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

On Petition for Review of a Decision of the
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 JURISDICTION

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

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

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

TABLE OF CITATIONS

TABLE OF CONTENTS

INTRODUCTION

The Petitioner, Ronald Schultz, Citrus County Property Appraiser invokes the discretionary jurisdiction of this Court pursuant to Fla. R. App. 9.030(a)(2)(A)(iii) to review a decision of the Fifth District Court of Appeal, Love PGI Partners, LP v. Schultz, (1998 WL 44481 5th DCA) (conformed copy attached), which expressly and directly conflicts with the prior decisions of this Court and other District Courts of Appeal. In the relevant sections of Love PGI (referenced therein as "Sugarmill Parcel," pages 8-12), the Fifth District reverses a Final Judgment of the Fifth Judicial Circuit, Citrus County, Florida, which held Sugarmill's 1994 recommenced cattle grazing activities were not "bona fide" as such were illegal uses under the LDC as agricultural land uses were not an authorized land use in the applicable land use district. The Fifth District holds that Sugarmill's cattle activities were not "development" as defined by §380.04 Fla. Stat., §163.3164(23) Fla. Stat., and §163.3201 Fla. Stat. Not constituting "development," such was not subject to regulation by LDC (zoning code), the use was legal and therefore bona fide.

The Fifth District Court of Appeal's decision expressly states it disagrees with the holding in Robbins v. Yusem, 559 So. 2d 1185 (Fla. 3d DCA 1990). In addition to the express declaration of conflict with the Third District; the Fifth DCA opinion conflicts this Court's opinion in Herzog v. Herzog, 346 So. 2d 56 (Fla. 1977), and Shaw v. Shaw, 334

So. 2d 13 (Fla. 1976) (See page 3 of the Sugarmill opinion) as the issue of "development" as regulated by Citrus County's Code was a disputed issue of fact resolved by the trial court.

STATEMENT OF THE CASE AND FACTS

On or before March 31, 1994, SUGARMILL, timely filed an administrative request for agricultural classification. The 1994 SUGARMILL agricultural classification application reflected a parcel representing 4300 acres was used for cattle crazing and 1,000 acres for forestry activities. (R-118, 759-60). SCHULTZ granted the requested agricultural classification as to 733.57 acres of historical planted pines and 160 acres of historical pasture land and denied the remainder. SUGARMILL appealed the matter to the VAB. At the VAB hearing, the issues raised centered on "legitimacy" of the cattle grazing activity under the LDC. (T-201,336) The VAB affirmed SCHULTZ position. A timely civil action was filed. The matter was tried in a non-jury trial before the Honorable Patricia Thomas, Circuit Judge. On June 5, 1996, the trial court entered its final judgment on behalf of SCHULTZ. The Trial Court found the use was not a continuous non-conforming use given a lapse in time and made the following findings on the zoning issue:

> 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. 3rd DCA 1990).

Factually, the following are applicable:

On January 1, 1994, the land use designation of the SUGARMILL parcel under the CLUP and LDC was planned development-residential ("PDR"). Authorized land uses were residential, commercial and industrial. Agricultural uses were prohibited (T-44).

In late 1993, SUGARMILL notified SCHULTZ that in 1994 the SUGARMILL would be recommencing agricultural activities (R- 695-696) and desired agricultural classification on its parcel which for two (2) prior years had lacked such.

Testimony on this issue centered on the remarks of Mr. Vincent Cautero, former director of DDS and Mr. Gary Maidhof, Citrus County Land Use Planner who reported to Mr. Cautero. Cautero's key testimony stated:

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

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

Mr. Maidhof, a Citrus County land use planner, testified agricultural uses do not require a development permit as such was not "development" as defined by the LDC (T-65).

Mr. Maidhof disagreed with Mr. Cautero's testimony that the definition of "development" applied to agricultural uses under the LDC (T-75) Mr. Maidhof did admit that "agriculture" was defined in the LDC as the definition used in the F. A. C. absent a definition in the LDC. (T-79) controlled. Per Rule 9J-5.03 F.A.C., cattle grazing was an agricultural use. (T-80)

Maidhof admitted that in his determination of agriculture (cattle grazing) not being development he had not considered §380.06(4) Fla. Stat.

Mr. Maidhof indicated §2020, LDC defined when development orders were required. (T-85) The operative phrase was "development under the Code" and not development as defined by statute (see §380.04 Fla. Stat). (T-86) As to Appendix G, Mr. Maidhof noted it identified agriculture use as a specific land use (T-90), and such would be the definition from Rule 9J-5.03(4) F.A.C. (T-90). Significantly, Appendix G reflects that agriculture uses are prohibited in the PD-R land use district and there was no "ambiguity" in this section of the LDC. (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 are controlled by the underlying master plan previously approved. In the Sugarmill master plan, it did not include agriculture. (T-93,94,97) Mr. Maidhof acknowledged that under the 1990 LDC the Appellant, Sugarmill, lacked a development permit for agricultural activities (T-102).

SUMMARY OF ARGUMENT

The pertinent standard for conflict jurisdiction per Article V, §3(b)(3) of the Constitution and Fla.R.App.Pro. 9.030 (a)(2)(A)(iv), is that the district court decision must expressly and directly conflict with the decision of another district court on the same question of law. Jenkins v. State, 385 So. 2d 1356 (Fla. 1980); Ford Motor v. Laik's, 401 So. 2d 1341 (Fla. 1981). Generally, the rule is:

> ...that "conflict may exist either (1) where an announced rule of law conflicts with other appellate expressions of law, or (2) where a rule of law is applied to produce a different result in a case which involves "substantially the same controlling facts as a prior case.'" City of Jacksonville v. Florida First National Bank of Jacksonville, 339 So. 2d 632, 633 (Fla. 1976).

