

CITY OF FORT PIERCE - OFFICE OF THE CITY ATTORNEY

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MEMORANDUM

**TO:** Robert J. Bradshaw, City Manager  
**FROM:** Robert V. Schwerer, City Attorney  
**SUBJECT:** Big Red Tomato Packers  
**DATE:** June 11, 2015

RECEIVED  
TIME \_\_\_\_\_  
JUN 11 2015  
CITY OF FT. PIERCE  
CITY MANAGER'S OFFICE

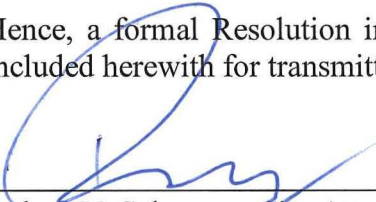
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Recall that a question of law arises over the City's ability to apply building regulations, including the Florida Building Code, to the packing house owned by Big Red Tomato Packers, LLC, and located at 3500 Enterprise Road, Fort Pierce. The Building Department understands that the packing facility is subject to permitting requirements for construction and renovation activity there, just as is any other facility. The property owner, however, contends that the operation is completely exempt from the building code. It relies on Fla. Stat. s. 604.50.

This dispute is a pure question of law regarding how the statute is to be applied. There is no argument between the City and property owner over the basic facts. In discussing this with the property owner, both sides are of the belief that the fairest, most expeditious way of resolving the legal issue here is to put the question to the Florida Attorney General Office rather than the courts at this time.

With this in mind, a formal request for a legal opinion was addressed to the AG. But instead of giving the City an opinion on this subject, the Attorney General is seen by the attached letter dated April 8, 2015 to require that the request for an opinion be approved by the City Commission.

Hence, a formal Resolution in the matter is prepared for Commission adoption and is included herewith for transmittal. Thank you for your attention.

  
\_\_\_\_\_  
Robert V. Schwerer, City Attorney

/mlp  
Attachment



PAM BONDI  
ATTORNEY GENERAL  
STATE OF FLORIDA

OFFICE OF THE ATTORNEY GENERAL  
Opinions Section

PL-01 The Capitol  
Tallahassee, FL 32399-1050  
Phone (850) 245-0158 Fax (850) 922-3969  
<http://www.myfloridalegal.com>

April 8, 2015

Mr. Marc Meyers  
City of Fort Pierce Building Official  
Post Office Box 1480  
Fort Pierce, Florida 34954

Dear Mr. Meyers:

Thank you for your recent letter requesting assistance in determining whether a packing house located within the city of Fort Pierce qualifies as a nonresidential farm building exempt from local regulation. Regrettably, the matter is one which may not be addressed in a formal opinion at this time. In light of the nature of your question, involving the jurisdiction of the city and the duties of the property appraiser, this office would require that your request be from a majority of the members of the city's governing body, as well as from the property appraiser.

You may wish to review Attorney General 2001-71 for a discussion of the exemption of nonresidential farm buildings from local regulation. In your correspondence, you indicate that the property appraiser has not designated the packing house property as agricultural. This office would defer to the property appraiser's decision in this matter.

Should the property appraiser and the city's governing body join in your request, this office stands to review the issue.

Sincerely,

Lagran Saunders  
Assistant Attorney General

ALS/tsh

RECEIVED  
APR 15 2015  
Building Department

CITY OF FORT PIERCE - OFFICE OF THE CITY ATTORNEY

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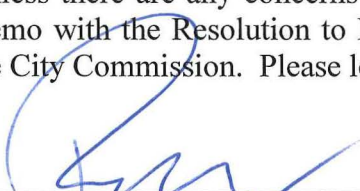
**M E M O R A N D U M**

**TO:** Marc Meyers, Building Official  
**FROM:** Robert V. Schwerer, City Attorney  
**SUBJECT:** Big Red Tomato Packers  
**DATE:** June 11, 2015

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It will be recalled that by letter dated, April 8, 2015, the Florida Attorney General's Office requires formal City sign off on the request for an opinion as earlier drafted for your signature. A proposed Commission Resolution in the matter is, therefore, prepared and enclosed herewith. Also, included is an enclosure memo to be addressed to the City Manager, by means of which request is made by you to present the matter to the City Commission for adoption of the Resolution.

