

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Under the proposed General Provisions 2.6 (p. 17-18), the draft provides certain case law has been superseded by legislative changes.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most instances, the actual holding of the case has not been overturned despite the legislative change, which may have superseded some of the rationale in reaching the court's conclusion. For example, the draft cites *Bystrom v. Whitman*, 488 So. 2d 52, 521 (Fla. 1986) as a case that has been superseded.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 Some superseded case law includes: [case styles]."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."



Victoria Llerena, Esq., CFE

P.A. Legal Manager

111 NW 1st Street, Suite 710 | Miami, Florida 33128

Office: 305-375-4489 | Fax: 305-375-3024

www.MiamiDade.Gov/PA_ | [Facebook_](#) | [Twitter](#)

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, 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.

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THE PROPERTY APPRAISERS' ASSOCIATION OF FLORIDA, INC.



PAAF - March 2, 1976

TAAF - 1903-1976

March 17, 2023

VIA E-MAIL

Rene Lewis, Director
Property Tax Oversight Program
Florida Department of Revenue
Post Office Box 3000
Tallahassee, Florida 32315-3000
E-mail: rene.lewis@floridarevenue.com
DORPTO@floridarevenue.com

Re: Proposed Amendments to the Classified Use Real Property Guidelines

Dear Director Lewis:

The members of the Property Appraisers' Association of Florida, Inc. (PAAF)¹ 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.

¹ 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

From: Mrs. Sheila Anderson <cps1jra@gmail.com>

Sent: Saturday, June 10, 2023 1:58 PM

To: DORPTO <DORPTO@floridarevenue.com>

Cc: Rene Lewis <Rene.Lewis@floridarevenue.com>; Steve Keller <Steve.Keller@floridarevenue.com>; Mark Hamilton <Mark.Hamilton@floridarevenue.com>

Subject: 12D-51.001, F.A.C.

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Questions and comments.

1 - Are uncleared lots in residential subdivisions qualified for agricultural exemptions? It is my understanding some such exemptions have been provided. It is not clear from the 12D-51.001, F.A.C. text.

2 - Does a commercial venture, farming fish on land, qualify for an agricultural exemption? If so, under what statutes, where in the Rules, and where in the Guidelines?

3 - What are the standards for compliance? For example, 194.301, F.S. refers to compliance with the 8 criteria in 193.011, F.S. If applicable, how is the use criteria ascertained and verified? Is there a checklist?

4 - Wherever improved property is mentioned for assessment purposes, the term of art "fee simple" should be inserted to be consistent with the intent in 12D-51.003, F.A.C.

5 - See page 7. 1.5 refers to "... professional practice and standards ..." To be consistent, should the term "appraisal" be inserted so the language reads "... professional appraisal practice and standards"?

6 - See page 8. Why was 1.6 deleted?

Sheila Anderson, Principal/Broker
Commercial Property Services, Inc.

Licensed Real Estate Broker

305-608-0081

www.floridapropertytaxappeals.com

-----Original Message-----

From: Mrs. Sheila Anderson <cps1jra@gmail.com>

Sent: Thursday, July 13, 2023 8:43 PM

To: Mark Hamilton <Mark.Hamilton@floridarevenue.com>; DORPTO
<DORPTO@floridarevenue.com>

Subject: 12D-51.001, Fla. Admin. Code

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The following are proposed for inclusion in this Rule.

SMA

----- Forwarded message -----

From: <sma@floridapropertytaxappeals.com
<<mailto:sma@floridapropertytaxappeals.com>> >

Date: Wed, Jul 12, 2023, 4:10 PM

Subject:

To: <cps1jra@gmail.com <<mailto:cps1jra@gmail.com>> >

TO: PTO and to Mark Hamilton, General Counsel

Spelling errors in the transcript include: "Fitch" should be "Phipps". "Sallow" should be "fallow". "Plotted" should be "platted".