Herein, the standard is clearly met. The Fifth District decision states at page 10 "*Schultz argues that Robbins v. Yusem, 559 So. 2d 1185 (Fla. 3d DCA 1990), review denied, 569 So. 2d 1282 (Fla. 1990) is determinative.... Thus, as a matter of law, the court (trial) concluded agricultural use could not be considered bona fide because of the land's zoning. We disagree with Robbins,....*" Both, the factual and legal issues in respective District Court Opinions were identical - a new

agricultural use, a determination that each was not a non-conforming use, a determination that such was contrary to the local zoning regulations, and like statutory law existing at the time of each opinion. The Third District finding that such use was not bona fide and the Fifth District findings that the use was not regulated by zoning thus was bona fide. The jurisdictional conflict test is met; the Fifth District acknowledges such on the face of its opinion. It should be noted that the Second District has adopted the Robbins rule to agricultural classifications and required compliance with zoning. *See* Williamson v. Kirby, 654 So. 2d 194 (Fla. App. 2nd Dist. 1994). Finally, the Fifth District opinion conflicts with this Court in its substitution of its opinion on the factual dispute as to whether the LDC regulates agricultural uses.

ARGUMENT

The trial court finding No. 14, expressly held the Sugarmill agricultural activities were prohibited in the Sugarmill land use district by LDC relying on Robbins. In Robbins, the land owner was engaged in a new silvaculture 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.

The Fifth District opinion facially expressly disagrees with Robbins on the theory that agricultural uses are not "development" as defined by §380.04, Fla. Stat. The Court states at page 11 "*it appears forestry and cattle raising activities are excluded from regulations of development*" and additionally cites to §163.3194(5) Fla. Stat. The Fifth District 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).

The Fifth District misconstrues the relevant law and by such creates not only a jurisdictional conflict but also a large, new method to avoid ad valorem taxation. In both Robbins and herein, "development" as defined by §380.04 existed at the time of each decision. Since 1974, Chapter 163.00, Part II, Laws of Florida has also contained the same definition of "development". 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.

The Fifth District Court opinion assumes that since the County's land use regulation were adopted pursuant to Chapter 163.00, Part II, that somehow such necessitates a different holding than Robbins. In Robbins, the zoning ordinance derived its authority from §125.01(h) Fla. Stat. and §163.00 et. seq. Fla. Stat. Herein the LDC was adopted pursuant to §125.01(h) Fla. Stat. and §163.3202 (b) Fla. Stat. The Fifth District's reliance on §163.3194(5) Fla. Stat. is misplaced; the CLUP did not render the agricultural land use invalid rather it was the LDC.

The record testimony clearly indicates Citrus County chose to regulate Agricultural land use. The exclusion of agricultural uses of §380.04 Fla. Stat. is only for the purposes of Chapter 380.00. See Fla. Stat. §380.04(4). Having elected to regulate agricultural uses, Citrus County expressly excluded such in the Sugarmill PD zoning. To commence such without a permit was illegal. The Fifth District Court of Appeals blanket exemption of agricultural uses from local government regulation is contrary to record and the County's authority per §125.01(h) Fla. Stat.

As noted the Fifth District holds the LDC does not "regulate" agricultural uses. The trial court held to the contrary. The LDC does define development per §380.04 Fla. Stat.; yet the same LDC includes (by reference) a definition for agriculture (Fla. Admin. Code R. 9J-5.03), has an agricultural land use district and precludes such in the Sugarmill district. The record reflects an evidentiary conflict on the definition of "development" between two (2) County land use planners per the LDC. Each stated Appendix "G" to the LDC (T-44) expressly

prohibits the agricultural uses in the Sugarmill District. The County LDC elected (per §380.04(4) Fla. Stat.) to regulate agriculture; the Fifth District Court errored in its contrary determination.

If the rationale of the Fifth District stands, all parcels of land - whether residential, commercial or whatever are now subject to a claim for agricultural classification. Further, agriculture uses are now not subject to local governmental land use regulation. When coupled with the established rule that an agricultural use need not be per se profitable. *See* Williamson; St. Joe Paper Co. v. Adkinson, 400 So. 2d 983 (Fla. 1st DCA 1981); the holding results in a substantial expansion of Florida's agricultural classification. Finally, the Fifth District opinion abrogates any consideration of zoning and thus §193.461(4)(a)(3) and §193.461(4)(b), Fla. Stat. become irrelevant.

CONCLUSION

The jurisdictional conflict of whether the LDC does or does not regulate development and agricultural uses of the two (2) district court opinions is acknowledge by the Fifth District. The definition of "development" was and is the same at the time of each decision. Similarly, Fla. Stat. 163.3194(5) was in effect at the time of both decisions. The zoning code in Robbins, supra was adopted per §125.01(h) and Chapter 163.00, Part II, Laws of Florida (1984). Similarly, the LDC was adopted under like regulatory authority. The respective district courts reached different conclusions on the same facts and the same questions of law. The legal standard for a jurisdictional conflict exists. Beyond this conflict, the Fifth DCA decision substitutes its judgment on the noted factual issue. That is internally inconsistent and contrary to this Court's holding cited in

Petitioner's argument summary. (page 2 hereof).

The significance of conflict between district courts is not to be minimized. It affects all Florida tax appraisers. In the area of land use law it affects all counties and all municipalities. Tax classifications have historically been treated strictly and narrowly. United States Gypsum Co. v. Green, 110 So. 2d 409 (Fla. 1959). The decision of the Fifth District reverses this established policy by opening all property statewide for an agricultural use classification regardless of any local zoning land use classification or regulation. Given the express conflict between districts and the statewide impacts to tax and land use issues created by the conflict, Petitioner respectfully asks this Court to accept jurisdiction.

Dated on this 24th day of April, 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 three copies have been provided via Federal Express delivery to the Court and a true and correct copy of the foregoing has been furnished by regular U.S. Mail delivery on this 24th day of April, 1998, to: Robert L. Rocke/Enola T. Brown, ANNIS, MITCHELL, COCKEY, EDWARDS & ROEHN, P.A., Post Office Box 3433, Tampa, Florida, 33601.

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

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT JANUARY TERM 1998

NOT FINAL UNTIL THE TIME EXPIRES TO FILE REHEARING MOTION, AND, IF FILED, DISPOSED OF.

LOVE PGI PARTNERS, LP,
and SUGARMILL WOODS, INC.,

Appellant/Cross-Appellees,

v. CASE NO. 96-1973

RONALD SCHULTZ, et al.,

Appellees/Cross-Appellants.

_____/

Opinion filed February 6, 1998

Appeal from the Circuit Court
for Citrus County,
Patricia Thomas, Judge.

