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IN THE SUPREME COURT OF FLORIDA

RONALD SCHULTZ, et. al.

Petitioners,

v.

CASE NO: 92,803
DCA CASE No. 96-01973

LOVE PGI PARTNERS, L.P., et. al.

Respondents.

RESPONDENT'S ANSWER BRIEF OF THE MERITS

APPEAL FROM THE DISTRICT COURT OF APPEAL FIFTH DISTRICT OF FLORIDA

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SUMMARY OF ARGUMENT

The District Court did not err. The District Court found, based on the clear and unambiguous language of the definition of "development" in Section 380.04(1), Florida Statute, and the exclusions from "development" set forth in Section 380.04(3)(e), Florida Statutes, that Sugarmill's cattle grazing was not "development." Consequently, the District Court concluded that the Code - which requires "development" under Section 380.04, Florida Statutes, for its exercise of jurisdiction - had no application to cattle grazing. Since cattle grazing was not "development" - the jurisdictional predicate for regulation under the Code, Section 1300J. - then neither the Code, its zoning regulations nor the holding of Robbins v. Yusem, 559 So. 2d 1185 (Fla. 3d DCA 1990), which addresses the legality of a use under zoning regulations, could apply to Sugarmill's cattle grazing and since neither the zoning regulations of the Code nor the holding of Robbins had any application to that cattle grazing, then neither the Code nor Robbins could be used to determine if that activity was bona fide under Chapter 193, Florida Statutes.

Schultz's sole basis for not classifying Sugarmill's cattle grazing as agricultural was the legality of Sugarmill's agricultural activity under the Code. Love PGI Partners, L.P. v. Schultz, 706 So. 2d 887, 892 (Fla. 5th DCA 1998) ("…there is

no basis to conclude that this was a non-existent, or sham (not a bona fide) livestock activity.") Since the Code does not regulate cattle grazing and Schultz raised no other basis for not classifying Sugarmill's property as agricultural, then Sugarmill's agricultural use of its land was legal, in good faith and bona fide. Id. Therefore, Schultz's denial of an agricultural exemption for Sugarmill's cattle grazing departed from the essential requirements of law and constituted an abuse of discretion. Gianolio v. Markham, 564 So. 2d 1131 (Fla. 4th DCA 1990); Love PGI Partners, 706 So. 2d at 894.

This Court should affirm the District Court's decision.

I

THE DISTRICT COURT DID NOT ERR WHEN IT FOUND THAT CHAPTER 163, PART II, THE LOCAL GOVERNMENT COMPREHENSIVE PLANNING AND LAND DEVELOPMENT ACT, AND THE CITRUS COUNTY LAND DEVELOPMENT CODE DO NOT REGULATE SUGARMILL'S CATTLE GRAZING ACTIVITIES.

II

SECTION 163.3194(5), FLA. STAT. (1985), DOES NOT ABROGATE THE REQUIREMENT THAT AGRICULTURAL USES THAT CONSTITUTE "DEVELOPMENT" MUST BE LEGAL UNDER A LOCAL GOVERNMENT'S LDR'S IN ORDER TO MEET THE GOOD FAITH REQUIREMENT OF SECTION 193.461(3)(D), FLA. STAT.

The question decided by the District Court - and thus the question before this Court - is **not**, as Schultz asserts, whether all agricultural uses are excluded from the definition of "development" in Section 380.04, Florida Statutes, but whether one specific use - cattle grazing - is excluded from that definition, and if it is, then whether the Citrus County Land Development Code ("Code") - which requires "development" as a condition precedent to its exercise of regulatory jurisdiction, Section 1300.J., Code ("…the requirements of this Code apply to all development….") - can be applied to Sugarmill's cattle grazing to determine if that activity is "bona fide" under Chapter 193, Florida Statutes. The District Court concluded that the provisions of the Code had no

application to Sugarmill's cattle grazing. That conclusion was correct.

The District Court found, based on the clear and unambiguous language of the definition of "development" in Section 380.04(1), Florida Statutes (which requires the "...making of any material change in the use or appearance of any structure or land," Section 380.04(1), Florida Statutes, in order for an activity to constitute "development"), and the exclusion from "development" set forth in Section 380.04(3)(e), Florida Statutes, that Sugarmill's cattle grazing was not "development." Consequently, the District Court concluded that the Code - which requires "development" under Section 380.04, Florida Statutes, for its exercise of jurisdiction - had no application to cattle grazing.[1] Neither the Code, its zoning regulations, nor the holding of Robbins v. Yusem, 559 So. 2d 1185 (Fla. 3d DCA 1990), which addresses the legality of a use under zoning regulations, applies to Sugarmill's cattle since the jurisdictional predicate for regulation under the Code has not been met. Section 1300 J, Code. Thus, because cattle grazing does not constitute "development," then neither the

[1]Until, presumably, the nature of the activity was altered such that the activity "...[made] a material change in the use or appearance of the land or structure," Section 380.04(1), Florida Statutes.