In 12D-51.001, Fla. Admin. Code please amend the transcript text per the following:

Page 37, bottom: Property appraisers may use the sales comparison, income, and cost approaches in estimating the value of agricultural lands in Florida for all ad valorem tax purposes "pursuant to 193.011".

Page 38, top: ... property appraisers have discretion, ... "after estimating the logical value pursuant to the three approaches to value, whichever approach is selected, care must be exercised to ensure value conclusions do not exceed fee simple market values"

Questions still not addressed are:

1. Uncleared lots and residential subdivisions - are those agriculturally exempt for timber.
2. Would a commercial venture; farming fish on land, qualify for an agricultural exemption and if so, where is that in the statutes and the rules?

Sheila Anderson, Principal/Broker
Commercial Property Services, Inc.
Licensed Real Estate Broker
305-608-0081

From: Nina Paradela Roppo <nparadela@rvmrlaw.com>

Sent: Tuesday, July 18, 2023 5:41 PM

To: Rene Lewis <Rene.Lewis@floridarevenue.com>; DORPTO <DORPTO@floridarevenue.com>

Cc: governorron.desantis@myfloridalegal.com; citizensservices@myfloridalegal.com; cfo.patronis@myfloridacfo.com; Julie Schwartz, <jschwartz@rvmrlaw.com>; Mandler, Jeffrey <jmandler@rvmrlaw.com>; Denise Alfonso <dguillen@rvmrlaw.com>

Subject: Correspondence re: Proposed Amendments to Agricultural Classified Use Real Property Appraisal Guidelines

Caution: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon. Please see attached correspondence from Julie Schwartz, Esq. Thank you.

Nina Paradela Roppo

Paralegal



RENNERT VOGEL
MANDLER & RODRIGUEZ, P.A.
ATTORNEYS AT LAW

100 SE 2nd Street, 29th Floor | Miami, FL 33131

305-577-4167 Direct | 305-373-0791 Fax | nparadela@rvmrlaw.com

Miami | Boca Raton

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RENNERT VOGEL
MANDLER & RODRIGUEZ, P.A.
ATTORNEYS AT LAW

Julie Schwartz, Esq.
Direct Line: 305.375.6583
E-mail: JSchwartz@rvmlaw.com

July 18, 2023

VIA E-MAIL

Rene.lewis@floridarevenue.com; DORPTO@floridarevenue.com

Rene Lewis, Director
Property Tax Oversight Program
Florida Department of Revenue
Post Office Box 3000
Tallahassee, FL 32315-3000

Re: **Proposed Amendments to the Agricultural Classified Use Real Property Appraisal Guidelines (the "Guidelines")**

Dear Sir or Madam:

Our firm represents taxpayers in all aspects of ad valorem property tax matters, and we appreciate the opportunity to provide input into drafting of the revised Florida Agricultural Classified Use Real Property Appraisal Guidelines (the "Guidelines"). Jeffrey Mandler and I participated in the June 27th Public Workshop. At that time, Mr. Mandler asked who specifically had worked on drafting the proposed Guidelines, so that the public would have an opportunity for a substantive discussion with the DOR staff that are responsible for preparing, and knowledgeable about, the Guidelines as is required by FS 120.54(2)(c). Mr. Hamilton responded that the Guidelines were produced as a group effort by DOR staff. Most comments from the public were simply received and not responded to in any meaningful way, which is not in keeping with the intent of FS 120.54(2)(c) and the purpose of holding a workshop. In the future, we urge you to make available the staff members who are prepared to discuss the substance of the matters being presented.

The revised guidelines add Section 1.0 which gives a helpful overview of the role of the PTO, the property assessment process, and the Guidelines. Some parties have commented earlier in this rules development process that references in the Guidelines to USPAP are not relevant or appropriate. On the contrary, we believe that reference to USPAP is critical, as it represents a professionally accepted appraisal practice, with which the Property Appraiser must comply in all aspects of property assessment, including classified values.

