

MOTION TO DISMISS

SPECIAL MASTER DeSOTO COUNTY

DRD ENTERPRISES INC OF DAVIE

Respondent

VS.

DeSoto County

Petitioner

CASE NO **CE-2009-065**

Comes now DRD ENTERPRISES INC OF DAVIE to respond to petitioner's claims

HISTORY

In June 2009 DRD ENTERPRISES INC OF DAVIE purchased an 11 acre, more or less, farm in DeSoto County zoned A 10, address 4899 NW Hwy 72 Arcadia, Florida. The farm had previously been used as a Fish Farm with a development plan approved for the previous owner and still active until December 31, 2009, when renewal of the existing development plan and greenbelt applications would need to be submitted. Prior to purchasing, DRD ENTERPRISES INC OF DAVIE made inquiries as to water quality and dwellings on the property and was informed by the selling agent that there was an older mobile home on the property and that people had been living in it. (Doc 1).

DRD ENTERPRISES INC OF DAVIE began preparations to the infrastructure required to operate an income producing farm enterprise. Improvements required were electrical, plumbing (Doc 14), storage, pump room and an individual to manage and secure the property. DRD ENTERPRISES INC OF DAVIE believed the mobile home to be adequate for a watchperson, caretaker, handyman. (Docs 2-4). In Evidence, photos of the farm area (Doc 10 – 13).

DRD ENTERPRISES INC OF DAVIE had the farm inspected by the Florida Department of Aquaculture,

Portia Sapp FDACS-Division of Aquaculture Bartow Field Office 605 E Main St. Bartow, FL 33830 863-519-5262

For the feasibility of using the existing ponds for an aquaculture enterprise, the results of the inspection evidenced in (Doc 5) and estimate for purchase of livestock(Doc 5A). As a registered Aquaculture Farmer it is mandatory that DRD ENTERPRISES INC OF DAVIE practice Best Management Practices by State of Florida law. Aquaculture farming requires a 24 hour watch and daily monitoring. DeSoto County has prevented the ability to operate a farm (aquaculture) as provided by the laws of the State of Florida.

DRD ENTERPRISES INC OF DAVIE was notified by DeSoto County to cease all operations by September 8, 2009 at which time DRD ENTERPRISES INC OF DAVIE was put out of business by the actions of DeSoto County (Doc 6).

After repeated correspondence with ALL governing agencies within DeSoto County it became clear that DeSoto County was not going to respect and honor the Laws of the State of Florida under the Right to Farm Act. Notified of Special Master Hearing set for October 22, 2009.

CASE LAW

DRD ENTERPRISES INC OF DAVIE operating as a farm is governed by Florida Statute 823.14

Florida Statute 823.14: Right-to-Farm Act

One reason that Florida adopted the right-to-farm law was "that agricultural activities conducted on farm land in urbanizing areas are potentially subject to lawsuits based on the theory of nuisance and that these suits encourage and even force the premature removal of the farm land from agricultural use. It is the purpose of this act to protect reasonable agricultural activities conducted on farm land from nuisance suits" [823.14(2)]. Basically the statute establishes that any farm in operation for at least one year, that was not a nuisance when established, using generally accepted agricultural principles, cannot be considered a nuisance unless certain specific conditions exist. Among those conditions are items such as improperly treated human waste, garbage, dead animals, harmful gases, diseased animals dangerous to human health (except animals kept in accordance with a current state or federal disease control program), unsanitary animal slaughter creating potential harmful diseases, etc. The statute specifically notes that change of ownership; type of

farm product produced; changing conditions around the farm; or changes to comply with best management practices at local, state, federal levels do not constitute a nuisance. Typical farm operations defined in the statute are “the marketing of produce at roadside stands or farm markets; the operation of machinery and irrigation pumps; the generation of noise, odors, dust, and fumes; ground or aerial seeding and spraying; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and the employment and use of labor.” Rules related to the establishment or expansion of farm operations are also covered in the law.

The Florida Legislature also specifically noted that “notwithstanding any other provision of law, **a local government may not adopt any ordinance, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm operation on land classified as agricultural land pursuant to § 193.461 if such activity is regulated through implemented best management practices, interim measures, or regulations developed by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or a water management district and adopted under Chapter 120 as part of a statewide or regional program; or if such activity is expressly regulated by the United States Department of Agriculture, the United States Army Corps of Engineers, or the United States Environmental Protection Agency.**”

The lone exception to this area of legislative intent is for lands associated with a farm operation “within a wellfield protection area as defined in any wellfield protection ordinance adopted by a local government, and the adopted best-management practice or interim measure does not specifically address wellfield protection, a local government may regulate that activity pursuant to such ordinance.”

