

**DAVIE AGRICULTURAL ADVISORY BOARD**  
**JANUARY 25, 2005**

**1. ROLL CALL**

The meeting was called to order at 6:46 p.m. Board members present were Chair Hilda Testa, Vice-Chair Julie Aitken, and Dr. Rick Bruns. Also present were Development Services Director Mark Kutney, Code Compliance Official Danny Stallone, Landscape Inspector Chris Richter and Board Secretary Jenevia Edwards recording the meeting. Jacque Daniels was absent.

**2. APPROVAL OF MINUTES: October 26, 2004**

Later in the meeting Vice-Chair Aitken made a motion, seconded by Dr. Bruns to approve the minutes of October 26, 2004. In a voice vote, with Ms. Daniels being absent, all voted in favor. **(Motion carried 3-0).**

**3. DISCUSSION**

3.1 State Statutes Concerning Downzoning Issues – Mark Kutney, Director  
Development Services

Chair Testa explained that there was a difference of opinion between staff and the Board as to application of the Statute. She indicated that the Board needed clarification in order to put the issue to rest.

Vice-Chair Aitken indicated that she had heard that someone who wanted to open a nursery was told by the Planning and Zoning Division that they could not have a nursery in an A-1 zoning designation, only in an M-3 or M-4 zoning. Mr. Kutney commented that he was not aware of the incident; however, it didn't make any sense unless it was an application for a landscape business or maintenance company. He indicated that staff had the correct information and anything else would be completely off-base. Vice-Chair Aitken commented that she was not sure how much of the information was correct but wondered if the proposed business was a maintenance company instead of a nursery.

A lengthy discussion followed with Mr. Stallone indicating that the information did not coincide with what the table of permitted uses allowed, and a nursery could be defined as a farm under A-1 zoning. Mr. Stallone added that based on the identification of the process being conducted on the property; it was probably more of a landscaping business than a nursery.

Vice-Chair Aitken asked if there was a definition in the Code for a landscape maintenance company and a nursery. Mr. Stallone responded in the negative. Following a brief discussion regarding Code issues, Mr. Kutney indicated that there would be a lot of definition changes if the entire Code was revised. He indicated that at a previous Council meeting, a zoning in progress was proposed by Vice-Mayor Paul to enable staff along with a consultant to rewrite the entire development Code instead of doing it piecemeal. He added that after much discussion, Council deferred taking action, and decided to hold a workshop. Mr. Kutney indicated that there was a lot of work involved because the definition section of the Code had not kept up with changes that had been made.

The Board briefly discussed how the changes to the Code could be accomplished, and the problems that surfaced after the farm amendments were completed. Vice-Chair Aitken indicated that there were non-farmers who were trying to hide behind the farm amendments when their operation was not legitimate. There was discussion regarding definition changes that were made when Section 12-34(B) had been rewritten, with Mr. Stallone indicating that changes were made under the farm section. He indicated that there had been people who had applied for a farm designation from the Town although they already had the Broward County agricultural classification. Chair Testa asked if there had been any applicants with non-cultural classification to apply for a farm designation. Mr. Stallone responded in the affirmative and explained that he had learned from the Property Appraiser's perspective that present operations should be looked at, not proposed operations. A brief discussion followed with Mr. Stallone indicating that the administrative determination process was identifying potential problems before they became a conflict. In doing so, he commented that the Town might overstep its bounds with some of the farm designation requests; however, sometimes neighborly relations might amount to more than acquiring a farm designation. Mr.

**DAVIE AGRICULTURAL ADVISORY BOARD  
JANUARY 25, 2005**

Stallone added that by anticipating what may occur and making the right recommendations, there had not been any problems with places that have been designated farms.

Chair Testa asked about the type of places that were asking for farm designations with Mr. Stallone responding that it was 50-50 between equestrian and agricultural; mostly boarding farms.

The Board discussed the issue of non-farmers who were pretending to be farmers, hiding behind Right-To-Farm Act and abusing the protection afforded to legitimate farmers. Mr. Stallone discussed the case of a nursery being a viable, legitimate business and not a front for a maintenance service and taking advantage of a system they were not meant to benefit from. He warned that these abuses might lead to legislative changes which would affect the overall agricultural community.

Vice-Chair Aitken asked if the criteria for farm claims for a portion of land used for agriculture was included in the Code. Mr. Stallone indicated that he was not sure if a specific percentage was indicated. A brief discussion followed with Vice-Chair Aitken indicating that if a specific percentage was indicated, it would curtail the action of individuals who were using a bulk of their property for non-agricultural purposes. Vice-Chair Aitken reiterated that to get an agricultural classification, the business should primarily be a farm minus the residence. Mr. Stallone indicated that there were legal reasons related to homestead exemption that could separate the distinction between what percentage of a property was being used as a farm. He indicated that there was a Code section that allowed for a portion of a property to be declared a farm.

Mr. Kutney asked about the specifics of what the Board wanted him to address relative to the downzoning versus the Code.

Vice-Chair Aitken referred to the property at issue and asked if it was already zoned R-5 with Mr. Kutney responding in the affirmative.

A lengthy discussion followed with Mr. Kutney explaining the reason for the downzoning, specifically that Council was trying to have the agricultural designation placed back on the land use map. Mr. Kutney indicated that the property owners would be changing the land use classification to be consistent with the zoning. Vice-Chair Aitken spoke about the negative effect this could have on prospective new farmers. Mr. Kutney commented that the zoning by itself was only one criterion in property appraisal in terms of land value, and although it was important, it did not mean devaluing the land. He provided an explanation as to what made a piece of land valuable.

