FE560

UF UNIVERSITY of FLORIDA
IFAS Extension

Issues at the Rural-Urban Fringe: Florida's Agricultural Enclave Law[1]

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This publication is part of a series titled Issues at the Rural-Urban Fringe. The publications in this series can be found online at the EDIS website at http://edis.ifas.ufl.edu/TOPIC_SERIES_Issues_at_the_Rural_Urban_Fringe.

Introduction

Has Florida's current and anticipated rapid population growth made preventing the conversion or premature conversion of agricultural land to non-agricultural uses an important public policy issue in the state? That probably depends on who you ask and whether they own any agricultural land. Most agricultural landowners would probably dispute the need for any special programs to prevent or decelerate the conversion of agricultural land to other uses. Currently, there is no shortage in commodities produced in Florida due to global markets. While agricultural landowners might argue that land surrounded by residential or commercial development does not make for good neighbors, non-agricultural landowners might disagree with this assessment. Their concerns might be centered on issues related to the supply of certain commodities, loss of green space and wildlife habitat, natural resource amenities, and water recharge areas.

In 2006, the Florida Legislature made a policy decision related to this issue when they amended the "*Agricultural Land and Practices Act*" by defining an agricultural enclave. Under certain conditions, landowners within an enclave could request a change in the local comprehensive plan that would allow the land use to be changed for use consistent with industrial, commercial, or residential development.

Changes to the *Agricultural Land and Practices Act*, Florida Statue (F.S.) 163.3162

In 2006, the Florida Legislature amended and the Governor signed an amendment to the *Agricultural Land and Practices Act*, F.S. 163.3162. The amendment allows the owner of a parcel of land defined as an agricultural enclave to apply with a local government unit for an amendment to the local government's comprehensive plan. Application for amendment as an agricultural enclave requires consistency with F.S. 163.3164, *Local Government*

1. This is EDIS document FE560, a publication of the Department of Food and Resource Economics, Florida Cooperative Extension Service, Institute of Food and Agricultural Sciences, University of Florida, Gainesville, FL. This document is one of a series entitled "Issues at the Rural-Urban Fringe". Published October 2007. Reviewed February 2011. Please visit the EDIS website at http://edis.ifas.ufl.edu.

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Comprehensive Planning and Land Development Regulation Act, and with Florida Administrative Code (FAC) 9J-5.006(5), *Review of Plans and Plan Amendments for Discouraging the Proliferation of Urban Sprawl*. Land uses and land use intensities considered compatable with designation as an agricultural enclave include industrial, commercial, and residential parcels that surround the agricultural enclave. Changes to the *Agricultural Land Practice Act* state that local government amendments under the act "must be transmitted to the state land planning agency for review" after good faith negotiations have been concluded "regardless of whether the local government and owner reach consensus on the land uses and intensities of use" (Section 5b).

Additionally, F.S. 163.3162 requires that:

> Each application for a comprehensive plan amendment under this subsection for a parcel larger than 640 acres must include appropriate new urbanism concepts such as clustering, mixed-use development, the creation of rural village and city centers, and the transfer of development rights in order to discourage urban sprawl while protecting landowner rights (Section 5).

F.S. 163.3162 also specifically states that:

> Nothing within this subsection relating to agricultural enclaves shall preempt or replace any protection currently existing for any property located within the boundaries of the following areas:
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> 1. The Wekiva Study Area, as described in F.S.369.316 or
>
> 2. The Everglades Protection Area, as defined in F.S. 373.4592(2) (Section 5d).

Definition of an Agricultural Enclave

Chapter 163.3164(33) defines an agricultural enclave:

> "Agricultural enclave" means an unincorporated, undeveloped parcel that:
>
> (a) Is owned by a single person or entity;
>
> (b) Has been in continuous use for bona fide agricultural purposes, as defined by F.S. 193.461, for a period of 5 years prior to the date of any comprehensive plan amendment application;
>
> (c) Is surrounded on at least 75 percent of its perimeter by:
>
> 1. Property that has existing industrial, commercial, or residential development or
>
> 2. Property that the local government has designated, in the local government's comprehensive plan, zoning map, and future land use map, as land that is to be developed for industrial, commercial, or residential purposes, and at least 75 percent of such property is existing industrial, commercial, or residential development;
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> (d) Has public services, including water, wastewater, transportation, schools, and recreation facilities, available or such public services are scheduled in the capital improvement element to be provided by the local government or can be provided by an alternative provider of local government infrastructure in order to ensure consistency with applicable concurrency provisions of F.S. 163.3180;
>
> (e) Does not exceed 1,280 acres; however, if the property is surrounded by existing or authorized residential development that will result in a density at buildout of at least 1,000 residents per square mile, then the area shall be determined to be urban and the parcel may not exceed 4,480 acres (Section 33).