Enola T. Brown, Robert L. Rocke, and
Christopher L. Griffin of Annis, Mitchell,
Cockey, Edwards & Roehn, P.A., Tampa,
for Appellant/Cross-Appellee.

Clark A. Stillwell of Brannen,
Stillwell & Perrin, P.A., Inverness,
for Appellee/Cross-Appellant.

I hereby certify that the above and foregoing is a true copy of instrument filed in my office.

FRANK J. HAWKSHAW, CLERK
DISTRICT COURT OF APPEAL OF
FLORIDA, FIFTH DISTRICT
Per Chris Swanger
Deputy Clerk

SHARP, W., J.

Love PGI Partners, LP, (Love) and Sugarmill Woods, Inc. (Sugarmill) appeal from final judgments[1] rendered against them concerning the property appraiser's (Schultz) denial (in part) of their claims for agricultural classification for lands located in Citrus County for 1994. The issues on appeal are whether the trial court had substantial competent evidence presented to it to determine that

[1] Final Judgment was entered against Sugarmill on June 5, 1996 and against Love on July 3, 1996.

Love's and Sugarmill's use of part of their lands for forestry by natural regeneration was not *bona fide* and whether the trial court correctly ruled that cattle-grazing operations conducted on part of Sugarmill's property could not qualify for an agricultural classification because it was illegal under the Citrus County Comprehensive Plan and Development Code.

Schultz cross-appeals the trial court's rejection of his argument that an agricultural classification for Sugarmill's property used for cattle grazing should additionally be denied because Sugarmill's predecessor in title platted all of the land (as well as Love's) as part of a planned unit development, including single family residential, multi-family residential, recreation areas, commercial areas, and streets. The plats were recorded in 1973, although none of the property under consideration in these cases had been developed. We affirm as to Love, reverse as to Sugarmill, and affirm the cross-appeal.

Punta Gorda Developers, Inc. and Norcorp, Inc., predecessors in title, platted the property involved in this case as part of a larger planned unit development known as Sugarmill Woods, in 1973. It consists of four separate villages, two of which had been constructed at the time of this litigation. However, with regard to the properties at issue in this case, there was no development whatsoever. The current owners testified there would probably be no development for the foreseeable future.

Sugarmill acquired the land involved in this lawsuit from Punta Gorda in the mid 1980s. It is located both north and south of County Road 480, and had been classified agricultural through 1991. It currently consists of 4,300 acres Sugarmill claims is and has been used for cattle grazing, and 1,000 acres used for forestry. In 1992 or 1993, Love acquired its parcel of approximately 343.9

acres from Sugarmill. It is located south of County Road 480. From 1974 through 1991, it also was classified agricultural.

In 1992, Schultz denied agricultural classification for all of the property except areas in planted pines and improved pasture. No agricultural classifications were sought in 1993. In 1994, Sugarmill and Love sought an agricultural classification for all of the land, based on forestry and cattle-grazing operations.

Sugarmill claimed *all* of its land lying north of the County Road 480 had been *bona fide* used for cattle grazing. And, it claimed that all of its land south of County Road 480 was used for forestry operations, some in natural regeneration and some in planted pines. Schultz granted agricultural classification for 733.57 acres in planted pines (south of County Road 480), and 160 acres in an improved pasture (north of County Road 480) only, and denied agricultural classification for the balance. Sugarmill appealed the denials. The trial court upheld these determinations. With regard to Love, Schultz granted agricultural classification for the area in planted pines and denied it for the natural woodland area. Love appealed the denial. The trial court upheld that determination.

The appellants in this case had the burden of proof at trial to show either no reasonable hypothesis supported the property appraiser's determination, or the appraiser did not consider the appropriate statutory factors under § 193.461. *See Davis v. St. Joe Paper Co.*, 652 So.2d 907, 908 (Fla. 1st DCA 1995); "'Just Value' or Just a Value - Florida's Imperial Property Appraiser," 48 Fla.L.Rev. 723, 737 (Sept. 1997). The findings of the trial court as to disputed facts cannot be overturned by this court.[2]

---

[2] *Herzog v. Herzog*, 346 So.2d 56 (Fla. 1977); *Shaw v. Shaw*, 334 So. 2d 13 (Fla. 1976).

I. Natural Woodlands or Natural Regeneration.

The issue concerning whether Love's parcel adjacent to its planted pines was used for a *bona fide* forestry use is determinative of its appeal, since it did not present an argument below that the parcel was used for cattle grazing. With regard to Sugarmill, it sought an agricultural classification for all of its land lying south of County Road 480, which included a portion in planted pines as well as some in natural woodlands. Although the final judgment rendered against Sugarmill does not contain an express finding that Sugarmill's agricultural use for the natural woodlands was not *bona fide*, the evidence presented for both parties was identical and the trial court upheld denial of an agricultural classification for that area. The result is and should be the same for both parties.

The testimony offered by Schultz concerning the use of the natural woodlands was comprehensive and conclusive. Reggie Tetter, a senior appraiser with the Department of Revenue in Tallahassee, reviewed the forestry operations on both parcels. His testimony indicated that, based on aerial photographs from 1960 and historical records, the land had not changed much since 1960. It is composed of candler soil, a type not highly productive for forestry operations. In the early part of the century, it appears to have been used for naval stores, and prior to the 1940s, all of the long leaf pines were harvested. At present there are open areas, turkey oak and jack oak (neither is commercial timber), and scattered long-leaf pine with a few seedlings. However, there are very few large long-leaf pines on the parcels, which produce seed.

In his opinion, there was not enough long-leaf pine present to produce a marketable stand of trees in the foreseeable future. It would take another fifty years by natural regeneration, to produce an adequate stock of timber. He also opined that it would be necessary to aggressively manage the land by scarification of the soil, controlled burning, and planting with long-leaf pine or sand pine. He

said there was no evidence of such activity on this land as of January 1, 1994 (the critical date for this appeal).[3] He noted the presence of cattle in the past on this land and pointed out that running cattle can negatively impact forestry operations.

He agreed that it is possible to have a *bona fide* natural regeneration forestry operation, which would be entitled to an agricultural classification but concluded this was not happening on the parcels in question. There had been no harvesting of trees on these lands, no re-forestry management plan submitted for them, and there were no commercially-viable stands of trees on the property.

