12-1-98 OA

IN THE SUPREME COURT OF FLORIDA
CASE NO. 92,803

Fifth District Court of Appeal
Case No: 96-01973

RONALD SCHULTZ
CITRUS COUNTY PROPERTY APPRAISER
Petitioner

vs.

SUGARMILL WOODS, INC.
Respondent

PETITIONER'S BRIEF ON MERITS

Clark A. Stillwell, Esquire
Florida Bar No. 202770
BRANNEN, STILLWELL & PERRIN, P.A.
Post Office Box 250
Inverness, FL 33451-0250
Telephone: (352) 726-6767
Facsimile: (352) 726-8283
Attorneys for Petitioner

TABLE OF CONTENTS

TABLE OF CITATIONS

FLORIDA ADMINISTRATIVE CODE: **PAGE:**

CITRUS COUNTY LAND DEVELOPMENT CODE:

CASES.
CAS:ts

PRELIMINARY STATEMENT

The Petitioner, Ronald Schultz, Citrus County Property Appraiser will be referred to as "Schultz" or "Petitioner." The Respondent, Sugarmill Woods, Inc. will be referred to as "Sugarmill" as applicable or "Respondent."

The property for which Sugarmill sought an agricultural exemption will be referred to as the "Sugarmill Parcel." The Sugarmill Property is bisected by Citrus County Road 480; the portion north of County Road 480 will be referred to as the "Northern Parcel" and the portion south of County Road 480 will be referred to as the "Southern Parcel."

References to the trial transcript will be indicated by (T-___), record references will be indicated by (R- ___) and Exhibits will be indicated by (E-___ or R-___).

Given the repetitive nature of certain terms which have common acronyms for each term and for brevity sake, the following terms will be referred to by their acronyms:

1. Citrus County Department of Development Services - DDS
2. Citrus County Comprehensive Land Use Plan - CLUP
3. Citrus County Land Development Code - LDC
4. Planned Development - Residential - PDR
5. Value Adjustment Board - VAB

C:\WPDOCS\PROPERTY\SUPREME\SUPCTBRF\PRELIMIN.

STATEMENT OF THE CASE

The issues presented to this Court in the SCHULTZ petition concern the initial denial of the 1994 agricultural classification application by the Respondent, SUGARMILL, by the Petitioner, SCHULTZ, the confirmation of such by the trial court, and overturning of the trial court's opinion by the Fifth District Court of Appeals as to the SUGARMILL parcel.[1] The matter commenced with SUGARMILL's 1994 Agricultural classification application to SCHULTZ's office and culminated with the lower court's final judgment dated June 5, 1996 (SUGARMILL Parcel) on behalf of SCHULTZ; that Final Judgment found the contested agricultural classification was not a bona fide agricultural use. The trial court's final judgment as to the SUGARMILL parcel was appealed to the Fifth District Court of Appeals. On February 6, 1998, the Fifth District Court of Appeals entered its decision; (published at 1998 WL 44481 (Fla. App. 5th Dist. 1998). As to the SUGARMILL parcel, the Fifth District reversed the trial court's decision and found the Respondent SUGARMILL's agricultural activities were <u>not</u> development and therefore in good faith and bonafide per §193.461 Fla. Stat.

---

[1]The Love PGI parcel and legal issues therein are not before this Court.

The record on appeal establishes the following chronology of the events:

On or before March 31, 1994, SUGARMILL, timely filed a request for agricultural classification on its parcel in issue. The 1994 SUGARMILL agricultural classification application reflected a parcel representing 4300 acres allegedly being used for cattle crazing and 1,000 acres for forestry activities. (R-118, 759-60)

On June 30, 1994, the Appellee, SCHULTZ, granted, in part, the agricultural classification and denied the classification as to the remainder of each respective parcel. As to the SUGARMILL parcel, SCHULTZ granted the requested agricultural classification for 733.57 acres of planted pines (southern parcel) and 160 acres of pasture land (northern parcel) and denied the balance. SUGARMILL appealed the matter to the Citrus County Value Adjustment Board ("VAB"). At the VAB hearing, the issues raised centered on "legitimacy" of the cattle grazing activity under the Citrus County land use regulations. (T-201,336) The VAB affirmed the SCHULTZ's partial denial of the agricultural classification application.

On or about December 9, 1994, SUGARMILL instituted this matter in the Circuit Court, Fifth Judicial Circuit. The matter was tried by the lower Court on the Appellants' Amended Complaint dated January 11, 1995 and the Appellees' Affirmative Defenses

dated January 31, 1995. SUGARMILL's Amended Complaint generally asserts that at all times material SUGARMILL was engaged in bona fide agricultural activities per § 193.461 Fla. Stat. and SCHULTZ improperly considered criteria other than the statutory criteria of §193.461 Fla. Stat. Based on the Petitioner's Petition for Writ of Certiorari, the relevant Affirmative Defenses by SCHULTZ in the lower court are:

> 1. That all times material to the allegations of the Complaint, the respective Plaintiffs on their respective separate parcels of real property as identified by the Complaint have not utilized said parcels for "bona fide agricultural purposes" as defined by Fla. Stat. 193.461....
>
> 3. At all times material to the allegations of the Plaintiffs' Complaint, the Plaintiffs' use of the respective parcels for agricultural purposes was contrary to the Citrus County Land Development Code district's use designation on the property. Specifically, the Citrus County Land Use Designation of PD-R prohibits agricultural uses; thus said use was not a bona fide use and made in good faith. (R-17-19)

On April 18, 1996, the parties filed with the Court a stipulation as to pertinent facts and synopsis of the issues. Both parties filed extensive motions for summary judgment with briefs. Each party's respective motion for summary judgment were denied by the trial court.

