



**DECISION OF THE VALUE ADJUSTMENT BOARD
EXEMPTION, CLASSIFICATION, OR
ASSESSMENT DIFFERENCE TRANSFER PETITION**

County MANATEE

DR-485XC
R. 11/12
Rule 12D-16.002
Florida Administrative Code
Effective 11/12
TC

The actions below were taken on your petition.
 These actions are a recommendation only, not final
 If you are not satisfied after you are notified of the final decision of the VAB, you have the right to file a lawsuit in circuit court to further contest your assessment. (See sections 193.155(8)(l), 194.036, 194.171(2), and 196.151, Florida Statutes.)

Petition # <u>2017VB295AX</u>	Parcel ID <u>6147110509</u>
Petitioner name <u>Cargo Partners VIII-Long Bar Pointe</u> The petitioner is: <input checked="" type="checkbox"/> taxpayer of record <input type="checkbox"/> taxpayer's agent <input type="checkbox"/> other, explain: _____	Property address

Decision Summary Denied your petition Granted your petition Granted your petition in part

Lines 1 and 4 must be completed	Value from TRIM Notice	Value before Board Action <small>Value presented by property appraiser Rule 12D-9.025(10), F.A.C.</small>	Value after Board Action
1. Just value, required	2385283	2385283	2385283
2. Assessed or classified use value,* if applicable	2385283	2385283	2385283
3. Exempt value,* enter "0" if none	0	0	0
4. Taxable value,* required	2385283	2385283	2385283

*All values entered should be county taxable values. School and other taxing authority values may differ. (Section 196.031(7), F.S.)

Exemption, Classification, or Assessment Difference Transfer

<input type="checkbox"/> Homestead	<input type="checkbox"/> Widow/er	<input type="checkbox"/> Blind	<input type="checkbox"/> Totally and permanently disabled veteran
<input type="checkbox"/> Low-income senior	<input type="checkbox"/> Disabled	<input type="checkbox"/> Disabled veteran	<input checked="" type="checkbox"/> Use classification, specify <u>Agricultural</u>
<input type="checkbox"/> Parent/grandparent assessment reduction	<input type="checkbox"/> Deployed military	<input type="checkbox"/> Use exemption, specify _____	<input type="checkbox"/> Other, specify _____
<input type="checkbox"/> Transfer of homestead assessment difference			

Reasons for Decision

Findings of Fact
Please see attached

Conclusions of Law
Please see attached

Recommended Decision of Special Magistrate The finding and conclusions above are recommendations.

	Rinky S. Parwani	March 12, 2018
Signature, special magistrate	Print name	Date
	Vicki Tessmer	3/12/18
Signature, VAB clerk or special representative	Print name	Date Mailed

The board will consider the recommended decision on April 4, 2018 at 2:00 p.m.
 Address Manatee County Administration Bldg, BOCC Chambers, 1st floor, 1112 Manatee Ave W, Bradenton, FL 34205

Pursuant to Resolution R-17-094, UNLESS you submit a written objection to this Recommendation within 15 days from the date mailed above, there will be **no** further opportunity for comment on your petition. If you do submit an objection, you will be given **five (5) minutes** to summarize why you believe the Special Magistrate's Recommendation is incorrect. You may **not** present any new evidence which was not raised before the Special Magistrate.

For a copy of the Value Adjustment Board uniform rules of procedure, contact:	Phone: <u>941.741.4058</u>	Web: <u>www.manateeclerk.com</u>
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If you are disabled and need accommodations to participate in the hearing, you are entitled to assistance with no cost to you. Please contact the Value Adjustment Board at the number above within two days of receiving this notice. If you are hearing or voice impaired, call 711.

Petition 2017VB000295

Findings of Fact

Margaret Cooper attorney appeared on behalf of the Petitioner. The Petitioner's representatives Peter Logan and Misty Servia and Connor Chambers appeared.

The Property Appraiser was represented by Tamara Higgins and Nelon Kirkland attorney for the property appraiser.

The parties were sworn in and the taxpayer overview was read into the record. Neither party had any questions regarding the overview.

