



VALUE ADJUSTMENT BOARD REMAND TO PROPERTY APPRAISER

DR-485R
N. 12/09

Rule 12D-16.002
Florida Administrative Code

Section 1. Completed by Value Adjustment Board or Special Magistrate

Petition # 2023-00001	County Broward	Parcel ID 504027010242	Date 06/10/2024
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To: Property Appraiser	From: Clerk or Special Magistrate
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Name	Name
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Address	Address 115 S. Andrews Ave., Room 120 Attn: VAB Fort Lauderdale, FL 33301
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The value adjustment board or special magistrate has:

Determined that the property appraiser's value is incorrect (section 194.301, F.S.).

Granted a property classification.

Include findings of fact on which remand decision is based or reference and attach Form DR-485V, Form DR-485XC, or other document with these items completed.

(See Attached)

Include conclusions of law on which remand decision is based or reference and attach Form DR-485V, Form DR-485XC, or other document with these items completed.

(See Attached)

Appropriate remand directions to property appraiser:

(See Attached)

The board retains authority to make a final decision on this petition.

Section 2. Completed by Property Appraiser

Provide a revised just value or a classified use value and return this form to the clerk of the Board.

Just valuation:		OR	Classified use valuation:	
Previous	Revised			

Signature, Property Appraiser

Print name

Date

Use additional pages, if needed.

Remand Findings of Fact:

The Special Magistrate hereby adopts and incorporates the facts as jointly stipulated to to by the parties, to wit:

1. Subject Property: Essential Characteristics

- a. The Property address is 4680 SW 148 Avenue, Southwest Ranches, Florida 33330.
- b. The Property consists of 4.95 acres.
- c. As of January 1, 2023, the Property was improved with the following buildings, support structures, and improvements:
 - i. 4,900 SF accessory building.
 - ii. 364 SF accessory building.
 - iii. 364 SF accessory building.
 - iv. 1,600 SF accessory building.
 - v. 120 SF accessory building.
 - vi. 16,796 SF of asphalt-paved areas for vehicular use including parking
 - vii. 252 SF accessory building
 - viii. 7 support structures occupying 2,099 SF, i.e., pergolas
 - ix. Perimeter fencing and access gate

2. Subject Property: Ownership and Leasehold Interests

- a. Atlas Investments, LLC, purchased the subject property for property on December 14, 2020, for \$900,000 and has fee simple ownership of the same.
- b. On August 1, 2022, Atlas Investments LLC entered into a 10-year lease agreement with Cielo Farms, LLC. Article 5 of the Lease Agreement states that, "The Premises shall be used for an event venue and for no other purpose." See pages 52-65 of Petitioner's 120 page packet.
- c. As of January 1, 2023, Atlas Investments, LLC and Cielo Farms, LLC were owned by Miguel Rodriguez-Albisu and Georgina Rodriguez.

3. 2021 Tax Year

- a. For the 2021 Tax Year, the Petitioner applied for an agricultural classification for cattle.
- b. The Property Appraiser's Office granted the agricultural classification for 4.95 acres.

4. 2022 Tax Year

- a. On January 19, 2022, the Petitioner timely submitted a renewal card for the 2022 Tax Year indicating the agricultural use had changed. See page 29 of the Property Appraiser's Office 162-page evidence packet. The Petitioner indicated that the Property agricultural use changed from cattle to two new uses: sheep and nursery.
- b. On August 25, 2022, the Property Appraiser granted the agricultural classification for the 2022 tax year as follows: 0.16 acres for sheep and 1.47 acres for nursery. The remaining 3.32 acres were denied an agricultural classification.
- c. The Petitioner timely appealed the denial of the 3.32 acres to the Value Adjustment Board but voluntarily withdrew the petition.

