Property Appraiser, classification of agricultural land

Number: INFORMAL

Date: February 07, 2012

The Honorable Paula Dockery
Senator, 15th District
224 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Senator Dockery:

Thank you for your letter of January 31, 2012, requesting this office's assistance in determining the intent of Chapter 2010-277, Laws of Florida. Attorney General Bondi has asked me to respond to your letter. It appears from the information received from your office that the matters to which you refer may be before the Polk County Value Adjustment Board. While this office will not comment regarding issues before the value adjustment board,[1] the following informal comments may assist you.

Section 193.461, Florida Statutes, provides direction to the property appraiser in classifying and assessing agricultural lands as follows:

"(1) The property appraiser shall, on an annual basis, classify for assessment purposes all lands within the county as either agricultural or nonagricultural.
(2) Any landowner whose land is denied agricultural classification by the property appraiser may appeal to the value adjustment board. The property appraiser shall notify the landowner in writing of the denial of agricultural classification on or before July 1 of the year for which the application was filed. The notification shall advise the landowner of his or her right to appeal to the value adjustment board and of the filing deadline. The board may also review all lands classified by the property appraiser upon its own motion. The property appraiser shall have available at his or her office a list by ownership of all applications received showing the acreage, the full valuation under s. 193.011, the valuation of the land under the provisions of this section, and whether or not the classification requested was granted."

Classification as agricultural land requires that the property owner file a return on or before March 1 of each year.[2] The statute states that "[t]he property appraiser, before so classifying such lands, may require the taxpayer or the taxpayer’s representative to furnish the property appraiser such information as may reasonably be required to establish that such lands were actually used for a bona fide agricultural purpose."[3]

The statute also establishes the criteria that must be met in order for real property to be classified as agricultural lands:

"Subject to the restrictions specified in this section, only lands that are used primarily for bona fide agricultural purposes shall be classified agricultural. The term 'bona fide agricultural

purposes' means good faith commercial agricultural use of the land.
1. In determining whether the use of the land for agricultural purposes is bona fide, the following factors may be taken into consideration:
a. The length of time the land has been so used.
b. Whether the use has been continuous.
c. The purchase price paid.
d. Size, as it relates to specific agricultural use, but a minimum acreage may not be required for agricultural assessment.
e. Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including, without limitation, fertilizing, liming, tilling, mowing, reforesting, and other accepted agricultural practices.
f. Whether the land is under lease and, if so, the effective length, terms, and conditions of the lease.
g. Such other factors as may become applicable.
2. Offering property for sale does not constitute a primary use of land and may not be the basis for denying an agricultural classification if the land continues to be used primarily for bona fide agricultural purposes while it is being offered for sale.
(c) The maintenance of a dwelling on part of the lands used for agricultural purposes shall not in itself preclude an agricultural classification.
(d) When property receiving an agricultural classification contains a residence under the same ownership, the portion of the property consisting of the residence and curtilage must be assessed separately, pursuant to s. 193.011, to qualify for the assessment limitation set forth in s. 193.155. The remaining property may be classified under the provisions of paragraphs (a) and (b).
(e) Notwithstanding the provisions of paragraph (a), land that has received an agricultural classification from the value adjustment board or a court of competent jurisdiction pursuant to this section is entitled to receive such classification in any subsequent year until such agricultural use of the land is abandoned or discontinued, the land is diverted to a nonagricultural use, or the land is reclassified as nonagricultural pursuant to subsection (4). The property appraiser must, no later than January 31 of each year, provide notice to the owner of land that was classified agricultural in the previous year informing the owner of the requirements of this paragraph and requiring the owner to certify that neither the ownership nor the use of the land has changed. The department shall, by administrative rule, prescribe the form of the notice to be used by the property appraiser under this paragraph. If a county has waived the requirement that an annual application or statement be made for classification of property pursuant to paragraph (a), the county may, by a majority vote of its governing body, waive the notice and certification requirements of this paragraph and shall provide the property owner with the same notification provided to owners of land granted an agricultural classification by the property appraiser. Such waiver may be revoked by a majority vote of the county(s governing body. This paragraph does not apply to any property if the agricultural classification of that property is the subject of current litigation."[4]

The property appraiser is charged with reclassifying certain lands as nonagricultural under statutorily specified conditions:

"The property appraiser shall reclassify the following lands as nonagricultural:
1. Land diverted from an agricultural to a nonagricultural use.