Code nor Robbins could be used to determine if that activity was bona fide under Chapter 193, Florida Statutes.[2]

The Fifth District Court of Appeal did not err.

The plain and ordinary meaning of the Code evidences that Sugarmill's cattle grazing is not "development," as a matter of law, and thus it is not regulated by the Code. See §§ 1300 J. and 1500, Citrus County Land Development Code ("…the requirements of this Code **apply to all development**….;" "Development: The carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels. **This definition includes all references** as specified **in Section 380.04(2)-(11),** Florida Statutes.") Since Sugarmill's cattle grazing is not regulated by the Code, then neither the Code nor the holding Robbins v. Yusem, 559 So. 2d at 1185 - which addresses the legality of uses under a land development code - have any application to Sugarmill's cattle grazing and cannot be used as a basis for the "…classification of lands [like Sugarmill's] as agricultural for ad valorem

[2]The District Court also concluded that zoning could not be determinative of whether a parcel was entitled to agricultural classification under Chapter 193, Florida Statutes. Love PGI Partners, 706 So. 2d at 892.

purposes pursuant to section 193.3194(5)." Love PGI Partners, L.P. v. Schultz, 706 So. 2d 887, 893 (Fla. 5th DCA 1998).[3]

Schultz's sole basis for not classifying Sugarmill's cattle grazing as agricultural was the legality of Sugarmill's agricultural activity under the Code. Id. at 894 ("…there is no basis to conclude that this was a non-existent, or sham (not a bona fide) livestock activity."). Since the Code does not regulate cattle grazing and Schultz raised no other basis for not classifying Sugarmill's property as agricultural, then Sugarmill's agricultural use of its land was legal, in good faith and bona fide. Id. Therefore, Schultz's denial of an agricultural exemption for Sugarmill's cattle grazing departed from the essential requirements of law and constituted an abuse

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[3] Sugarmill does not dispute that zoning can be considered by the property appraiser under Section 193.461(3)(b)7, Florida Statutes, to determine if a use is "bona fide." However, zoning is not determinative of that question, Love PGI Partners, 706 So. 2d at 892; Wilkinson v. Kirby, 654 So. 2d 194 (Fla. 2d DCA 1995); Lackey v. Little England, Inc., 461 So. 2d 1281 (Fla. 5th DCA 1985); but it is just one of the factors to be evaluated. Love PGI Partners, 706 So. 2d at 892.

Here, the District Court concluded, correctly, that the trial court committed two errors. First, the trial court considered that the issue of zoning determined conclusively the question of whether Sugarmill's cattle grazing was bona fide. That consideration is contrary to the law. More importantly, however, is the fact that the trial court concluded, contrary to the clear and unambiguous language of Section 380.04, Florida Statutes, and the Code, that Sugarmill's cattle grazing was subject to regulation under the land development regulations of the Code. That conclusion was wrong.

of discretion. Gianolio v. Markham, 564 So. 2d 1131 (Fla. 4th DCA 1990); Love PGI Partners, 706 So. 2d at 893-894.

Part II, Chapter 163, Florida Statutes, known as the Local Government Comprehensive Planning and Land Development Regulation Act ("Act"), mandates that local governments adopt land development regulations. See, §163.3202, Fla. Stat. (1995) ("Within 1 year after submission of its revised comprehensive plan for review pursuant to s. 163.3167(2), each county ... in this state **shall** adopt or amend and enforce land development regulations that are consistent with and implement their adopted comprehensive plan.").

The Code is the "land development regulation" for Citrus County ("County"). See, Section 1100 of the Code.[4] Therefore, the Code sets out the regulations applicable to the development of land in the County and the regulations that implement the

[4]Section 1100 of the Code states: "The Citrus County Land Development Code is adopted pursuant to Chapter 163, Part II, Florida Statutes, and Chapter 125, Florida Statutes." Schultz argues, at p. 30 of his brief, that the trial court found - based on County "policy" and its consideration of certain provisions of the Code which regulate agricultural uses - that the County had adopted standards that were "stricter" than the definition of "development" in Section 380.04 and thus applied to Sugarmill's cattle grazing. That assertion is belied by the fact that (1) the Code was adopted under Chapter 125, Florida Statutes, and thus the Code represents the full exercise of the powers granted a county under law; and (2) the County - in its exercise of its powers under Chapters 163 and 125 - incorporated the entire definition of "development" in the Code, including the exclusions from that definition in Section 380.04(3), Florida Statues. Section 1500 of the Code.

Comprehensive Plan. See, §1300 J. of the Code ("The requirements of this Code apply to all development occurring after the effective date of this Code unless otherwise exempted by this Code, the ... Comprehensive Plan, or other ordinance.").