James Sander, a former employee of Punta Gorda Development Co., the prior owner of the lands from 1971 to 1991, testified that other than the areas put into planted pines, there had been no forestry plan for the natural woodlands. It consisted largely of jack oak, a few scattered pines, and palmettos. They did controlled burns of the area to improve grazing for cattle. Since 1974, various cattle lessees had run cattle on the natural woodland.

Andrew Love, chair of the general partner of Love PGI, testified he was familiar with the properties before they were sold to the predecessor, Punta Gorda Isles, and up to the present. He testified that as of January 1994, he did not think there was any specific forestry management plan for the Love property, other than the area in planted pines. They did controlled burns and maintained fire lanes in the natural woodlands, which he said would benefit the timber operations. However, he admitted these activities were largely to enhance cattle-grazing operations.

Gerald Evans testified for Love. He is a staff forester with the Natural Resource Planning Services, a private consulting service, who had been retained by Love to handle timber sales for 1994,

---

[3] § 192.042; *Bass v. General Development Corp.*, 374 So.2d 479 (Fla. 1979).

and to develop goals for managing the land. He admitted that most of his activities on the land occurred in mid-1994.

Evans was developing ideas and guidelines for the natural woodlands on the Love property. He determined there was not sufficient merchantable timber in the natural area, and he recommended that the trees be left alone to get regeneration established. He thought there was a sufficient seed source that could be used to regenerate the area. He was in the process of developing a forestry plan for this part of the property, which would include controlled burns, and fire lanes.

The Florida Constitution provides that agricultural land *may be* classified by general law for ad valorem tax purposes, and assessed solely on the basis of character or use.[4] Section 193.461 implements that provision of the Constitution. It provides that property appraisers shall classify all lands on an annual basis within the county as agricultural or nonagricultural. Regarding the process of classification section (3)(b) states:

> [O]nly lands which are used primarily for bona fide agricultural purposes shall be classified as agricultural. 'Bona fide agricultural purposes' means good faith commercial agricultural use of the land. In determining whether the use of the land for agricultural purposes is bona fide, the following factors may be taken into consideration:
>
> 1. The length of time the land has been so utilized;
>
> 2. Whether the use has been continuous;
>
> 3. The purchase price paid;
>
> 4. Size, as it relates to specific agricultural use;
>
> 5. Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial

[4] Art. VII, § 4(a), Fla. Const.

agricultural practices, including, without limitation, fertilizing, liming, tilling, mowing, reforesting, and other accepted agricultural practices;

6. Whether such land is under lease and, if so, the effective length, terms and conditions of the lease; and

7. Such other factors as may from time to time become apparent.

Florida cases which address these provisions stress the key to determining entitlement to agricultural classification is the actual physical activity being conducted on the land. *Bass v. Gen. Dev. Corp.*, 374 So.2d 479 (Fla. 1979); *McKinney v. Hunt*, 251 So.2d 6 (Fla. 1st DCA 1971); *Davis v. St. Joe Paper Co.*; *Schooley v. Wetstone*, 258 So.2d 483 (Fla. 2d DCA 1972); *Hausman v. Rudkin*, 268 So.2d 407 (Fla. 4th DCA 1972). If the land is being used for *bona fide* agricultural purposes, it is entitled to the agricultural classification. *Straughn v. Tuck*, 354 So.2d 368 (Fla. 1977). This is generally a fact determination, appropriate for the trial court to make. An appellate court must affirm, if there is sufficient competent evidence to support the trial court's ruling. *Hausman v. Rudkin; Conrad v. J.M. Sapp*, 252 So.2d 225 (Fla. 1971); *Greenwood v. Oates*, 251 So.2d 665 (Fla. 1971).

Appellants argue that the denial of an agricultural classification in this case was based on testimony that the natural regeneration forestry operation on these lands was not, nor could it be, commercially viable for a very long time. We agree that commercial viability of an agricultural use or activity is not determinative.[5] But profit motive may be a factor which can be considered under section 193.461(3)(b)(7). *See Straughn v. Tuck*, 354 So.2d at 370 (the term "commercial

[5] *McKinney v. Hunt*, 251 So.2d 6 (Fla. 1st DCA 1971); *St. Joe Paper Co. v. Adkinson*, 400 So.2d 983 (Fla. 1st DCA 1981).

agricultural use" simply adds another factor - profit or profit motive - which may be considered by the tax assessor, but it does not limit the classification to profitable operations).

However, we think this case is similar to *Greenwood v. Oates.* In that case, the court upheld the denial of agricultural classification for a large acreage parcel of woodlands. As in this case, the trial court heard testimony about a number of factors, the opinion of forestry experts as to whether forestry operations were being conducted on the lands, the nature of the terrain, the density of marketable timber, the past usage of the land, and the reasonable attainment of a salable product within a reasonable future time, keeping in mind that trees do not mature as quickly as "chickens and cows."

We think the trial court's denial of an agricultural classification for the natural woodlands should be affirmed, based on the evidence adduced at trial. The tracts had few stands of merchantable timber, the viability of a natural regeneration plan was in dispute, few improvements had been made for forestry purposes, and there was no forestry management program in effect or even developed for the land on the critical date of January 1, 1994. There simply was insufficient evidence of any actual forestry operations on the lands in question on that date.

II. Sugarmill: Cattle grazing, a *bona fide* agricultural use?

Sugarmill's 4,300 acres lying north of County Road 480 was denied an agricultural classification for cattle grazing. As stated above, Schultz did allow an agricultural classification for 160 acres also north of County Road 480, which Sugarmill used for improved pasture. That area is not in dispute. With regard to the balance of the parcel, the testimony at trial concerning Sugarmill's use of it for livestock operations was essentially undisputed.

This land had been leased and used for cattle grazing since the 1970s. However, there was a two-year gap, from 1991 to 1993, when cattle operations ceased. This finding was disputed by Sugarmill, but sufficient evidence was adduced to establish that fact.

In 1993 the land was leased to Jessie Thomas. He testified he patched the fence all along County Road 480, and along the Sugarmill development. He fenced in the entire area and grazed cattle on that parcel. He also burned areas to produce better feed for the cattle and consulted the county forester concerning the burns.