The Petitioner was requesting a value of \$0 for the agricultural classification. The Property Appraiser stated the values it proposed on the record.

The Petitioner submitted a notebook of evidence including: Agricultural lease, Request for Farming Exemption, Agricultural Operations Plan, Notice of Qualifications of Permeant Farming, Photographs, General Development Plan, Internal Email regarding permit, Construction Plans, Internal SWFWMD Email, Construction Plans for Ling Pointe, SWFWMD Memorandum, SWFWMD Permit, SWFWMD Property Appraiser, VAB Petition, Transcript of Hearing, Recommended Decision, Petitioner's Objection to Decision, Property Appraiser's Rebuttal, Supplemental Objections, Transcript of Hearing, Property Appraiser's Intent to Change Position, Florida Statutes 193.461, 373.406, 403.927, Environmental Resource Permitting Rule 62-330.051, SW Florida Water Management Permit Handbook, Gianolio c. Markham.

The Petitioner also submitted a letter SWFWMD dated February 26, 2018.

The property appraiser submitted the following evidence into the record:

Property Record Card, Subject Parcel Location Map, January 2016 Aerial, January 2017 Ariel, September 2017 Aerial, On site photos from 11/29/2016 -11/25/2017, AG Observation Report/Call Documentation, Email message 2/13/17, Email message 7/24/17, Aqua by the Bay Subject Parcel Rezone various dates, Newspaper articles, AG application, SWFWMD email, Florida statutes 192.042, Florida Statute 193.461 Subject Parcel Views, Site Plans, Florida Constitution Article VII, Florida Department of Revenue 12D-5.004, Florida Department of Agricultural Best Management Practices, Photos of Subject Parcel, New Replacement Applications, Email Correspondence SWFMD, Case law from the Petitioner, Case Law regarding the burden of proof.

There were no objections to any of the evidence submitted in the record or anything submitted online.

The Petitioner's counsel presented an opening statement. The Petitioner's counsel stated that both parties accept the findings of fact by the prior magistrate. There is a stipulation that the facts are accepted by both parties. There is only an issue as to the conclusions of law as the SWFFMD permit. This case involves a cattle grazing operation that is ultimately planned to be a real estate operation. Cargo Partners is the owner of the property which consists of three pastures. In the fall

of 2016 there was an application for three agricultural ponds for cattle grazing purposes with SWFWMD. There is an exemption in the water resources act where they do not need to receive a permit from SWFWMD. The digging of the three ponds received the agricultural exemption from SWFWMD. There was a condition that the pond could not go more than 15 feet. The statutory SWFWMD exemption requires that it not be more than 15 feet and not more than 15 acres. If you exceed 15 acres, you cannot go deeper than 15 feet. If you don't meet this requirement you lose the exemption. Petitioner want to dig deeper than 15 feet because they would need more fill for development. The Petitioner applied to digger deeper than 15 feet. The Petitioner went ahead and got an ERP permit as a result. The Petitioner was in the process of digging the ponds January 1, 2017. To get an agricultural permit from SWFWMD it is required that the dirt be spread across the land. The Petitioner spread the dirt across the parcel to maintain the agricultural permit. The middle and west pasture have an agricultural exemption. The fill went to the east pasture which is the subject of this Petition. As of January 1, 2017 there is no cattle on the east pasture where the fill was spread. The hope was that when the rainy season came the grass would grow and the pasture would be ready again for cattle to feed. The cows were fenced off and put on another pasture for their safety. The residential permit had been pulled. The previous special magistrate keyed in on the fact there was no cattle as of January 1, 2017 and denied the exemption. The VAB asked this be reconsidered and the record was not clear on the permitting with SWFWMD. The Petitioner is focusing on why the residential permit was pulled. Due to the dry season, the grass did not grow so the cattle could not be brought on and there was a period of inactivity. The question is the intent as to whether to proceed with agricultural activity.