The matter was tried in a non-jury trial before the Honorable Patricia Thomas, Circuit Court Judge, on May 9-11, 1996. On June 5, 1996, the lower Court entered its final judgment on behalf of the Appellee as to SUGARMILL, wherein the Trial Court made the following pertinent findings:

> 11. The preponderance of the evidence presented, including the referenced testimony of Mr. DeMoya, supports a finding that the grazing activities ceased for a period of more than 180 days beginning in 1992. Demoya testified that, during 1992, the fences around the subject area were broken and there was no appearance of cattle or grazing activities. The lapse that occurred in 1992 apparently continued until the new cattle grazing lease was entered into between SUGARMILL and Mr. Thomas. (See Defendant's Exhibits "N," "O," and "P"). Plaintiff produced no evidence to show that there was a continuing use of the property. This lapse is significant as grazing is an agricultural use that is otherwise not permitted in land designated as PRD. (emphasis supplied)
>
> 12. SUGARMILL argues that the cattle grazing activities were continuous enough to warrant a finding that they are a continuing, legal and non-conforming use under the C.C.L.D.C. As part of that proposition, SUGARMILL introduced into evidence the opinion letter of Gary Maidhof of the Citrus County Development Department dated July 7, 1994. That letter was offered for the purposes of establishing that the opinion of the Department of Development for Citrus County supported an agricultural classification of the property. While this Court recognizes that the opinion of the administrative agency charged with the

enforcement of the Development Code is entitled to great weight, the evidence in this case dictates that this Court finds that the cattle grazing activities occurring in 1994 were an illegal, non-conforming use. Such a finding requires a ruling that the cattle grazing did not support an agricultural classification as requested by SUGARMILL in 1994.

13. Specifically, Section 3140 of the C.C.L.D.C. requires that:

> "....If a nonconforming use of a structure or land ceases...or if that use has been discontinued for a period of 180 consecutive days or for any intermittent period amounting to 180 days in any one calendar year, use of the structure or the structure and the land shall thereafter conform to the standards of this Code" (emphasis supplied).

Therefore, even if cattle grazing had occurred as a non-conforming use prior to 1992, the evidence shows that it ceased in 1992 and did not recommence until sometime in 1994, which is clearly more than 180 days. Thus, SUGARMILL was required to have the cattle grazing activity properly exempted and permitted by the County. Thus, the determination of the County Development Department is not supported by the application of these facts to the requirements of the C.C.L.D.C.

14. Moreover, as the C.C.L.D.C. does not permit agricultural uses, such as grazing, to occur in areas designated as PRD, the application of SUGARMILL was properly rejected as to the grazing activities. The agricultural classification is not permitted for a use which violates the applicable land use code, unless an exemption has been received to allow

the illegal, non-conforming use. Robbins v. Yusem, 559 So. 2d 1185, 1187 (Fla. 3d DCA 1990).

16. Based on the foregoing, SUGARMILL has not met its burden of showing that there was no reasonable hypothesis to support the decision of the Property Appraiser as to the application of SUGARMILL in 1994. (R-891-895)

On February 6, 1998, the Fifth District Court of Appeal rendered its decision on the appeal and cross appeal. See: Love PGI Partners, L.P. v. Schultz, 706 So. 2d 887 (Fla. 5th DCA 1998). ("Love PGI") The pertinent section of that opinion to the SUGARMILL parcel in issue starts at page 1156 through page 1160. A complete copy being attached hereto. The decision essentially holds that agricultural activities are "not" development per §380.04 Fla. Stat., §163.3164(4) Fla. Stat. and Citrus County Land Development regulations. Accordingly, the use is not contrary to the Code and therefore in good faith, thus bona fide, and entitled to the agricultural classification applied for pursuant to §193.461(3)(b). Specifically, the Court states:

> No Code adopted pursuant to Chapter 163 can alter its intended impact. Comprehensive plans adopted pursuant to Chapter 163 are intended to regulate and control "development," as defined by the statute and the Code. They are intended to have no impact on classification of lands as agricultural for ad valorem tax purposes, pursuant to section 193.3194(5).

From this decision, Petitioner timely invoked the jurisdiction of this Court pursuant to Fla. R. App. P. 9.030(a)(2)(A)(IV). This Court granted jurisdiction on June 20, 1998.

STATEMENT OF FACTS

The initial two (2) parcels in issue in the lower court - LOVE PGI, Alternate Key #7240539, and SUGARMILL, Alternate Key #1525098, were until tax year 1993, one parcel. LOVE PGI acquired its interests in the 343.98 (MOL) acre parcel in mid-July, 1992. Common facts applicable to both parcels until mid-July, 1992 were:

1. That in 1977 and subsequent years (via a series of amendments), the Plaintiff's predecessor in title voluntarily rezoned the SUGARMILL parcel from R-1 (single family residential) to PUD multi-use special exemption of residential (single and multi-family) and commercial. As of January 1, 1994, the land use designation of the SUGARMILL parcel under the current Citrus County comprehensive plan and development code is planned development-residential ("PDR"). The LOVE PGI parcel at all times being designated within said PUD for commercial land use; The SUGARMILL parcel being designated for residential use; [Paragraph E, Joint Stipulation page 5/last sentence Paragraph D, page 2].

2. From 1984 through 1991, the Citrus County Property Appraiser classified the SUGARMILL parcel as agricultural and recognized the parcel as one parcel for ad valorem tax purposes. For the purposes of 1994 ad valorem taxation, the Citrus County Property Appraiser assigned one tax key number to the SUGARMILL parcel, and a separate tax key number for Love PGI [Paragraph H, page 6, Joint Stipulation] (the later not in issue herein).

3. On July 1, 1992 SUGARMILL's parcel was Alternate Key #1525098. After a review of SUGARMILL's application for agricultural classification for that year, which included the two (2) parcels, the agricultural classification was denied on all but the planted timber land and the 160 acre pasture area abutting on Citrus County Road 491. In 1992, no petition was filed to appeal the decision of the Property Appraiser to the VAB.