> Land development regulations are:
>
> ordinances enacted by governing bodies **for the regulation of any aspect of development** and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land.
>
> §163.3164(23), Fla. Stat. (1995) (emphasis added).

By definition, land development regulations like the Code apply -- and thus regulate -- only those activities that constitute "development." Id.

"Development," for purposes of the Act and the land development regulations adopted thereunder -- here, the Code -- "... has the meaning given it in s. 380.04." §163.3164(6), Fla. Stat. (1995). The language of this provision is clear and unambiguous and must be accorded its plain meaning. Citizens of the State of Florida v. Public Service Commission, 425 So. 2d 534 (Fla. 1982).

> Section 380.04, Florida Statutes, defines "development" as:
>
> The term "development" means the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels.
>
> §380.04(1), Fla. Stat. (1995).

However, not all activities are "development." The activity must "...mak[e] a material change in the use or appearance of any structure or land," Section 380.04(1), Florida Statutes, and it must not be excluded from that definition by Section 380.04(3), Florida Statutes:

> (3) The following operations or uses **shall not** be taken for the purpose of this chapter to **involve "development"** as defined in this section:

§380.04(3), Fla. Stat. (1995).

The mandatory language of this exclusion is clear and unambiguous, Board of County Commissioners of Monroe County v. Department of Community Affairs, 560 So. 2d 240, 242 (Fla. 3d DCA 1990) ("Where the language of a statute is unambiguous it must be accorded its plain meaning."); Steinbrecher v. Better Constr'n Co. 587 So. 2d 492, 493 (Fla. 1st DCA 1991) ("It is also an accepted principle that the use of the term "shall" in a statute normally has a mandatory connotation."), and a court has no power to give this language any meaning beyond the clear intent accorded it by the legislature. Public Health Trust of Dade County v. Lopez, 531 So. 2d 946 (Fla. 1988); Holly v. Auld, 450 So. 2d 217 (Fla. 1984); Bill Smith, Inc. v. Cox, 166 So. 2d 497 (Fla. 2d DCA 1964).

Section 380.04(3), Florida Statutes, identifies those activities, including certain "agricultural activities," that do

not involve the "...making of any material change in the use or appearance of any structure or land," §380.04(1), Florida. Statutes, which are, therefore, excluded as a matter of law from "development." The "excluded" agricultural activities include:

> (e) The use of any land for the purpose of growing plants, crops, trees, and other agricultural or forestry products; raising livestock; or for other agricultural purposes.
>
> §380.04(3)(e), Fla. Stat. (1995).

This exclusion does not encompass all agricultural activities. City of Oveido, 699 So. 2d 316, 318 (Fla. 1st DCA 1997) ("The legislature could have required the PSC to defer to a properly adopted comprehensive plan, but it did not do so."). Even Schultz admits this. Brief at 20 ("In summary, the gist of Chapter 380.00 regulation of agricultural uses is that agricultural uses may be development if a structure is potentially involved but cattle grazing (agriculture) is exempted from that Chapter's regulatory authority."). In fact, only those agricultural uses that fall within the plain and ordinary meaning of the language of subsection (3)(e) are excluded. Board of County Commissioners of Monroe County, 560 So. 2d at 241 ("The definition of development in Section 380.04, Florida Statutes, specifically excludes `[w]ork by a highway or road agency ... for the maintenance or improvement of a road ... if the work is carried out on land within the boundaries of the right-of-

way'.").The plain and ordinary meaning of "raising livestock" includes cattle grazing. Love PGI Partners, 706 So. 2d at 893.

Therefore, the clear and unambiguous language of Section 380.04(3), Florida Statutes, evidences that the use of land for any of the purposes identified in subsection (3)(e), including cattle grazing, or the raising of livestock, is not "development," as a matter of law, and cannot be subject to or regulated by those land development regulations adopted by local governments (like the County) under Section 163.3202, Florida Statutes. Board of County Commissioners of Monroe County, 560 So. 2d at 241 ("Since `maintenance or improvement of a road' by a county, where such `work is carried out on land within the boundaries of the right-of-way,' is not `development' ... the FDCA lacks jurisdiction to order Monroe County to cease all road work until the County complies with the County's development regulations ..."). See, Public Health Trust of Dade County, 531 So. 2d at 949 ("In construing a statute, courts cannot attribute to the legislature an intent beyond that expressed.").

It is clear that the Code regulates, and thus applies to, development.

> The requirements of this Code apply to all **development** occurring after the effective date of this Code unless otherwise exempted by this Code, the Citrus County Comprehensive Plan, or other ordinance.
>
> §1300 J., Citrus County Land Development Code.

Moreover, the Code defines "development" by incorporating the definition set forth in Section 380.04, **as well as the statutory exclusions from that definition:**

> Development: The carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels. **This definition includes all references as specified in Section 380.04 (2)-(11), Florida Statutes.**

§1500, Citrus County Land Development Code (emphasis added).