Unless there are any concerns requiring further discussion, please forward the enclosed memo with the Resolution to Mr. Bradshaw for inclusion in the next agenda packet for the City Commission. Please let me know of any questions.



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Robert V. Schwerer, City Attorney  
RVS:la  
Attachment

**RESOLUTION NO.:**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA REQUESTING AN OPINION FROM THE FLORIDA ATTORNEY GENERAL CONSTRUING APPLICATION OF FLA. STAT s. 604.50 TO A PACKING HOUSE**

**WHEREAS**, there is currently a good faith argument between Big Red Tomato Packers, LLC and the City of Fort Pierce, Florida, over the application of building regulations including the Florida Building Code to a tomato facility located at 3500 Enterprise Road, within the City of Fort Pierce: and

**WHEREAS**, the aforesaid dispute is based upon a legal construction of Fla. Stat. s. 604.50, and where the basic facts are not in dispute, so that the resolution of said legal construction is believed and understood to be a matter amenable to resolution by submission to the office of the Florida Attorney General; and

**WHEREAS**, as a condition precedent for addressing questions submitted to the Florida Attorney General under the authority of Fla. Stat. s. 16.01(3) the Florida Attorney General's office requires the requestor to submit a Memorandum of Law setting out the requestor's own position on the question for which an opinion is sought.

**NOW THEREFORE BE IT RESOLVED** by the City Commission of the City of Fort Pierce, Florida, as follows:

The City Commission of the City of Fort Pierce requests of the Florida Attorney General pursuant to Fla. Stat. s. 16.01(3) that the Attorney General render an opinion regarding the application and construction of Fla. Stat. s. 604.50. In furtherance hereof there is attached a Memorandum of Law, through means of a letter addressed by the City's Building Official, Mr. Marc Meyers, to the Florida Attorney General dated March 30, 2015.

**DONE AND RESOLVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2015

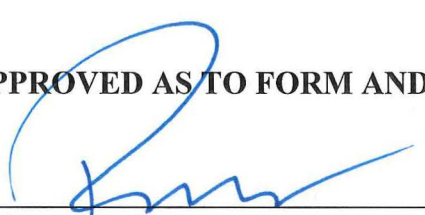
**IN WITNESS WHEREOF**, this Resolution has been duly adopted on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Linda Hudson, Mayor

**ATTEST:**

\_\_\_\_\_  
Linda Cox, City Clerk

**APPROVED AS TO FORM AND CORRECTNESS**

  
\_\_\_\_\_  
Robert V. Schwerer, City Attorney

# CITY OF FORT PIERCE *Florida*



BUILDING DEPARTMENT  
P.O. BOX 1480, FORT PIERCE, FLORIDA 34954  
772-467-3188, FAX; 772-467-3849

March 30, 2015

The Honorable Pamela Bondi  
Attorney General, State of Florida  
Department of Legal Affairs  
The Capitol PL01  
Tallahassee, FL 32399-1050

Re: Request of City of Fort Pierce for Opinion on  
Exemption of Packing House from Florida Building Code Requirements

Dear Madam Attorney General:

This request is respectfully addressed by me as Building Official of the City of Fort Pierce, Florida, to you in your capacity as Attorney General for the State of Florida, pursuant to Fla. Stat. S. 16.01(3). There is requested kind cooperation in the issuance of a formal opinion addressing the specific statutory issue identified hereafter, under the circumstances also described. The intended reach of Fla. Stat. S. 604.50 is not believed to be entirely clear under the scenario here presented and its application will benefit from clarification by your office on what the legislature meant to accomplish with it. A Memorandum of Law likewise accompanies this request. Further communications facilitating this request may be handled at your discretion through our City Attorney, Robert V. Schwerer, at the above address.

## I. QUESTION

Is a packing house which is located within the City of Fort Pierce to be classified for purposes of Fla. Stat. S. 604.50 as a "nonresidential farm building" and therefore exempt

from permitting requirements of the Florida Building Code, see Fla. Ch. 553, Part, IV, and related building regulations of the City, under the following circumstances, and wherein it is not classified as an agricultural use by the Property Appraiser for purposes of Fla. Stat. s. 193.461?

## **II. THE FACTS**

This matter involves a roughly seven acre piece of property located across the street and down the block from a Farmers Market. Since the 1950s, there has been located on the property a packing house which processes vegetables, mostly tomatoes and bell peppers. In 1980 or thereabouts the property was purchased by a group of farmers who owned a farm which is in another, different location not within the immediate geographic area as the packing house. They acquired the packing house for the purpose of processing, packing and marketing their own produce. The packing house serves only their produce.