4. In 1993, the existing agricultural classifications on SUGARMILL were automatically renewed. No new applications for agricultural classification were submitted on either the LOVE PGI or SUGARMILL property in 1993. [Paragraph J, page 6, Joint Stipulation].

The SCHULTZ's issue herein is limited to the question of SUGARMILL's renewed agricultural use in 1994 as not being an authorized use per Citrus County's Land Development Code (LDC)

regulations. The below statement of facts is accordingly limited to this issue.

The parties in their pretrial stipulation agreed that the cattle grazing use of the SUGARMILL property north of County Road 480 (3,103 acres) (T-331,337) under the Jessie Thomas lease was substantial, commercial agricultural activities - the issue was such "bona fide." South of County Road 480 the actual use was planted pines and an area of so called "regeneration" (parcel not in issue herein).

The pertinent facts commence with SUGARMILL notifying SCHULTZ that in 1994 the Appellants would be recommencing agricultural activities. (R- 695-696) (Emphasis supplied). Thereafter, the 1994 agricultural classification filing was made by SUGARMILL. (R-759-760) In March, 1994, SCHULTZ requested the Citrus County Department of Development Services (DDS) whether such agricultural uses were authorized in the existing land use district. The DDS made an inquiry of SUGARMILL but received no answer. (R-699-700) On June 30, 1994, the Appellee granted (in part) and denied (in part) the SUGARMILL agricultural classification application. See Statement of the Case. On July 6, 1994, SUGARMILL's legal counsel wrote a letter to the County's DDS therein requesting a formal determination that the agricultural uses by SUGARMILL were

authorized per the County's land development regulations. (R-218, 219) Significantly, this letter did not mention the lack of cattle grazing from 1991 to late 1993, it did however highlight as forestry activity only the planted pines lying south of County Road 480, and included the Thomas cattle lease north of County Road 480 (3,100 acres)(MOL). The matter was reviewed by DDS staff (T-68) and one (1) day later, (July 7th), a form letter, was written stating as follows:

> ...Under the Zoning Ordinance, agriculture was a permitted continuing use in the PD. Under the Land Development Code, the current land use designation allows agriculture provided it is compatible with the surrounding area, and standards for development are met as specified in the Code. If someone applies for a new agricultural permit in this category, confirmation would come after staff has determined that the use is compatible with the surrounding area.
>
> When an agricultural use is already taking place, confirmation of the use may be obtained from the Department of Development Services based on evidence reviewed. Based on evidence presented to this Department, this parcel was being used agriculturally and is therefore considered a bona fide use in the Planned Development Residential land use district.... (R-701)

Testimony on this issue centered on the remarks of Mr. Vincent Cautero, former director of Citrus County Department of Development Services and Mr. Gary Maidhof, Citrus County Land Use Planner who

worked for and reported to Mr. Cautero. Mr. Cautero indicated that:

(1) His duties included formal interpretations of the LDC (T-19);

(2) His department did receive a request as to whether or not agricultural uses were permitted per the County's Land Development Code (T-20-21);

(3) That his staff concluded agricultural uses were permitted uses in the Planned Development - Residential district of the Appellants (T-22) per Mr. Maidhof's letter of July 7, 1994 (T-23);

(4) On cross, Mr. Cautero stated the actual use of property - cattle grazing, fencing, etc. represented "development" (T-32) per the LDC;

(5) That Mr. Maidhof had primary responsibility to determine and prepare the response to the Appellant's inquiry on the land use question;

(6) Mr. Cautero, at page 37 of the trial transcript stated the following on the issue of whether authorized land uses in the PDR land use district are controlled by the master plan:

Q. Would it be an accurate statement that the land uses in the PDR district under the 1990 LDC are controlled by the underlying master plan which generated that PDR district?

A. Yes. The -- yes, that would be accurate.

Q. Do you know if the SUGARMILL, Love PGI master plan authorizes agricultural uses?

A. I couldn't tell you with certainty if it does or not, no.

Q. Would -- the official approval would control that; would it not?

A. Yes, I believe it would.

(7) That Appendix G to the LDC (a schedule of uses for each land use district) states agricultural uses were prohibited in the Appellant's land use district of PDR (T-44);

(8) Notwithstanding, Appendix G, Mr. Cautero related that the basis for his department's letter of July 7, 1994, was that the Appellant's agricultural use was taking place prior to adoption of the LDC and continuous. In short, valid non-conforming uses (T-45, T-46);

(9) On re-cross, Mr. Cautero acknowledge for the Department of Development Services letter of July 7 to be correct, it assumed the continuous agricultural use (T-46, T-47);

(10) Finally, he indicated no knowledge of the two (2) year hiatus in cattle grazing activities on site. (T-46-47)

Mr. Maidhof, a Citrus County land use planner, testified to the process of and the substance of his letter of July 7th. He indicated such was a form letter but sent after inquiry with his supervisor Mr. Cautero. Significantly at page 62 of the trial transcript he concludes "agricultural could continue as a use;" "an allowable use" (T-63) predicated on evidence of the applicant the

use had continued for an extended period of time predating the LDC (T-63) Mr. Maidhof stated that agricultural uses do not require a development permit as such was not "development" as defined by the LDC (T-65).

On cross, Mr. Maidhof related he did not go on the property in issue. (T-68) He admitted that the information upon which his letter was written did not contain specific evidence of any cattle leasing from 1989 - 1993 (T-70) and he did not make an inquiry. (T-70) Also he had the property appraiser information relative to the partial loss of Agricultural classification in the year 1992-1993. Mr. Maidhof disagreed with Mr. Cautero's testimony that the definition of "development" applied to agricultural uses under the LDC (T-75) Mr. Maidhof admitted that agriculture as defined in the County LDC is the same definition used in the Florida Administrative Code absent a definition in the County's LDC. (T-79) Per that definition, (Fla. Admin. Code, R. 9J-5.03) cattle grazing was an agricultural use. (T-80) That the definition of "Development" such was found in §380.06 Fla. Stat. dealing with developments of regional impact and such exempts agriculture. (T-79-80)

He admitted that in his determination that agriculture (cattle grazing) is not development he had not considered §380.06(4) Fla.