2. Land no longer being utilized for agricultural purposes.
3. Land that has been zoned to a nonagricultural use at the request of the owner subsequent to the enactment of this law.
(b) The board of county commissioners may also reclassify lands classified as agricultural to nonagricultural when there is contiguous urban or metropolitan development and the board of county commissioners finds that the continued use of such lands for agricultural purposes will act as a deterrent to the timely and orderly expansion of the community.
(c) Sale of land for a purchase price which is three or more times the agricultural assessment placed on the land shall create a presumption that such land is not used primarily for bona fide agricultural purposes. Upon a showing of special circumstances by the landowner demonstrating that the land is to be continued in bona fide agriculture, this presumption may be rebutted."[5]

The Legislature has provided a definition of "agricultural purposes" in section 193.461(5), Florida Statutes:

"For the purpose of this section, 'agricultural purposes' includes, but is not limited to, horticulture; floriculture; viticulture; forestry; dairy; livestock; poultry; bee; pisciculture, when the land is used principally for the production of tropical fish; aquaculture; sod farming; and all forms of farm products as defined in s. 823.14(3) and farm production.
(6)(a) In years in which proper application for agricultural assessment has been made and granted pursuant to this section, the assessment of land shall be based solely on its agricultural use. The property appraiser shall consider the following use factors only:
1. The quantity and size of the property;
2. The condition of the property;
3. The present market value of the property as agricultural land;
4. The income produced by the property;
5. The productivity of land in its present use;
6. The economic merchantability of the agricultural product; and
7. Such other agricultural factors as may from time to time become applicable, which are reflective of the standard present practices of agricultural use and production.
(b) Notwithstanding any provision relating to annual assessment found in s. 192.042, the property appraiser shall rely on 5-year moving average data when utilizing the income methodology approach in an assessment of property used for agricultural purposes.

* * *

(d) In years in which proper application for agricultural assessment has not been made, the land shall be assessed under the provisions of s. 193.011."

Chapter 2010-277, Laws of Florida, was intended to clarify that "offering property for sale does not constitute a primary use of the land and may not be the basis for denying classification as agricultural land if the land continues to be used primarily for bona fide agricultural purposes while it is being offered for sale."[6] As the legislative history suggests:

"The bill only pertains to the offering of property for sale by the current owner and not to an actual sale. The bill would protect farmers and other land owners who choose to offer their property for sale from losing their agricultural classification based solely on the act of offering

their property for sale and having to pay higher property taxes even though the land continues to be used primarily for a bona fide agricultural purpose."[7]

I am enclosing a copy of the House of Representatives Staff Analysis of CS/CS/CS/HB 981 quoted above for your consideration.

Thank you for contacting this office for assistance.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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Enclosure

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[1] *See* Department of Legal Affairs Statement Concerning Attorney General Opinions stating that, in order not to intrude upon the constitutional prerogative of the judicial branch, opinions generally are not rendered on questions pending before the courts.

[2] Section 193.461(3)(a), Fla. Stat.

[3] *Id.*

[4] Section 193.461(3)(b), Fla. Stat.

[5] Section 193.461(4)(a), Fla. Stat.

[6] *See* title, Ch. 2010-277, Laws of Florida, and "Summary Analysis," House of Representatives Staff Analysis of CS/CS/CS/HB 981, dated 11/07/2010.

[7] *See* "Effect of Bill," House of Representatives Staff Analysis of CS/CS/CS/HB 981, dated 11/07/2010.