Key points related to the definition of an agricultural enclave include that it must have been classified for tax purposes (use value assessment) as an agricultural operation for at least five continuous years prior to the comprehensive plan amendment application. To be classified as an agricultural enclave requires that at least 75 percent of the perimeter of property be surrounded by existing industrial, commercial, or residential uses, or that it

be designated for those uses in the future. The size of the enclave is limited to two square miles (1,280 acres) unless the build out has a minimum density of 1,000 people per square mile which translates into an enclave of seven square miles (4,480 acres).

Implications of Agricultural Enclaves

Some individuals might argue that Florida's agricultural enclave law is inconsistent with state polices that discourage the conversion or premature conversion of agricultural land to non-agricultural uses such as F.S. 823.14, *Right-to-Farm Act*; F.S. 604.006, *Mapping and Monitoring of Agricultural Lands Act*; F.S. 70.001, *Private Property Rights Protection Act*; and F.S. 193.461, *Agricultural Lands Classification and Assessment Act*. Is the agricultural enclave concept consistent with laws like these? It depends on your perspective.

For example, agricultural landowners would most likely argue that the agricultural enclave concept is very consistent with private property rights protection. Those same landowners might also argue the enclave concept is valid because use of the land for production purposes will be wrought with complaints about noise, odors, machinery on roads, etc. and the long-term future of the land in production is limited because of those issues. The agricultural landowner might also argue that the long-term future of the land is limited in production because allied industries, such as seed, feed, chemicals, and fertilizers, are no longer located in an economically feasible proximity for the farm to secure needed inputs. Non-agricultural landowners often express concerns about food production, natural resource amenities, wildlife habitats, etc. and remain concerned that conversion of land meeting the criteria for an enclave will further erode these attributes in the state.

What will be the impact to communities, counties, and the state as a result of the agricultural enclave modifications? No one really knows. While there are a few items related to the modification for agricultural enclaves that are certain, there are many other factors that are uncertain.

What are some of the certainties? Unless the property has been in continuous bona fide agricultural use as defined in F.S. 193.461 the property is not even eligible to be defined as an agricultural enclave. The number of amendments to local government comprehensive plans should be somewhat limited. In general, although some exceptions exist (see F.S. 163.3187), comprehensive plan amendments are limited to no more than twice per year. Another certainty upon approval of the plan amendment is that land use intensity of the enclave should increase. This occurs because land use within the enclave is eligible for designation as industrial, commercial, or residential based on what surrounds the enclave or has been designated in the local government's comprehensive plan, zoning map, and future land use map as land that is to be developed for industrial, commercial, or residential purposes, and at least 75 percent of such property is existing industrial, commercial, or residential development.

What are some of the uncertainties? How many areas and requests will be made under the enclave designation? No one knows for sure how many areas in Florida are affected by the change in this law. A general consensus is that the number of parcels eligible for this designation is somewhat limited and mostly in urban areas with significant development and growth. It is not anticipated that designation as an enclave will have significant impacts on total production of various commodities in the state. Still, there is a potential for some impact in local communities and counties if the commodities produced are marketed and sold through local markets. What will happen to land values is uncertain, but the uncertainty seems to be centered on how high prices might escalate and accelerate. More intense use of the land for industrial, commercial, and residential uses should cause prices to rise but how high no one knows.

Summary

Florida's population growth is creating the need to address and balance land use decisions in the state. Defining an agricultural enclave is just one step in the process. It appears that the legislature has weighed in on the concept that agricultural production property surrounded by large amounts (75 percent or more) of

industrial, commercial, or residential property does not result in economically efficient agricultural production or compatible neighbors. Debates on land use allocation, private property rights, sprawl, etc. will continue in the future as long as the state's population continues to grow.

References

Florida Department of Community Affairs. 2006. *The Future Land Use Element*. Rule 9J-5.006, Florida Administrative Code. https://www.flrules.org/gateway/RuleNo.asp?id=9J-5.006.

State of Florida. 2006. *Agricultural Lands and Practices Act*. Florida Statutes, Chapter 163.3162. http://www.flsenate.gov/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0163/SEC3162.HTM&Title=->2006->Ch0163->Section%203162#0163.3162.

State of Florida. 2006. *Agricultural Lands Classification and Assessment Act*. Florida Statutes, Chapter 193.461. http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0193/SEC461.HTM&Title=->2007->Ch0193->Section%20461#0193.461 .