5. 2023 Tax Year

- a. At the request of the Petitioner, Patrick Shortsleeve, Agricultural Analyst for the Property Appraiser, inspected the subject property on December 30, 2022.
- b. On January 20, 2023, the Petitioner timely submitted a Form DR-499, the ("renewal card") for the agricultural classification for the 2023 tax year. See Page 1 of the Property Appraiser's 158-page evidence packet.
- c. On the renewal card, the Petitioner affirmed that, "The property herein described was on January 1st being used for a bona fide Agricultural or High-Water Recharge purposes."
- d. On February 14, 2023, the Property Appraiser's Office sent a letter to Atlas Investments LLC. The subject line of the letter reads: "Re: 2023 Agricultural Classification Application. Documentation Required to Establish Bona Fide Agricultural Use." The letter asks Atlas to "Please provide all relevant documentation in support of your application including but not limited to:" and lists required documents including specific "ADDITIONAL DOCUMENTATION" for "Goats/Sheep" and "Nursery." The letter also states:
"If you have already submitted the necessary documents as it pertains to your property and is outlined in this letter, please disregard this notice. If you have not yet submitted the necessary documents required to process your application, they must be submitted to our office on or before April 14, 2023."
See Pages 155-157 of Property Appraiser's 158-page packet.

- e. On March 7, 2023, the Property Appraiser's Office sent a letter to the Petitioner stating that:

"Your renewal for a 2023 Agricultural Classification on the above-referenced property is hereby denied.

In your renewal application for the 2023 tax year, you certified the property's primary use was for a plant nursery and sheep business. A thorough investigation revealed the property is not used for a bona fide commercial agricultural purpose of a plant nursery and sheep business. As such, the property does not meet the criteria for Agricultural Classification set forth in state law, including Florida Statute §193.461 and FAC Rule 12D-5.004."

See Page 158 of the Property Appraiser's 158-page evidence packet.

f. The Petitioner filed a Petition with the Value Adjustment Board on April 4, 2023, and re-filed its Petition on July 5, 2023, appealing the denial of the agricultural classification.

6. Stipulations

a. Sheep fall within the definition of livestock pursuant to 193.461(5).

b. Horticulture includes a plant nursery and an ornamental nursery pursuant to 193.461(5).

7. Procedural Requirements

The Parties agree that the Special Magistrate must prepare a written recommended decision according to section 12D-9.030, F.A.C. The following the sequence of general procedural steps set forth in section 12D-9.027(4)(b)-(g), F.A.C must be observed:

(b) Consider the admitted evidence presented by the parties.

(c) Identify the particular property classification that is the subject of the petition.

(d) Identify the statutory criteria that apply to the particular property classification that was identified as the issue under administrative review.

(e) Identify and consider the essential characteristics of the petitioned property or the property owner, as applicable, based on the statutory criteria that apply to the issue under administrative review.

(f) Identify and consider the basis used by the property appraiser in issuing the denial for the petitioned property.

(g) Determine whether the admitted evidence proves by a preponderance of the evidence that the property appraiser's denial is incorrect, and the classification should be granted because all of the applicable statutory criteria are satisfied.

8. Standard of Proof

The standard of proof is preponderance of the evidence which means greater weight of the evidence. See Section 12D-9.027(5), F.A.C.

9. Burden of Proof

The Petitioner has the burden of proving by a preponderance of the evidence that the classification assigned to the property is incorrect. See Section 194.301(2)(d), F.S. There is no presumption of correctness in favor of the property appraiser.

Remand Conclusions of Law:

The SM has analyzed this case as required by 12D-9.027, and as stipulated by the parties.

CONSIDER THE EVIDENCE

The SM has considered the testimonial and documentary evidence, including photographs, and the stipulation of facts submitted by the parties.

IDENTIFY THE PARTICULAR PROPERTY CLASSIFICATION THAT IS THE SUBJECT OF THE PETITION

The classification at issue is in the first instance agricultural, based on sheep and a nursery. If the Petitioner meets its burden to show there is an agricultural use, then the SM must consider whether any portion of the property is devoted to agri-tourism.

IDENTIFY THE STATUTORY CRITERIA THAT APPLY TO THE PARTICULAR PROPERTY CLASSIFICATION

The statutory criteria for an agricultural classification are set forth in Florida Statutes section 197.461(3)(b) and are as follows:

(b) Subject to the restrictions specified in this section, 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.