Stat. and he had no knowledge of such. (T-82) Further, that this statute distinguishes between development as used in the chapter and as used in an ordinance (T-84) but he did not consider such. (T-84-85)

Referring to other sections of the code, Mr. Maidhof indicated Section 2020 of the Code defined when development orders were required. (T-85) The operative phrase was "development under the Code" and not development as defined by statute (sic §380.04 Fla. Stat.) (T-86) In reviewing the Code, Mr. Maidhof stated agricultural activity was not expressly exempted. (T-86)(T-87) Mr. Maidhof noted the use of agriculture as a specific expressly recognized land use (T-90), and would be designed by Fla. Admin. Code, R. 9J-5.03(4) (T-90) and that Appendix G reflects that agriculture uses are prohibited in the PD-R land use district. Mr. Maidhof stated there was not an "ambiguity" in this section of the Code (T-91) Mr. Maidhof also noted the PDR district on its face did not authorize agricultural uses (T-92) and land uses within any PDR district were controlled by the underlying master plan previously approved. In the case of SUGARMILL master plan, such approval does not include agriculture. (T-93,94,97) He acknowledged that prior zoning codes, 1980 and 1986 respectively, had zoned SUGARMILL as PD (Planned Development) and this land use did not authorize

agricultural uses. (T-98-99) Mr. Maidhof acknowledged that under the 1990 LDC the Appellant, SUGARMILL, lacked a development permit for agricultural activities (T-102) and the SUGARMILL project has not formally vested for agricultural activities. (T-102) For such to occur, evidence of continuous use was necessary (T-107) and if evidence established a lapse of 180 days a party loses any vested status per the Code. (T-103-104)

I

THE DISTRICT COURT ERRED AS A MATTER OF LAW IN FINDING THAT CHAPTER 163.00, PART II, "FLORIDA LOCAL GOVERNMENT COMPREHENSIVE PLANNING AND LAND DEVELOPMENT ACT AND THE CITRUS COUNTY LAND DEVELOPMENT CODE DOES NOT REGULATE AGRICULTURAL LAND USES.

II

§163.3194(5) FLA. STAT., (1985) DOES NOT ABBORGATE THE REQUIREMENT THAT AN AGRICULTURAL LAND USE BE LEGAL PURSUANT TO LOCAL GOVERNMENT LDR'S TO MEET THE QUALIFICATION OF GOOD FAITH IN §193.461(3)(D) FLA. STAT.

SUMMARY

The Fifth District Court of Appeals decision in Love PGI v. Schultz requires this court to interpret and construe the relationship of four (4) separate state and local legislative actions:

(1) §193.461, Fla. Stat. - Florida's Agricultural land

classification statute;

(2) §380.04, Fla. Stat. - a portion of Florida Environmental and Land Management Act and specifically the definition of "development" as used therein;

(3) §163.3161 - 3217 Fla. Stat. (Chapter 163.00, Part II) - Florida's Local Government Comprehensive Planning and Land Development Regulation Act ("the ACT"); specifically the definition of "development" therein and the regulatory authority of the ACT over agricultural land uses.

(4) Citrus County's Comprehensive Land Use Plan (CLUP) and Land Development Code (LDC).

The issue for this Court essentially is does a local government land use plan and land regulation (LDR) adopted pursuant to Chapter 163.00, Part II Laws of Florida (the ACT) regulate agricultural land uses or are such exempted via statutory definition of "development" set forth in §380.04(3), its incorporation by reference into Chapter 163.00, Part II Laws of Florida via §163.3164 Fla. Stat. and as defined by LDC §1500 Citrus County (<u>also an incorporation of the definition by reference</u>).

The Fifth District opinion in <u>Love PGI</u> in reviewing the definition of development in the noted, referenced statute and ordinance found such exemption applicable. The District Court

stated - "codes adopted pursuant to Chapter 163 are intended to regulate and control "development" as defined therein and such excludes agricultural activities such as cattle grazing." It should be noted the District Court opinion is not emphatic as it states it "appears" such are excluded. Thereafter, the Fifth District Court distinguishes the prior controlling law on this point. Robbins v. Yusem, 559 So. 2d 1185 (Fla. 3d DCA 1990), (rev. denied 559 So. 2d 1282) by noting that court was involved with a zoning law while subjudicia the Citrus County LDR was enacted pursuant to Chapter 163, Part II authority. The error of this conclusion requires a complete review of relevant portions of the four (4) noted statutes and not just a focusing on isolated, specific sections. Acosta v. Richter, 671 So. 2d 149 (Fla. 1996). Moreover, the Fifth District decision by its finding makes portions of the above referenced statutes meaningless. Such is contrary to established principles of statutory construction. Foley v. State, 50 So. 2d 179 at 184 (Fla. 1951).

ARGUMENT I AND II

Development from the perspective of Chapter 380.00, Laws of Florida is defined by §380.04 Fla. Stat. This statute regulates as the "DRI" types of development and areas of critical state concern. See §380.01 Fla. Stat. The definition given to

development states in full:

380.04. Definition of development

(1) 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.

(2) The following activities or uses shall be taken for the purposes of this chapter to involve "development," as defined in this section:

(a) A reconstruction, alteration of the size, or material change in the external appearance of a structure on land.