USPAP is the Uniform Standards of Professional Appraisal Practice, published by The Appraisal Foundation, an entity authorized by the U.S. Congress to publish standards for the appraisal profession. The USPAP preamble states that the purpose of the standards “is to promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers. It is essential that appraisers develop and communicate their analyses, opinions and conclusions to intended users of their services in a manner that is meaningful and not misleading.” USPAP contains standards for Mass Appraisal Development and Mass Appraisal Reporting. Appraisal development is the process of arriving at a valuation, while appraisal reporting is the process of communicating the results of the appraisal process to others, such as taxpayers.

F.S. 194.30, as amended in 2009, states that “a taxpayer who challenges an assessment is entitled to a determination by the value adjustment board or court of the appropriateness of the appraisal methodology used in making the assessment. The value of property must be determined by an appraisal methodology that complies with the criteria of F.S. 193.011 and professionally accepted appraisal practices. The provisions of this subsection preempt any prior case law that is inconsistent with this subsection.” This requirement means that property appraisers must comply with professionally accepted appraisal practices in their appraisal development and reporting or communicating of all assessments. USPAP requires knowledge of and compliance with laws applicable to a particular jurisdiction and, therefore, incorporates compliance with F.S. 193.461.

In conclusion, it is imperative that the proposed Guidelines retain the references in Section 1 to USPAP.

We have the following additional specific comments to the June 2023 draft of the Guidelines:

Section 1.2 Description of Guidelines

The second paragraph states that Property Appraisers have “considerable latitude” for applying the Guidelines. This sentence must be stricken as it is contrary to Florida law. Pursuant to F.S. 195.002 and FS 195.032, the DOR *shall* establish and promulgate standard measures of value to be used by property appraisers, and *shall* provide guidelines for valuation of property and methods for property appraisers to employ. Furthermore, the property appraisers’ latitude is limited by professionally accepted appraisal methodology. Please also see our comments to 1.4 below, regarding

the four standards which also limit the Property Appraisers' appraisal development. Property Appraisers do not have "considerable latitude, " but must adhere to these standards and guidelines.

Section 1.4 Uses for Which These Guidelines are not Intended

The first paragraph states that "these guidelines should not be used as the basis for the legal rights or responsibilities of participants in the real property appraisal process for ad valorem tax purposes in the State of Florida." This sentence should be stricken. This misrepresents F.S. 195.062(1), which states that the Guidelines shall be adopted in conformity with the rulemaking process but not have the force of rules. The statement in the draft Guidelines is far broader than the statutory language and does not reflect the fact that courts and the property appraisers themselves rely on the Guidelines. In certain cases, property appraisers have relied in court on their compliance with the Guidelines as support for their assessment.

The second paragraph contains a statement that "Property appraisers *may* use other professionally accepted sources of appraisal guidance, such as the Uniform Standards of Professional Appraisal Practice (USPAP), published by the Appraisal foundation, but only to the extent that those other sources do not conflict with Florida Law". We suggest also including the following: Property appraisers must also comply with the four standards set forth in F.S. 194.301, which are: (1) compliance with professionally accepted appraisal practices (including in appraisal development and appraisal reporting); (2) avoidance of arbitrarily different appraisal practices within groups of comparable property within the same county; (3) avoidance of superseded case law, and (4) correct application of an appropriate appraisal methodology.

Section 1.5 Content of These Guidelines

Why is the reference to the 2010 Property Assessment Valuation removed?

Section 2.1 Overview

General Comment: The second paragraph states that it contains sections dealing with the four major agricultural land uses in Florida, timberland, pasture land, citrus land and cropland. We would suggest that citrus be broadened to include groves generally, such as mango and avocado groves, and that nursery uses also be addressed.

Agritourism: The seventh paragraph addresses agritourism. Since agritourism reflects recent legislative action, more information should be added, including the following:

- Agritourism is specifically encouraged by the legislature, as stated in F.S. 570.85.

