

OA 12-1-98

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 REPLY BRIEF ON MERITS

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CITATIONS	i
PRELIMINARY STATEMENT	iii
SUMMARY OF THE ARGUMENT	1
ARGUMENT I AND II	3
ARGUMENT	4
CONCLUSION	14
CERTIFICATE OF SERVICE	15

TABLE OF CITATIONS

CASES:

PAGE:

Love PGI Partners, L.P. v. Schultz 1, 7
706 So. 2d 887 (Fla. 5th DCA 1998)

Holly v. Auld, 450 So. 2d 217 (Fla. 1984) 8, 14

Robbins v. Yusem, 559 So.2d 1185, 1187 14
(Fla. 3d DCA 1990)

STATUTORY AUTHORITY:

PAGE:

Chapter 125.00 7
Chapter 163.00, Part II 1, 3, 6, 7

CASES:

PAGE:

§163.3161 Fla. Stat. 2
§163.3177 Fla. Stat. 3, 7
§163.3177(10) Fla. Stat. 4
§163.3178 Fla. Stat. 3
§163.3194(5) Fla. Stat. 3
§163.3194(6) Fla. Stat. 2, 6
§193.461 Fla. Stat. 14
§193.461(3)(d) Fla. Stat. 4
§197.461(4)(a)(3) Fla. Stat. 3
Chapter 380 1, 6
Chapter 380.04 6
§380.04(3)(e) Fla. Stat. 1, 2, 4, 6, 8,
9
§380.021 2, 6

FLORIDA ADMINISTRATIVE CODE:

PAGE:

Fla. Admin. Code, R. 9J-5.000 et. seq. 3, 4, 7
Fla. Admin. Code, R. 9J-5.001 6
Fla. Admin. Code, R. 9J-5.001(1) 7
Fla. Admin. Code, R. 9J-5.001(10) 7
Fla. Admin. Code, R. 9J-5.003(4) 4, 5

CITRUS COUNTY LAND DEVELOPMENT CODE:

PAGE:

Section 1100	7
Section 1300	2, 8
Section 1300 (D)	2, 5, 8, 9, 14
Section 1300 (E)	2, 5, 8, 9, 14, 15
Section 1500	5
Section 2020	9, 15
Section 2021	9
Section 2023	9, 10
Section 2023 (A) (2) (d)	9
Section 2030	14
Section 2200	3
Section 4100	10
Section 4140	10
Section 4143	10
Section 4143 (3)	10
Section 4153	10
Section 4153 (6)	10
Section 4340	11
Section 4342	11
Section 4478	11
Section 4500	11
Section 4524	11
Section 4525	11
Section 4600	11
Section 4620-4630	11
Section 4621	12
Section 4627	12
Section 4634	12
Section 4637	12
Section 4640	12
Section 4641 (H)	2, 12
Section 4680 (B)	14

OTHER AUTHORITIES:

PAGE:

Appendix G to the LDC	9
49 Fla. Jur. 2d, <u>Statutes</u> §115	6

PRELIMINARY STATEMENT

The list of acronyms listed in Petitioner's Brief on Merits, dated July 24, 1998, page iv, will be utilized herein for brevity's sake. Reference to Part II, Chapter 163.00, Fla. Stat., Florida's "Local Government Comprehensive Planning and Land Development Regulation Act" is by the phrase "Act". Reference to Fla. Admin. Code R. 9J-5.00 will be "Rule 9J-5.00". Also attached are copies of cited Citrus County Land Development Code (LDC) text regulations pertaining to agriculture. Again, such are attached for brevity's sake.

SUMMARY OF ARGUMENT

The Fifth District Court of Appeal decision in Love PGI Partners, L.P. v. Schultz 706 So. 2d 887 (Fla. 5th DCA 1998), and Respondent's argument in support thereof leads this Court to support an irrational legal conclusion in construing the relationship of Florida's land use regulatory statutes - Chapter 380, Laws of Florida (the DRI/Area of Critical Concern regulatory statute); Part II, Chapter 163.00, Laws of Florida (local land use planning), and the Citrus County CLUP and LDC. Respondent seeks to narrowly construe the definition of "development" in each respective statute to exempt itself from compliance with the Act and Citrus County Code regulations. In doing so, the Respondent ignores basic fundamentals of statutory construction. Respondent fails to read the noted statutes in total and in "pari materia", fails to give any meaning to unambiguous wording which narrows the exclusion relied upon and by such argument renders certain sections of the noted statutes and code meaningless.