The Property Appraiser stated its position in that there are 3 parcels. The middle parcel was where the digging was being done. The parcel that is the subject of the Petition is just the east parcel that had fill dirt put on it from the middle parcel. The cattle were moved from the east parcel over to the west parcel. That was done to prevent them to be harmed from the heavy equipment. The Property Appraiser's position is that the permitting is not the only basis of the agricultural classification. The determination is not made based on the future intent. The actual use on January 1, 2017 is the focus of the property on that date. There a parcels that may be zoned for permitting purposes agricultural but they may not being used for agricultural purposes as determined by the exemption process. The amount of dirt was being spread for future development.

The Property Appraiser testified the subject parcel had cattle grazing in 2016. The parcel used to have agricultural use on the records previous. The east parcel in 2017 there was significant change in use. The Property Appraiser had no knowledge of the permit at the time of the denial. The denial was based upon the actual use of the land. The Property Appraiser looked at the applications and permits with SWFFMD. The Property Appraiser stated that the fencing was falling down and therefore she could not put it under cattle grazing. It is undisputed that there was no cattle on the property. The Property Appraiser cannot place a value on future intent. The subject lease is for a couple of parcels and the lease is not being used for cattle grazing on this particular parcel.

The Petitioner's counsel stated there is confusion as to the lease and cross-examined the Property Appraiser. The Property Appraiser stated that the lease is 28 through 30 and was placed in the record. The Petitioner's counsel stated the east pasture is subject to an agricultural lease. The

Property Appraiser had received the addendums later and agreed the entire parcel was under a lease. The Property Appraiser stated SWFWMD permitting is not binding on the exemption process to be recognized as cattle pasture. The Petitioner's Counsel advised that SWFWMD permitting is persuasive as to use. The Property Appraiser stated that the permit is taken into consideration and that spreading dirt is an agricultural use. The Property Appraiser stated that the use by the Petitioner in this case was not usual and customary. The Petitioner's Counsel argued that burning fields is an acceptable practice for agricultural use. The Property Appraiser stated that the cattle are generally returned to the property after a burn with four months. The Property Appraiser stated the cattle have been off the property 16 months.

Peter Logan testified the original application was for cattle grazing. There was no new application for the grass growth. It's hard to say that January 1, 2017 is the drop dead date.

Petitioner's counsel argued if you are in a period of inactivity such as growing the grass you are still in agricultural use as defined by the case law regarding controlled burns. The grass was expected to grow and it did not because of the drought. The period of inactivity is consistent with the over agricultural operation. Had the Petitioner intended the digging be consistent with development like compacting the dirt then this parcel would have lost its agricultural exemption. The Petitioner has a period of inactivity like taking crops out of rotation. There is an agricultural plan in the evidence. The ponds were dug consistent with agricultural use. Because the cattle were not on the property the special magistrate did not find agricultural use. The Petitioner stated that the permit from SWFWMD was not for residential purposes and was undisputed. The overall operation is consistent with an agricultural use. The permit requires the dirt to be spread is consistent with the digging of the water ponds for the middle parcel for the cattle and is consistent with the agricultural plan for SWFWMD.

Peter Logan SFWFMD permit required the fill remain on site and was not limited to any of the parcels. The dirt was spread from the eastern parcel and spread to the parcel that is the subject of the Petition. There was no exemption application for sod agricultural use. The Petitioner just thought grass would grow when the rainy season started. The Petitioner intends to seed during the next season. The property has been on all three parcels since it was bought in 2012.

Petitioner's counsel questioned the Property Appraiser on irrigation. Property Appraiser stated she tries to gain access to the entire parcel by contacting the taxpayer and used it as an example. The irrigation is some hypothetical and has nothing to do with the property.

The Property Appraiser stated she was not granted total access to the property and she felt the fencing was down on the property and gates were open on the property a couple weeks ago and the construction sign was up.

Peter Logan testified there was a fence there today. This party has garnered a lot of interest from environmental groups. The Petitioner has been particular in the care of the property. Mr. Logan was shocked to hear the gate was opened. The gates should be locked and it is unusual for it to be open. Mr. Logan stated the pictures was unclear as to location and the pictures were taken late in 2017. The contractors may have taken some of the fence down for a period of time. However, Mr. Logan stated there is no ability to get in the property without going through a gate. Mr Logan

was frustrated because this was not the existing condition at the time. Mr. Logan testified there are two different leases for large parcels. Mr. Logan testified there was no grassing program in place on the parcel. There will be a grassing program in the future. The Petitioner testified the land has not been developed. The Petitioner testified there was not a change in agricultural use for a sod program. The are will be seeded in June 2018.