(b) A change in the intensity of use of land, such as an increase in the number of dwelling units in a structure or on land or a material increase in the number of businesses, manufacturing establishments, offices, or dwelling units in a structure or on land.

(c) Alteration of a shore or bank of a seacoast, river, stream, lake, pond, or canal, including any "coastal construction" as defined in s. 161.021.

(d) Commencement of drilling, except to obtain soil samples, mining, or excavation on a parcel of land.

(e) Demolition of a structure.

(f) Clearing of land as an adjunct of construction.

(g) Deposit of refuse, solid or liquid waste, or fill on a parcel of land.

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

(a) Work by a highway or road agency or railroad company for the maintenance or improvement of a road or railroad

track, if the work is carried out on land within the boundaries of the right-of-way.

(b) Work by any utility and other persons engaged in the distribution or transmission of gas or water, for the purpose of inspecting, repairing, renewing, or constructing on established rights-of-way any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like.

(c) Work for the maintenance, renewal, improvement, or alteration of any structure, if the work affects only the interior or the color of the structure or the decoration of the exterior of the structure.

(d) The use of any structure or land devoted to dwelling uses for any purpose customarily incidental to enjoyment of the dwelling.

(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.

(f) A change in use of land or structure from a use within a class specified in an ordinance or rule to another use in the same class.

(g) A change in the ownership or form of ownership of any parcel or structure.

(h) The creation or termination of rights of access, riparian rights, easements, covenants concerning development of land, or other rights in land.

(4) "Development," as designated in an ordinance, rule, or development permit includes all other development customarily associated with it unless otherwise specified. When appropriate to the context, "development" refers to the act of developing or to the result of development. Reference to any specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is

not development. Reference to particular operations is not intended to limit the generality of subsection (1). (emphasis supplied).

Subsection 3 pertaining to exemptions does exclude agricultural uses. The exemption language is clearly limited to "the purposes of this Chapter." (See above emphasis in section quote.) Notably, the Fifth District quotation of "definition" fails to address this legislative limitation on the exemption. In short, it ignores such.

Further, the Fifth District fails to reference or address the express terms of §380.04(4) (See emphasis above). This section needs to be construed against the general definition of development set forth 380.04(1) which speaks to "any material change in the use or appearance of any structure or land." Significantly, the same statute in its definition of a "structure" includes such uses or use on agriculturally based lands. §380.031(19) Fla. Stat. 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 - over DRI's and area's of critical state concern. Development as used in a local ordinance includes all other development as commonly associated with it. Nothing in the Chapter 380, Laws of Florida preclude a local

government from adopting it's own regulatory scheme over development. This regulatory scheme of Chapter 380 has existed since 1972 without legislative amendment thereto.

Chapter 163, Part II since 1974 - to date has defined "development" per §163.3164(6) which states: "Development has the meaning given it in s.380.04." In 1985, with the legislative implementation of Florida's Local Government Comprehensive Planning and Land Development Regulation Act ("ACT") the definition of development was not modified. The Fifth District opinion in Love PGI necessarily interprets the incorporation to carry forth the above discussed Chapter 380 exemption of agricultural uses. The decision narrowly focuses on this sole section of the ACT. In doing such, the opinion ignores the overall legislative intent of the "Act." The ACT required every County and municipal government to implement and adopt comprehensive land use plans, See: §163.3177 Fla. Stat. One such minimum requirement is a future land use element. §163.3177(6)(a) states:

> (6) In addition to the requirements of subsections (1)-(5), the comprehensive plan shall include the following elements:
> (a) A future land use plan element designating proposed future general distribution, location, and extent of the uses of land for residential uses, commercial uses, industry, agriculture, recreation, conservation, education, public buildings and grounds, other public facilities, and other categories of the public and

> private uses of land. The future land use plan shall include standards to be followed in the control and distribution of population densities and building and structure intensities. The proposed distribution, location, and extent of the various categories of land use shall be shown on a land use map or map series which shall be supplemented by goals, policies, and measurable objectives. Each land use category shall be defined in terms of the types of uses included and specific standards for the density or intensity of use. The future land use plan shall be based upon surveys, studies, and data regarding the area, including the amount of land required to accommodate anticipated growth; the projected population of the area; the character of undeveloped land; the availability of public services; and the need for redevelopment, including the renewal of blighted areas and the elimination of nonconforming uses which are inconsistent with the character of the community. The future land use plan may designate areas for future planned development use involving combinations of types of uses for which special regulations may be necessary to ensure development in accord with the principles and standards of the comprehensive plan and this act. The future land use plan of a county may also designate areas for possible future municipal incorporation.... (**emphasis supplied)**

This statutory language is clear that the regulatory scope of the ACT requires each local government to address agricultural as a land use in the Future Land Use Element of its plan. A local government is required to map these areas which shall be supplemented by goals, policies, and objections as to agricultural uses to implement the planning process. See §163.3177, Fla. Stat. 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? The Fifth District opinion establishes this principle. Further, the consistency test set forth in §163.3194(1)(a) Fla. Stat. now has no relevancy as to the required agricultural sections of any future land use element of a plan. Clearly, this could not be the legislative intent by the incorporation of definition of development from Chapter 380.04 into the ACT.

A review of existing Administrative Code regulations upon which Chapter 163, Part II was promulgated further indicates the legislative intent. The ACT does not define agricultural uses. §163.3177(10) Fla. Stat. specifically and expressly recognizes Fla. Admin. Code, R. 9J-5.00 et. seq. as defining the minimum criteria for local land use plans. Fla. Admin. Code, R. 9J-5.003 defines both "development" and "agricultural uses." Fla. Admin. Code, R. 9J-5.003(35) matches the statutory definition of "development" set forth in §380.04 Fla. Stat. Fla. Admin. Code, R. 9J-5.003(4) defines agricultural uses as:

> "Agricultural uses means activities within land areas which are predominantly used for the cultivation of crops and livestock including: cropland; pastureland; orchards; vineyards' nurseries; ornamental horticulture areas' groves' confined feeding operations' specialty farms; and silviculture areas."