The language of Section 1500 of the Code is clear and unambiguous. Therefore, those agricultural activities that are excluded from "development" under Section 380.04(3)(e), Florida Statutes, are also excluded from regulation under the Code. Board of County Commissioners of Monroe County, 560 So. 2d at 241; see, Florida Publishing Co. v. State, 706 So. 2d 54, 55-56 (Fla. 1st DCA 1998) where the court concludes, based on clear and unambiguous language, that rule incorporates statutory exemptions; Aetna Cas. & Sur. Co v. Huntington Nat'l Bank., 609 So. 2d 1315, 1317 (Fla. 1992) ("It must be assumed that the legislature knows the meaning of the words and has expressed its intent by the words found in the statute."); Comerica Bank & Trust, F.S.B. v. SDI Operating Partners, L.P., 673 So. 2d 163 (Fla. 4th DCA 1996).

Sugarmill's cattle grazing is a "... use of any land for the purpose of ... raising livestock." §380.04(3)(e), Fla. Stat.

Therefore, Sugarmill's cattle grazing is excluded from "development" and the Code has no legal application to that activity. Id.

The District Court's conclusion, while based on the clear and unambiguous language of the statute, is also supported by the opinions of the County Department of Developmental Services ("DDS") and the State of Florida Department of Community Affairs ("DCA"). DDS is the entity charged with the authority and responsible for interpreting the Code., Section 1410 of the Code (R. 355; TT at 24; 67; 169); DCA is the State land-planning agency. §163.3164(20), Fla. Stat.

In 1994, Schultz asked DDS to provide him with an interpretation of whether Sugarmill's agricultural use, in light of the PD-R zoning, was allowable under the Code. (R. 697-698; TT at 24). By letter dated July 7, 1994, DDS concluded that those agricultural uses were "allowable" and "bona fide." (R. 355; 365; 701; TT at 21-22; 22-23; 26). That interpretation must be accorded great weight. Daniel v. State Turnpike Authority, 213 So. 2d 585, 587 (Fla. 1968) ("Construction of a given [law] by the administrative agency charged with its enforcement and interpretation is entitled to great weight and a court generally will not depart therefrom except for the most cogent reasons and unless clearly erroneous."); Dept. of Commerce v. Matthews, 358 So. 2d 256 (Fla. 1st DCA 1978).

Moreover, at trial, Mr. Gary Maidhof, an Environmental Planner with DDS and the person responsible for advising Schultz on the "lawfulness" of uses under the County Comprehensive Plan and the Code, (R. TT at 24; 59; 60; 167; 169), testified that only those agricultural activities that constitute "development" are subject to the Code. (R. TT at 102). Mr. Maidhof also testified that he considers Sugarmill's cattle grazing to fall within the exclusion from "development" in subsection (3)(e). Therefore, he does not consider that agricultural use subject to regulation under the Code.[5] (R. TT at 22; 23; 26; 64-65). This interpretation must be accorded great weight. Daniel, 213 So. 2d at 587; Dept. of Commerce, 358 So. 2d 256.

Mr. Maidhof's opinion is supported by DCA, which concluded that the specific agricultural uses employed by Love and Sugarmill do not constitute "development."

> The current owners' use of the dedicated public right-of-ways for agricultural purposes would not serve to partially divest the Sugarmill Woods development [under Chapter 380, Florida Statutes] because **the use of land for agricultural purposes is not considered to be "development"** under Section 380.0651, Florida Statutes.
>
> July 11, 1995 Opinion Letter from Secretary of the Department of Community Affairs to Clark A. Stillwell, Esquire (emphasis added). (R. 245-261; 369-370).

[5]See, §1500 F. of the Code that reflects that the meaning to be given to the definitions of the Code is predicated, in part, on the definitions of the Florida Statutes.

Likewise, the DCA's interpretation must be accorded great weight. Daniel, 213 So. 2d at 587; Dept. of Commerce, 358 So. 2d at 256. Thus, the clear and unambiguous language of Section 380.04, Florida Statutes, as supported by the opinions of DDS and DCA, demonstrate that the Code has no application to Sugarmill's cattle grazing.

The District Court's conclusion, that Sugarmill's cattle grazing should have been accorded an agricultural classification, was correct. First, that activity is excluded from the definition of "development" and is not subject to the Code. §§1300 and 1500 of the Code; §§380.04 and 163.3164, Fla. Stat. More importantly, however, is the fact that the District Court determined, based on the record evidence and the fact that Schultz presented no evidence to counter or dispute that record evidence, that "…there is no basis to conclude that [Sugarmill's cattle grazing] was a non-existent, or sham (not bona fide) livestock activity," Love PGI Partners, 706 So. 2d at 894, and thus Sugarmill's land was entitled to an agricultural classification. Hauseman v. Rudkin, 268 So. 2d 407, 409 (Fla. 4th DCA 1972) (A "bona fide" agricultural activity is one that is "... real, actual, of a genuine nature - as opposed to a sham or deception.")

