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Insights

Cattle Grazing Leases: Key Considerations for Real Estate Developers

Lowndes Leasing Lawyers Blog
09.13.2021

Real estate developers in Florida are buying and improving rural land at a record pace. In many cases, this land has been devoted to purposes which resulted in the land being categorized as agricultural for real estate tax assessment purposes. Florida Statutes, Section 193.461, requires county property appraisers to categorize land as agricultural upon request by the owner if it is demonstrated that the land is being used for a bona fide agricultural purpose. Such purposes under the relevant statute can include a variety of uses, such as horticulture, floriculture, forestry, dairy, livestock, poultry, beekeeping and fish farming, to name a few.

Whether land qualifies to be categorized as agricultural under this statute depends on a number of factors, including the quantity and size of the land, its condition, its market value as agricultural land, its income, its productivity, the economic viability of its use, and other factors reflective of standard present practices of agricultural use and production.

Sometimes called an "agricultural exemption," the classification is not really an exemption from real estate taxes, but rather a means of reducing the appraised value of the land on the county's tax rolls, resulting in lower taxes being assessed in order to preserve and encourage the agricultural use of land in the state.

It can sometimes take a year or two (or even longer) for developers to obtain governmental entitlements needed to start their proposed developments on land they acquired that was previously used for agricultural purposes. There can be a significant real estate tax savings if a developer continues the agricultural use of the land, so as to maintain the lower appraised value until development actually occurs.

While it may not be feasible for many types of agricultural uses to continue during this pre-development period, cattle grazing is a common and recognized agricultural purpose that is easily accommodated on land that is pending development. Typically, all that is needed is fencing, water and grazing land, plus a rancher with cattle.

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If a developer buys land that is already used by the seller for cattle grazing, it is relatively easy for the developer to lease the land back to the seller upon closing in order to allow the seller to continue its agricultural use. This gives the seller additional time to move its livestock elsewhere, and it also gives the developer the tax savings associated with the agricultural use in addition to the income from the lease.

If the land is not being used for cattle grazing when the developer acquires it, the developer may be able to find a rancher who needs grazing land and enter into a lease with them, as long as the land is suitable.

Cattle grazing leases are relatively simple and contain some basic terms. These include the duration of the lease, the amount of income the rancher will pay the developer, and the caretaking duties the rancher will perform (such as maintenance of pastureland, buildings, water sources, fencing and the like).

If the rancher hires contractors to perform improvements, they should not be permitted to lien the developer's interest in the land (only the rancher's leasehold interest), and the developer should record a notice to that effect. The developer should have the right to enter onto the land in order to verify the rancher's compliance with its obligations, as well as conduct pre-development activities that do not interfere with the rancher's use.

It is probably a good idea for the developer to preclude the rancher from assigning or subletting the lease without the developer's prior approval. It is also important for the developer to be able to terminate the lease when it is ready to develop, by giving the rancher sufficient notice to enable the cattle to be moved elsewhere. If the land is large enough to be developed in phases, the parties may wish to provide for the partial release of land from the lease as development on each phase begins.

The lease should require the rancher to (i) comply with all laws applicable to its operations, (ii) indemnify the developer against liability associated with its ranching operations, and (iii) maintain adequate liability insurance naming the developer as additional insured. Of course, a default by either party that is not cured within any specified grace period should entitle the other party to terminate the lease.

If the agricultural use of the land is for purposes other than cattle grazing, the lease will usually be more complex and be tailored for the particular use involved, but similar principles will apply. For example, a lease that allows the tenant to maintain a citrus grove will contain provisions addressing the use of fertilizers and pesticides, with attendant liability on the operator for environmental contamination. Citrus requires harvesting at certain times, so the ability of the developer to terminate the lease will be subject to constraints on that account.

Each county is likely to have different standards it applies to parties who wish to establish and maintain an agricultural classification of land. This is common, as long as they do not conflict with the applicable Florida statute reference above.

When considering whether to enter into a lease of land for agricultural purposes, it is important for a developer to consult in advance with attorneys who practice in the fields of real property tax law and leasing law to ensure that the goals desired by the developer can be achieved.