

**From:** Llerena, Victoria (PA) <vml@mdcpa.net>

**Sent:** Thursday, March 16, 2023 12:29 PM

**To:** DORPTO <DORPTO@floridarevenue.com>

**Cc:** Solis, Lazaro (PA) <SolisL@mdcpa.net>

**Subject:** Re: Public Workshop for Development of Proposed Amendments to the Classified Use Real Property Guidelines

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Good morning.

Thank you for the opportunity to provide input regarding the Department of Revenue's Coded Draft Ag Guidelines dated January 2023.

Under the proposed General Provisions 2.6 (p. 17-18), the draft provides certain case law has been superseded by legislative changes. We believe this statement is overbroad and potentially confusing. In most instances, the actual holding of the case has not been overturned despite the legislative change, which may have superseded some of the rationale in reaching the court's conclusion. For example, the draft cites *Bystrom v. Whitman*, 488 So. 2d 52, 521 (Fla. 1986) as a case that has been superseded. While the case cites the prior presumption of correctness requiring the taxpayer to present proof that excludes every hypothesis of a legal assessment, the actual holding of the case is that taxpayers' financial information is relevant and discoverable. The legislative change did not overturn or supersede the actual holding.

To still notify readers legislative changes were made and case law should be reviewed with care, we would suggest deleting the sentence in the proposed guidelines 2.6 stating "Yet, some pre-2009 and post-2009 case law does not reflect the appropriate application of the principles outlines in these major statutory changes. Some superseded case law includes: [case styles]." Instead, we would propose a more general statement, one consistent with section 2.1.4. in the DOR's Florida Real Property Appraisal Guidelines describing case law, such as "Care should be taken to consult new legislative changes and actual case law, along with legal advice where necessary, in their application."



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**From:** OASYS ePortal Notifications <pto-apps-no-reply@floridarevenue.com>

**Sent:** Wednesday, February 15, 2023 1:07 PM

**To:** Solis, Lazaro (PA) <SolisL@mdcpa.net>

**Subject:** Reminder: Public Workshop for Development of Proposed Amendments to the Classified Use Real Property Guidelines

Good afternoon.

This is a friendly reminder that next Tuesday, February 21, 2023, the Department will hold a public workshop at 10:00 a.m. to solicit public comment and questions on the development of preliminary proposed amendments to the Classified Use Real Property Guidelines. Please see the original communication below for more information.

Thank you.

**TO:** Property Appraisers, Tax Collectors, Clerks of the Court, Value Adjustment Board Clerks and Interested Parties

**FROM:** Florida Department of Revenue  
Property Tax Oversight

**SUBJECT:** Public Workshop for Development of Proposed Amendments to the Classified Use Real Property Guidelines

**DATE:** January 31, 2023

The Department of Revenue announces that it will hold a public workshop on February 21, 2023, at 10:00 a.m. to solicit public comment and questions on the development of preliminary proposed amendments to the Classified Use Real Property Guidelines in general conformity with the Administrative Procedures Act under Chapter 120, F.S., as required by s. 195.062(1), F.S. Although the Guidelines are not rules and do not have the force or effect of a rule pursuant to s. 195.062(1), F.S., the document is incorporated by reference in Rule 12D-51.001, Florida Administrative Code. The Department reviewed the Classified Use Real Property Guidelines and prepared proposed amendments which include removing obsolete language, bringing the capitalization methodology up to date, revising the areas of information to current standards, and reformatting. The workshop is an opportunity for the public to participate and offer comments. Based on the public input received at this workshop, the Department may conduct additional public workshops to receive more comments, present a revised draft document or both.

The Property Tax Oversight Program published a Notice of Rule Development in the January 31, 2023, edition of the Florida Administrative Register for this proceeding (see Volume 49, Number 20, page 346). The program has posted the proposed amendments and a summary of the proposed updates to the Classified Use Real Property Guidelines on its website at [floridarevenue.com/rules](http://floridarevenue.com/rules), under the Property

Tax Proposed Rules category “Chapter 12D-51, Florida Agricultural Classified Use Real Property Appraisal Guidelines.”