Petitioner respectfully asserts such is legal error as:

1. The definition of "agricultural" as stated in 380.04(3)(e) is an all encompassing definition which includes cattle grazing activities and other activities as set forth

therein. The distinction, if any, between the terms §380.04(3)(e) Fla. Statutes and definition of agricultural as used in the Act and Code is meaningless to the issue at hand. More importantly, per the words of the statute, the exclusion of agricultural activities within §380.04(3)(e) is expressly limited for "purpose of this Chapter". Said purpose is set forth in §380.021, Fla. Stat. and differs from the legislative purpose of the Act - (See §163.3161, Fla. Stat.) and the Code (See Section 1300E). This limiting language on the exclusion of agricultural activities is carried forward into the definition of "development" per §163.3194(6) and the Code regulations;

2. (a) Citrus County Code regulations expressly and clearly regulate agricultural land uses to include Sugarmill's "cattle grazing". Respondent fails to cite in total the "Purpose and Intent" section of the Code, Section 1300, citing in part only Section (J). The complete text of pertinent sections evidences a contrary intent than Respondent's position. See Section 1300D and E, page 8 herein. See Section 4641(H) page App. 31. The trial court rejected said arguments as the testimony did not support same and relied on testimony of the County's Director of Development Services in rendering its findings of the Code's regulatory intent.

(T-32), (T-44)

(b) That Code regulations govern the Respondent's "recommencement" of agricultural uses of its property as such represents a change of use per Section 2200 of the Code requiring a development order, but per the Code, the Respondent's use is not authorized.

3. To accept Respondent's argument requires the Court to ignore significant sections of the Act (See §163.3177 and §3178), R. Rule 9J-5.00 and the CLUP and LDC each of which has specific requirements relative to Agricultural land uses and Respondent argument makes these sections meaningless if the exception applies throughout the land use regulatory process. Accepting Respondent's position, §197.461(4)(a)(3) Fla. Stat. is rendered meaningless as Agriculture as a land use district is now immaterial given that Agriculture is allegedly not development in any plan and code adopted per the Act.

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 ABROGATE 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.

ARGUMENT

Respondent's attempt to distinguish and characterize its "cattle grazing" activities as an agricultural use which differs in some material respect from other agricultural uses as defined in the Act and CLUP or the Code is simply inappropriate. If one reads the list of agricultural uses set forth in §380.04(3)(e), Fla. Stat., such is all inclusive definition. The last phrase of the statute clearly evidences such - it states "for other agricultural purposes". If one compares the statute with the definition of agricultural use found within Rule 9J-5.003(4), the similarity is remarkable. See page 23 of Petitioner's Initial Brief. It is important to recognize that this statutory definition was adopted pre the passage of Act and the legislature was aware of this definition when it passed the Act in 1986. Also, the legislature recognized the significance/importance of Rule 9J-5.000 in the land use planning process. See §163.3177(10) Fla. Stat. The term agriculture as used in the Act is as per the noted administrative code definition. Such encompasses the Respondent's cattle grazing activities.

Within the Citrus County CLUP and Code, the term "agricultural" as used therein is also as per definition of Rule 9J-5.003(4). The testimony of Gary Maidhof, Citrus County Planner, was clear and unchallenged that the term "agriculture" as used in the Code, (while not expressly defined), was incorporated by reference from Rule 9J-5.003(4) pursuant Section 1500 of the Code (T-79). While the Act and Code share a common definition of "development", that definition of "development" has to be read in conjunction with the full Purpose and Intent of the Code, §1300 D and E and the testimony presented at trial. The conclusion that cattle grazing activities is not one of the regulated agricultural uses is simply not supported by the Code or the trial testimony. Cattle grazing activities, silviculture and many other agricultural land uses are expressly addressed within the Code and accordingly regulated by such. Also, the Code, as discussed on pages 12-13 of this Reply Brief, has an express provision dealing with the commercial raising of livestock and what land use districts require permits for this use and where such use is a use as a matter of right. See Petitioner's Appendix where the specific Code sections referencing agricultural development contracts and exemptions are noted.

The Respondent's position is simply that the exemption of

agricultural uses in the definition of "development" per §380.04 Fla. Stat. as incorporated within Section 163.3194(6) of the Act and the Code is clear and unambiguous. According to traditional concepts of statutory construction, one gives meaning to these clear words. Both the Respondent and the Fifth District Court of Appeal opinion fail to address that the statutes language that the exclusion is limited strictly to the purposes of Chapter 380, Laws of Florida. That purpose is defined at §380.021, Fla. Stat. Land use plans and regulations (per the Act) are not intended to implement "areas of critical state concern", nor are they designed to regulate "developments of regional impacts". Accepting Respondent's logic that one must follow the clear statutory language, then it is incumbent upon this Court to give meanings to the phrase "for the purposes of this Chapter" as used in §380.04(3)(e). As a matter of law, it is inappropriate to pick and choose words in construing statutes; one has to give full meaning to all phrases. 49 Fla. Jur. 2d, Statutes §115.

