Zoning regulations, effect on agricultural land

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The Honorable Judy Paul
Councilmember, District 4
Town of Davie
6591 Orange Drive
Davie, Florida 33314-3399

Dear Councilmember Paul:

This is in response to your question regarding the impact of local government zoning regulations adopted pursuant to Chapter 163, Florida Statutes, on tracts of undeveloped land zoned for agricultural use. While your question may not be addressed in a formal opinion at this time, the following general comments are offered to be of assistance.

The "Florida Right to Farm Act," section 823.14, Florida Statutes, protects agricultural activities conducted on lands in areas that are becoming urbanized from premature removal through nuisance lawsuits.[1] The act protects the status of a farming operation that has been in existence for at least one year and which was not a nuisance at the time it first established operations, if the farm operation conforms to generally accepted agricultural and management practices.[2] Subsection (6) of the act also provides:

"It is the intent of the Legislature to eliminate duplication of regulatory authority over farm operations as expressed in this subsection. Except as otherwise provided for in this section and s. 487.051(2), and notwithstanding any other provision of law, a local government may not adopt any ordinance, 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, where such activity is regulated through implemented best-management practices or interim measures developed by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or water management districts and adopted under chapter 120 as part of a statewide or regional program. . . ."

The legislative history of this subsection states that the purpose of section 823.14(6), Florida Statutes, was to preclude a local government from adopting laws, ordinances, regulations, rules or policies to prohibit, restrict, regulate, or otherwise limit any continuing farm operation on any land currently engaged in bona fide production of a farm product.[3] Thus, a farming operation that falls within the coverage of section 823.14, Florida Statutes, would necessarily comply with the agricultural zoning classification of the land and would not be subject to county regulations or restrictions that attempt to limit such an operation.

Zoning ordinances are intended to control development and land use, going beyond mere standards for the construction of buildings otherwise permitted under an existing zoning classification.[4] Zoning includes restrictions on the density of development and such simple

restrictions as set-back lines for construction. To the extent such regulations do not limit or restrict the continued operation of a farm, it would appear that they would be applicable to land that is zoned agricultural.[5] Such ordinances, however, must be reasonable, uniform, certain and must supply sufficient standards.[6] Moreover, a zoning ordinance establishing a restriction without regard to public health, safety, and general welfare would be an unreasonable exercise of police power.[7]

Section 163.3162, Florida Statutes, is the "Agricultural Lands and Practices Act." The act, added to Chapter 163 in 2003, recognizes the importance of agricultural production to the economy of this state and protects "reasonable agricultural activities conducted on farm lands from duplicative regulation."[8] Language similar to that in section 823.14(6), Florida Statutes, prohibits a county from adopting 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 section 193.461, Florida Statutes, if such activity is regulated through implemented best management practices, interim measures, or regulations developed by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district and adopted under Chapter 120, Florida Statutes, as part of a statewide or regional program.[9]

In Attorney General 2001-71, this office was asked whether a zoning compliance permit was required for nonresidential farm buildings in order to assure that such construction complied with setback lines under the county's zoning plan. Inasmuch as a setback requirement for building construction would not necessarily limit a farm's operation, it was concluded that such a restriction would apply to such construction. This office has also been asked whether a county could enact zoning regulations affecting the placement of migrant farm worker facilities in residential areas, given that section 381.00896, Florida Statutes, prohibits discrimination in the development and use of such facilities. In Attorney General Opinion 99-18, this office recognized that the prohibition must be interpreted in a manner to carry out the Legislature's intent and found that the plain language of the statute would not preclude a county from lawfully exercising its zoning authority and enforcing its zoning regulations to limit migrant farm worker housing facilities to areas in which such use is permitted. The Legislature had not chosen to grant a blanket exemption for migrant farm worker housing when it could have easily done so. The opinion noted that the prohibition against local ordinances that limit or restrict an activity of a bona fide farm operation on land that is classified as agricultural would not preclude application of zoning regulations that do not have such an intent or effect.

I trust that these informal comments will provide assistance in the evaluation of the issue you have raised.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] Section 823.14(2), Fla. Stat.

[2] Section 823.14(4), Fla. Stat.

[3] Florida Senate Staff Analysis and Economic Impact Statement, CS/CS/SB 1904, April 11, 2000. Section 823.14(6), Fla. Stat., was added to the Florida Right to Farm Act by s. 39, Ch. 2000-308, Laws of Florida.

[4] *See Fountain v. City of Jacksonville*, 447 So. 2d 353, 355 (Fla. 1st DCA 1984) (ordinance intended to control development and land use in the vicinity of airports and not merely to impose standards for the construction of buildings otherwise permitted under the existing zoning classifications is a zoning ordinance).

[5] *See* Op. Att'y Gen. Fla. 2001-71.

[6] *See City of Miami v. Romer*, 73 So. 2d 285 (Fla. 1954) and *Town of Palm Beach Shores v. Doty*, 100 So. 2d 205 (Fla. 2d DCA 1958), aff'd 104 So. 2d 508 (Fla. 1958).

[7] *See Romer, supra.*

[8] Section 163.3162(2), Fla. Stat.

[9] Section 163.3162(4), Fla. Stat.