If you would like to submit a comment before the workshop, please send your comment or question to [DORPTO@floridarevenue.com](mailto:DORPTO@floridarevenue.com).

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# THE PROPERTY APPRAISERS' ASSOCIATION OF FLORIDA, INC.



PAAF - March 2, 1976

TAAF - 1903-1976

March 17, 2023

## **VIA E-MAIL**

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Re: Proposed Amendments to the Classified Use Real Property Guidelines

Dear Director Lewis:

The members of the Property Appraisers' Association of Florida, Inc. (PAAF)<sup>1</sup> have discussed the proposed changes to the Florida Agricultural Classified Use Real Property Appraisal Guidelines (agricultural guidelines), as set forth in the January 2023 draft, and respectfully submit the following comments thereto. PAAF's members appreciate the opportunity to provide input and look forward to continuing to participate in the revision process as the Department of Revenue (department) progresses towards a final work product. Before discussing specific provisions of the proposed changes to the guidelines, there are two general comments that should be emphasized.

First, the agricultural guidelines only are intended to assist property appraisers in valuing properties that have been classified as agricultural. *See* § 195.032, Fla. Stat. (2022) ("The standard measures of value shall provide guidelines for the valuation of property and the methods for property appraisers to employ in arriving at the just valuation of particular types of property consistent with ss. 193.011 and 193.461."). The guidelines do not purport to address the initial determination of whether property is entitled to the agricultural classification as set forth in section 193.461(3), Florida Statutes (2022). As a result, the department should avoid the inclusion of any language in the proposed changes to the guidelines that could be perceived as impacting the determination of classified use status.

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<sup>1</sup> PAAF's 2022-23 membership consists of property appraisers from the following 59 counties: Baker, Bay, Bradford, Brevard, Broward Calhoun, Charlotte, Citrus, Clay, Collier, Columbia, Desoto, Dixie, Duval, Escambia, Flagler, Franklin, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Holmes, Indian River, Jackson, Jefferson, Lafayette, Lee, Leon, Levy, Liberty, Madison, Marion, Martin, Monroe, Nassau, Okaloosa, Okeechobee, Orange, Osceola, Pasco, Pinellas, Polk, Putnam, St. Lucie, Santa Rosa, Sarasota, Seminole, Sumter, Suwannee, Taylor, Union, Wakulla, Walton, and Washington.

Second, there is no indication that the guidelines have become outdated or fail to reflect appropriate valuation techniques for properties classified as agricultural and assessed pursuant to section 193.461(6), Florida Statutes (2022). In the past 10 years, there have been minimal administrative and/or judicial challenges to the classified use assessments of agricultural properties. There have been no court decisions concluding or otherwise commenting that the agricultural guidelines were incorrect or otherwise failed to reflect appropriate appraisal methodologies. Although the Auditor General recommended that the department “continue efforts to update the Manual [of Instructions]” in its 2019 Performance Audit, no deficiencies in the agricultural guidelines were delineated. No similar recommendation was made in the 2022 Performance Audit. *See Fla. Auditor General, Dep’t of Revenue Performance Audit, Report Nos. 2020-003; 2023-014.* Thus, there is no demonstrated need to substantively revise the guidelines even though it has been 40 years since they were adopted. Only minor updating of statutory references and data sources would be appropriate.

In general, it appears that the department’s January 2023 draft acknowledges that significant substantive changes are unnecessary. PAAF’s members agree and commend the department in its overall approach to revisions of the agricultural guidelines.

For ease of reference, comments to specific portions of the proposed changes to the agricultural guidelines will be set forth in the order in which the language appears in the January 2023 draft. Reference will be made to the paragraph, followed by a brief description of PAAF’s concerns.