The basis for Schultz' and the trial court's denial of an agricultural classification for this parcel in 1994 was because the land is zoned PR-D (Planned Development - Residential). Pursuant to the Citrus County Land Development Code, adopted pursuant to chapter 163 in 1990, cattle grazing is not a permitted use or a legal nonconforming use for that category of zoning. The Code would have permitted a nonconforming use to continue, if it had not been discontinued for a period of 180 consecutive days. The trial court concluded that in order to conduct cattle grazing activities on this parcel, Sugarmill would have to have that activity properly exempted and permitted by the County, which it had not done.

We disagree. The appropriateness of agricultural classification of land for ad valorem tax purposes depends on the general statutory laws of this state, not a county code. As noted above, section 193.461(3)(b) makes this determination turn primarily on the actual, good faith use of the land. If the land is being used for a *bona fide* agricultural purpose, it is entitled to the agricultural classification. *Hausman v. Rudkin*. Zoning may be a consideration under the catchall "other factors" provision in section 193.461(3)(b)(7), but it is not determinative. *Wilkinson v. Kirby*, 654 So.2d 194 (Fla. 2d DCA 1995). Nor does section 193.461(4)(a)(3) appear applicable because Sugarmill or its

predecessor in title did not seek rezoning of the land from an agricultural use to a non-agricultural use. *Compare Harbor Ventures, Inc. v. Hutches*, 366 So.2d 1173 (Fla. 1979). At the time of the rezoning to a PUD in 1973, there was no impediment to continued agricultural use of the property under the zoning laws then in effect. In any event, zoning is at best only a rebuttable presumption. *Lackey v. Little England, Inc.*, 461 So.2d 281 (Fla. 5th DCA 1985).

Schultz argues that *Robbins v. Yusem*, 559 So.2d 1185 (Fla. 3d DCA 1990) is determinative. In that case, the Third District held that land classified under the Dade County Code as IC-C but used to farm yucca and calabaza, could not receive an agricultural classification because agriculture was an illegal use for that property, under the zoning code. The court concluded that a finding that commercial agricultural use is not *bona fide* because prohibited under the zoning laws, may be overcome by showing the use is a legal, nonconforming use. But, as in this case, that showing was not possible. Thus, as a matter of law, the court concluded agricultural use could not be considered *bona fide* because of the land's zoning.

We disagree with *Robbins*, to the extent that it holds agricultural classification for ad valorem tax purposes is controlled by a county code adopted pursuant to chapter 163. Both chapter 163.3164(4) and the Citrus County Code, adopted pursuant to chapter 163[6] deal with regulations for the *development* of land. They provide for regulation of activities which constitute "development."[7] Both the statute and the county code define "development" by reference to section 380.04, which provides:

---

[6] §§ 163.3167(2), Fla. Stat. (1995); 163.3202, Fla. Stat. (1995).

[7] §§ 163.3164(23); 163.3201, Fla. Stat.

(1) The term development means the carrying out of any building activity or mining operation,...

* * *

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

(e) *The use of any land for the purpose of growing plants, crops, trees, and other agricultural or forestry products; raising live stock;* or for other agricultural purposes. (emphasis supplied).

It appears forestry and cattle raising activities are excluded from regulation of development pursuant to the statute and the Code. Further, section 163.3194(5) expressly 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. 193.46.

From both of these statutory provisions it appears that the Legislature did not intend that lands classified as agricultural under chapter 193 for ad valorem tax purposes, would be affected by the adoption of comprehensive development plans pursuant to chapter 163. No Code adopted pursuant to chapter 163 can alter its intended impact.[8] 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).

---

[8] *State v. Smith*, 584 So.2d 145, 146 (Fla. 2d DCA 1991).

As demonstrated above, both the trial court and the taxing authority, Schultz, used an incorrect legal basis to deny Sugarmill agricultural classification on its lands used for cattle grazing. Thus their determinations are not entitled to the presumption of correctness or the necessity to show that no reasonable hypothesis supported the property appraiser's determination. *Davis v. St. Joe Paper Co.*; *Wilkinson v. Kirby*, 654 So.2d 194 (Fla. 2d DCA 1995); *The Glades, Inc. v. Colding*, 422 So.2d 349 (Fla. 2d DCA 1982).

If this record contained any disputed material facts concerning whether Sugarmill or its lessee was using these lands for a *bona fide* cattle grazing operation on January 1, 1994, we would remand this cause to the trial court for a factual determination of this issue using the factors test set forth in section 193.461(3)(b). *Atlantic Richfield Co. v. Walden*, 277 So.2d 815 (Fla. 2d DCA 1973).[9] However, Schultz in this case presented no evidence to counter or dispute Sugarmill's witnesses that, in fact, as of January 1, 1994, Jessie Thomas was conducting a cattle-grazing operation on the disputed property. He fenced the land completely, repaired and restored some fencing, improved the feed through controlled burns and ran cattle on the land. Thus there is no basis to conclude that this was a non-existent, or sham (not a *bona fide*) livestock activity. *Hausman v. Rudkin*. These lands were entitled to an agricultural classification for 1994.

III. Cross-appeal: Effect of platting and deed restrictions.

Schultz argues on cross-appeal that an agricultural classification for all of Sugarmill's property (except for the planted pine area and the improved pasture), should also be denied because in 1973

---

[9] *See also Bass v. General Dev. Corp.*, 374 So.2d 479 (Fla. 1979); *Roden v. K & K Land Management, Inc.*, 368 So.2d 588 (Fla. 1978); *Straughn v. Tuck*, 354 So.2d 368 (Fla. 1977); *Conrad v. J.M. Sapp*, 252 So.2d 225 (Fla. 1971); *Greenwood v. Oates*, 251 So.2d 665 (Fla. 1971); *Wilkinsen v. Kirby*, 654 So.2d 194 (Fla. 2d DCA 1995); *Ridgewood Phosphate Corp. v. Perkins*, 487 So.2d 40 (Fla. 2d DCA 1986); *Schooley v. Wetstone*, 258 So.2d 483 (Fla. 2d DCA 1972).

the predecessor in title to all of the properties involved in this case platted the entire Sugarmill Woods residential/mixed use development project, consisting of 15,400 acres, and recorded the plat in the public records of Citrus County, Florida. The plat shows mixed uses for the land: single family lots, multi-family projects, recreational areas, commercial sites, and streets. By January 1994, Cypress Village and Oak Village had been constructed. However, none of the land involved in this case (Pinewood and Palm Villages) had been developed. No streets or other improvements had been made, and no lots had been sold. The undeveloped parcel was sold to Sugarmill, and in turn, it sold a smaller parcel to Love.