Fla. Admin. Code, R. 9J-5.006 labeled "Future Land Use Element" sets forth the purpose of this Plan element and minimum requirements for each local governments plan. Fla. Admin. Code, R. 9J-5.006(1)(a) requires the mapping of agricultural uses in the element. Subsection (3)(a) of the Rule requires the mapping of existing land use categories to include agricultural. Subsection (a) of the Rule requires the like land use analysis for the future planning period. Subsection (3)(c) requires regulations of land use categories in the element. Fla. Admin. Code, R. 9J-5.006(4)(a) requires the Future Land Use Map to include agricultural uses as defined by the Rule. Again, if the legislative intent was by definition to exempt agricultural uses - why the inclusion of the above rules adopted by the ACT.

Regarding land development regulations - also known as zoning - (See §163.3164(22) Fla. Stat., Op. Att'y Gen, Fla. 89-14 (1989)); §163.3202(1) requires all local governments to within one (1) year of their plan to adopt such LDR's that are consistent with and implement their adopted plan. The statute states:

> Within 1 year after submission of its revised comprehensive plan for review pursuant to s.163.3167(2), each county, each municipality required to include a coastal management element in its comprehensive plan pursuant to s. 163.3177(6)(g), and each other municipality in this state shall adopt or amend and enforce land development regulations that are consistent

> with and implement their adopted comprehensive plan. **(emphasis supplied)**

Subsection 2(b) of §163.3202 thereof specifically states:

> Regulate the use of land and water for those land use categories, included in the land use element and ensure the compatibility of adjacent uses and provide for open space. **(emphasis supplied)**

Finally, Fla. Admin. Code, R. 9J-24.008 requires local government LDR's to be compatible and implement the land use plan. In short, each local government must identify, map and plan for agricultural uses in its plan. In its LDR's it must regulate the use of land for each land use category. Agriculture is a land use category per the ACT and per Fla. Admin. Code, R. 9J-5.000 Yet, per the Fifth District opinion all of the above is for naught as agricultural is not "development" per the ACT.

How does the Citrus County CLUP and LDR match to the above legislative mandates of the ACT. First, to be valid and effectual it was found to be consistent with and furtherance of the ACT. See: §163.3184(3),(6) and (8) Fla. Stat. To achieve this approval the CLUP must implement and meet the minimum requirements of §163.3177(6)(a) Fla. Stat. and §163.3202(2)(b). The County CLUP in its Future Land Use Element expressly has an agricultural land use district. The County land use maps identify agricultural areas, certain other land use districts allow agricultural uses, the

County's goals, objectives and policies address and implement the Agricultural District! (See Appendix "A" attached). Citrus County LDR regulations are similar if not more specific then the CLUP. Agriculture is not defined in the LDR but the LDR incorporates by reference the definition of agriculture from Fla. Admin. Code, R. 9J-5.003(4) "Development" is defined (and like the ACT and Fla. Admin. Code, R. 9J-5.000) it incorporates the definition from §380.04 in full. The Code also defines silvaculture. The LDC has a separate agricultural district - §4641(H) and a separate list of authorized agricultural land uses to include silvaculture and pasture. Other land use districts in the Code expressly state that agricultural uses are allowed. (R-644-662)

Appendix G to the Code, (a matrix of specific type of land uses compared to each LDR land use districts) expressly includes agriculture in its matrix mix. (R-727-732)(T-44) Appendix "G" indicates whether in any one given land use district whether agriculture <u>is or is not</u> permitted and the type of permit required. Herein, in the Respondent's land use district - planned development residential (PDR) agriculture uses are not listed as an authorized use. Per Appendix "G" such uses are prohibited in this district. The County land planner indicated such language was clear and unambiguous. (T-91) The LDC does have an exemption section -

§2030; the exemption language does not exclude agricultural uses. (T-86-87) The failure of the Respondent's land use district to list agriculture as a use necessarily prohibits same. The failure to exempt agriculture in the LDC necessarily means such is subject to regulation by the LDC, See: Federal Ins. Co. v. Southwest Florida Determent Ctr, Inc., 23 Fla. L. Weekly 576 (Fla. Feb. 12, 1998) reiterating the concept "expressio unius est exclusio alterius" in interpreting statutes and ordinances.

From the above regulatory scheme, the trial court concluded that the renewed agricultural uses in 1994 by the Respondent were contrary to the LDC and thus not legal and therefore not bona fide. (R-891-855) Based on this finding, the trial court expressly relied on Robbins v. Yusem, supra.

The Fifth District narrowly focuses in its opinion on the exemption language found 380.04(3)(e) and the incorporation of such into the ACT and the County LDC. This narrow focus is inappropriate. Respondent would argue the exemption is clear, unambiguous and it must be given it's clear intent Board of County Comm'rs v. Monroe County v. Department of Community Affairs, 560 So. 2d 240, 242 (Fla. 3rd DCA 1990). Therein the Court address the exception section for road work found in Section 380.04(3). The nature of that action was an enforcement of alleged development in

an area of critical state concern as governed by Chapter 380, Florida Statutes. The Court correctly concluded that the plain meaning of the statute controlled and such was exempted from Chapter 380. Herein, the Fifth Circuit interpretation ignores the introductory language of 380.04(3) which states the exemption is limited to that specific Chapter. Petitioner agrees that the exemption of Agriculture from Chapter 380, Florida Statutes is clear. However, as to the opinion in Love PGI, it ignores the clear qualification of the exemption just to Chapter 380 and reads such in isolation. The polestar of statutory construction is the plain meaning but such an interpretation requires the straight forward consideration of each relevant sentence (emphasis supplied). Acosta v. Richter, 671 So. 2d 149 at 155 (Fla. 1996). A statute is to be interpreted to give effect to every clause in it, and to accord meaning and harmony to all of its parts. Acosta, supra; Statutory phrases are not to be read in isolation but rather in the context of the entire section. Acosta, supra. Following the above "polestars" the following occur relative to the question of whether development per the "Act" and the County Code does or does not include agriculture:

(1) The Fifth District in Love PGI reads the exemption in isolation;

(2) The Fifth District in Love PGI renders the discussion of §163.3177(6)(a) a meaningless exercise since there is no regulatory authority over agriculture;

(3) The Fifth District in Love PGI renders the mandatory language of §163.3202(2)(b) meaningless as any LDR which implements land use categories has no force as to agriculture since its "not" development.