- The seventh paragraph states that “section 570.85 F.S. allows agritourism operators to maintain agricultural classification for ad valorem tax purposes under 193.461 F.S. so long as the agritourism activity relates directly to agricultural production.” The second part of this sentence, following 193.461 F.S. should be stricken. This is not in the statute and adding it here creates a new requirement that is not in the statute.

- The definition of agritourism from F.S. 570.86 should be included. It states, “Agritourism activity” means any agricultural related activity consistent with a bona fide farm, livestock operation, or ranch or in a working forest which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, civic, ceremonial, training and exhibition, or harvest-your-own activities and attractions.”

- The sentence stating, “However it is important to remember for purposes of agricultural classification, s. 193.461(3)(b), F.S. still requires that the primary use of the land be a bona fide agricultural use.” should be stricken. Amended F.S. 570.85(1) removes the requirement that agritourism be a *secondary* stream of revenue, and the initial statement is contrary to the amended statute.

Section 2.2.5 Value Consistent with Use

The following sentence was struck from the Guidelines but should be put back in, “For land conservation purposes, land may be permitted to lie fallow on an occasional basis.” It is important for every Property Appraiser to understand that allowing land to lie fallow may be an acceptable bona fide commercial use of the land.

Section 2.5 Assessment Challenges

References to F.S. 194.301 and 194.3015 are critical to include here. When these guidelines were last drafted in 1982, these statutes did not exist. Other parties have commented on this section stating that the 2009 revisions to F.S. 194.301 are well

established and that the holdings of the cases cited which were decided based on the every-reasonable-hypothesis standard are not necessarily overruled by F.S. 194.3015. In our experience representing taxpayers, adoption of the principles in F.S. 194.301 and 194.3015 has been slow and uneven, and reiterating them here, as well as in the Real Property and Tangible Personal Property Guidelines which are also being revised, is critical.

The cases listed in 2.5 were based on metrics and standards making up the “every reasonable hypothesis standard” that has since been rejected. These old metrics and standards required a much higher standard of proof for a taxpayer to challenge an original assessment as well as much lower standards of care and diligence by the property appraiser in developing and reporting assessments. One such example is the old standard that the property appraiser’s determination of assessment value is “an exercise of administrative discretion with the officer’s field of expertise.” Now the property appraiser is required to present competent, substantial evidence that its appraisal methodology complied with professionally accepted appraisal practices.

As we pointed out in our comments to 1.4 above, F.S. 194.301 creates four standards: (1) compliance with professionally accepted appraisal standards, including in appraisal development and reporting, (2) avoidance of arbitrarily different appraisal practices within groups of comparable properties, (3) avoidance of superseded case law and (4) correct application of an appropriate appraisal methodology. Retention of Section 2.5 assists in clarifying these issues and is critical to maintain uniformity in this statute.

Section 4.1 Pasture Land Valuation

Pasture land definition should include land that supports that pasture such as land beneath barns, and other farm buildings.

Section 5.0 Citrus Land.

As mentioned above, this should be broadened to include all types of groves.

Rene Lewis, Director
July 18, 2023
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Section 5.4 Economic Life of Typical Grove

The first paragraph states that the “precise length of this period is an appraisal judgment.” It should be clarified that such appraisal judgment must be based on supporting data.

Section 5.6.2 Preparing the Value Schedule

Subsection (3) states that “The planted grove acreage may include small ancillary portions such as turning rows and perimeter driveways.” This should be changed to state that “the acreage includes ancillary portions such as turning rows and perimeter driveways.” These areas are needed for the agricultural use of the property.

Thank you for your consideration of these comments and we look forward to continuing to work toward developing an equitable and transparent process for Florida taxpayers.

Very truly yours,

A handwritten signature in blue ink that reads "Julie Schwartz". The signature is written in a cursive, flowing style.