### **Paragraph 1.2 Description of Guidelines.**

The description of the guidelines includes language that “general application of the principles detailed in these guidelines, even among counties experiencing different market conditions or varying resources, should yield substantially similar results.”

Comment: The language should be rewritten to avoid any inference that the classified use assessment of property in one county may be relevant to whether the assessment in another county is lawful. Assessments from other counties are irrelevant and cannot be considered in evaluating whether property is correctly assessed. *Dep’t of Revenue v. Ford*, 438 So.2d 798 (Fla. 1983). Statewide uniformity of assessments is “more a goal than a compellable right.” *Spooner v. Asken*, 345 So.2d 1055, 1059 (Fla. 1976). Concerns for regional assessment parity are wholly irrelevant. *Id.*; *see Armstrong v. State*, 69 So.2d 319 (Fla. 1954). A taxpayer cannot claim a violation of the just valuation requirement merely on the basis of an allegation that different values had been assigned to adjacent properties of a like character in other counties. *Straughn v. GAC Properties, Inc.*, 360 So.2d 385, 387 (Fla. 1978). A lack of statewide uniformity does not give a taxpayer a cause of action to reduce or cancel a valid tax assessment. *Ford*, 438 So.2d at 800.

### **Paragraph 1.3 Purposes of These Guidelines.**

The purpose of the guidelines is described as to promote and facilitate the accuracy and equity of agricultural classified use assessment valuation of real property for ad valorem tax purposes “both within and among counties.”

Comment: The same observation set forth as a comment to paragraph 1.2 is applicable. Again, the assessment of property in one county is legally irrelevant to whether the assessment in another county complies with section 193.461(6).

### **Paragraph 1.5 Content of These Guidelines.**

The paragraph suggests that users should refer to the agricultural guidelines in conjunction with other applicable sources of professional knowledge such as *Property Assessment Valuation* (2010), and *Rural Property Valuation* (2017), but only to the extent that other sources do not conflict with Florida law or the manual of instructions.

Comment: The agricultural classified use valuation is required to be made in accordance with section 193.461(6). As such, it is fairly unique and specific to Florida. Reference to published sources of general appraisal procedures is not particularly helpful as to what the department advises is germane to the valuation assignment. Likewise, the department's failure to identify portions of these sources that it believes conflict with Florida law does not assist property appraisers in the performance of their statutory duties. These references should be eliminated.

### **Paragraph 1.6 Other Sources of Appraisal Guidance.**

The paragraph suggests that property appraisers may use other professionally accepted sources of appraisal guidance, such as the Uniform Standards of Professional Appraisal Practice (USPAP) but only to the extent that these other sources do not conflict with Florida law. The paragraph further observes that certain standards may only apply in certain contexts and that USPAP Jurisdictional Exceptions may be applicable to several sections of USPAP Standards 5 and 6.

Comment: The same observation set forth as a comment to paragraph 1.5 is applicable. The reference to USPAP should be eliminated.

### **Paragraph 2.2 Procedures for Classifying Agricultural Land.**

The paragraph includes a lengthy discussion of the criteria for determining whether property is entitled to the agricultural classification along with a discussion of Agritourism.

Comment: The guidelines should not purport to address the initial determination of whether property is entitled to the agricultural classification as set forth in section 193.461(3), Florida Statutes (2022). As a result, the department should avoid the inclusion of any language in the proposed changes to the guidelines that could be perceived as impacting the determination of classified use status. The discussion should be eliminated and simply replaced with a statement that the guidelines do not address issues related to whether the land is entitled to receive the agricultural classified use status.

### **Paragraph 2.3 Agricultural Factors.**

The paragraph references the assessment criteria of section 193.461(6). It further indicates that the property appraiser “must utilize” a “mass appraisal system to value agricultural property” within the county.

Comment: The quotation of section 193.461(6) is incomplete and fails to include subsections (c)2-4 and (d). Property appraisers may not typically utilize their CAMA systems in deriving assessments of agricultural properties. At the least, the word “must” should be replaced by “may.”