Once produce is picked at their farm, the produce is hauled directly to the packing house, washed in a chlorine bath, graded, packed in boxes, and then placed in a cooler for storage until being loaded onto tractor trailer trucks and distributed around the country. The packing house employs as many as 120 people during the season and annually processes in excess of 25 million pounds of produce.

The property was annexed in 1998 to the City of Fort Pierce, where it is zoned light industrial, and a classification equivalent to how the property was also previously zoned within the County. The Property Appraiser's Office does not classify it for purposes of Fla. Stat. s. 193.461 as an agricultural use. The City's building code applies to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure within the City, except where expressly exempted by local or state law. No provision in local law exempts the packing house from permitting requirements of the City's building code.

Building permits have been issued from time to time by the City for improvements, repairs and renovations involving the packing house. The owners now wish to undertake expansion of the building, but contend that Fla. Stat. s. 604.50 exempts such construction from building permit requirements. The property has never been used as a residence.

## **III. MEMORANDUM OF LAW**

It is the Building Official's position that the packing house remains subject to municipal permitting requirements under the Florida Building Code and related building code requirements of the City. Please accept the following Memorandum of Law in support of

such position.

Nothing in Fla. Stat. s. 604.50 exempts such packing house from building regulations as a “nonresidential farm building”. The applicable statute sets out a four-step analysis for exemption eligibility: first, there is a threshold requirement that the building be located on land in use for a “*bona fide* agricultural purpose” as measured by Fla. State. s. 193.461(3)(b); second, third and fourth, it must then qualify as a “nonresidential farm building”, meaning that it must *either* qualify as a “farm” for purposes of Fla. Stat. s. 553.73(1)(c) *or* satisfy two additional requirements, that it be used “primarily for agricultural purposes” and also be located “on land that is an integral part of a farm operation”. The building meets none of the criteria in question or, at the minimum, fails to meet at least one or more of them.

First, the packing house is not on land that qualifies for use as a “*bona fide* agricultural purpose”. Fla. Stat. s. 604.50 provides the following:

- (1) Notwithstanding any provision of law to the contrary, any nonresidential farm building, farm fence, or farm sign *that is located on lands used for bona fide agricultural purposes* is exempt from the Florida Building Code and any county or municipal code or fee, except for code provisions implementing local, state, or federal floodplain management regulations. A farm sign located on a public road may not be erected, used operated, or maintained in a manner that violates any of the standards provided in s. 479.11(4), (5)(a), and (6) – (8).
- (2) As used in this section, the term:
  - (a) *Bona fide agricultural purposes has the same meaning as provided in Section 193.461(3)(b).*
  - (b) “Farm” has the same meaning as provided in Section 823.14.
  - (c) “Farm sign” means a sign erected, used or maintained on a farm by the owner or lessee of the farm which relates solely to farm produce, merchandise, or services sold, produced, manufactured, or furnished on the farm.
  - (d) “Nonresidential farm building” means any temporary or permanent building or support structure that is classified as a nonresidential farm building on a farm under s. 553.71(10)(c)

or that is used primarily for agricultural purposes, is located on land that is an integral part of a farm operation or is classified as agricultural land under s. 193.461, and is not intended to be used as a residential dwelling. The term may include, but is not limited to, a barn, greenhouse, shade house, farm office, storage building or poultry house. (e.s.)

Consultation with s. 193.461(3)(b) reveals a set of criteria to be taken into account by the Property Appraiser in determining whether property may be classified as “agricultural” or not. Within the greater context of s. 193.461 there is set out a process by means of which the property may be so designated by the Appraiser. See s. 193.461(1) (“The property appraiser shall, on an annual basis, classify for assessment purposes all lands within the county as either agricultural or nonagricultural). By incorporation of this provision into s. 604.50, there is plainly a legislative declaration that property may not be found eligible for exemption from building codes unless it is first formally classified by the Property Appraiser as property used for *bona fide* agricultural purposes. The property on which the packing house is located is not so classified. It fails to clear the initial threshold. There is thus no necessity of next addressing the question of whether, if classified as such, it meets qualification to be treated as a “nonresidential farm building”. See ex. *Davila v. State*, 75 So.3<sup>rd</sup> 192 (Fla 2011) (stating that where language of the statute is clear and unambiguous and conveys a clear and definite meaning, the statute must be given its plain and obvious meaning).