(4) The Fifth District opinion similarly renders the above noted section of the County CLUP and LDC which address agriculture uses meaningless as the proposed use is not "development".

A more proper construction of the regulatory scheme set forth above in accord with the principle of Acosta, supra. is:

A. The plain language of the exemption language found in 380.04(3) limits such to that specific Chapter;

B. Given A, §380.04(4) now has relevance and meaning in local ordinances;

C. The ACT must be read in total to give meaning to all sections; §163.3177 Fla. Stat. and §163.3202 Fla. Stat. provide for a plan and an LDR to implement and regulate agriculture uses.

D. The unambiguous language of the above cited CLUP and County LDC indicate those local regulations are intended to apply

to Agricultural uses. The express prohibition of Appendix "C" can not be ignored;

E. The above interpretation provides meaning to §193.461(4)(a)(3) and §193.461(4)(b). Each respective statutory section speaks to zoning as impacting a decision to classify lands as agricultural for tax purposes. If the Fifth District's decision stands, agricultural uses are not subject to zoning on LDR's. Therefore these statutory provisions are no longer material. A parcel of land's zoning status is no longer material as such does apply to agricultural as development activity. Also, the validity of certain Department of Revenue rules pertaining to zoning in agricultural land classification are now in doubt. See: Fla. Admin. Code, R. 12D-5.004(2)

It should be noted that the Act set minimum requirements for planning and LDR's. Nothing precludes a local government from adopting additional standards. In fact the Act encourages such as far as "visionary" statements. See §163.3177(1) and (7) Fla. Stat. establishing required and optional elements. A local County government per its authority created by 125.01(h) could adopt standards beyond the Act provided same are consistent. The trial court concluded that such occurred. The record finds compelling evidence and codes that such was the policy of Citrus County.

First, in the letters of July 7, 1994 (written when the definition of development was not an issue) the County speaks to agriculture use in the sense it is regulated per the Code (R-217, 218-219). Moreover, the discussion of the County CLUP and LDR's (Statement of Facts, pages 72-14) and pages 25-27, clearly indicate such. These sections, per the County planners testimony, were and are unambiguous. Agriculture was and is prohibited in the Respondent's land use district. The trial court's findings Number 14 was correct in determining that the Respondent's renewed agricultural use was not authorized per the Code.

The trial courts reliance upon the rule established in Robbins v. Yusem, supra. is the more appropriate approach.

In Robbins, the land owner was engaged in a new silviculture land activities (tree farming) in an industrial land use zone. The court held such was not bona fide as it was contrary to the applicable zoning laws. Similar to the matter herein, the land owner could not meet the standard of a non-conforming land use. Absent such a showing, Robbins denied the requested agricultural classification. The Court noted that it was mandated to strictly interpret an agricultural classification provided by §193.461, Fla. Stat. and an "illegal" use was not a bonafide use. The Court concluded by stating:

> ...there is an eminently rational basis for the rule of law that we announce today. The determination of the Property Appraiser is reasonably related to legitimate legislative aims, while the order of dismissal entered by the trial court grants the taxpayer a substantial tax reduction based on an illegal use of land. No statute, judicial decision, or principle of equity permits us to sanction an illegal act by conferring upon the taxpayer substantial tax relief at the expense of other taxpayers.

In 1990, when Robbins was decided not only was the definition of "development" the same but also §163.3194(5) Fla. Stat. had existed since 1986.

Post the 1990 Robbins v. Yusem decision, its rationale as to zoning as a factor in agricultural classification of lands has been followed by the Second District in Williamson v. Kirshy, 654 So. 2d 1994 (Fla. 2nd DCA 1995); and the First District in Davis v. St. Joe Paper Co., 652 So. 2d 907 (Fla. 1st DCA 1995). These later cases finding that zoning per se was not a dispositive factor but one factor properly evaluated in any agricultural classification pursuant to Fla. Stat. 193.461.

To the extent Respondent would now argue that trial court factual record supports the Fifth DCA opinion, the Petitioner would refer this Court to the analysis of the testimony on the "development" issue in the Statement of Facts. First, the Director of the County Development testified at trial that the Sugarmill activity represented "development" (T-32). The testimony of

planner Mr. Gary Maidhof was substantially impeached and not accepted by the trial court - see trial court finding No. 12. Any asserted factual issue or ambiguity in the statutory framework in issue herein was primarily for the trial court and not the district court. See: Herzog v. Herzog, 346 So. 2d 56 (Fla. 1977); Shaw v. Shaw, 334 So. 2d 13 (Fla. 1976).

The Fifth District Court's reliance upon §163.3194(5)Fla. Stat. as dispositive of the relationship between the ACT and §193.461 Fla. Stat. is misplaced. The section states:

> The tax exempt status of lands classified as agricultural under s. 193.461 shall not be affected by any comprehensive plan adopted under this act as long as the land meets the criteria set forth in s. 193.461.