The Property Appraiser states that there was no fencing on west pasture photos. The Property Appraiser stated there were 2018 photos that show no fencing. The Property Appraiser testified that she had not encountered a situation with such a large pond being built for cattle. There were about 50 cattle on the parcel. A pond of that size and that much dirt is such a major change and not typical for a cattle. If the agricultural function changes an updated application must be made with the Property Appraiser's office to explain the change in use. Written documentation is usually supplied. The Property Appraiser contends that the spreading of the soil, even though permitted is not consistent with a cattle operation.

Petitioner's counsel questioned the Property Appraiser and the Property Appraiser stated the ponds are on a smaller scale in cattle operations. The Property Appraiser had not seen a property taken a whole different shape and this was a new experience for the Property Appraiser. The water is usually in place for the cattle.

The Petitioner's counsel stated that the previous findings of fact stated that the spreading of the dirt was consistent with a cattle operation. Petitioner's counsel argued that the period of inactivity on January 1, 2017 does not remove the agricultural exemption because it was consistent with agricultural use. The activity was consistent with the SWFFMD permit.

All the evidence and testimony was admitted. All evidence and testimony was relevant and credible.

Conclusions of Law

Florida Statute 193.461 provides as follows:

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.

The findings of fact from the previous magistrate are incorporated by reference as agreed to by the parties.

In this case, the property has been used for agricultural use for a period and continuous time since 2012. The purchase price paid is irrelevant. The size is consistent with use as cattle grazing. There was no indicated effort to adequately care for the land based upon the testimony of the Petitioner in accordance with accepted agricultural practices – such as seeding the land to feed cattle. In fact, the Petitioner stated it is undisputed that there is no cattle on the land as of January 1, 2017. The fact of the matter is that by the Petitioner's own testimony the use had changed. While the Petitioner's evidence shows that there was a permitting process that indicated agricultural use, there was no relevant and credible evidence or testimony that spreading the dirt on the land was consistent with a cattle grazing use – only that it was consistent with the permitting process.

The Petitioner in fact stated that the cattle could not be placed on the land because of safety issues due to the pond construction. The Petitioner does not deny that the usage will be for residential purposes in the future and that decisions to maintain agricultural permitting are made in order to facilitate that development in the most cost-effective manner. The Petitioner also pointed out that the dirt being spread was a period of inactivity. The Petitioner stated that they thought grass would grow for the cattle in the rainy season and it did not. The Petitioner testified they plan to plant the next rainy season and then put the cattle on the land. While the Petitioner testified the property was gated and fenced, taking that into account is irrelevant because there was no cattle inside the fence by stipulation. Moreover, while there was a lease the Petitioner's testimony was that the parcel was not being used for cattle pursuant to the lease. The Petitioner testified that there was no grassing program for the cattle.

While the Petitioner is correct in that the permitting is consistent with agricultural purposes for SWFWMD the actual use of the parcel is not consistent with the requirements of Florida Statute 193.461 for more than 18 months. Moreover, the Petitioner testified that the property is also not being used for development purposes, so essentially it has sat vacant for 18 months with the spreading of dirt.

The burden of proof is on Petitioner to show by a preponderance of the evidence that the tax status assigned the Subject Property is incorrect. See, §194.301(d), F.S. The Petitioner's own testimony and evidence shows that the land is not being used for bona fide agricultural purposes on January 1, 2017. The site was not being used consistent with the lease, and was not being prepared for use by the cattle. The cattle were deliberately moved from the property for safety reasons and this was for a long period of time. There was no preparation other than spreading out dirt to prepare the land for cattle for more than 1 year and the cattle had been removed from the parcel for safety purposes. While the Petitioner had a permit for an agricultural pond that was not dug on the parcel. This parcel was only used for the spreading of dirt.

The period of inactivity was extremely long. It is therefore recommended based upon the Petitioner's own testimony and evidence that the agricultural exemption be denied.