Nonresidential farm buildings, regulation

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Subject:
Nonresidential farm buildings, regulation

Mr. Michael D. Cirullo, Jr.
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Boulevard
Suite 200
Fort Lauderdale, Florida 33308

RE: MUNICIPALITIES–FARM BUILDINGS–SIGNS–FENCES–LAND DEVELOPMENT REGULATIONS–regulation of nonresidential farm building by municipalities. s. 604.50, Fla. Stat.

Dear Mr. Cirullo:

As Town Attorney for the Town of Loxahatchee Groves, you have requested my opinion on substantially the following question:

Does section 604.50, Florida Statutes, exempt nonresidential farm buildings, farm fences, and farm signs from land development regulations adopted pursuant to Chapter 163, Florida Statutes?

In sum:

Section 604.50, Florida Statutes, exempts nonresidential farm buildings, farm fences, and farm signs from land development regulations adopted by the Town of Loxahatchee Groves pursuant to Chapter 163, Florida Statutes.

Section 604.50, Florida Statutes, makes provision for nonresidential farm buildings, farm fences, and farm signs:

"(1) Notwithstanding any provision of law to the contrary, any nonresidential farm building, farm fence, or farm sign is exempt from the Florida Building Code and any county or municipal code or fee, except for code provisions implementing local, state, or federal floodplain management regulations. A farm sign located on a public road may not be erected, used, operated, or maintained in a manner that violates any of the standards provided in s. 479.11(4), (5)(a), and (6)-(8)."

The statute defines the terms used in the section for purposes of statutory construction.[1]

Prior to the adoption of Chapter 2011-7, Laws of Florida, this statute provided that "[n]otwithstanding any other law to the contrary, any nonresidential farm building is exempt from

the Florida Building Code and any county or municipal *building* code."[2] (e.s.) The Legislature's removal of the term "building" from the language of the statute relating to county or municipal codes has resulted in your request for an opinion from this office.

The Town of Loxahatchee Groves has adopted land development regulations pursuant to Chapter 163, Florida Statutes, entitled the "Unified Land Development Code." The town's land development regulations contain typical setback requirements for properties in the town. Subject to consistency with the Right to Farm Act, the town has sought to enforce setback requirements upon nonresidential farm buildings, such as shade houses, corrals, and barns.[3] However, the change to section 604.50(1), Florida Statutes, which exempts nonresidential farm buildings, farm fences, and farm signs from "any county or municipal code" would prevent the town from enforcing its zoning regulations, such as setbacks for nonresidential farm buildings, farm fences, and farm signs if it is determined that section 604.50, Florida Statutes, provides an exemption for nonresidential farm buildings and farm fences and signs from the town's land development regulations.

It is a general rule of statutory construction, frequently expressed by Florida courts that:

"When a statute is clear, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent. Instead, the statute's plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent."[4]

Section 604.50(1), Florida Statutes, clearly states that "[n]otwithstanding any provision of law to the contrary, any nonresidential farm building, farm fence, or farm sign is exempt from . . . any county or municipal code or fee[.]" The Legislature has maintained an exception for code provisions implementing local, state, or federal floodplain management regulations. Applying the rule of construction set forth above compels the conclusion that the Town of Loxahatchee Groves has no authority to enforce "any county or municipal code or fee" provision on any nonresidential farm building, farm fence, or farm sign.

Further, a review of the legislative history surrounding the enactment of CS/HB 7103 during the 2010 and 2011 legislative sessions, suggests that this was the legislative intent. Staff analysis of the bill by both the House and the Senate states that the amendment to section 604.50, Florida Statutes, will

"exempt farm fences from the Florida Building Code and farm fences and nonresidential farm buildings and fences from county or municipal codes and fees, except floodplain management regulations. It provides that a nonresidential farm building may include, but not be limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house."[5]

The intent of the Legislature is the primary guide in statutory interpretation.[6] Where the language used by the Legislature makes clear its intent, that intent must be given effect.[7] Thus, absent a violation of a constitutional right, a specific, clear and precise statement of legislative intent will control in the interpretation of a statute.[8]

