments to two Ordinances that will enable advisory Comprehensive Plan review authority by the North Merritt Island and Port St. John Dependent Special District Boards to the Local Planning Agency (LPA).

Your continued cooperation is greatly appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

**ORDINANCE NO. 2015-**

AN ORDINANCE AMENDING CHAPTER 98, ARTICLE IV, CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA, RELATING TO THE PORT ST. JOHN DEPENDENT SPECIAL DISTRICT; SPECIFICALLY AMENDING SECTION 98-105, POWERS, FUNCTIONS AND DUTIES, BY CLARIFYING THE PORT ST. JOHN DEPENDENT SPECIAL DISTRICT'S REVIEW AUTHORITY FOR COMPREHENSIVE PLAN AMENDMENTS AND REZONINGS; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA ENCOMPASSED; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR INCLUSION IN THE BREVARD COUNTY CODE OF ORDINANCES.

WHEREAS, the Board of County Commissioners, on \_\_\_\_\_, 2015, directed preparation of an amendment to Chapter 98, Special Districts, of the Brevard County Code of Ordinances, as it relates to the Port St. John Dependent Special District; and

WHEREAS, Section 98-105(1), Brevard County Code of Ordinances, provides that the Port St. John Dependent Special District shall review rezoning applications within the boundaries of the district in lieu of the planning and zoning board, which also functions as the local planning agency of the county; and

WHEREAS, Section 98-105(2), Brevard County Code of Ordinances, provides that the Port St. John Dependent Special District shall review applications requesting a change in designation on the county future land use map within the boundaries of the district; and

WHEREAS, Section 163.3174(1), Florida Statutes, requires a representative of the school board to serve on the local planning agency, or equivalent agency, that reviews comprehensive plan amendments and rezonings that would, if approved, increase residential density; and

WHEREAS, Section 163.3174(4)(a), Florida Statutes, provides that the local planning agency shall be the agency responsible for reviewing and making final recommendation regarding comprehensive plan amendments to the Board of County Commissioners; and

WHEREAS, the Board of County Commissioners desires to provide clarity regarding the powers, functions and duties of the Port St. John Dependent Special District, and reconcile any apparent or potential conflict with state law.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

**SECTION 1. Chapter 98, Article IV, Section 98-105,** Code of Ordinances of Brevard County, Florida, is hereby amended to read as follows:

**Sec. 98-105. - Powers, functions and duties.**

The governing board of the dependent special district shall have the power and duty to:

- (1) In lieu of the planning and zoning board, review and provide the board of county commissioners with a recommendation upon rezoning applications made for property located within the boundaries of the dependent special district, when such application, if approved, would not increase residential density on the property that is the subject of the application;
- (2) ~~In lieu of the applicable CRG, review and provide recommendations to the board of county commissioners upon site-specific applications requesting a change in designation on the county future land use map~~Review and provide the planning and zoning board with an advisory recommendation upon rezoning applications made for property located within the district, when such application, if approved, would increase residential density on the property that is the subject of the application;
- (3) Review and provide recommendations to the board of county commissioners on any issue or subject referred to the governing body of the district by the county commission which matter may include the priority, location, maintenance, and use of public improvements or infrastructure provided within the district of Brevard County;
- (4) Adopt bylaws setting forth procedures for conducting business;
- (5) Review and provide the local planning agency with an advisory recommendation upon site-specific applications requesting a change in designation on the county future land use map.

The provisions of this section establishing a review process shall supersede and replace any conflicting review procedure set forth in any other ordinance.

**SECTION 2. Conflict with State Law.** Nothing in this ordinance is intended to conflict with the provisions of the Florida Constitution or any Florida Statute. In the event of a direct and express conflict between this ordinance and either the Florida Constitution or the Florida Statutes, the the provisions of the Florida Constitution or Florida Statutes, as applicable, control.

**SECTION 3. Severability.** If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

**SECTION 4. Area Encompassed.** This ordinance shall take effect only in the geographical boundaries of the Port St. John Dependent Special District as described in Exhibit A to Ordinance No. 98-58, on file with the county clerk.

**SECTION 5. Effective Date.** A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment. This ordinance shall take effect upon adoption and filing as required by law.