Schultz relies on language in the plat which purports to dedicate the streets and park areas to the public. He took the position that Sugarmill has no right to use the platted public areas for cattle grazing, without formal approval from Citrus County, since the dedication language of the plat was unqualified. Section 177.081(2) provides:

> When a tract or parcel of land has been subdivided and a plat thereof bearing the dedication executed by the developers and mortgagees having record interest in the lands subdivided and the approval of the governing body has been secured and recorded in compliance with this chapter, all streets, alleys, easements, right-of-way, and public areas shown on such plat, unless otherwise stated, shall be deemed to have been dedicated to the public for the uses and purposes thereon stated.

§ 177.081(2), Fla. Stat. (1995).

Both parties conceded that it would be economically impossible for Sugarmill to fence off the public areas shown on the plat so as to restrict the cattle grazing to simply the platted lot areas. Schultz argues that unless Sugarmill replats the property and qualifies the dedication of the roads and public area to the public, or obtains approval from the county for use of the dedicated property for

commercial agricultural use, its agricultural classification must be denied because it is not "*bona fide.*" However, this argument is inconsistent with Schultz' granting an agricultural classification for the improved pasture area and the planted pines, although they too are part of the platted, undeveloped villages. Additionally, since 1973 the whole of the platted areas has been taxed by Citrus County, with no exception for the claimed public streets and park areas.

At trial, it was shown that other than Sugarmill and Love, there are no other owners of the platted property. No streets or other improvements have been built. Agents for the owners testified that no development of this property was contemplated for a long period of time. They intended to use the land as it always had been -- for forestry and cattle grazing.

Sugarmill argued that until the roads have been constructed and accepted by the county for maintenance, it has the right to use the whole of the parcel for agricultural purposes. *See Daniel v. State Turnpike Authority,* 213 So.2d 585, 587 (Fla. 1968); *Dept. of Commerce v. Mathews Corp.,* 358 So.2d 256, 260 (Fla. 1st DCA 1978). It also pointed to language added to the Improvement Agreements between Citrus County and Sugarmill's predecessor in title in 1981. They provide:

> The County has accepted the plat for all Villages as recorded in Plat Book 9 Pages 86-150, inclusive,... and *shall accept the area depicted on said plat as dedicated for public use, including, but not limited to streets, at such time as said improvements are satisfactorily completed*...Nothing in the agreement shall be construed as meaning that the County agrees to accept the streets or other improvements for maintenance by the County unless said streets or said improvements are agreed to be accepted for maintenance by formal resolution doing so and describing therein the streets and improvements accepted for maintenance. (emphasis supplied)

Sugarmill presented testimony of witnesses involved in the original platting who stated that the public areas of the plats were not intended to be dedicated and accepted by the county until the

improvements required to be made on the plats were completed, village by village. This is consistent with the manner in which Citrus County has handled this project in the past. Further, this interpretation is compatible with the lack of public dedication of the park areas on the plats, for it would be anomalous to have the streets dedicated and accepted at a time prior to the dedication and acceptance of the parks.

This situation is distinguishable from those cases in which third parties purchased lots in a platted subdivision which shows streets and parks. Those parties might have enforceable rights to use the platted streets and parks.[10] However, in this case, there are no third-party lot owners. Love and Sugarmill purchased their large parcels in fee from the platter-predecessor in title. Only they would have standing to complain about enforcing rights to platted streets and parks, and they are not complaining.

We agree with the trial court that the deed restrictions, platting and dedication of streets and parks in the undeveloped villages should have no impact on, and play no part in, denying agricultural classification for lands used for agricultural purposes. Other cases involving platted but undeveloped lands have held that agricultural classification should not be denied for other reasons. In *Harbor Ventures, Inc. v. Hutches*, the court held that section 193.461(4)(a) did not apply to deny agricultural classification to property rezoned from a non-agricultural use to another non-agricultural use. However, as in this case, the land was rezoned to a PUD. That circumstance was not used to deny the agricultural classification. In *The Glades, Inc. v. Colding*, part of the property involved was platted as a subdivision. However, it had been used as a nursery area for plants. The court ruled

---

[10] *City of Miami v. Florida East Coast Ry. Co.*, 79 Fla. 539, 84 So. 726 (1920); *Spencer v. Wiegart*, 117 So.2d 221 (Fla. 2d DCA 1959); *Feig v. Graves*, 100 So.2d 192 (Fla. 2d DCA 1958).

there was no reason to deny it agricultural classification. The court specifically rejected the owner's intended future use of the land (subdivision development) and the high purchase price as determinative factors, regarding denial of an agricultural classification. The fact that the land was platted and undeveloped was also an additional factor insufficient to deny it the classification.[11]

The acceptance of Schultz' argument on this point also appears to be inconsistent with *Bass v. General Dev. Corp.* In *Bass*, the supreme court held that section 193.461(4)(a)(4), Florida Statutes (1975) was unconstitutional because it created an irrebuttable presumption that lands for which an owner had recorded a plat were not entitled to an agricultural classification. The court said that agricultural use is the only proper test for classifying land agricultural for ad valorem tax purposes. It pointed out that the filing of a subdivision plat has very little to do with the present use of the property. It concluded that a statute which creates an irrebuttable presumption that the land was not being used for agricultural purposes *solely* on the basis of the recording of a platted subdivision was violative of the Equal Protection Clause.[12]

Consistent with the holding in *Bass*, we conclude that an agricultural classification for land cannot be denied *solely* because a plat containing it has been placed of record. Schultz relies on section 177.081(2), but if it has the effect he argues for, it also would be unconstitutional pursuant to *Bass*. Thus we affirm the trial court on the cross-appeal.

AFFIRMED in part; REVERSED in part.

GRIFFIN, CJ., and PETERSON, J., concur.

---

[11] *See also Wilkinson v. Kirby*, 654 So. 2d 194 (Fla. 2d DCA 1995).

