Municipal Ordinance Applied to Farm Land

Number: INFORMAL

Date: July 18, 2017

July 14, 2017

Mr. Karl W. Bohne, Jr.
Attorney for the Town of Grant-Valkaria
Post Office Box 410818
Melbourne, Florida 32941-0818

Dear Mr. Bohne:

On behalf of the Town of Grant-Valkaria (town), you ask substantially whether sections 163.3162(3)(a), 604.50, and 823.14(6), Florida Statutes, preclude the enforcement of a town ordinance requiring certain improvements to roadways before a permit will be issued for a driveway to access property upon which a farming operation is located.

While this office does not interpret the provisions of a local code or ordinance, I would note that Ordinance 2008-01 for the town appears to apply to granting driveway permits for single-family and duplex residential structures.[1] To the extent the ordinance is applied only when granting driveway permits for single-family and duplex residential structures, there is no conflict between the ordinance and the before-mentioned statutes.[2] As applied to agricultural land used for a farming operation and not containing a residential structure, the following comments are offered.

Section 163.3162, Florida Statutes, has as its stated purpose "to protect reasonable agricultural activities conducted on farm lands from duplicative regulation."[3] More specifically, in subsection (3)(a), the act states:

"A governmental entity may not exercise any of its powers to adopt or enforce any ordinance, resolution, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land pursuant to s. 193.461. . .[.]"

This office has found that to the extent a local regulation does not "prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation[,]" it may be applied to land which is used for such an operation.[4] You have provided a synopsis of the requirements that were imposed in the town's ordinance 2008-01 regarding unpaved roads. As reflected in your letter, the purpose of the ordinance is to provide a mechanism for property owners to access their property by providing for improvements to public right-of-ways. To the extent there is no prohibition, restriction, or regulation of farming activity in the town's ordinance, it may be applied to lands zoned for agricultural purposes.

I trust these informal comments will be of assistance to you in the enforcement of the town's driveway permitting ordinance consistently with state law.

Sincerely,

Lagran Saunders
Director
Opinions Division

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[1] Section 1.1(b)

[2] But see Op. Att'y Gen. Fla. 2013-01, in which this office concluded that s. 604.50, Fla. Stat., exempts nonresidential farm buildings, farm fences, and farm signs from municipal land development regulations, consistent with the statutory exemption from any county or municipal code or fee.

[3] Section 163.3162(1), Fla. Stat.

[4] See Op. Att'y Gen. Fla. 2009-26.