The requirements of Part II, Chapter 163, Fla. Stat., are the minimum for a land use plan and land development regulations required for each local government within the State. These minimum criteria are derived from Rule 9J-5.001. Each county and municipal government was required to create and adopt a comprehensive land

use plan and thereafter within one year of that plan create a set of land development regulations which implemented same. The Act and the Rule are clear that these regulations are the minimum. §163.3177 Fla. Stat.; Rule 9J-5.001(1), (10). Nothing prohibits a local government from adopting stricter standards. Nothing prohibits a local government from adopting optional elements discussed in the Act. Within Citrus County, the Plan and land development regulations were found consistent as defined by the Act and the Rule 9J-5.000. A complete reading of the Code clearly indicates that the County went beyond the minimum requirements of the Act and in that process Citrus County regulates agricultural land uses. On this point the Fifth District Court of Appeal was uncertain. Love PGI, 706 So. 2d at 893. The following discussion takes away any uncertainty and shows this conclusion to be erroneous.

Section 1100 of the Citrus County Land Development Code labeled "Authority" provides that the Code is adopted pursuant to Chapter 163, Part II, Fla. Stat. and Chapter 125, Fla. Stat. The decision in Love PGI v. Schultz implies the sole basis of authority for the County land development regulations under review herein was the Act. The above section clearly indicates that finding was incorrect.

Continuing, Section 1300 labeled "Purpose and Intent" of the Code is attached in its entirety in Petitioner's Appendix, page 2. Respondent has cited to this Court Subsection J thereof. The quotation is accurate, however, using traditional statutory construction, one should read the whole section to find its meaning and purpose. Holly v. Auld, 450 So.2d 217 (Fla. 1984). Subsections D and E of the "Purpose and Intent" section of the Code expressly address the role of agriculture as regulated land use within the Code. These sections provide:

D. Protecting the character and maintaining the stability of residential, agricultural, business, industrial, recreation and public areas.

E. Promoting the orderly development of residential, agricultural, business, industrial, recreation and public areas. [Emphasis supplied].

Based on the principles cited in Respondent's Brief, this Court should give meaning to the clear and unambiguous intent Section 1300 D and E; that the County intends to regulate the orderly development of land to include agricultural uses. Respondent argues that the Code's incorporation of the term "development" as used within §380.04(3)(e) Fla. Stat. which carries with it the exclusion of "cattle grazing". Yet this definition section of the Code also incorporates by reference the definition of "agricultural" from the administrative code which includes like

activity. The same Code definition section also contains a definition of "silviculture". This land use activity is within the scope of the exemption language found within §380.04(3)(e). If such is exempted per the Respondent's argument then Citrus County has adopted a definition for which it has no intent to regulate. Reading the Code in total and implementing per Sections 1300(D) and(E) the County intended to regulate agricultural land uses.

Section 2020 of the Code indicates when local development orders are required. See: Petitioner's Appendix, page 7. The operative phrase is "development per the Code". Section 2021 speaks to the change of use and requires a specific application for a development order when a change of use occurs. Section 2023 defines the test for a determination of a change of use. Herein one has a "recommencing" of agricultural activities. Per Section 2023(A)(2)(d) a change of use occurs if the intended use is inconsistent with the existing land use classification. Herein, the PRD district which the Sugarmill parcel is designated does not allow for agricultural uses to include cattle grazing. Such are expressly prohibited per Appendix G to the Land Development Code. (T-44). Confirmation of such is found via the testimony at trial of Mr. Maidhof and the Director of Development Services. As this new use is inconsistent with the land use district of Sugarmill, it

is a change of use requiring a County development order. Section 2023 of the Code deals with exemptions from the Code; there is no exemption for agricultural uses.

Chapter III of the Code addresses vested rights and non-conforming uses. Significantly, the Respondent elected not to seek a determination of vested rights or non-conforming use, rather relied upon an interpretation of the County zoning official.

Chapter IV of the Code which deals with on the on site requirements for any regulated land use activity under the Code. Section 4140 sets express stormwater management standards. Section 4143 is the exemption provision from the Code's stormwater development; subsection 3 thereof provides as exempt: "Bona fide agricultural activity which has a permit from SWFWMD." The Code exempts from general stormwater standards any agricultural activity provided that such use has a permit from the water management district. Chapter IV also includes a section (4100) which deals with delineation of wetlands and protection of wetlands from development activity. Section 4153 sets forth the standards. This section also has an exemption section. Section 4153(6) provides an exemption for it.

Cultivating or harvesting agricultural, horticultural or silviculture or acuacultural products that occur naturally on sites.

Again, the Code reflects that an intent to regulate agricultural activities by a limited exemption for selected agricultural uses but not all such uses!