[12] Art.1. § 2, Fla. Const.

best frivolous, entitling third-party defendant to award of attorney fees; third-party plaintiff tried to create issue of material fact precluding summary judgment by maintaining position contradicting plaintiff's testimony in previous, related suit. West's F.S.A. § 57.105.

Brown and Corirossi and Robert Corirossi, Miami, for appellant.

Kubicki, Bradley, Draper, Gallagher & McGrane and Gail L. Kniskern, Miami, for appellee.

Before SCHWARTZ, C.J., and LEVY and GERSTEN, JJ.

PER CURIAM.

[1] Mario Freixas [Freixas], the third-party plaintiff below, appeals the trial court's entry of a Final Summary Judgment in favor of the third-party defendant, the Buena Vista Lakes Condominium Association, Inc. [Association]. Freixas claims that the trial court should not have entered a summary judgment, in connection with his claim against the Association, because of the alleged existence of a genuine issue of material fact. The trial court was eminently correct in determining that no genuine issue of material fact existed. Rather, the paper "issue" pointed to by Freixas amounts to no more than the problematic confusion created by the fact that the position that he is maintaining in this litigation specifically contradicts the sworn testimony that he gave in a prior related lawsuit. The Courts of this State cannot, and in this case did not, countenance such legal maneuvers and tactics.

Finding Freixas's position to be totally devoid of even any arguable merit, we affirm the Final Summary Judgment entered in favor of the Association and against Freixas.

[2] Turning now to the trial court's order denying the attorney's fees sought by the Association pursuant to the provisions of Section 57.105, Florida Statutes (1987), we must disagree with the trial court. Not only do we find the litigation initiated by Freixas against the Association to be devoid of merit and, furthermore, totally lacking even the slightest suggestion of a justiciable issue, we find the said litigation to be frivolous at best and odious at worst. We hold that the Association is clearly entitled to an award of attorney's fees under Section 57.105, Florida Statutes (1987) and, accordingly, remand this matter to the trial court with directions that attorney's fees be awarded, under the above-cited statutory section, to the Association.

Affirmed in part, reversed in part and remanded with directions.

Joel W. ROBBINS, as Property Appraiser of Dade County, Appellant,

v.

Melvin R. YUSEM, Trustee, and Sam D. Alexander, Acting Director of the Department of Revenue, Appellees.

No. 89-286.

District Court of Appeal of Florida, Third District.

Feb. 27, 1990.

Rehearing Denied May 17, 1990.

Property appraiser brought suit to reinstate a nonagricultural classification and tax assessment on parcel of real property. The Circuit Court, Dade County, Murray Goldman, J., entered order dismissing with prejudice, and property appraiser appealed. The District Court of Appeal, Jorgenson, J., held that commercial agricultural use of property in violation of applicable zoning regulations cannot be considered a "good faith" commercial agricultural use, within meaning of agricultural exemption from property taxation.

Reversed and remanded.

1. **Taxation** ⇐348.1(3)

Commercial agricultural use of property in violation of applicable zoning regulations cannot be considered a "good faith" commercial agricultural use, within meaning of agricultural exemption from property taxation. West's F.S.A. § 193.461.

See publication Words and Phrases for other judicial constructions and definitions.

2. **Taxation** ⇐348.1(3)

Agricultural property tax exemption statute must be strictly interpreted. West's F.S.A. § 193.461.

3. **Taxation** ⇐348.1(3)

Under statute exempting agricultural use of property from taxes, taxpayer may overcome finding that commercial agricultural use of property is not in "good faith" because it is prohibited under zoning laws, by showing that use is legal nonconforming use. West's F.S.A. § 193.461.

Robert A. Ginsburg, Dade County Atty., and Daniel A. Weiss, Asst. County Atty., Robert A. Butterworth, Atty. Gen., and Joseph C. Mellichamp, III, Asst. Atty. Gen., for appellant.

Steel, Hector & Davis and Samuel J. Dubbin, Miami, for appellees.

Before SCHWARTZ, C.J., and JORGENSON and COPE, JJ.

JORGENSON, Judge.

The Dade County Property Appraiser (Property Appraiser) appeals an order dismissing with prejudice his complaint to reinstate a nonagricultural classification and tax assessment on a parcel of real property. For the following reasons, we reverse.

Melvyn R. Yusem, Trustee (taxpayer), is the legal titleholder of record of a parcel of real property zoned IU–C (Industrial District, Conditional) under the Dade County Zoning Code. Although the land was zoned for industrial use, the property was actually used for the commercial farming of yucca and calabaza. The property had not been used for farming in 1983, 1984, or 1985. In 1987, the Property Appraiser denied the taxpayer's application for an agricultural classification on the grounds that the agricultural use was illegal under the zoning code and thus could not be considered a "good faith" use of the property within the meaning of the Greenbelt Law, section 193.461, Florida Statutes (1987). The taxpayer appealed to the Property Appraisal Adjustment Board of Dade County (PAAB). A special master heard the petition and recommended agricultural classification. The PAAB adopted the special master's recommendation and reduced the property's preliminary assessment from $1,900,584 to $8,730. The Property Appraiser then filed an action in the circuit court seeking reinstatement of the preliminary assessment and denial of the agricultural classification. The taxpayer moved to dismiss the action for failure to state a claim, arguing that present agricultural use of the property is the dispositive factor in classifying the land for ad valorem taxation. The trial court granted the motion and entered a final order dismissing the complaint with prejudice.[1] The Property Appraiser appeals; we reverse.

The issue presented by this appeal is whether the actual commercial agricultural use of property in violation of Dade County zoning ordinances can be considered a "good faith" agricultural use entitled to preferential tax treatment under section 193.461, Florida Statutes (the Greenbelt Law). The question is one of appellate first impression.

[1] Agricultural classification or "exemption" for property tax purposes is governed by section 193.461, Florida Statutes (1987). That section states:

> [O]nly lands which are used primarily for bona fide agricultural purposes shall be classified agricultural. *'Bona fide' agricultural purposes means good faith*

1. On appeal, the property appraiser argues that the trial court erroneously considered the taxpayer's affirmative defense of selective enforcement when it ruled on the motion to dismiss. Because the record does not reflect that the trial court's order was based in any way on that affirmative defense, we do not address the issue.

commercial agricultural use of the land. In determining whether the use of the land for agricultural purposes is bona fide, the following factors may be taken into consideration:

1. The length of time the land has been so utilized;
2. Whether the use has been continuous;
3. The purchase price paid;
4. Size, as it relates to specific agricultural use;
5. Whether an indicated effort has been made to care sufficiently and adequately for the land ...;
6. Whether such land is under lease ...; and
7. Such other factors as may from time to time become applicable. (Emphasis added.)