Your memorandum of law suggests that the word "code" as used in section 604.50(1), Florida

Statutes, may not include the Town of Loxahatchee Groves' "Unified Land Development Code." While the Florida Statutes contain a number of definitions for the word "code,"[9] the fact that the Legislature provided no definition for purposes of section 604.50(1), or Chapter 604, Florida Statutes, requires that the word be understood in its common and ordinary sense.[10] "Code" is generally defined as:

"3. any set of standards set forth and enforced by a local government agency for the protection of public safety, health, etc., as in the structural safety of buildings (building code), health requirements for plumbing, ventilation, etc. (sanitary or health code), and the specifications for fire escapes or exits (fire code). 4. a systematically arranged collection or compendium of laws, rules, or regulations."[11]

Black's Law Dictionary defines "code" as "[a] complete system of positive law, carefully arranged and officially promulgated; a systematic collection or revision of laws, rules, or regulations[.]"[12]

The term "land development regulations" is defined in section 163.3164, Florida Statutes, as:

"'Land development regulations' means ordinances enacted by governing bodies for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land, except that this definition does not apply in s. 163.3213."[13]

You have advised that the Town of Loxahatchee Groves developed its land development code pursuant to Chapter 163, Florida Statutes. You state that while a collection of land development regulations would appear to fall within the general definition of "code," section 604.50, Florida Statutes, applies solely to "nonresidential farm buildings" and "farm fences." You contrast this with land development regulations which apply to "the development of land," but which include, as set forth in the definition above, such matters as zoning, building construction, and sign regulations.

I cannot draw such a distinction. The Town of Loxahatchee Groves "Unified Land Development Code" appears to be a "code" within the scope of that term as used in section 604.50(1), Florida Statutes. The Legislature clearly intended to exempt nonresidential farm buildings, farm fences, and farm signs from "any county or municipal code." Thus, recognizing the Legislature's intent, it is my opinion that nonresidential farm buildings, farm fences, and farm signs are exempted from regulation under the land development regulations of the town.[14]

In sum, it is my opinion that section 604.50, Florida Statutes, exempts nonresidential farm buildings, farm fences, and farm signs from land development regulations adopted by the Town of Loxahatchee Groves pursuant to Chapter 163, Florida Statutes.[15]

Sincerely,

Pam Bondi
Attorney General

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[1] Section 604.50(2), Fla. Stat., defines these terms as follows:

"(a) 'Farm' has the same meaning as provided in s. 823.14.
(b) 'Farm sign' means a sign erected, used, or maintained on a farm by the owner or lessee of the farm which relates solely to farm produce, merchandise, or services sold, produced, manufactured, or furnished on the farm.
(c) 'Nonresidential farm building' means any temporary or permanent building or support structure that is classified as a nonresidential farm building on a farm under s. 553.73(10)(c) or that is used primarily for agricultural purposes, is located on land that is an integral part of a farm operation or is classified as agricultural land under s. 193.461, and is not intended to be used as a residential dwelling. The term may include, but is not limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house."

[2] *See* s. 604.50, Fla. Stat. (2002).

[3] *See* Ops. Att'y Gen. Fla. 09-26 (2009) and 01-71 (2001) in which this office concluded that a county could enforce land development regulations pursuant to s. 823.14, Fla. Stat., Florida's Right to Farm Act, so long as those regulations did not limit the operational activities of a bona fide farm operation inconsistent with the Right to Farm Act. Both of these opinions addressed s. 823.14, Fla. Stat., and were issued prior to the amendment to s. 604.50, Fla. Stat., in 2011 by CS/HB 7103.

[4] *See e.g., State v. Burris*, 875 So. 2d 408 (Fla. 2004); *State v. Egan*, 287 So. 2d 1 (Fla. 1973); *Van Pelt v. Hilliard*, 78 So. 693 (Fla. 1918); *Legal Environmental Assistance Foundation, Inc. v. Board of County Commissioners of Brevard County*, 642 So. 2d 1081 (Fla. 1994); *Goddard v. State*, 438 So. 2d 110 (Fla. 1st DCA 1983); Ops. Att'y Gen. Fla. 93-47 (1993) (in construing statute which is clear and unambiguous, the plain meaning of statute must first be considered); 93-2 (1993) (since it is presumed that the Legislature knows the meaning of the words it uses and to convey its intent by the use of specific terms, courts must apply the plain meaning of those words if they are unambiguous); and 92-93 (1992).

