



FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES COMMISSIONER WILTON SIMPSON

October 31, 2023

VIA EMAIL (mr@atlasinvestmentgroupllc.com)

Atlas Investment Group LLC
440 Sawgrass Corporate Pkwy Suite 210
Sunrise FL 33025

Re: Agricultural Classification of Lands with Agritourism Activities

Dear Mr. Rodriguez,

Thank you for contacting the Florida Department of Agriculture and Consumer Services (Department). Your representative has advised that you own approximately 4.95 acres in Broward County (4680 Volunteer Rd Southwest Ranches, FL) that has been used for various agricultural activities for many years. I understand that you purchased the property in 2020 and continue to operate a diversified agricultural operation that includes a plant nursery, a small sheep herd, and you recently added agritourism activities to your operation.

In 2023, the property appraiser's office removed the "agriculture classification" pursuant to Section 193.461, Florida Statutes, for the property based on a determination that there was no bona fide agricultural use occurring on the property. You further advised that the only change to the agriculture operations on the property between 2022 and 2023 was the addition of the agritourism activities.

As presented, the controversy surrounding your property appears to be related to the use of non-residential farm buildings¹ for agritourism purposes, specifically as wedding venues. I have reviewed your website and the pictures of your operation that were provided. They appear to show a diversified agricultural operation with the components I described above. I have also confirmed that you hold current a nursery certification from the Department's Division of Plant Industry and are in compliance with state nursery regulations.

While the assessment of real property falls within the purview of the County Property Appraiser, the Department does have a responsibility to promote and encourage agritourism and to assist with conflict resolution between local governments and agricultural producers.² Since the conflict here centers on Florida's agritourism laws, I believe it is appropriate for me to opine. In my opinion, Florida law clearly provides that an agricultural property classification may not be revoked or denied for the use of a non-residential farm building for agritourism purposes.

¹ See Section 604.50(2)(d), Florida Statutes, for definition.

² Sections 570.85-87, Florida Statutes.

I understand you are appealing the removal of the agricultural classification by the property appraiser. The statutory test for agricultural classification is found in Section 193.461(3), Florida Statutes, which provides that... “only lands that are used primarily for bona fide agricultural purposes shall be classified agricultural. The term “bona fide agricultural purposes” means good faith commercial agricultural use of the land.”

Florida law exempts certain agricultural activities and operations from local government regulation. To determine what is exempt, the Legislature has defined several terms critical to this analysis. “Agriculture” is defined by Section 570.02, Florida Statutes, as “the science and art of production of plants and animals useful to humans ... and includes aquaculture, horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bees, and any and all forms of farm products and farm production.” A “farm” is defined in Section 823.14, Florida Statutes, as “the land, buildings, support facilities, machinery, and other appurtenances used in the production of farm or aquaculture products.” A nursery (defined in Section 581.011(20), Florida Statutes) and livestock clearly falls within both definitions. An agritourism element to an agricultural operation is not a disqualifying factor in the determination as to whether the operation is a commercial endeavor.

As a threshold matter, the Department has long considered weddings to fall within the statutory definition of an agritourism activity. Even before the legislature amended the statute to expressly include “civic and ceremonial activities,”³ there was a reasonable argument that weddings qualified as “recreational” or “entertainment” activities. There is ample historic support for this conclusion, including the long tradition of holding recreational activities in barns,⁴ and specifically, of holding weddings in barns.⁵

Agritourism in Florida is primarily governed in Chapter 570, Florida Statutes. These statutes provide legislative intent, preempt agritourism from local government regulation, define terms, and provide exemptions from liability.⁶ Relevant to the issue here, Agritourism activity is defined in Section 570.86(1), Florida Statutes, as:

[A]ny agricultural related activity consistent with a bona fide farm, livestock operation, or ranch or in a working forest which allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy activities, including farming, ranching, historical, cultural, civic, ceremonial, training and exhibition, or harvest-your-own activities and attractions. *An agritourism activity does not include the construction of new or additional structures or facilities intended primarily to house, shelter, transport, or otherwise accommodate members of the general public.* An activity is an agritourism activity regardless of whether the participant paid to participate in the activity. (Emphasis added).

As I understand the facts, the main structure on the property has a dual use. I understand that the structure is used as a showroom for your nursery operations and is converted for use for agritourism events as needed. While buildings with these types of improvements might not resemble a traditional farm building neither do modern vertical farming, aquaculture, or hydroponic facilities, and many other modern agriculture practices. There is no such thing as a building to be to “nice” for agriculture. The legal test is whether the structure was built for the primary purpose of accommodating the public. If it was, then the structure does not fall within the statutory definition. The timeline you have provided indicates that the structure was first used for your nursery operation and that agritourism events followed in time.

³ Ch. 2016-14, Laws of Fla.

⁴ Mount, William Sidley. *Dance of the Haymakers (Music is Contagious)*. 1845.

⁵ Brueghel, Pieter the Younger. *Wedding Dance in Barn*. 1616.

⁶ See §§ 570.85 - .89, Fla. Stat.

If a county *factually* determines that a building is no longer used primarily for bona fide agricultural purposes, but instead determines that it is used primarily for agritourism, Section 570.87(1), Florida Statutes, clearly instructs property appraisers and provides that:

“[A]n agricultural classification...may not be *denied or revoked solely* due to the conduct of agritourism activity on a bona fide farm or the construction, alteration, or maintenance of a nonresidential farm building, structure, or facility on a bona fide farm which is used to conduct agritourism activities. So long as the building, structure, or facility is an integral part of the agricultural operation, the land it occupies shall be considered agricultural in nature... (emphasis provided).”

This statute was adopted in 2022 and there is no relevant case law interpreting what constitutes “primarily” or is an “integral” part of the farm operation. Generally, if the language of the statute is clear, Florida “courts will not look behind the statute's plain language for legislative intent...the statutes plain and ordinary meaning must control, unless this leads to an unreasonable result...” (Fla. Att’y Gen. Op. 2013-01 (2013), quoting *State v. Burris*, 875 So. 2d 408 (Fla. 2004)). Further, if a review of legislative intent is deemed necessary, “the fact that the Legislature provided no definition...requires that the word be understood in its common and ordinary sense.” *Id.* You have described the barn as your showcase for your nursey operation. It is rational to believe that on that fact alone it is integral to your farm operation.

Finally, I will preemptively note that I believe any agritourism activity is an integral part of an agricultural operation. They not only serve an important and obvious revenue function (i.e. they provide necessary cash in an inherently cyclical industry), but they are a valuable marketing tool. Both functions are integral to any farming operation.

Please contact me at Steven.Hall@FDACS.gov if you have any questions.

Sincerely,

Steven Hall

Steven Hall
Assistant Deputy Commissioner

CC: Robert Volpe - rvolpe@holtzmanvogel.com