But even if exemption is somehow not defeated by the Property Appraiser’s failure to classify the property as agricultural, the packing house still does not qualify, because it is not a “nonresidential farm building” when measured by s. 553.73(10)(c). Nor does it meet either of the two alternative criteria necessary for any such finding, wherein it must be both “used primarily for agricultural purposes” and is located “on land that is an integral part of a farm operation”. Restating this, there are two possible ways the packing house operator can win the coveted status of a “nonresidential farm building”. Both are unavailing. The first avenue requires a showing that the packing house meets the definition of 553.73(10)(c). If it does, then well and good. If it does not, as here, then the two alternative criteria must be addressed.

The packing house does not satisfy the language first required of it by s. 553.73(10)(c):

- (10) The following buildings, structures, and facilities are exempt from the Florida Building Code as provided by law, and any further exemptions shall be as determined by the Legislature and provided by law:

(c) Nonresidential farm buildings *on farms*. (e.s.)

The packing house is not located “on a farm”. According to Fla. Stat. s. 823.14(3)(a), a “farm” is a place where there are “land, buildings, support facilities, machinery, and other appurtenances used in the production of farm or aquaculture products.” The term “farm products” is defined at s. 823.14(3)(c) as “any plant ... or animal or insect useful to humans and includes, but is not limited to, any product derived therefrom.” In other words, a “farm” is where the crops are grown, the animals raised. The building must be “on” that place. In this instance, the packing house is not located at the place where the crops and animals are produced and raised. It therefore follows that the packing house does not meet the test required for eligibility under s. 553.73(10)(c).

Nor does it satisfy both of the two alternative criteria so as to enable its treatment as a “nonresidential farm building”. The use being made of the property does not amount to a use “primarily for agricultural purposes.” The phrase relates only to buildings facilitating the actual growing of crops or raising of livestock, distinguishable from buildings housing unrelated activities necessary for placing the end result into the stream of commerce through processing, shipment, distribution and ultimately placement on a store shelf. *cf. Pampanga Sugar Mills v. Trinidad*, 279 US 211, 49 SCt 308, 73 Led 665 (1929); *James v. Reuter, Inc. v. Walling*, 137 F2d 315, cert. gr. 64 320 US 731, 64 SCt 205, 88 Led 432, vacated 321 US 671, 64 SCt 826, 88 LEd 1001 (1943); *Elm Street Farm v. US*, 127 F2d 920 (1<sup>st</sup> Cir Mass 1942); *Sancho v. Bowie*, 93 F2d 323 ((1<sup>st</sup> Cir Puerto Rico 1937), cert. den. 304 US 569, 58 SCt 1038, 82 Led 534; *City of Amarillo v. Love*, 356 SW2d 325 (Texas App 1962). Else a trucking terminal or grocery store could similarly be classed as an exempt “nonresidential farm building” in the manner urged here by the property owner on behalf of its packing house.

This is consistent with the definition given to a “farm operation” by Fla. Stat. s. 823.14(3)(b), which reads:

- (b) ‘Farm operation’ means all conditions or activities by the owner, lessee, agent, independent contractor, and supplier which occur on a farm in connection with the production of farm products and includes, but is not limited to , the marketing of produce at roadside stands or farm markets; the operation of machinery and irrigation pumps; the generation of noise, odors dust, and fumes; ground or aerial seeding and spraying; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and the employment and use of labor.

Of the enumerated activities, none, except for marketing at roadside stands, is seen to go beyond the narrow scope required for growing crops or raising livestock. There should not therefore be inferred any meaning, application or purpose which goes beyond such scope. *Noscitur a sociis*. See ex. *Nehme v. Smithkline Beecham Clinical Laboratories, Inc.*, 863 So.2d 201 (Fla. 2003). The mere fact that the legislature specifically mentions one exception from the general class of crop and livestock activity there, marketing for “roadside stands”, certainly implies that other “nonfarm” activities, such as off-site processing and off-site distribution, are not also includable. *Ejusdem generis*. See ex. *Eicoff v. Denson*, 896 So.2d 795 (Fla 5<sup>th</sup> DCA 2005).