Schultz's sole basis for refusing to classify Sugarmill's property as agricultural was his mistaken belief that the use

was not lawful under the Code and thus could not be "bona fide." Love PGI Partners, 706 So. 2d at 892. Here, it is clear that Sugarmill's cattle grazing is not subject to the Code and since Schultz raise no other basis for denying an agricultural classification for Sugarmill's property, then Sugarmill's agricultural use of the land was legal, in good faith and bona fide. Id. at 892 & 894.

Schultz's only argument requires this Court to look beyond the clear and unambiguous language of Section 380.04, Florida Statutes, and the Code, and modify the definition of "development" set forth clearly in Section 380.04, Florida Statutes, and the Code.[6] However, because the definition of "development" is clear and unambiguous, the rules of statutory construction do not apply to the case at hand. Hill v. State, 688 So. 2d 901 (Fla. 1997); Perkins v. State, 682 So. 2d 1083 (Fla. 1996); Savona v. Prudential Ins. Co. of America, 648 So. 2d 705 (Fla. 1995); Zuckerman v. Alter, 615 So. 2d 661 (Fla. 1993); Aetna Cas. & Sur. Co., 609 So. 2d at 1317; Holly v. Auld, 450 So. 2d at 219; City of Safety Harbor v. Communications Workers of America, 1998 WL 101352 (Fla. 1st DCA 1998); S.L. v. State, 708

[6] Schultz's main objection seems to be his belief that the District Court's decision reaches an inequitable result. However, those considerations are inapplicable here. See, Savona, 648 So. 2d at 708 ("We recognize that the result in this case appears inequitable, but we cannot substitute what we perceive to be amore desirable policy for a clear and

So. 2d 1006 (Fla. 2d DCA 1998); Metro Dade County v. Milton, 707 So. 2d 913 (Fla. 3d DCA 1998); Parham v. Balis, 704 So. 2d 623 (Fla. 2d DCA 1997).

The District Court's conclusion that the language of the Code and Section 380.04, Florida Statutes, was clear and unambiguous, was correct. Moreover, Schultz is unable to identify any ambiguity in the statute (or the Code) that would permit this Court to do anything other than apply that clear and unambiguous language. Metro Dade County, 707 So. 2d at 914 ("Florida law is well settled that ambiguity is a prerequisite to judicial construction, and in the absence of ambiguity the plain meaning of the statute prevails." Martin County v. Edenfield, 609 So. 2d 27, 29 (Fla. 1992).); Holly, 450 So. 2d at 219 ("courts are without power to construe an unambiguous statue in a way which would modify its express terms."). Since there is no ambiguity, there is no basis for this Court to consider any of the arguments advanced in Schultz's brief. Id.

However, even if the language of Section 380.04 and the Code were not clear and unambiguous, the District Court's conclusion - that Sugarmill's cattle grazing is not "development" and not regulated by the Code - is still correct

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unambiguous directive.").

because the arguments Schultz advances for interpreting (and his interpretation of) the Code are without merit.[7]

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[7]Equally meritless is the argument raised by Dade County ("Dade"). Contrary to the assertions in Dade's amicus brief, the District Court did not address the legality of Sugarmill's uses under the [zoning] code. In fact, the District Court found the zoning code inapplicable to that activity. Therefore, the District Court did not "downplay" the significance of compliance with zoning regulations; did not "compromise" the statutory policy of Robbins; nor "compromise" the "common sense requirement" that land uses act in good faith. Instead, by finding that zoning was inapplicable to the "legality" of Sugarmill's cattle grazing, the District Court left intact the body of law which Dade asserts has been "compromised." Amicus Brief at 9.

Because Sugarmill's cattle grazing was excluded from the definition of "development" in Section 380.04, Florida Statutes, and the Code, there can be no "violation" of that Code. Thus, Robbins does not come into play. In fact, Dade agrees with this proposition.

> When zoning, or, for that matter, any other relevant land use restriction, is a consideration the appropriate analysis contains the following elements:
>
> 1. **Is the use** being made of the property **governed by a land use regulation?**
>
> 2. Is the use, **if governed,** permitted or prohibited?
>
> 3. If the use is prohibited, is there an exception based on a legal, non-conforming use? (i.e.: a "grandfathered" use, or an approved variance)
>
> **If a use is not governed by land use regulations** or, if governed, is a permitted use, **then its actual use is the guidepost** to its classification, Gianolio v. Markham, 564 So. 2d 1131 (Fla. 4th DCA 1990), assuming the use is otherwise the required commercial use.

Dade County Brief at 9 (emphasis added).