[5] *See* The Florida Senate Veto Message Bill Analysis for CS/HB 7103, dated July 12, 2010, and House of Representatives Staff Analysis, CS/HB 7103, dated April 14, 2010, and stating that section 6 of the bill "exempts farm fences from the Florida Building Code, and exempts farm fences and nonresidential farm buildings from county or municipal codes and fees, except for code provisions implementing local, state, or federal floodplain management regulations."

[6] *See, e.g., State v. J.M.*, 824 So. 2d 105, 109 (Fla. 2002); *St. Petersburg Bank & Trust Co. v. Hamm*, 414 So. 2d 1071 (Fla. 1982); *Barruzza v. Suddath Van Lines, Inc.*, 474 So. 2d 861 (Fla. 1st DCA 1985); *Philip Crosby Associates, Inc. v. State Board of Independent Colleges*, 506 So. 2d 490 (Fla. 5th DCA 1987).

[7] *Barruzza* and *Philip Crosby Associates, Inc., supra*.

[8] *Carawan v. State*, 515 So. 2d 161 (Fla. 1987).

[9] *See* s. 320.822, Fla. Stat. (uniform standard code for recreational vehicles and park trailers), and s. 553.955, Fla. Stat. (providing that the word "code" is defined for purposes of those statutes as the Florida Energy Efficiency Code for Building Construction).

[10] *See Southeast Fisheries Association, Inc. v. Department of Natural Resources*, 453 So. 2d 1351 (Fla. 1984); *Millazzo v. State*, 377 So. 2d 1161 (Fla. 1979) (when a statute does not specifically define words of common usage, such words are construed in their plain and ordinary sense).

[11] Webster's New Universal Unabridged Dictionary (2003), p. 397.

[12] Black's Law Dictionary (8th ed. 2004), p. 273.

[13] Section 163.3164(26), Fla. Stat.

[14] Your letter states that "if Section 604.50 is intended to expand the exemption for nonresidential farm buildings, fences and signs to all municipal regulations, then Section 823.14, Florida Statutes, would be superfluous as to nonresidential farm buildings, fences and signs, since an exemption from a code means there cannot be duplication of codes." However, s. 604.50 and s. 823.14, Fla. Stat., the Florida Right to Farm Act, can be read in such a manner as to give effect to both. *See Ideal Farms Drainage District et al. v. Certain Lands, 19 So. 2d 234 (Fla. 1944); Mann v. Goodyear Tire and Rubber Company*, 300 So. 2d 666 (Fla. 1974), for the proposition that when two statutes relate to common things or have a common or related purpose, they are said to be *pari materia*, and where possible, that construction should be adopted which harmonizes and reconciles the statutory provisions so as to preserve the force and effect of each. Section 604.50, Fla. Stat., is the more specific statute and completely exempts nonresidential farm buildings, farm fences, and farm signs from regulation under the town's codes. Section 823.14, Fla. Stat., is intended by the Legislature to "protect reasonable agricultural activities conducted on farm land from nuisance suits." The Right to Farm Act would accommodate other types of land development regulation undertaken in compliance with the terms of the act, but the more specific subjects of s. 604.50, Fla. Stat., would be excluded from the terms of the act. Thus, these two statutes, both related to farming, can be read to give a scope of operation to each.

[15] I would note that the Office of General Counsel, Florida Department of Agriculture and Consumer Services, has submitted a letter on this issue concluding that "it is the opinion of the Department of Agriculture and Consumer Services that this legislation applies to all local codes including land development regulations." *See* letter from Carol A. Forthman, Office of the General Counsel, Florida Department of Agriculture and Consumer Services, to Mr. Michael D. Cirullo, Jr., dated November 20, 2012.