It is moreover the basic rule that statutes are to be applied in a way that is logical and sensible, see ex. *Williams v. City of Jacksonville*, 118 Fla. 671, 160 So. 15, 98 ALR 513 (1935), so as to avoid absurd results. See ex. *State v. Presidential Women’s Center*, 937 So.2d 114 (Fla. 2006). It is the intent of the Florida Building Code to provide for, “... effective and reasonable protection for public safety, health, and general welfare for all the people of Florida at the most reasonable cost to the consumer.” Fla. Stat. s. 553.72(1). Were the packing plant, a complex industrial structure, to be deemed excluded from the Florida Building Code, its construction would then proceed unguided by any recognizable standards assuring the safety and welfare of its occupants or, for that matter, the safety and welfare of surrounding property owners. Any doubt in the matter should err on the side of the public’s protection. See ex. Fla. Stat. s. 553.72(2) (“It is the intent of the Legislature that local governments shall have the power to inspect all buildings, structures, and facilities within their jurisdictions in protection of the public health, safety, and welfare pursuant to chapters 125 and 166.”). Indeed, to find otherwise would be to create conflict between ss. 604.50 and 553.72(2). Statutes are not to be construed in any conflicting sense. See ex. *State ex. Re. School Bd. Of Martin County v. Dept. of Ed.*, 317 So.2d 68 (Fla. 1975)(any interpretation leading to such result should not be adopted unless it is inevitable); see also ex. *Agency for Health Care Admin. v In re Estate of Johnson*, 743 So.2d 83 (Fla 3<sup>rd</sup> DCA 1999)(it is the duty of courts to favor a construction that gives a field of operation to all rather than construe one statute as being meaningless or repealed by implication).

Finally, completing the alternative two-part analysis under s. 604.50, the packing house is not located on property “that is an integral part of a farm operation”. There being no statutory definition given, the term “integral” is defined traditionally in common usage as: “essential to completeness; constitution as ‘a part’.” *Webster’s New International Dictionary of the English Language* (2<sup>nd</sup> ed.), G & C. Merriam Co., pg. 1290 (1949). The term “farm operation” means, “... all conditions or activities by the owner, lessee, agent, independent contractor, and supplier which occur on a farm in connection with the production of farm, honeybee, or apiculture products and includes, but is not limited to, the marketing of produce at roadside stands or farm markets; the operation of machinery

The Honorable Pamela Bondi  
March 30, 2015  
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and irrigation pumps; the generation of noise, odors, dust and fumes; ground or aerial seeding and spraying; the placement and operation of an apiary; the application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and the employment and use of labor.” Fla. Stat. s. 823.14(3)(b). The same discussion above applies here. This is to say, a narrow construction is intended by our legislature on the allowable scope to be given to what may be permitted of buildings so as to qualify for exemption, it being limited to land where crops are grown and animals are raised. Had there been intent to project application of the statute beyond the immediate confines of the “farm” by tracing the pathway taken by crops and animals as it winds through the stream of commerce, to the packing houses, the trucking terminals, the grocery stores, it would have been an easy matter for the Legislature to say as much. It didn’t. No such meaning should thus be imputed to fill the gap left by any putatively missing language. See ex. *Progressive Exp. Ins. Co., Inc. v. Menendez*, 979 So.2d 324 (Fla 3<sup>rd</sup> DCA 2008) (courts not at liberty to add words to a statute which not placed there by the legislature). The structure is therefore not a “nonresidential farm building”.

In sum, the packing house is not eligible for exemption from permitting requirements of the Florida Building Code or related provisions of the City’s own building code as otherwise allowable under s. 604.50. The packing house does not qualify as a “bona fide agricultural use” as determined by the Property Appraiser, for purposes of s. 193.461(3)(b). Nor, for several reasons, is it a “nonresidential farm building”. It does not meet the statutory requirements of s. 553.73(10)(c) and it likewise does not meet either or both elements required by the alternative standard: the packing house is not used “primarily for agricultural purposes” and it is not an “integral part of a farm operation”.

My office and the City of Fort Pierce sincerely appreciates the attention given by your office to this matter so there may be assurance that the property owner’s concerns are addressed as fairly and thoroughly as the law allows and thanking you for your consideration, I am and shall ever continue to remain, as always,

Sincerely,



Marc Meyers, Building Official  
City of Fort Pierce, Florida