Schultz first suggests that the phrase "for the purposes of this chapter," which is found in Section 380.04(3), Florida Statutes, restricts the use of these exemptions from the definition of "development" to only those activities regulated by Chapter 380, Florida Statutes (i.e., developments of regional impact and areas of critical state concern). Schultz then suggests that because the "for purposes of this chapter" language is incorporated in the Code, that phrase also limits the use of the exclusions under the Code to only developments of regional impact and areas of critical state concern. Brief at 20. That assertion is in error. The language of Section 1300 J. of the Code clearly and unambiguously incorporates all of Section 380.04, Florida Statutes, including the exclusions of subsection (3), in the Code's definition of "development." Section 1300J. of the Code. ("The requirements of this Code apply to all **development** occurring after the effective date of this Code unless otherwise exempted by this Code, the Citrus County Comprehensive Plan, or other ordinance.") Therefore, the scope of the term "development," as used in the Code, includes all of Section 380.04, Florida Statutes, including the exclusions of subsection (3). Florida Publishing Co. 706 So. 2d at 55-56. Moreover, the clear and unambiguous language of the Code does not suggest that the exclusions of Section 380.04, Florida Statutes, are inapplicable to the Code; in

fact, those exclusions are incorporated expressly. Absent express language limiting the application of Section 380.04(3), Florida Statutes, to Chapter 380, this Court must conclude that the County intended to include the entire definition of "development" in the Code. To read the Code as Schultz suggests requires a strained interpretation. Suwannee River Water Management District v. Pearson, 697 So. 2d 1224, 1226 (Fla. 1st DCA 1997) ("Under Florida law, water management districts are special taxation districts. Section 189.403(6), Fla. Stat. (1995). The fact that this statutory definition is "for purposes of this (Chapter 189) chapter" certainly cannot mean that for all other purposes a water management district is not a special taxing district. If the Legislature had so intended, it could have inserted the word "only" before the words "for purposes of this chapter."); Aetna Cas. & Sur. Co., 609 So. 2d at 1317 ("Legislative intent must be determined primarily from the language of the statute. It must be assumed that the legislature knows the meaning of the words and has expressed its intent by the use of the words found in the statute….The legislative history of a statute is irrelevant where the wording of the statute is clear." (citations omitted)); Capital Nat. Financial Corp. v. Dept of Ins. and Treasurer, 690 So. 2d 1335, 1336 (Fla. 3d DCA 1997) ("If the

legislature had intended that the statute prohibit such activity, it could have written the statute to so provide.").

Schultz's interpretation of Section 380.04, Florida Statutes, and its application to the Code is contrary to the Code's clear and unambiguous language. Section 1300 J. of the Code. Hill, supra; Perkins, supra; Savona, supra; Zuckerman v. Alter, 615 So. 2d 661 (Fla. 1993); Aetna Cas. & Sur. Co., supra; Holly, 450 So. 2d at 219; City of Safety Harbor, supra; S.L. v. State, supra; Metro Dade County, supra; Parham, supra. Therefore, Schultz's argument must fail.

Schultz also suggests that "ambiguity" arises out of the relationship of Chapters 163, 193, 380, Florida Statutes, and the Code. The essence of Schultz's argument is that Chapters 163 and 380, Florida Statutes, and the Code, which rely on the definition of "development" to define their scope, do regulate agricultural activities and uses. Because the District Court's opinion excludes agricultural uses from "development," Schultz suggests an ambiguity exists (i.e., regulation and exclusion from regulation). See, Brief at 22-23 ("Did the legislature mean to require the above planning process for agricultural uses and then after this effort, allow such effort to be ignored because such uses are exempted by definition of development?") and 24 ("Again, if the legislative intent was by definition to exempt agricultural uses - why the inclusion of

the above rules adopted by the ACT.") This argument is likewise without merit.

If, in fact, the District Court had concluded that all agricultural activities were excluded from "development" and therefore excluded from regulation under Chapter 163, Florida Statutes, and the Code, then Schultz's argument might have some merit. But the District Court did not conclude that all agricultural activities are excluded from the definition of "development." Indeed, in light of the clear and unambiguous language of Section 380.04(3)(e), it could not.[8] Instead, the District Court held only that a certain agricultural activity - cattle grazing - was exempt.

The fallacy of Schultz's argument is belied by the clear and unambiguous language of Section 380.04(3)(e), Florida Statutes:

> (3) The following operations or uses shall not be taken for the purpose of this chapter to involve "development" as defined in this section:

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[8] For example, Section 380.04(3)(e), Florida Statutes, lists certain uses that, consistent with the definition in Section 380.04(1), Florida Statutes, do not make any material change in any structure or land. If the Legislature has intended to exclude all agricultural uses, it could have said so, but it did not. City of Oveido, 699 So. 2d at 318 ("The Legislature could have required the PSC to defer to a properly adopted comprehensive plan but did not do so. In the face of a clear and unambiguous statute, we will not read in additional meaning or requirements.") Consequently, Schultz's interpretation of the statute, which extends the scope of the exclusion, is improper. Holly, 450 So. 2d at 219.

