Local regulation of farming operations

Number: INFORMAL

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Mr. Karl W. Bohne
Town of Malabar Attorney
1803 Airport Boulevard
Melbourne, Florida 32901

Dear Mr. Bohne:

As Town Attorney for the Town of Malabar, you have asked a number of questions relating to Attorney General's Opinion 2001-71 and local regulation of farming operations.

Attorney General Opinion 2001-71 dealt with the application of the "Florida Right to Farm Act", section 823.14, Florida Statutes, to an existing farm. The facts presented in that opinion involved nonresidential farm buildings. The opinion concludes that there is no statutory provision exempting non-residential farm buildings from compliance with county land development regulations. The opinion notes that local governments are prohibited from adopting any ordinance, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit the *continuing* agricultural use of any land currently engaged in bona fide production of a farm product.

Section 823.14, Florida Statutes, the "Florida Right to Farm Act," (the act)[1] recognizes the importance of agricultural production to this state's economy 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[.]"[2] The Legislature also recognizes that agricultural activities conducted on farmland in areas that are becoming urbanized are potentially subject to nuisance lawsuits and that such suits may encourage or force the premature removal of farm land from agricultural use. The goal of the act, therefore, is to protect established farmers from the expense and harassment of lawsuits aimed at declaring the farming industry to be a nuisance.[3]

The act generally provides that a farming operation which has been in existence for at least one year and which was not a nuisance at the time of its established date of operation shall not be a public or private nuisance if the farm operation conforms to generally accepted agricultural and management practices.[4] However, an existing farm operation may not expand to a more excessive operation with regard to noise, odor, dust, or fumes, if it is adjacent to an established homestead or business.[5]

Section 823.14(6), Florida Statutes, provides in part that:

"It is the intent of the Legislature to eliminate duplication of regulatory authority over farm operations as expressed in this subsection. Except as otherwise provided for in this section and s. 487.051(2), and 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 s. 193.461, where such activity is regulated through implemented best-management practices or interim measures developed by the Department of Environmental Protection, the Department of Agriculture and Consumer Services, or water management districts and adopted under chapter 120 as part of a statewide or regional program . . . ."

As Attorney General Opinion 2001-71 points out, the legislative history of the subsection quoted above states that the amendment was to preclude a local government from adopting laws, ordinances, regulations, rules or policies to prohibit, restrict, regulate, or otherwise limit any continuing farm operation on any land currently engaged in bona fide production of a farm product.[6] Thus, a farming operation that falls within the coverage of section 823.14, Florida Statutes, would by definition, comply with the agricultural zoning classification of the land and would not be subject to county regulations or restrictions that attempt to limit such an operation.

However, the facts you have presented involve property which does not support a continuing farming operation. Rather, the owner of the property wishes to convert the property to use as a commercial horse stable. Therefore, the protections of section 823.14, Florida Statutes, do not apply to this property. Rather, the owner must comply with zoning and other land use restrictions applicable to this property without regard to the fact the property has recently been granted an agricultural tax exemption.

You have also asked whether the offering of trail rides and riding lessons constitutes a bona fide commercial agricultural activity. The determination of whether particular activities may constitute a bona fide commercial agricultural activity is one which must initially be made by the property appraiser based upon the factors in section 193.461, Florida Statutes. This office will not comment on such a question except at the request of the property appraiser as it involves the resolution of mixed questions of law and fact outside the scope of this office's authority. However, Florida courts have addressed an agricultural classification for property used to train and house thoroughbred racing horses[7] and the discussion in those cases may be helpful to you.

I trust that these informal comments will assist you in advising your client, the Town of Malabar. This informal, advisory opinion was prepared for you by the Division of Opinions in an effort to be of assistance. It reflects the conclusions of the author and does not constitute a formal Attorney General Opinion.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] *See* s. 823.14(1), Fla. Stat., providing the title to the act.

[2] Section 823.14(2), Fla. Stat.

[3] *See Pasco County v. Tampa Farm Service*, Inc., 573 So. 2d 909 (Fla. 2nd DCA 1990).

[4] Section 823.14(4)(a), Fla. Stat.

[5] Section 823.14(5), Fla. Stat.

[6] Florida Senate Staff Analysis and Economic Impact Statement, CS/CS/SB 1904, April 11, 2000.

[7] *See Robbins v. Racetrack Training Center, Inc.,* 833 So. 2d 306 (Fla. 3rd DCA 2003), and citations therein.