#### **Paragraph 2.3.2 The Cost Approach.**

The paragraph instructs that farm buildings and residences should be appraised using the procedures set forth in the Real Property Appraisal Guidelines.

Comment: The better reference would be to simply advise that the valuation of farm buildings and residences shall be made in accordance with section 193.011, Florida Statutes. The department has advised that the Real Property Guidelines are outdated.

#### **Paragraph 2.3.3 The Income Approach.**

In its discussion of the capitalization rate, the department advises that all components used to derive a capitalization rate shall be calculated using a 5-year moving average, but the current year county millage rate (not subject to the 5-year average) should be used.

Comment: Such language does not reflect current practice. The millage should be subject to the same averaging as the other components of the capitalization rate.

#### **Paragraph 2.3.4 Data Sources.**

The paragraph instructs that “[p]ublished data should only be used to back up local verified data or used in the absence of local data.”

Comment: As written, the paragraph appears to suggest that published data only should be a secondary choice or is a less reliable source of information. As the department is aware, it is very difficult to obtain local data, much less local verified data. The paragraph should be rewritten to reflect that property appraisers may use published data along with local verified data.

#### **Paragraph 2.3.5 Value Consistent with Reason.**

The paragraph continues to incorporate language from the 1982 guidelines that a change in the prior agricultural use of land to another potential agricultural use that may not be complete or discernable on January 1 would not result in a loss of the agricultural classification.

Comment: The agricultural guidelines are for the purpose of the classified use valuation of the property. References to whether property would be entitled to the classification should be eliminated.

#### **Paragraph 2.4 Property Inspection.**

The paragraph advises that, after a natural disaster, the property appraiser “should reinspect all affected parcels before the January 1 assessment date.”

Comment: The language most likely will prove to be administratively impracticable in many instances. Inspections could occur both before and after January 1 in an effort to determine the extent of damage to the property and potential impact on its valuation as of January 1. Mandating inspections prior to January 1 also may diminish the resources available to perform the five-year review of other, non-impacted parcels. The language should be rewritten.

#### **Paragraph 2.6 Assessment Challenges.**

The paragraph purports to advise that section 194.301, Florida Statutes (2022), was substantively changed in 2009 related to review of assessments by the VAB and the circuit courts. It then provides the department's legal opinion as to cases it believes have been superseded by the change.

Comment: The department should not include legal opinions or advice in the guidelines, which are statutorily authorized only to address the classified use valuation of agricultural properties. The burden of proof applicable to assessment challenges was changed 14 years ago and is well established. In addition, none of the cited cases involve cases addressing classified use valuation. The entire paragraph should be deleted.

#### **Paragraph 3.4.1 Determining Productive Capacity/Site Index.**

The paragraph instructs that timber stands that are predominantly hardwoods that can be harvested and reforested "should be valued at a percentage of the associated pine value for the slash pine site index of the property."

Comment: The language does not reflect the practice of all property appraisers. The word "may" should be used instead of "should." The term "reforested," as it relates to hardwood stands, also is undefined. While such stands may naturally regenerate over time, PAAF's members are unaware of any hardwood reforestation efforts.

#### **Paragraph 4.3 Rental Income for Pasture Land.**

The paragraph includes a lengthy discussion of Animal Unit Months (AUM) of soils and advises that countywide rental surveys should be sorted based upon AUM.

Comment: The language creates an administrative impracticability and overly emphasizes the import of AUM in determining comparable rents. For pastureland, the quality and type of vegetation may be more important than the soil carrying capacity. Other issues such as proximity to other agricultural lands of the operator, quality of the fencing and access to the property, and continued soil maintenance such as fertilization and burning may more significantly impact the rent paid by the operator. In practice, property appraisers have found AUM or soil quality to not be a controlling factor in the rent paid to lease pastureland. In addition, the contribution of the soil quality to the rental rate is extremely difficult to isolate when analyzing lease information obtained by annual rental surveys. The discussion of AUM should be removed.