Julie Schwartz

JMS/da

cc: Governor Ron DeSantis, governorron.desantis@myflorida.com
Attorney General Ashley Moody, Citizenservices@myfloridalegal.com
CFO Jimmy Patronis, CFO.Patronis@MyFloridaCFO.com



THE PROPERTY APPRAISERS' ASSOCIATION OF FLORIDA, INC.



PAAF - March 2, 1976

TAAF - 1903-1976

August 11, 2023

VIA E-MAIL

Rene Lewis, Director
Property Tax Oversight Program
Florida Department of Revenue
Post Office Box 3000
Tallahassee, Florida 32315-3000
E-mail: rene.lewis@floridarevenue.com
DORPTO@floridarevenue.com

Re: Proposed Amendments to the Classified Use Real Property Guidelines, June 2023 draft

Dear Director Lewis:

The members of the Property Appraisers' Association of Florida, Inc. (PAAF)¹ have discussed the proposed changes to the Florida Agricultural Classified Use Real Property Appraisal Guidelines (agricultural guidelines), as set forth in the June 2023 draft, and respectfully submit the following comments thereto. PAAF's members appreciate the changes made to the January 2023 draft and the opportunity to continue to participate in the revision process as the Department of Revenue (department) progresses towards a final work product.

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 June 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."

¹ 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.

Comment: In response to PAAF’s comments to the January 2023 draft, the department has deleted “substantially.” The change, however, does not sufficiently address PAAF’s concerns. Case law is very clear that 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.

The language now appears to suggest that applying “appropriate appraisal methodologies” . . . “should yield similar results” even among counties experiencing different market conditions or varying resources.” Such language is contrary to Florida law if it were the department’s intent that the “results” discussed in the language are the classified use assessments. The entire sentence should be stricken from the guidelines. Importantly, applying appropriate appraisal methodologies among counties experiencing different market conditions should yield different – not similar – results.

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). The legislature only has authorized consideration of whether the property appraiser has arbitrarily used “appraisal practices that are different from the appraisal practices generally applied . . . to *comparable property within the same county.*” § 194.301(2)(a)3., Fla. Stat. (2022) (emphasis added).

Paragraph 1.4 Uses for Which These Guidelines Are Not Intended

The department included the following language in the June 2023 draft: “These guidelines do not address the procedure for approving or disapproving applications for agricultural classified use. Chapter 12D-5, Florida Administrative Code (F.A.C.) sets forth the procedure to be used in classifying real property as agricultural land for the purpose of ad valorem taxation in accordance with s. 193.461, F.S.”

Comment:

PAAF had emphasized in its comments to the January 2023 draft that the department should not include any language in the proposed changes to the guidelines that could be perceived as impacting the determination of classified use status. In this regard, the language acknowledging that the property appraiser is responsible for approving or disapproving applications for agricultural use is appropriate.

The newly included language, however, advises that chapter 12D-5 sets forth “the procedure” to be used in classifying real property as agricultural land. Several rules within the chapter have no application to classified use status, i.e., rules 12D-5.005-5.014. Rule 12D-5.004(1) delineates additional factors that a property appraiser “may consider, but to which he is not limited” in determining agricultural classification. Subsection (2) provides other “factors that are recommended to be considered.” Even the seven statutory factors set forth in section 193.461(3)(b), Florida Statutes (2022), that “may be taken into consideration” are not mandatory. *Bystrom v. Union Land Inv., Inc.*, 477 So.2d 585, 588-9 (Fla. 3d DCA 1985). Chapter 12D-5 does not set forth “the procedure” to be used in classifying real property as agricultural land. Rather, that decision is to be made in accordance with section 193.461, Florida Statutes (2022). If the department believes that reference to chapter 12D-5 is necessary, the language should be rewritten. In addition, it should correctly advise that the factors included in rule 12D-5.004(1) and (2) are not mandatory.