Regarding the Board's discussion that a prospective property owner should be allowed to do agricultural "stuff" in R-2 to R-5, Mr. Kutney disagreed. He recommended that if the Board wanted Council and staff to take a closer look, the Board should make a motion asking Council to revisit the issue. A lengthy discussion followed regarding agricultural development, land development regulations, agricultural exemption and allowance of agricultural activities in any zoning district providing that development had already taken place.

Vice-Chair Aitken cited a zoning case where the 5th DCA reasoned that because agriculture was not development, development regulations did not apply and agriculture was exempt and zoning was a land development regulation; therefore, zoning did not apply to farms. Mr. Kutney indicated that State Law required that zoning should be consistent with land use and if there was a conflict between them, the land use would rule. He explained that there were 11,000 parcels in the Town with their land use and zoning being inconsistent and an administrative rezoning process had begun by the Town. A brief explanation was given for the cause of the inconsistencies. Mr. Kutney explained that if there was an R-5 designation on the map but the property was zoned AG, in order to make the zoning consistent with the land use, the land use should be changed to AG.

There was extensive dialog regarding future land use designations, prospective and future development rights, agricultural classification, reversal of property classification, and the Right-To-Farm

**DAVIE AGRICULTURAL ADVISORY BOARD**  
**JANUARY 25, 2005**

Act. Mr. Kutney commented that to some people, zoning appeared to be an impediment but he expressed the opinion that zoning was in place to assist agriculture.

Vice-Chair Aitken commented that Davie was the first municipality in the State of Florida that brought its ordinances in compliance with State law in terms of farms. She added that presently, Davie and the County were the only ones in compliance with State law. Mr. Kutney asked why was there no enforcement by the State on the municipalities that were not in compliance. Vice-Chair Aitken commented that she did not believe that the State was aware of the non-compliance.

Following a brief discussion regarding resolution of the issue, Vice-Chair Aitken suggested getting an Attorney General's Opinion. The Board discussed the phrasing of the question for submission to the Attorney General. Mr. Stallone indicated that the request would have to be submitted through the Town Attorney's Office.

There was a brief discussion regarding whether a property could be classified as agricultural or commercial. Mr. Stallone commented that if revenue was derived from an operation, it would be considered a commercial enterprise.

Chair Testa asked for clarification as to why agricultural use was allowed in certain zoning districts but others were not. Mr. Kutney explained that agricultural use was not allowed in R-2 and R-5 districts and this was outlined in Section 12-34(B).

The Board briefly discussed the manner in which the suggestion for the Attorney General's Opinion should be presented to Council and whether it should be a formal presentation. Vice-Chair Aitken commented that the presentation should be informal.

Jason Curtis asked if requesting an Attorney General's Opinion was a good idea. The Board briefly discussed the necessity for the opinion with the explanation that other municipalities were not experiencing problems because they were not in compliance with State law and were regulating things that should not be regulated. The consensus was that it was necessary to get the correct answer to the issues at hand.

Chair Testa asked if an Attorney General's Opinion was that agriculture was not a permitted use and there would be no changes, was there an allowance whereby the land owner could have the zoning changed back to R-5 later or if he had to change back to R-1. She asked if there was anything in the Code that allowed for the change and if not, should there be. Mr. Stallone explained that there was no provision in the Code once the right was relinquished by downzoning to a different zoning district. He commented that if the Code was subsequently changed then they would have to deal with the new Code.

There was brief discussion regarding the liability to the Town if the land owner later realized that the land did not have the expected accrued value because of the downzoning. Mr. Kutney commented that in the short term, it was probably easier to predict what might occur; however, 15 years later there might be substantial changes to the area.

Following further discussion regarding an Attorney General's Opinion, it was the consensus of the Board that a presentation be made informally to Council by Vice-Chair Aitken. A brief discussion followed regarding the type of questions that should be asked of the Attorney General. The Board agreed that the questions should be a compilation of Statutes and issues that should be addressed. Mr. Kutney indicated that he would seek Council's direction before he would be able to move forward with the issue.

**4. OLD BUSINESS**

There was no old business to discuss.

**DAVIE AGRICULTURAL ADVISORY BOARD**  
**JANUARY 25, 2005**

**5. NEW BUSINESS**

Landscape Inspector Chris Richter distributed information regarding Everglades Pollution Prevention Strategies.

Vice-Chair Aitken commented that the equine Best Management Practices (BMPs) had been completed for Broward County and Peg McPherson of South Florida Water Management District would be able to provide a copy of the draft to Ms. Richter.

Chair Testa indicated that information in the handout did not seem to pertain to livestock but to landscaping. Vice-Chair Aitken indicated that the BMP's for cattle had already been completed by the State and were in effect.

Ms. Richter indicated that the suggestions listed in the handouts were ways to clean up the Everglades. She asked that the Board review the ideas in the draft and try to present any new ideas that would help in curtailing the problem. Ms. Richter asked that the information be forward to her by e-mail.

Dr. Bruns asked for information on the Neiman Marcus mall. A brief discussion ensued with Mr. Kutney providing information on the issue.

**6. COMMENTS AND/OR SUGGESTIONS**

There were no comments or suggestions.

**7. ADJOURNMENT**

There being no objections and no further business to discuss, the meeting adjourned at 8:15 p.m.

---

Date Approved

---

Chair/Board Member