As defined DRD Enterprises Inc of Davie operated and pursued a farm activity in accordance with governing laws of the State of Florida.

RESPONSE to Violations Cited

Ordinance 125.01 Clean County Act

DRD ENTERPRISES INC OF DAVIE argues that the above mentioned ordinance is in direct conflict with the Laws of the State of Florida reference the Right to Farm Act 823.14

DRD ENTERPRISES INC OF DAVIE was cited for abandoned vehicle.

DRD ENTERPRISE INC OF DAVIE is not aware of an abandoned vehicle on this property and can only add that in the short time of actually occupying the property a complete inventory of the entire 11 acres was not a priority. No official has sent photo or location of this vehicle? Lacking evidence that an abandoned vehicle is on this farm and is causing environmental damage DRD ENTERPRISES INC OF DAVIE asks that this violation be dismissed.

Permitted Principal Uses and Structures

DRD ENTERPRISES INC OF DAVIE argues that DeSoto County has created laws, ordinances, and restrictions that prohibit the efficient operation of a farm according to best farm management practices. DRD ENTERPRISES INC OF DAVIE contends that DeSoto County has created a Land Development Plan that Regulates, by admission and omission, the everyday management of a farm. (see Doc 8) causing an economic hardship to DRD ENTERPRISES INC OF DAVIE.

It is inconceivable to DRD ENTERPRISES INC OF DAVIE that it must construct, erect, purchase a residential dwelling (see Doc 8) meeting the design and specifications set forth by DeSoto County in order to maintain a secure managed farm and by Florida State law an aquaculture farm must be managed using Best Management Practices. DRD ENTERPRISES INC OF DAVIE argues that creating this statute puts an unreasonable financial burden on this farm and by DeSoto County not offering alternative measures to solve this issue (see DOC 7) AND with the order to cease all operations DeSoto County did in fact put the farm owned by DRD ENTERPRISES INC OF DAVIE out of business (see Doc 6)

CODES CITED BY DeSOTO COUNTY

RESIDENTIALLY DESIGNED MANUFACTURED HOME. A factory built, singlefamily dwelling that meets either the National Manufactured Home Construction and Safety Standards Act (42 U.S.C. Section 5401) commonly known as the HUD (U.S. Department of Housing and Urban Development) code or the Florida Manufactured Building Act of 1979 (Florida Statute 553, Part I), commonly known as DCA (Florida Department of Community Affairs) modular homes. These residentially designed manufactured homes must have; a roof with a pitch not less than 3 inches rise in a 12 inch run with eaves; vinyl, wood or masonry siding or an approved product that simulates any of these types of siding; and be a minimum width of 22 feet. All Residentially Designed Manufactured Homes must meet or exceed the structural requirements, for the wind zone in which they are installed, as specified in their respective codes.

F. Permits for accessory structures shall be issued in accordance with the following regulations:

1. No permit for an accessory structure may be issued unless there is an existing principal structure on the property or unless the permits are issued concurrently.

2304 AGRICULTURAL 10 DISTRICT (A-10)

The intent of the Agricultural 10 District (A-10) is primarily agricultural, pastoral, the extraction or processing of non- phosphate minerals, and low-density residential development. This district is designed to accommodate traditional agricultural uses and conservatory measures, where appropriate, while protecting the rural areas of the County. The regulations in this District are intended to permit a reasonable use of the property, at a gross density of one dwelling per ten (10) acres. At the same time, the intent is to prevent the creation of conditions which would endanger damage or destroy the agricultural base of the County, the environmental resources of the County, the potable water supply and the wild life resources. The first priority of this District is agricultural uses.