#### **Paragraph 4.4.2 Classes of Pasture Improvement.**

The paragraph advises that “[p]onds and water sources that are accessible by livestock should be considered pastureland.”

Comment: To the extent that the language may be interpreted to require ponds and water sources to be valued on the same basis as pastureland, it may result in an overassessment of the property. If the amount of rent paid by the operator reflected the availability of a natural water source, but did not include the acreage attributable to that water source, the assessment may be skewed.

#### **Paragraph 5.5 Determining Typical Yield.**

The paragraph addresses citrus valuation and instructs that production “levels may differ across county lines although efforts should be made to keep these differences to a minimum.”

Comment: Please again refer to the comments as to paragraphs 1.2 and 1.3. Some citrus yield information is available on a regional basis but even then the regions may be separated by county boundaries. The language should be removed.

#### **Paragraph 5.10 Recapture.**

The paragraph includes a narrative explanation of how to calculate the recapture rate.

Comment: It appears that the narrative discussion of how to calculate the recapture rate is incorrect. The calculation itself, on the other hand, is correctly stated. The sentence should be rewritten to state: “Then divide 1 by the remaining economic life to find the recapture rate.”

#### **Paragraph 6.6 Irrigated Land Valuation.**

The paragraph advises that it “should not be assumed that the presence or use of irrigation equipment means an increase in crop yields.”

Comment: Generally, cropland is valued by analyzing rents paid. Rents paid for irrigated cropland will be higher than non-irrigated cropland for many reasons, including a perceived increase in yields as well as reduced risk to climate conditions causing crop loss or reduced yields.

#### **Addendum A – Band of Investment (BOI) Example.**

The worksheet advises that the current county millage rate is the “only component not subject to the five-year averaging.”

Comment: As discussed in the comment to paragraph 2.3.3, such language does not reflect current practice.

## **Addendum G – Agricultural Rental Analysis Example, Cropland/Pasture Land.**

This worksheet demonstrates how to calculate a weighted rent for cropland or pastureland values.

Comment: The worksheet appears to suggest that appraisal judgment is eliminated or constrained in evaluating the rent survey information received. The example gives all rent information equal weight and validity and fails to consider that rent information also may be obtained from published sources. In the example, rental letter #3 reflects a rent rate of \$45.00, which far exceeds the other rents of \$30.00, \$30.00, and \$32.00, and may not solely reflect the smaller size of the parcel. The property appraiser may decide to eliminate that information or give it less weight. Such decisions are clearly proper and within the ambit of appraisal judgment.

In addition, the example includes a note that rent is net to the owner after deducting a management fee. In practice, rents paid for cropland or pastureland do not involve any aspect of a management fee to cover broker fees or the owner's costs. Property appraisers do not typically make such adjustments. Thus, the note should be deleted.

## **Addendum H – Cropland and Pasture Land Value Schedule.**

The worksheet includes the AUM considerations that were discussed in the comment to paragraph 4.3. It also includes the reference to using net rents as opposed to gross rents, with the difference being a management fee.

Comment: The worksheet should be revised to eliminate the reference to the AUM capability of the soil and the management fee example. Please refer to the comment to Addendum G.

## **Conclusion**

PAAF's members appreciate the opportunity to provide input and look forward to continuing to participate in the revision process as the department progresses towards a final work product. The January 2023 draft reflects the department's considerable effort and diligence in its endeavor to update the agricultural guidelines. The comments provided herein are intended to assist the department in its efforts and should not be interpreted as critical of the draft or the staff that have worked on the project.

Very truly yours,



Loren E. Levy, General Counsel  
Property Appraisers Association  
of Florida, Inc.

LEL/gls

cc: Hon. Bob Henriquez, President  
All PAAF Members