OPN 91-0026

Apr 15, 1991

The Honorable C.C. Brandt, Jr.
Leon County Property Appraiser
Leon County Courthouse, Room 106
Tallahassee, Florida 32301-1853

RE: Agricultural Classification of Real Property

Dear Mr. Brand:

This is in response to two questions you posed at a meeting with Tom Herndon, Executive Director, Department of Revenue, Thursday, April 11, 1991, involving the agricultural classification of real property governed by s. 193.461, F.S.

The first question you asked was whether the property appraiser was required to reclassify land to nonagricultural on the basis that agricultural use deters timely and orderly expansion of the community as provided in s. 193.461(4)(b), F.S. This question was answered by the First District Court of Appeal in St. Joe Paper Company v. Adkinson, 400 So.2d 983 (Fla. 1st DCA, 1981). The court held deterrency under s. 193.461(4)(b), F.S. was "not a legitimate consideration for the tax assessor in determining whether or not he will deny agricultural classification to lands or reclassify lands nonagricultural. This consideration may be made only by the Board of County Commissioners."

Your second line of inquiry involved s. 193.461(4)(a)3, which provides that "the property appraiser shall reclassify... as non-agricultural.... Land that has been zoned to a non-agricultural use at the request of the owner subsequent to the enactment of this law." While this provision seems to be straight-forward, there has been more than meets the eye. In construing this provision, the Fifth District Court of Appeal in Lackey v. Little England, Inc., 461 So.2d 281 (Fla. 5th DCA, 1985), followed the Florida Supreme Court and held that:

This statute is clear and unequivocal but its meaning has been interpreted, in conjunction with another portion of the statute, by our supreme court.

In Markham v. Fogg 458 So.2d 1122 (Fla. 1984), that court held:

As to the final prong of the test, the landowner has no right of rebuttal to the mandatory reclassification of the subject property. This is not fatal, however, because the instant statute can be read in pari materia with Section 193.461(3)(b). After property has been reclassified under subsection (4)(a)3 as nonagricultural, the landowner is not precluded from presenting evidence under subsection (3)(b) to show that his property is indeed being used primarily for bona fide agricultural purposes. That later subsection lists several factors that may be shown by the landowner and if sufficient the property would then be classified agricultural. The procedure, in essence, would be the same as if subsection (4)(a)3 itself were rebuttable. For this reason, it clearly satisfies the third prong of the due process test.

Apparently in order to satisfy due process concerns, the Florida Supreme Court has construed section 193.461(4)(a)3, Florida Statutes, as allowing the landowner to regain his agricultural classification even after the mandatory reclassification resulting from rezoning. He does this by showing "that his property is indeed being used primarily for bona fide agricultural purposes".

I have attached copies of these cases for your convenient reference. My research has not disclosed a case departing from these holdings.

I trust this has been responsive.

Sincerely,

Jeff Kielbasa

Ad Valorem Tax Counsel
Division of Ad Valorem Tax

JK/bso
Attachments
CC: J. Thomas Herndon