A. USES AND STRUCTURES: No building or structure, or part thereof, shall be erected, altered or used, or land used, in whole or in part, for other than the following:

1) Permitted Principal Uses and Structures:

- a) **One (1) Single-family dwelling per parcel**; foster care congregate living facilities, day care centers.
- b) **Agricultural uses - Animal breeding, training, stabling; Bee keeping; livestock grazing; field crops; fruit and nut production; forestry; gardening; veterinary hospital & clinic; aqua culture; roadside produce stands.**
- c) Wildlife management areas, plant and wildlife conservancies, refuges and sanctuaries.
- d) Wholesale plant nurseries, greenhouses, and retail sales (to include the sale of garden supplies) as defined in the LDR.
- e) On-site sale of farm products grown on the premises.
- f) Golf courses; cemeteries.
- g) Excavation (other than phosphate) on parcels 20 acres or larger and related processes, earthmoving.
- h) Agricultural buildings such as: barns, feed storage sheds, animal storage buildings, and agricultural equipment storage buildings.
- i) **Ag Support Mobile Home (one only) on a parcel of land no smaller than forty (40) acres, having a greenbelt classification, and will be occupied by a family supporting the agricultural operation.**

DRD ENTERPRISES INC OF DAVIE ask that the violation for having a farm manager residing on a farm in a dwelling other than a residential home be dismissed for the reasons afore stated.

Furthermore DRD ENTERPRISES INC OF DAVIE argues that DeSoto County has created 2 levels of enforcement to farms and that a 40 acre farm has more privileges and exemptions than the 11 acre farm owned by DRD Enterprises Inc of Davie as evidenced in DeSoto County Land Development Regulations, LDR 2304 A-i. (DOC 8). This statute by DeSoto County is discriminatory against DRD ENTEPRISES INC OF DAVIE

DRD ENTERPRISES INC OF DAVIE argues that the State of Florida Right to Farm Act makes no distinction in size of farms and that all farms within the State of Florida enjoy the full protection of the laws thereof under the Right to Farm Act. DRD ENTERPRISES INC OF DAVIE asks that personnel be allowed to reside on the farm to oversee the daily operations pertaining to fish farming.

VIOLATION FOR BUILDING OF CONCRETE DOMES

DRD ENTERPRISES INC OF DAVIE, in the process of preparing the recently purchased farm, began the construction of concrete indestructible rodent proof sheds. On an aquaculture farm a variety of pumps and aerators are required in addition to feed and tool storage. As previously argued under the Right to Farm Act and DeSoto County LDR (Doc 9) USES AND STRUCTURES clause h (Agricultural buildings), DRD ENTERPRISES INC OF DAVIE believes that these farm sheds, required for an efficient farm operation, are covered within laws of the State of Florida specifically the Right to Farm Act and Chapter 604.50 GENERAL AGRICULTURAL LAWS and DeSoto County LDR 2304 "A" USES AND STRUCTURES for agricultural land.

604.50 NON RESIDENTIAL FARM BUILDINGS

Any nonresidential farm building is exempt from the Florida Building Code and any county or municipal building code. For purposes of this section, the term "nonresidential farm building" means any building or support structure that is used for agricultural purposes, is located on a farm that is not used as a residential dwelling, and is located on land that is an integral part of a farm operation or is classified as agricultural land under s. 193.461. The term "farm" is as defined in s. 823.14

Florida Building Code 553.73 state as follows

9) The following buildings, structures, and facilities are exempt from the Florida Building Code as provided by law, and any further exemptions shall be as determined by the Legislature and provided by law:

(a) Buildings and structures specifically regulated and preempted by the Federal Government.

(b) Railroads and ancillary facilities associated with the railroad.

(c) Nonresidential farm buildings on farms.

(d) Temporary buildings or sheds used exclusively for construction purposes.

(e) Mobile or modular structures used as temporary offices, except that the provisions of part II relating to accessibility by persons with disabilities shall apply to such mobile or modular structures.

(f) Those structures or facilities of electric utilities, as defined in s. [366.02](#), which are directly involved in the generation, transmission, or distribution of electricity.

(g) Temporary sets, assemblies, or structures used in commercial motion picture or television production, or any sound-recording equipment used in such production, on or off the premises.

(h) Storage sheds that are not designed for human habitation and that have a floor area of 720 square feet or less are not required to comply with the mandatory wind-borne-debris-impact standards of the Florida Building Code.

(i) Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term "chickee" means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other nonwood features.

With the exception of paragraphs (a), (b), (c), and (f), in order to preserve the health, safety, and welfare of the

public, the Florida Building Commission may, by rule adopted pursuant to chapter 120, provide for exceptions to the broad categories of buildings exempted in this section, including exceptions for application of specific sections of the code or standards adopted therein. **The Department of Agriculture and Consumer Services shall have exclusive authority to adopt by rule, pursuant to chapter 120, exceptions to nonresidential farm buildings exempted in paragraph**

(c) when reasonably necessary to preserve public health, safety, and welfare. The exceptions must be based upon specific criteria, such as under-roof floor area, aggregate electrical service capacity, HVAC system capacity, or other building requirements. Further, the commission may recommend to the Legislature additional categories of buildings, structures, or facilities which should be exempted from the Florida Building Code, to be provided by law.