Section 193.461(3)(b).

In applying the "good faith" requirement, Florida courts have consistently construed "good faith" to mean "real, actual and of a genuine nature as opposed to a sham or deception." *Bystrom v. Union Land Invs., Inc.*, 477 So.2d 585, 586 (Fla. 3d DCA 1985), *rev. denied*, 488 So.2d 69 (Fla.1986); *Hausman v. Rudkin*, 268 So.2d 407, 409 (Fla. 4th DCA 1972). Agricultural use alone does not entitle a taxpayer to an agricultural exemption. *See Markham v. Fogg*, 458 So.2d 1122 (Fla.1984) (land used primarily for grazing cattle did not qualify for "good faith" agricultural classification); *Champion Realty Corp. v. Burgess*, 541 So.2d 615, 618 (Fla. 1st DCA) (even if the "sole act of cutting down trees ... was the most significant physical activity on the land," no agricultural classification would be granted where the Property Appraiser and the court found that such use was not "bona fide"), *rev. denied*, 549 So.2d 1013 (Fla.1989). The Property Appraiser concluded, and we agree, that, if the "good faith" requirement excludes from agricultural classification *sham* physical agricultural use, it must also exclude from agricultural classification *unlawful* physical agricultural use.[2]

The taxpayer's agricultural use of the property was unlawful under the Dade County, Florida Code § 33–268, which reads: "No land, ... in an IU–C district shall be used or permitted to be used, ... (except as a legal nonconforming building or use), except for one or more of the uses hereinafter enumerated...." Commercial agricultural use is not one of the many enumerated permitted uses and is thus an unlawful use.[3]

The legislative history of the Greenbelt Law supports the Property Appraiser's denial of an agricultural classification. The legislative intent of the Greenbelt Law is to conserve, protect, and encourage the development and improvement of agricultural lands suffering from the urban pressure of expanding metropolitan development. See preambles to chapters 59–226 and 72–181, Laws of Florida. The property in question was not agricultural land threatened by urban development but urban land classified exclusively for industrial development. There was no previously existing agricultural use to conserve or protect.

[2] We must strictly interpret the agricultural exemption statute. "While doubtful language in taxing statutes should be resolved in favor of the taxpayer, the reverse is applicable in the construction of exceptions and exemptions from taxation."

2. *See, e.g., Bower v. Edwards County Appraisal Dist.*, 752 S.W.2d 629 (Tex.App.1988) (taxpayer could not claim agricultural exemption for land used for raising deer and the vegetation which they ate where deer were wild and state law prohibited private ownership of wild deer).

3. An exception to the general rule that only enumerated uses are permitted in any zoning district is the nonconforming use doctrine. *See* § 33–1(76), Code of Metropolitan Dade County, Florida. That section permits "[u]se of any property or premises in any manner which does not comply with the regulations provided for in the district in which the property or premises is situated, *if such use was originally legally established.*" (Emphasis supplied.) The exception does not apply here. The property appraiser alleged in his complaint that the agricultural use was not permitted, and that the property had not been used for agriculture during the years 1983–1985. We must, for purposes of appellate review, assume facts alleged in the complaint to be true. *Connolly v. Sebeco, Inc.*, 89 So.2d 482 (Fla.1956).

United States Gypsum Co. v. Green, 110 So.2d 409, 413 (Fla.1959). This court, affirming a summary judgment denying a taxpayer favorable tax treatment, stated: "[I]n order for a taxpayer to receive a benefit different in kind from other taxpayers, it is necessary for him to strictly comply with *all* conditions which would be necessary to entitle him to the special treatment." *Jar Corp. v. Culbertson*, 246 So.2d 144, 145 (Fla. 3d DCA), *cert. denied*, 249 So.2d 690 (Fla.1971).

[3] Where, as here, the use of the property for commercial agriculture was prohibited by law and therefore was not in "good faith" as required by the Greenbelt Law, the Property Appraiser's denial of agricultural classification was proper.[4] Contrary to the taxpayer's argument, our decision will not create an unconstitutional irrebuttable presumption. At the outset, a finding that commercial agricultural use is not bona fide because it is prohibited under the zoning laws may be overcome by a showing that the use is a legal nonconforming use. Once the Property Appraiser determines, however, that the use is prohibited and is not a legal nonconforming use, the use, as a matter of law, is *not* bona fide and is *not* in good faith. That conclusion is a rule of substantive law, not an evidentiary presumption. *See* Ehrhardt, *Florida Evidence* § 301.3 (2d ed. 1984) ("Although some rules of law are called conclusive presumptions from time to time, they are not properly included in a codification of the law of evidence since they are rules of substantive law in the particular area in which they exist.").

Moreover, 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. Accordingly, we conclude that, as a matter of law, agricultural use of property in violation of applicable zoning regulations cannot be considered "good faith" commercial agricultural use of the land entitling its owner to an agricultural exemption. The Property Appraiser's complaint therefore stated a cause of action.

Reversed and remanded for further proceedings consistent with this opinion.

4. The County's failure thus far actively to enforce its zoning code does not transform the prohibited use into a permitted use.

Joel W. ROBBINS, as Property Appraiser of Dade County, Appellant,

v.

STUART INTERNATIONAL CORPORATION and Sam D. Alexander, Appellees.

No. 89-994.

District Court of Appeal of Florida, Third District.

March 6, 1990.

Rehearing Denied April 20, 1990.

An Appeal from the Circuit Court for Dade County; Bernard R. Jaffe, Judge.

Robert A. Ginsburg, Dade County Atty., and Daniel A. Weiss, Asst. County Atty., for appellant.

Fine Jacobson Schwartz Nash Block & England and Bonnie J. Losak-Jimenez, Miami, for appellees.

Before BASKIN, FERGUSON and JORGENSON, JJ.