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

a. The length of time the land has been so used.

b. Whether the use has been continuous.

c. The purchase price paid.

d. Size, as it relates to specific agricultural use, but a minimum acreage may not be required for agricultural assessment.

e. Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including, without limitation, fertilizing, liming, tilling, mowing, reforestation, and other accepted agricultural practices.

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

g. Such other factors as may become applicable.

Florida Statutes section 570.85(1) provides in pertinent part "It is the intent of the Legislature to promote agritourism as a way to support bona fide agricultural production by providing a stream of revenue and by educating the general public about the agricultural industry. It is also the intent of the Legislature to eliminate duplication of regulatory authority over agritourism as expressed in this section. Except as otherwise provided for in this section, and notwithstanding any other law, a local government may not adopt or enforce a local ordinance, regulation, rule, or policy that prohibits, restricts, regulates, or otherwise limits an agritourism activity on land classified as agricultural land under s. 193.461."

Florida Statutes section 570.87(1) provides in pertinent part "In order to promote and perpetuate agriculture throughout this state, farm operations are encouraged to engage in agritourism. An agricultural classification pursuant to s. 193.461 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."

LENGTH OF TIME OF AGRICULTURAL USE AND WHETHER CONTINUOUS

The Petitioner purchased the property in December 2020, and claimed an agricultural classification for cattle in 2021. In its January renewal card, Petitioner maintained its position that the property was agricultural but indicated that the use had changed to sheep and a nursery. The agricultural classification was granted as to 0.16 acres for sheep and 1.47 acres for a nursery. Thus, as of 1 January 2023, the agricultural classification had been in place for two years, and the specific uses of a nursery and sheep for not less than one year.

PURCHASE PRICE AND THE SIZE OF THE PROPERTY

The Petitioner paid \$900,000 for the 4.95 acre property.

WHETHER AN INDICATED EFFORT HAS BEEN MADE TO CARE SUFFICIENTLY AND ADEQUATELY FOR THE LAND IN ACCORDANCE WITH ACCEPTED COMMERCIAL AGRICULTURAL PURPOSES

As to the nursery, there was evidence that plants were purchased, and they were tended to, that there were wells on the property, that plants, including bougainvilleas in a range of sizes which could be the source of stock to grow additional bougainvillea were present. There was evidence of some sales of plants, with a significant percentage of these sales being to friends and family of the owners of the Petitioner. The "barn" is susceptible of use to grow plants, but better suited to be a showroom and event space, in that the structure admits limited natural light, is not equipped with an irrigation system, etc. but does have kitchen facilities and other amenities consistent with a use as a showroom and/or event space. Similarly, over 16,000 square feet of the property is paved. While some of this pavement would be useful for service vehicles, delivery, etc, much of it is suited to parking for the 1600 square foot building. Of course, a retail nursery does require adequate parking, but as the evidence suggested that sales of plants were completed mainly by appointment, the parking provided is more consistent with the use of an event space than a retail nursery or growing nursery. The property has been equipped with seven (7) pergolas. There was evidence of only limited changes to the property itself that would be necessary for a nursery.

As to the sheep, there was evidence of a paddock area suitable for sheep, and that sheep had been and were, in fact, present there and that they received care and were managed for breeding. There is, in addition, evidence that another area is cleared and suitable as, and is used for pasture for the sheep. The PAO alleges that one of the owners of the Petitioner remarked that she regards the sheep as "pets." There was evidence that sheep were, in fact, sold, including male lambs, and the original ram, and a new ram purchased to prevent inbreeding.

In addition to the foregoing facts literally "on the ground," as to both the sheep operation and nursery, Petitioner has applied for and received a number of certificates and permits, including registering the nursery and registering in a disease prevention program for sheep. While there appeared to have been calculation errors related to sales tax, there was evidence that sales tax was collected and paid on at least some of the sales of plants.