Respondent argued in the District Court that the language in subsection (5) coupled with §163.3194(1)(a) clearly indicates that scope of the ACT was limited to "development" as defined by 380.04 which includes the agricultural exclusion and the ACT was not intended to affect agricultural classification of lands per §193.461 Fla. Stat. As argued above, reliance on the Chapter 380, Florida Statutes exclusion is misplaced as such limited to DRI and Area of Critical State Concern issues. Citrus County land planners admitted such at trial (T-84-85). Beyond such, subsection (5) of §163.3194 has to be read in pari materia with the whole statute and

Chapter. §163.3194(4)(b) mandates the plan set general guidelines and principles of land use planning. By example one does not face code enforcement or fines for violating the plan; one is denied a permit. (See: §163.3194(2) setting forth the test of consistency.) Accordingly, the plan does not make the Respondent agricultural use illegal. It is the County LDC adopted per §163.3202 which determines if an agriculture use is or is not illegal. See trial court finding numbers 12-14. Applying the same logic as the Fifth District, this clear language controls - subsection (5) is limited to the "Plan." Finally, subsection (5) was adopted in 1985 and essentially changed nothing in the interpretation of §193.461. It simply represents a recodification of the standards of §193.461 to include bonafide and good faith as they existed at that time. The only discussion of zoning or land use in effect at that time was §193.461(4)(a)(3) and (4)(b). The Robbins v. Yusem decision, supra. did not occur until 1990. The criteria of "good faith" and "bona fide" were subsequently judicially construed to hold an illegal use was not in good faith. The logic of the Court in Robbins v. Yusem supra at page 1187 when it speaks to the legislative history of the greenbelt law is still applicable with or without the ACT and subsequent local government plans. At the time of enactment of §163.3194(5), the legislature could not have

known an illegal zoning (LDR) use would violate the standards of §193.461.

CONCLUSION

Herein, it is not contested that the Respondent, SUGARMILL, as of January 1, 1994 has used portions of the lands in its northern parcel, (beyond the partially granted agricultural classification as to the southern parcel and 160 acre pasture in the northern parcel) for agricultural use. For said use to qualify for an agricultural classification that use must qualify as "good faith" and bona fide pursuant to the §193.461(3)(b) Fla. Stat. Agricultural use alone does not entitle a taxpayer to an agricultural classification. Markham v. Fogg, 458 So. 2d 1122 (Fla. 1984). Because the classification of land as agricultural results in a more favorable tax assessment, it is in the nature of an exemption and, therefore, the provisions governing such classification should be strictly construed. Any doubts regarding the application of the statute should be resolved against the taxpayer. St. Petersburg Kennel Club v. Smith, 662 So. 2d 1270 (Fla. App. 2 Dist. 1995). As a matter of law, utilization of property not properly zoned for agricultural use is not in good

faith, and thus not a bona fide use entitling one to the classification. Robbins v. Yusem, 559 So. 2d 1185 (Fla. 3d DCA 1990) (rev. denied 559 So. 2d 1282).

The holding of the Fifth District Court of Appeals in Love PGI v. Schultz, fails to follow established principles of statutory construction. The Love PGI decision not only substantially impairs land use plan and land development regulations adopted pursuant to Chapter 163, Part II, Florida Statutes but also gives a new "qualified" meaning to the definition of "good faith" and "bona fide" per §193.461 Fla. Stat. This new qualified construction of bona fide means lands previously unavailable for agricultural use are now available. Such substantially broadens the exemption to property such as industrial, commercial and residential. Moreover, such now means that §193.461(4)(a)(3) and 193.461(4)(b) are irrelevant as zoning is no longer an issue.

This is not a rationale construction of the definition of development per 380.04. Following the statutory construction principals set forth in Acosta v. Richter, supra, the exemption of agriculture activities found in §380.04(3)(e) should be limited solely to that Chapter. The incorporation of the definition in to Chapter 163, Part II Florida Statutes and the County Code carries forward an exemption limited solely to Chapter 380, Florida States.

With such, the legislative discussions relative to agricultural land uses in §163.3177(6)(a) and 163.3202(2)(b) now has intended affect of legislature of planning for many varied land uses. As noted the County does have the legal authority to adopt LDR regulations more extensive than the Act. The trial court herein so found.

Per Love PGI, the issue of "good faith" under §193.461, Fla. Stat. is diminished, good faith now means agriculture uses are authorized on all lands as all government land use plans and all land development regulations originate from Chapter 163.00, Part II since October 1, 1985.

The Robbins v. Yusem rule represents a proper construction of agricultural classification and zoning. Zoning and LDR's are not determinative - they are rebuttable by a showing of an authorized use or a vested or nonconforming use. Here, the Respondent failed all tests per Robbins v. Yusem rule and as such, was not in good faith.

Respectfully, the Petitioner, SCHULTZ, asks the Court to reverse the decision of the Fifth District in Love PGI and reinstate the trial court ruling. Thereby, maintaining the Robbins v. Yusem rule as to an illegal use not be in good faith or bona fide per §193.461, Fla. Stat.

Dated on this 24th day of July, 1998.

Respectfully submitted,

BRANNEN, STILLWELL & PERRIN, P.A.
Post Office Box 250
Inverness, FL 34451-0250
(352) 726-6767

By: _____
Clark A. Stillwell
Florida Bar No. 202770

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and seven (7) copies have been provided via hand delivery to the Court and a true and correct copy of the foregoing has been furnished by U.S. Mail delivery on this 24th day of July, 1998 to: Robert L. Rocke/Enola T. Brown, ANNIS, MITCHELL, COCKEY, EDWARDS & ROEHN, P.A., Post Office Box 3433, Tampa, Florida, 33601; and to James A. Neal, Esquire, FITZPATRICK & FITZPATRICK, 213 N. Apopka Avenue, Inverness, Florida, 34450-4239.

By: _____
Clark A. Stillwell
Florida Bar No. 202770

BRIEF.FIN
CAS:ts