Continuing, Chapter IV also has a provision in Sections 4342 and 4340 of the Code for protection of trees on site therein implements specific on site standards. Like the above sections of the Code, there is an exemption provision. Subsection 3 thereof provides an exemption for "act of operation of bona fide agricultural forestry purposes." Again the Code evidences an attempt to regulate agricultural land uses by the exemption from a specific regulatory criteria. Chapter IV of the Code continues by providing regulations for fences and walls. Section 4478 of the Code defines the fencing requirements within the Agricultural district.¹ The Code also incorporates operational performance standards for noise. Section 4500. The Code defines sound levels by receiving land use within Section 4524, one such land use district is the agricultural district. Section 4525 of the Operational Performance Standards for noise has an exemption provision. Subsection A(4) provides an exemption for agricultural-type operations. Again, evidencing an intent to regulate

¹In 1997, when Sugarmill recommenced its cattle grazing and installed fencing, such was subject to this Code section!

agricultural uses by limited exemption for a specific section but not all inclusive in its exemption.

Section 4600 of the Code defines the regulation varied land use in the Code. Sections 4620-4630 describes the varied land use districts. A review of these districts within the Code indicates that "agricultural uses" are authorized in the Low Intensity Coastal and Lakes District, (Section 4620); the Rural Residential District, (Section 4621); the Extractive District, (Section 4634); and the Agricultural District, (Section 4637). As to the Sugarmill land use district "Planned Residential Development" (Section 4627), there is no like delineation for agricultural uses as found in the other noted districts.²

Section 4640 of the Code defines the Codes varied land uses. This Section includes an express definition for agricultural uses, Section 4641(H). See Petitioner's Appendix, page 31. Finally, Chapter IV contains a section addressing regulation over raising of animals within its varied land use districts. It has two schedules, the first is for residential districts. Subsection B thereof is labeled "Animals as an Agricultural Use". It specifies the raising of an animal as an agricultural use, i.e. cattle

²Applying the rationale of Robbins v. Yusem, 559 So. 2d 1185 (Fla. 3d DCA 1990), if the use is not listed, it is prohibited.

grazing is permitted by right only in the agricultural district.

It further provides that such is permitted as a Level I action, (i.e. a permit is required) in the Low Intensity Coastal and Lakes, Rural Residential, Central Ridge Residential as a principal use. This Section concludes by stating that raising animals shall be done under guidelines of best management practices. Here, contrary to the Respondent's position that there exists an exemption for cattle raising, is an express declaration on the issue within the Code. It expressly says that permits are required in select districts other than agriculture. As to the district which the Respondent finds themselves such is not listed as an authorized district.

In spite of these repetitive and clear expressions within the Code either regulating agricultural uses or providing select exemptions, the Fifth District Court of Appeal concluded that it was "unclear" as to whether agricultural uses are regulated under the Code.

Clearly total breadth of the above noted Citrus County Code Regulations, and the testimony at trial, establishes that the intent of the Code is to regulate agricultural uses to include cattle grazing. This position is consistent with established principles of statutory construction. In reading a statute one

reviews the totality of that statute. Holly v. Auld, supra. Respondent has narrowly focused on the exemption language and said that such is clear and unambiguous. Petitioner will not address the litany of cases cited for this proposition. It is equally clear that the trial court rejected the testimony on this point as relied upon by Respondent. It is equally clear that the Code's "Purpose and Intent" Section, when read in whole, evidences an intent to regulate the development of agricultural uses. Section 1300 (D) and (E). It is also equally clear that Section 4680(B) addresses the raising of animals as an agricultural use, in fact requiring permits in certain districts. Respondent's argument to the contrary is not supported by a total reading of the Code. Using Respondent's case law these clear, unambiguous expressions of legislative intent should be recognized and given meaning, not ignored.

CONCLUSION

Respondent's "cattle grazing" activities, an agricultural land use per the Act and the Code is a prohibited land use in its land use district of PRD. Thus such is not in "good faith", nor bona fide per §193.461, Fla. Stat. and Robbins v. Yusem, supra. Agricultural land uses are not expressly exempted per Section 2030

of the Code. The Code regulates "development allowed by the Code" (Section 2020) not just "development". The Code in its "Purpose and Intent" Section 1300 E. expressly addresses the regulation of "promoting orderly development of agricultural". Appendix G of the Code is clear and unequivocal in its substance and text. Notwithstanding Respondent arguments, a total reading of the Code evidences an intent contrary to the District Court opinion which admittedly was uncertain in its construction of the Code. Given the above clarification of legislative intent the decision of the Trial Court which recognized this intent should be reinstated.

Dated on this 2nd day of September, 1998.

Respectfully submitted,

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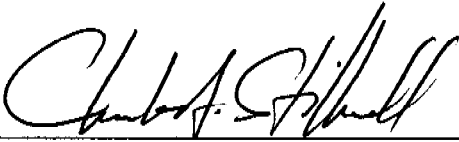
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CERTIFICATE OF SERVICE

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 2nd day of September, 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.

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