

TOWN OF LOXAHATCHEE GROVES

155 F Road Loxahatchee Groves, FL 33470



AGENDA MEMO

TO: Town Council of Town of Loxahatchee Groves

FROM: Office of the Town Attorney

VIA: Francine Ramaglia, Town Manager

DATE: April 18, 2023

SUBJECT: Discussion on Regulation of Agricultural Related Uses

Background:

As Town Council is considering amendments to its Comprehensive Plan regarding future land use categories, it is important to understand regulation of agricultural uses and uses that may be related to agriculture. This presentation is intended to provide a general overview of agricultural regulation and other related activities the Town can regulate.

Agricultural uses include but are not limited to: horticulture; floriculture; viticulture; forestry; dairy; livestock; poultry; bee; pisciculture, when the land is used principally for the production of tropical fish; aquaculture; sod farming; and all forms of farm products and farm production. §193.461(5), Fla.Stat. Notably, boarding and training of horses constitutes a “bona fide agricultural purpose” within the meaning of section 193.461, Florida Statutes. *Markam v. Pompano Park Racing*, 843 So.2d 922 (Fla. 4th DCA 2003).

Uses that are not typical agriculture, but may be related to agriculture, include uses classified as “agritourism” and uses that revolve around livestock wastes.

In Florida, agriculture is generally regulated or overseen by the Florida Department of Environmental Protection (FDEP) and the Florida Department of Agriculture and Consumer Services (FDACS). The state has made a concerted legislative effort to give exclusive agriculture oversight to FDEP, SFWMD and FDACS. This exclusive oversight is called “preemption”.

Preemption is where the overarching government entity has enacted legislation on a subject matter. Where that occurs, that legislation shall be controlling over the smaller or more localized government legislation and the localized government is precluded from enacting and sometimes

enforcing its own laws on the same subject.

Right to Farm:

The Right to Farm Act is the law that is usually thought of as being a shield to agricultural regulation. The Act is found in §823.14, Fla. Stat. Regarding local government regulation, the Act provides the following limitation:

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. When an activity of a farm operation takes place 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.

§823.14(6), Fla. Stat.

In order for the Right to Farm Act to apply, the use must be a “bona fide farm.” The County Property Appraiser’s Office is tasked with determining whether the operations on a property qualify as “bona fide” and assigns an agricultural classification to the property accordingly. The Town relies on the agricultural classifications assigned by the Palm Beach County Property Appraiser for properties within the Town. The Right to Farm Act does not exempt property owners from complying with floodplain management requirements and building permit requirements for residential structures and conversion of structures for residential uses. The Town does regulate such activities on agriculturally classified lands.

Agritourism:

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. This subsection does not limit the powers and duties of a local government to address substantial offsite impacts of agritourism activities or an emergency as provided in chapter 252.

§570.85, Fla. Stat.

Agritourism activity” means any 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.

§570.86(1), Fla. Stat. (emphasis added).

As the legislation regarding agritourism is relatively new, the Town does not currently have any adopted regulations relating to agritourism. Town Council recently gave staff direction to add language into the Town’s Comprehensive Plan in support of agritourism. The Town may also consider adding language into its Unified Land Development Code defining agritourism and setting forth certain regulations consistent with Chapter 570, Fla. Stat.

Livestock Waste:

Rule 62-709.201, Florida Administrative Code, provides the following definitions:

(2) “Animal byproducts” means source-separated organic solid waste that is animal in origin, such as meat, fat, dairy, or eggs, and is generated by commercial, institutional, agricultural, or industrial operations. This term includes waste generated by prison facilities, grocery stores, manufacturing or packaging plants, butcher shops, restaurants and abattoirs. This term also includes packaging that has come into contact with animal byproducts. These wastes will be viewed as putrescible waste in this chapter.

(13) “Manure” means a solid waste composed of excreta of animals, and residual materials that have been used for bedding, sanitary or feeding purposes for such animals. For purposes of this chapter, manure does not include such material generated and managed by normal farming operations, but does include “paunch manure,” which is the undigested stomach content of cattle.

Town Ordinance 2017-03 requires livestock waste haulers obtain permits prior to engaging in any hauling of Livestock Waste. Ordinance 2017-03 defines livestock waste as

Wastes composed of excreta of animals and residual materials that have been used for bedding, sanitary, or feeding purposes for such animals. For purposes of this ordinance, livestock waste that has been properly composted shall not be considered livestock waste.

Town Ordinance 2012-03 prohibits a property owner from allowing depositing of manure and horse bedding onto real property within the Town except when the manure or horse bedding is used for bona fide agricultural purposes (as defined in §193.461, Fla. Stat.).

§163.211, Fla. Stat., enacted in 2021, preempts the licensing of occupations to the State and includes that any current regulations expire as of July 1, 2023. Licensing, as defined in this section, includes a registration or license that is required for the person to perform the occupation in addition to any associated fee. This language effectively voids the Town's regulations requiring livestock waste haulers register with the Town. The Village of Wellington adopted BMPs related to livestock waste last year. The Town may consider adopting land development code provisions related to the production, storage, use, and other activities, including BMPs, of livestock waste on properties within the Town.

Summary:

These regulations indicate that:

Residential housing can be regulated even if the housing is for a legitimate agritourism event.

Offsite impacts, such as parking, vehicle stacking, noise, odor and light emissions, occurring as a result of an agritourism event can be regulated.

Livestock waste intended for disposal can be regulated by the Town if the waste is unmanipulated manure.

The 2023 Legislative session has not concluded. Additional Legislative preemptions prohibiting municipal regulations may still be passed.

Recommendations:

Discuss possible regulation of agricultural related uses and provide staff direction.