

Akerman Practice Update

FLORIDA REAL ESTATE TAX APPEALS

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Meeting the March 1st Deadline for Agricultural Classification

INSIDE

Tax Assessment of Income-Producing Properties	3
New Legislation Creates Exemption with Application Deadline of March 1st	4
Impact of Environmental Issues in Property Tax Appeals	5

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Over \$100 billion of land in Florida is classified agricultural and taxed at reduced values less than ten (10%) percent of just value. Florida's express public policy is to conserve, protect, and encourage agricultural and greenbelt lands. Hence, landowners using their property for agricultural purposes receive significant tax savings.

Qualifying for Agricultural Classification

Agricultural Purposes

First, the "use" of the land must be for "agricultural purposes," which is broadly defined as including but not limited to, horticulture; floriculture; forestry; dairy; livestock; poultry; bee; tropical fish; aquaculture; sod farming; and all types of farm products. The list is broad and inclusive in its general terms and does not necessarily exclude categories not listed. For example, horses are "livestock," and use of land for breeding, boarding, training or other commercial purposes involving horses can be agricultural.

Primary Activity

Second, agricultural use must be the "primary" activity that takes place on the land. If a residence is on the land, the area of the house and grounds will be excluded from the agricultural classification.

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“For property to be granted agricultural classification, the use of the land must be primarily for commercial agriculture.”

Commercial Use

Third, the agricultural use must be “commercial,” which means with an intent to make a profit. It is not enough to grow fruit or vegetables for your own use or keep a pet cow or your own horses for pleasure or sport.

Bona fide use

Fourth, the agricultural use must be “bona fide,” which means good faith – real, actual, and genuine and not a sham or deception. For example, if you apply for agricultural classification for a horse boarding farm, you should be boarding other people’s horses.

The Legislature has provided a list of factors that the Property Appraiser may weigh and consider in determining whether the agricultural use is bona fide, i.e., commercial agriculture:

- The length of time the land has been so utilized
- Whether the use has been continuous
- The purchase price paid
- Size, as it relates to agricultural use
- Whether an effort has been made to follow accepted commercial agricultural practices, including fertilizing, liming, tilling, mowing, reforestation, and other accepted agricultural practices
- Whether such land is under lease and, if so, the effective length, terms, and conditions of the lease
- Other factors which may be applicable, are set forth in the Florida Administrative Code, Rule 12D5.004

New Applications – Procedure

Property owners in Florida must apply for agricultural classification by March 1st in order to receive an agricultural exemption. Failure to make timely application by March 1st constitutes a waiver of the privilege for one year. If the property owner fails to file timely but is deemed entitled to agricultural classification, the owner may file a petition with the Value Adjustment Board (VAB) requesting that the classification be granted. The petition to the VAB must be filed no later than the twenty-fifth day following the mailing of the TRIM Notice from the Property Appraiser. There is a \$15.00 filing fee for the petition.

“It is important to meet the March 1st deadline or, in the alternative, file a timely appeal with the Value Adjustment Board.”

James McCann is a Shareholder in the firm's West Palm Beach office. He assists clients in resolving individual and business disputes, including tax assessment challenges throughout Florida.

Common Areas of Dispute

Many Property Appraisers emphasize the profitability of the use of property seeking agricultural classification. While profitability may be considered, it cannot be the determinative factor of whether agricultural designation is granted. Florida courts have found that a good faith commercial agricultural use of the land does not require a profit by the land owner.

Property Appraisers will often argue that agricultural classification of land requires that the property be part of a large agricultural operation. However, Florida law specifically provides that the size of the land used for agricultural should not be determinative. There are numerous small properties throughout the state that have been granted agricultural classification.

Conclusion

In applying for agricultural classification, it is important to meet the March 1st deadline or, in the alternative, file a timely appeal with the Value Adjustment Board. Failure to meet these deadlines will prevent you from obtaining agricultural classification and the concurrent reduction in assessed land value. It is imperative that you consider the factors set forth above before submitting your application. Legal Counsel can assist you in showing how your agricultural property satisfies as many of the factors as possible, and can guide you through the process of qualifying and obtaining agricultural classification for your land.

Tax Assessment of Income-Producing Properties

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Many non-homestead property owners will be receiving correspondence from their respective Property Appraisers requesting income and expense information to assist in the valuation process. Florida courts have interpreted Section 193.011, Fla. Stat. and Section 12 D-1.005 of the Florida Administrative Code as giving the Property Appraisers the right to the information in order to perform a proper assessment. Property Appraisers generally provide a deadline in March or April to supply the requested information. Failure to provide information may result in an owner's inability to utilize the information in a challenge of the assessment either before the Value Adjustment Board or in Circuit Court.

“Property owners should not provide unnecessary information that could prove damaging to their challenge of the assessment.”