A portion of the property appears to be set aside for a future residence and its curtilage, with no apparent efforts to prepare it or employ it for agriculture.

And another portion appears to have been used for some combination of storage and the use of someone on the property for security.

WHETHER THE LAND IS UNDER LEASE AND, IF SO, THE EFFECTIVE LENGTH, TERMS, AND

CONDITIONS OF THE LEASE

Petitioner leased the property to Cielo Farms for a 10 year terms commencing 1 August 2022. Article 5 of the lease states that "The Premises shall be used for an event venue and for no other purpose." Cielo Farms is owned by the same family that owns the Petitioner.

Based upon all of the foregoing, the SM concludes as follows:

1) The sheep paddock area and the pasture area close to the paddock are entitled to agricultural classification. The sheep operation, while small, is bona fide agriculture. Even accepting, arguendo, the testimony as to one of the owners stating she looked at the sheep like pets, the fact remains that sheep are bred and raised on the property and sold. The paddock is well suited for sheltering and caring for sheep. The pasture is suited for grazing sheep. The preponderance of the evidence supports the relevant findings to support this conclusion.

2) The nursery is a more complicated issue, and Petitioner's evidence is less compelling. PAO's counsel ably argued by analogizing the subject nursery operation to the garden section of a Home Depot. Yes, there are plants. Yes, some of them are sold. But if, after the point at which the owner would have, if engaged in bona fide agriculture, begun propagating plants for sale, the plants are all still raised by someone else, and one buys them from a grower, and then sells them to the public, then that is a retail sales operation, not agriculture. The "barn" on the property is very well suited as an attractive event venue. And an attractive location in which to display plants. It is not well-suited to grow plants. It is not constructed to maximize natural light. It does not have efficient irrigation systems. But if it is used for either agriculture or agritourism associated with agriculture it can still be appropriately classified as agricultural.

Problems with Petitioner's evidence also include that its lease specifically provides "The Premises shall be used for an event venue and for no other purpose." The SM is aware that the lessor and lessee are affiliated, closely held entities, and there was no evidence that the Petitioner ever enforced this restriction, but as the statutory criteria include any lease and its terms, this evidence must be placed on the scales. Additionally, the evidence showed that the use of the property as an event venue generated far more gross revenue than did the agricultural activities.

Further, while there was a great deal of testimony about intentions to propagate plants, there was little if any evidence that it was being done. Here time becomes key. Petitioner's nursery expert testified that it was best if parent plants had been in the ground for at least a year before starting to propagate from them, and that thereafter it was best to take cuttings to propagate in May or June. He testified that he would not expect to see cuttings and propagation at the subject property until May or June of 2023. Thus, if one accepts this testimony, and it was credible and unrebutted, as of 1 January 2023 the lack of cuttings is not indicative that the activity in place is not agriculture. The expert also testified that he would not expect to see soil acquired until near the time of the cuttings. By way of explanation, and without any pretense of binding anyone, if in January 2024 the evidence were still the same, and there were still no cuttings, the razor-thin preponderance of the evidence in favor of a conclusion that there is a bona fide nursery operation here would not, in the view of this SM, exist. There is just enough here for Petitioner to meet its burden as to the nursery. The registrations and other paperwork; the sales of plants acquired from growing nurseries; the presence of suitable parent plants; the testimony explaining why, as of 1 January 2024, there was not already propagation of plant, and the rest of the evidence -- taken together in light of Florida's provision for agritourism, these provide just enough to satisfy Petitioner's burden as to the bona fide nursery for 2023.

The remaining portions of the property that are not part of the nursery or sheep operation and not dual use for agritourism -- the area that appears to be intended to be a residence and its curtilage, and the portion of the roadway leading only to that area and the immediately adjacent areas not part of the pasture, and not used for storage, wells, pumps, etc. -- are not subject to the agricultural classification.

Remand Directions:

The SM REMANDS this matter for disposition consistent with the foregoing, including preparation of a map outlining the areas which are to receive the agricultural classification so that the acreage can be determined with precision.