* * *

> (e) The use of any land for the purpose of growing plants, crops, trees, and other agricultural or forestry products; raising livestock; or for other agricultural purposes.

§380.04(3)(e), Fla. Stat. (1997).

This clear and unambiguous language demonstrates that only certain agricultural uses, like Sugarmill's, that do not "…mak[e] a… material change in the use or appearance of any structure or land," Section 380.04(1), Florida Statutes, are excluded from "development." City of Oveido, 699 So. 2d at 318. All other agricultural uses are "development," are subject to regulation under Chapters 163 and 380, FS, and the Code, and are, therefore, subject to the future planning activities and consistency requirements Schultz raises. Even Schultz agrees with this. See, Brief at 20 ("In summary, the gist of Chapter 380.00 regulation of agricultural uses is that agricultural uses may be development is a structure is potentially involved by cattle grazing (agriculture) is exempted from that Chapter's regulatory authority…"). Thus, the predicate for Schultz's argument - that all agricultural uses are excluded from "development" - is flawed. Consequently, since the clear and unambiguous language of Section 380.04 (and the Code) indicate that some agricultural activities can be "development" and therefore subject to

regulation under Chapter 163, Florida Statutes, and the Code, then it becomes clear that there is no "ambiguity" arising out of the relationship of Chapters 193, 163 and 380, Florida Statutes, and the Code. Thus, it is improper, as Schultz suggests, for this Court to look behind the clear and unambiguous language of the statute, Holly, supra; Parham, supra, and consider the crux of Schultz's argument - statutory construction. Green v. State, 604 So. 2d 471 (Fla. 1992); City of Safety Harbor, supra; Aetna Cas. & Sur. Co. 609 So. 2d at 1317. The clear and unambiguous language of Section 380.04(1), Florida Statutes, supports the Fifth District's conclusion that Sugarmill's cattle grazing activities are not regulated by the Code. [9]

Schultz also maintains - without pointing to any ambiguity in the Code or Section 380.04, Florida Statutes[10] -- that this Court should look to the legislative intent of the Act and the

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[9]Schultz also contends that the language of Section 380.04(4), Florida Statutes, somehow limits the application of the exemptions from "development." However, Section 380.04(4), Florida Statutes, simply has no application to the case at hand. In fact, the plain and ordinary meaning of Section 380.04(4), FS, would expand the definition of "development" to include all other uses associated with the specific development. However, until the activity itself is "development," Section 380.04(4), Florida Statutes, simply has no application. [9]

[10] Other than the asserted "ambiguity" discussed supra at pp. 22-25.

administrative rules which "implement' the Act[11] to aid in the interpretation of the Code. Schultz cites no authority - and he cannot - to support the proposition that a court may do anything other than look at the plain and ordinary meaning of the statute where the language of that statute is clear and unambiguous. See, S.L. v. State, supra (no statutory construction where language is clear and unambiguous); Aetna Cas. & Sur. Co., 609 So. 2d at 1317; Holly, 450 So. 2d at 219; Tallahassee Mem'l Reg'l Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc., 681 So. 2d 826, 830 (Fla. 1st 1996) (error for trial court to rely on extrinsic aids to statutory construction when the language of a statute or ordinance is plain and unambiguous); Tropical Coach Line, Inc. v. Carter, 121 So. 2d 779 (Fla. 1960) (where language is clear and unambiguous, legislative intent must be derived from words used without involving rules of construction or speculating on what legislature intended); Zuckerman v. Alter, 651 So. 2d 661 (Fla. 1993) (legislature is presumed to have expressed its intent through words in statute). This argument has no merit.

Finally, Schultz asserts that this matter is governed by Robbins and the body of caselaw that addresses the issue of zoning; Schultz simply misconstrues the Robbins decision. Neither the District Court's opinion nor Section 380.04,

[11] Rule 9J-5, FAC.

Florida Statutes, states that all agricultural activities are exempt from the definition of "development." Supra at pp. 22-25. In fact, even Schultz agrees that those agricultural activities that involve a material change in the use or appearance of land may constitute "development." Brief at 20. Clearly, where an agricultural use is "development," then those activities would be subject to the Code and Robbins. Robbins addresses the legality of a use under an applicable zoning code. Here, however, the agricultural activities are not subject to the Code and therefore, cannot be deemed an "illegal" use under Robbins. Love PGI Partners, 706 So. 2d at 894.