823.14. Florida Right to Farm Act

(1) Short title.--This section shall be known and may be cited as the "Florida Right to Farm Act." (2) Legislative findings and purpose.--The Legislature finds that agricultural production is a major contributor to the economy of the state; that agricultural lands constitute unique and irreplaceable resources of statewide importance; that the continuation of agricultural activities preserves the landscape and environmental resources of the state, contributes to the increase of tourism, and furthers the economic self-sufficiency of the people of the state; and that the encouragement, development, improvement, and preservation of agriculture will result in a general benefit to the health and welfare of the people of the state. The Legislature further finds that agricultural activities conducted on farm land in urbanizing areas are potentially subject to lawsuits based on the theory of nuisance and that these suits encourage and even force the premature removal of the farm land from agricultural use. It is the purpose of this act to protect reasonable agricultural activities conducted on farm land from nuisance suits. (3) Definitions.--As used in this section:

(a) "Farm" means the land, buildings, support facilities, machinery, and other appurtenances used in the production of farm or aquaculture products.

(b) "Farm operation" means all conditions or activities by the owner, lessee, agent, independent contractor, and supplier which occur on a farm in connection with the production of farm products and includes, but is not limited to, the marketing of produce at roadside stands or farm markets; the operation of machinery and irrigation pumps; the generation of noise, odors, dust, and fumes; ground or aerial seeding and spraying; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and the employment and use of labor.

(c) "Farm product" means any plant, as defined in s. 581.011, or animal useful to humans and includes, but is not limited to, any product derived therefrom.

(d) "Established date of operation" means the date the farm operation commenced. If the farm operation is subsequently expanded within the original boundaries of the farm land, the established date of operation of the expansion shall also be considered as the date the original farm operation commenced. If the land boundaries of the farm are subsequently expanded, the established date of operation for each expansion is deemed to be a separate and independent established date of operation. The expanded operation shall not divest the farm operation of a previous established date of operation.

DRD ENTERPRISES INC OF DAVIE asks that the violation for building sheds on this A-10 agriculture farm be dismissed for reasons stated and in accordance with the Laws of the State of Florida and Right to Farm Act and Chapter 604.50 and Florida Building Code 553.73 sub sec 9c stated above.

VIOLATION FOR UNMOWED LAND

As evidenced in Doc 5A DRD ENTERPRISES INC OF DAVIE was in the process of purchasing livestock as a plan to control the existing overgrowth and save the expense of feed. Prior to being able to consummate a transaction for livestock DeSoto County issued a cease all activity order (Doc 6).

DRD ENTERPRISES INC OF DAVIE argues that DeSoto County has no jurisdiction over agricultural land as long as there are no environmental concerns as covered in 823.14 Florida Right to Farm Act.

DRD contends that DeSoto County has no authority to issue growth ordinances and restrictions to a farm under the laws of the State of Florida and the Right to Farm Act.

DRD ENTERPRISES INC OF DAVIE at additional expense has since had the farm mowed.

SUMMARY

DRD ENTERPRISES INC OF DAVIE purchased an agricultural A 10 farm recorded with the DeSoto County Tax Appraiser, expecting the full enjoyment and protection of the laws of the State of Florida under the Right to Farm Act and chapter 604.50.

DeSoto County has issued violations to DRD ENTERPRISES INC OF DAVIE based on an illegal, unconstitutional Land Development Regulation and any violation issued on a flawed document shall also be considered illegal. Based on this reason and the fact that DRD ENTERPRISES INC OF DAVIE has not broken any laws of the State of Florida, a judgment in favor of DRD ENTERPRISES INC OF DAVIE should be rendered and that all fines, liens, restrictions be removed from said property.

Furthermore the actions of DeSoto County has prevented DRD ENTERPRISES INC OF DAVIE from pursuing a farm operation and has violated the laws of the State of Florida in its cease all activity order as evidenced in (Doc 6). DRD ENTERPRISES INC OF DAVIE asks for compensatory damages in the sum of \$500,000. This sum represents current and future losses to DRD ENTERPRISES INC OF DAVIE, including the loss of present and future tax exemptions and credits.

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