The ability to exclude the income and expense information is provided by *Higgs v. Good*, 813 So.2d 178 (Fla. 3rd DCA 2002). The Property Appraiser in *Higgs* mailed a form notice to non-homestead taxpayers requesting income and expense figures for their property, as well as their income tax returns for that year, by April 30th. The form notice explained that any data submitted after April 30th would not be considered for the current tax year and would be objected to if offered at a subsequent administrative or judicial proceeding. The property owner did not comply with the production deadline. *Higgs* challenged the appraisal and attempted to enter income data at trial. The trial court concluded that the Property Appraiser failed to properly consider the untimely submitted income data and set aside the County’s assessment.

The Property Appraiser appealed, and the appellate court determined that a deadline prevents a taxpayer from having an unfair advantage. Otherwise, owners could await the notice of assessed valuation and, if it is lower than fair market value, say nothing and enjoy the break or, if the valuation is higher than the owner likes, submit the data and insist upon its use. The court concluded that it was an error to permit the owner to defer the submission of the income data until it pleased him and then use the data to demand either administrative or judicial reduction of his property tax assessment valuation. To permit such an untimely submission of evidence would prevent the Property Appraiser from completing their duty and provide the property owner an undue advantage.

Property owners should not provide unnecessary information that could prove damaging to their challenge of the assessment. If you have any concerns on the requested data or its submission, you should contact legal counsel and perform the proper analysis of the information to be produced. Legal counsel can advise you on what exactly is required for submittal and develop a strategy for those owners who anticipate challenging the tax assessment.

J. Travis Godwin is a Shareholder in the firm’s Tampa office. He represents various clients in property tax appeals throughout Florida.

New Legislation Creates Exemption with Application Deadline of March 1st

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The 2009 Florida Legislature enacted legislation creating an exemption for

real property dedicated in perpetuity for conservation purposes and requirements to file an application to be assessed for lands subject to a conservation easement, environmentally endangered, or land

used for outdoor recreational or park purposes. The new legislation created section 196.26, Florida Statutes, outlining the definitions and requirements for owners to apply for an exemption for real property dedicated in perpetuity for conservation purposes. Those granted the exemption must reapply annually by March 1st.

The new statute also has a provision that land dedicated in perpetuity for conservation purposes and that is used for “allowed commercial uses”

is exempt from ad valorem taxation to the extent of 50% of the assessed value of the land. Legal counsel can assist you in filing the required forms to obtain the exemption.

Cecelia Bonifay is a Shareholder in the firm's Orlando office and is the Chair of Akerman's Green and Sustainable Development practice. She represents developers and governmental entities in a wide range of land use, sustainable development, and environmental matters.

Impact of Environmental Issues in Property Tax Appeals

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The environmental condition and history of a property plays an important role in determining the taxable value of a property, and in challenging the assessed value of the property before the Value Adjustment Board or in Circuit Court.

Certain commercial and industrial properties, such as current and former gas stations, dry cleaners, and automotive repair facilities, may have residual soil and groundwater impacts associated with the former operations at the properties. The assessed value of such properties may be adjusted to reflect the cost of responding and managing certain environmental impacts, the increased transactional costs owners normally incur when selling or leasing such properties, and the perception of environmentally-impacted properties by potential buyers and/or tenants as opposed to other "clean" properties. Adjustments to the taxable value of environmentally impacted properties to address such considerations may significantly reduce the property taxes for qualifying properties.

Robyn Neely is a Shareholder in the firm's Orlando office, representing multi-national corporations, developers, financial institutions, and various public and private sector clients on complex environmental transactions.

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In particular, property owners that have incurred costs to respond to notices of violations or enforcement actions brought by the applicable regulatory authorities, such as the United States Environmental Protection Agency, the Florida Department of Environmental Protection, or county environmental authorities, have a material basis for arguing that the assessed value of their

“Adjustments to the taxable value of environmentally impacted properties...may significantly reduce the property taxes for qualifying properties.”

property should take into consideration the costs (fines, penalties, consultant fees, etc.) that the owners incurred to resolve such matters, potential restrictions on the use and/or redevelopment of the properties, and the documentation of environmental impacts in the public records. In instances where the applicable authorities have permitted property owners to manage the continued presence of petroleum or other hazardous substances in soil and/or groundwater at the their properties, owners would likely benefit from confirming that they were not paying the same property taxes as owners of comparable properties without any environmental impacts. In addition, owners of properties participating in one of the various State of Florida Petroleum or Dry-Cleaning Cleanup Programs that provide financial or technical assistance to assist in the clean-up of certain qualifying properties, have a strong basis for asserting the assessed value of their properties should be adjusted until such activities deemed necessary by the applicable environmental authorities are complete.

Legal counsel with environmental and property tax appeal experience can advise you on how environmental condition and history of a property may impact the taxable value of a property, and to develop a strategy to challenge tax assessments that does not take environmental factors into account.

The summary set forth herein is intended to be general in nature and does not constitute legal advice with respect to any particular situation. No legal or business decision should be based solely on its contents. If you would like further information, please contact your principal lawyer at the firm or one of the Akerman shareholders listed below:

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