Paragraph 2.1 Overview

The department has appropriately inserted into section 2.1 language indicating that the property appraiser is responsible for approving or disapproving applications for agricultural classified use assessment. On the other hand, inclusion of the portions of section 193.461 pertaining to the threshold determination of whether real property is entitled to the classified use status is unnecessarily included. Likewise, the lengthy discussion of agritourism should not be included as it does not pertain to the valuation of real property subject to the classified use status. Lastly, the language stating that Chapter 12D-5 sets forth “the procedure to be used in classifying real property as agricultural land” should be modified as discussed in PAAF’s comments to Paragraph 1.4.

The agricultural guidelines only are intended to assist property appraisers in valuing lands 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). The department should avoid including any language that could be perceived as impacting the determination of classified use status.

Paragraph 2.2.3 The Income Approach

The paragraph advises that the income approach reflects “a buyer’s evaluation of the earning potential of the land.” The department also has amended the prior language in the January 2023 draft regarding use of the county millage rate in the calculation of the capitalization rate; presumably in response to PAAF’s comments. In the June 2023 draft, the department now has inserted language that it “recommends property appraisers use the current year county millage rate without adjustment for 5-year averaging.”

Comment: The more complete statement of the income approach would be to advise that the income approach reflects the buyer’s and seller’s evaluation . . .”

As previously suggested, using only the current year county millage rate in calculating a 5-year averaged capitalization rate does not reflect current practice. The millage rate should be subject to the

same averaging as the other components of the capitalization rate to maintain uniformity of data inputs.

Paragraph 2.3.4 Data Sources

The paragraph, as revised in the June 2023 draft, instructs that “local data is the preferred data source” and that published data may be used to back up local verified data or used in the absence of local data.

Comment: As written, the paragraph advises that published data only should be a secondary choice or inherently 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 that is reflective of current market conditions. The paragraph should be rewritten to reflect that property appraisers may use all available reliable information, which may include published data along with local verified data.

Paragraph 2.3.5 Value Consistent with Use

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 attempt to reinspect all affected parcels before the January 1 assessment date.”

Comment: The department’s revision appears to be an effort to be responsive to PAAF’s comments regarding the January 2023 draft. The revision, however, did not substantively change the language, which may 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 classified use valuation as of January 1. The language should be rewritten as follows: “In the event of a natural disaster, the property appraiser should attempt to reinspect all affected parcels to document any damage caused by the disaster as of January 1, and consider the impact it may have on the classified use value.”

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 its 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 classified use valuation. The entire paragraph should be deleted.

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. It also includes new language advising that “rent paid to corporate land owners often includes a management fee. The management fee represents a small amount per acre and includes owner-incurred costs of incidentals related to establishing the lease and collecting rent as well as lease broker fees.” The paragraph then instructs property appraisers that rents paid for the agricultural use of land should be adjusted by removing any amount attributable to a management fee.

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.

With regard to the management fee issue, in actual 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. Making an adjustment, moreover, would result in a “double-dipping” of this expense because the property owner – as any knowledgeable lessor – would be presumed to already have considered the management fee cost in deciding the amount at which to rent the property. *See Turner v. Tokai Fin. Servs., Inc.*, 767 So.2d 494, 499 (Fla. 2d DCA 2000) (allowing a blanket deduction for costs of sale gives a windfall to the seller who has already accounted for them in the sale price).

Paragraph 6.5 Use of Qualified Rental Agreements for Valuation

This paragraph again instructs that rents used for valuation purposes should be reduced by any management fee.

Comment: Please refer to the comments made regarding this issue as to paragraph 4.3.

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 2.2.3, such language does not reflect current practice. The millage rate should be subject to the same averaging as the other components of the capitalization rate to maintain uniformity of data inputs.

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

This worksheet demonstrates how to calculate a weighted rent for cropland or pastureland values. The example includes a note that the rent is net to the owner after deducting a management fee.

Comment: Please refer to the comments made regarding this issue as to paragraph 4.3. 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 comments made regarding these issues in paragraph 4.3.

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 June 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