**SECTION 6. Inclusion in Code.** It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the the Code of Ordinances of Brevard County, Florida; and that the sections of this ordinance may be renumbered or relettered and that the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

**DONE, ORDERED AND ADOPTED**, in regular session, this XX day of XX, 2015.

Attest:

BOARD OF COUNTY  
COMMISSIONERS OF BREVARD  
COUNTY, FLORIDA

\_\_\_\_\_  
Scott Ellis, Clerk

\_\_\_\_\_  
Robin Fisher, Chairman  
(as approved by the Board on \*) 3-3-15

( S E A L )

Reviewed for legal form and content by: \_\_\_\_\_

**ORDINANCE NO. 2015-**

AN ORDINANCE AMENDING CHAPTER 98, ARTICLE V, CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA, RELATING TO THE NORTH MERRITT ISLAND DEPENDENT SPECIAL DISTRICT; SPECIFICALLY AMENDING SECTION 98-145, POWERS, FUNCTIONS AND DUTIES, BY CLARIFYING THE NORTH MERRITT ISLAND DEPENDENT SPECIAL DISTRICT'S REVIEW AUTHORITY FOR COMPREHENSIVE PLAN AMENDMENTS AND REZONINGS; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA ENCOMPASSED; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR INCLUSION IN THE BREVARD COUNTY CODE OF ORDINANCES.

WHEREAS, the Board of County Commissioners, on \_\_\_\_\_, 2015, directed preparation of an amendment to Chapter 98, Special Districts, of the Brevard County Code of Ordinances, as it relates to the North Merritt Island Dependent Special District; and

WHEREAS, Section 98-145(1), Brevard County Code of Ordinances, provides that the North Merritt Island Dependent Special District shall review rezoning applications within the boundaries of the district in lieu of the planning and zoning board, which also functions as the local planning agency of the county; and

WHEREAS, Section 98-145(2), Brevard County Code of Ordinances, provides that the North Merritt Island Dependent Special District shall review applications requesting a change in designation on the county future land use map within the boundaries of the district; and

WHEREAS, Section 163.3174(1), Florida Statutes, requires a representative of the school board to serve on the local planning agency, or equivalent agency, that reviews comprehensive plan amendments and rezonings that would, if approved, increase residential density; and

WHEREAS, Section 163.3174(4)(a), Florida Statutes, provides that the local planning agency shall be the agency responsible for reviewing and making final recommendation regarding comprehensive plan amendments to the Board of County Commissioners; and

WHEREAS, the Board of County Commissioners desires to provide clarity regarding the powers, functions and duties of the North Merritt Island Dependent Special District, and reconcile any apparent or potential conflict with state law.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

**SECTION 1. Chapter 98, Article V, Section 98-145,** Code of Ordinances of Brevard County, Florida, is hereby amended to read as follows:

**Sec. 98-145. - Powers, functions and duties.**

The governing board of the dependent special district shall have the power and duty to:

- (1) In lieu of the planning and zoning board, review and provide the board of county commissioners with a recommendation upon rezoning applications made for property located within the boundaries of the dependent special district, when such application, if approved, would not increase residential density on the property that is the subject of the application;
- (2) ~~In lieu of the applicable CRG, review and provide recommendations to the board of county commissioners upon site-specific applications requesting a change in designation on the county future land use map~~ Review and provide the planning and zoning board with an advisory recommendation upon rezoning applications made for property located within the district, when such application, if approved, would increase residential density on the property that is the subject of the application;
- (3) Review and provide recommendations to the board of county commissioners on any issue or subject referred to the governing body of the district by the county commission which matters may include the priority, location, maintenance, and use of public improvements or infrastructure provided within the district of Brevard County;
- (4) Review and provide the local planning agency with an advisory recommendation upon site-specific applications requesting a change in designation on the county future land use map.

The provisions of this section establishing a review process shall supersede and replace any conflicting review procedure set forth in any other ordinance.

**SECTION 2. Conflict with State Law.** Nothing in this ordinance is intended to conflict with the provisions of the Florida Constitution or any Florida Statute. In the event of a direct and express conflict between this ordinance and either the Florida Constitution or the Florida Statutes, the the provisions of the Florida Constitution or Florida Statutes, as applicable, control.

**SECTION 3. Severability.** If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

**SECTION 4. Area Encompassed.** This ordinance shall take effect only in the geographical boundaries of the North Merritt Island Dependent Special District as described in Exhibit A to Ordinance No. 98-64, on file with the county clerk.

**SECTION 5. Effective Date.** A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment. This ordinance shall take effect upon adoption and filing as required by law.

**SECTION 6. Inclusion in Code.** It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the the Code of Ordinances of Brevard County, Florida; and that the sections of this ordinance may be renumbered or relettered and that the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

**DONE, ORDERED AND ADOPTED,** in regular session, this XX day of XX, 2015.

Attest:

BOARD OF COUNTY  
COMMISSIONERS OF BREVARD  
COUNTY, FLORIDA

\_\_\_\_\_  
Scott Ellis, Clerk

\_\_\_\_\_  
Robin Fisher, Chairman

(as approved by the Board on \*) 3-3-15

( S E A L )

Reviewed for legal form and content by: \_\_\_\_\_