Neither Robbins nor any other case that addressed the issue of zoning as a consideration under Section 193.461, Florida Statutes,[12] raised or dealt with the preliminary question of whether the agricultural activities at issue constituted "development." Instead, those cases, including Robbins, presume that the specific agricultural use was subject to regulation (i.e., met the definition of "development") and proceed to apply the specific regulations at issue to determine if the use was legal (either as a permitted use or a non-conforming use) and

[12]Or any of the other zoning cases cited by Schultz including Wilkinson v. Kirby, 654 So. 2d 194 (Fla. 2d DCA 1995), or Davis v. St. Joe Paper Co., 652 So. 2d 907 (Fla. 1st DCA 1995).

thus "bona fide" under Section 193.461, Florida Statutes. Since Robbins did not address the question of law decided in Love PGI Partners - whether, as a threshold matter, the activities at issue constituted "development" - then Robbins does not control and the Fifth District was correct to not consider that issue.

Schultz misapprehends the Fifth District's decision by suggesting that zoning or land development regulations promulgated pursuant to Chapter 163, Florida Statutes, are no longer a factor in the determination of whether a use is bona fide. Schultz's contention is unfounded. The Fifth District did not reject the body of caselaw addressed in Robbins which concludes that zoning is a factor to be considered in, and is thus relevant to the issue of whether an agricultural use is "bona fide." In fact, the court recognized that zoning could be one such consideration ("Zoning may be a consideration under the catchall `other factors' provision in section 193.461(3)(b)(7)...," Love PGI Partners, 706 So. 2d at 892). However, before considering zoning as one of the "other factors," the property appraiser must first determine whether the activities under consideration constitute "development" and are thus subject to the applicable zoning law. Here, the agricultural activities at issue were not subject to the County's zoning regulations incorporated in the Code and those regulations could not be used to determine that Sugarmill's

agricultural activities were not "bona fide." Because the Fifth District's decision found Sugarmill's agricultural activities outside the scope of the Code, the issue of zoning under Section 193.461, Florida Statutes, and Robbins does not apply.

CONCLUSION

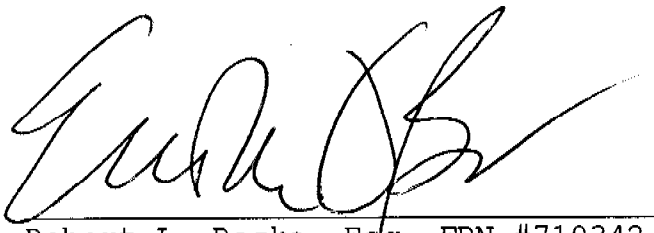
The District Court did not err. The District Court found, based on the clear and unambiguous language of the definition of "development" in Section 380.04(1), Florida Statute, and the exclusions from "development" set forth in Section 380.04(3)(e), Florida Statutes, that Sugarmill's cattle grazing was not "development." Consequently, the District Court concluded that the Code - which requires "development" under Section 380.04, Florida Statutes, for its exercise of jurisdiction - had no application to cattle grazing. Since cattle grazing was not "development" - the jurisdictional predicate for regulation under the Code, Section 1300J. - then neither the Code, its zoning regulations nor the holding of Robbins v. Yusem, 559 So. 2d 1185 (Fla. 3d DCA 1990), which addresses the legality of a use under zoning regulations, could apply to Sugarmill's cattle grazing and since neither the zoning regulations of the Code nor the holding of Robbins had any application to that cattle grazing, then neither the Code

nor Robbins could be used to determine if that activity was bona fide under Chapter 193, Florida Statutes.

Schultz's sole basis for not classifying Sugarmill's cattle grazing as agricultural was the legality of Sugarmill's agricultural activity under the Code. Love PGI Partners, L.P. v. Schultz, 706 So. 2d 887, 892 (Fla. 5th DCA 1998) ("…there is no basis to conclude that this was a non-existent, or sham (not a bona fide) livestock activity.") Since the Code does not regulate cattle grazing and Schultz raised no other basis for not classifying Sugarmill's property as agricultural, then Sugarmill's agricultural use of its land was legal, in good faith and bona fide. Id. Therefore, Schultz's denial of an agricultural exemption for Sugarmill's cattle grazing departed from the essential requirements of law and constituted an abuse of discretion. Gianolio v. Markham, supra; Love PGI Partners, 706 So. 2d at 894.

This Court should affirm the District Court's decision.

Respectfully submitted,



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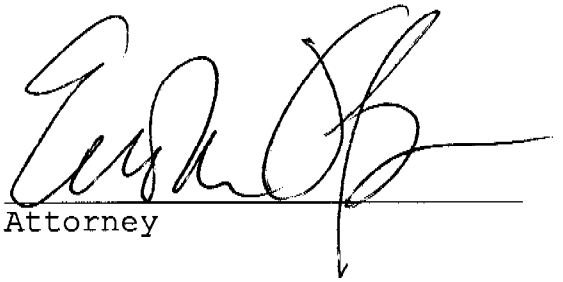
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been sent by U.S. mail this 18TH day of August, 1998 to **Clark A. Stillwell, Esq.**, Brannen, Stillwell & Perrin, P.A., P.O. Box 250, Inverness, FL 33451-0250.



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