ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
6779 HOUSE COMMUNITY & REGIONAL AFFAIRS

25

Official Business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Kevin "Pat" Parnell

Room 128

State Capitol
Juneau, AK 99801-1182

465-2647

SPONSOR STATEMENT FOR HOUSE BILL 495

I introduced House Bill 495 by request of a constituent. "An Act relating to the farm use exemption from municipal taxation for agricultural land," would allow for commercial owners of greenhouses to be granted a tax incentive under the farm use language in the Alaska Statutes. HB495 allows the term "horticulture," to be applied in definition to greenhouses.

Under current law, a tax exemption is granted to a person who uses land for profit in raising crops, raising livestock, or a combination thereof. One must be actively involved engaged in the agriculture realm, by making at least 10% of yearly gross income from this.

The tax exemption was found to apply for greenhouse operators by the Alaska Supreme Court, when it found in Lantz v. Fairbanks North Star Borough, (4FA-89-0986 Civil) that a commerical greenhouse operator was involved in agriculture and that horticulture did fall under its terminology, thus under AS 29.45.060.

A constituent in Anchorage was assessed property tax by the Municipality of Anchorage Assessor, thus asking me to introduce this bill to reinstate the terminology. I believe that the tax loss would be minimum compared to the advantages gained by sponsoring incentive to expand business for the commercial greenhouse operators of our state.

I would appreciate your support in passing this bill out of the House Community & Regional Affairs Committee.

Alaska State Legislature
HOUSE OF REPRESENTATIVES

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SECTIONAL ANALYSIS FOR HB 495

Section 1. AS 29.45.060(c) concerns agriculture use, and inserts the wording defining **"horticulture."** Specifically, the term **"horticulture"** is defined with regard to greenhouses.

(1) **Line 6,** puts in **greenhouses or otherwise.** and removes term ***HARVESTING*** for purposes of clarification, and inserts **or ornamental use.**

(2) **Line 7,** inserts **horticultural** to include in usage.

(3) **Line 9,** places the wording **agriculture or horticulture on** instead of ***FARMING,*** to more specifically define land use.

(4) **Line 10,** inserts **agricultural or horticultural activities on the** to specifically define what use has to derive 10% of yearly gross income to apply.

Section 2. Effective date of January 1, 1993.

LAWS OF ALASKA

1967

Source: HB 161

Chapter No.: 82

AN ACT

Providing for assessing farm lands at farm land values.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 29.10.396 is amended to read:

Sec. 29.10.396. PROPERTY TO BE ASSESSED AT ITS FULL AND TRUE VALUE. Property shall be assessed at its full and true value in money, as of January 1 of the assessment year, except as provided in secs. 397 and 398 of this chapter. In determining the full and true value of property in money, the person making the return, or the assessor, as the case may be, shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value the price for which the property would sell at auction, or at a forced sale, either separately or in the aggregate with all of the property in the taxing district, but he shall value the property at a sum which he believes it is fairly worth in money at the time of the assessment.

* Sec. 2. AS 29.10 is amended by adding a new section to read:

Sec. 29.10.398. FARM OR AGRICULTURE USE. (a) In this section "farm use" means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or for dairying or another agricultural or horticultural use or any combination thereof and includes the preparation of the products raised on the farm use land and disposal by marketing or otherwise. It includes the construction and use of dwellings and other buildings customarily provided in conjunction with the farm use. To be farm use land, the owner must be actively engaged in farming the land, and derive at least one-fourth of his yearly gross income from the farm use land. The

Sec. 29.53.035. Farm or agricultural lands. (a) Farm use lands shall be assessed on the basis of full and true value for farm use, and shall not be assessed as if subdivided or used for some other nonfarm purpose. The assessor shall maintain separate assessment records evaluating the farm use land for other than farm use purposes, where applicable. Should the farm use land be sold, leased, or otherwise disposed of, for other than farm use purposes, the owner shall be liable to pay the additional tax for the preceding two years, and the applicable portion of the current tax year, as though the land had not been assessed for farm use purposes.

(b) An owner of farm use land must, to secure the assessment, make application to the assessor before February 1 of each year in which the assessment is desired. The application shall be made upon forms prepared and supplied by the assessor and shall include information which may reasonably be required to determine the entitlement of the applicant.

(c) In this section "farm use" means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or for dairying or another agricultural use or any combination thereof and includes the preparation of the products raised on the farm use land and disposal by marketing or otherwise. It includes the construction and use of dwellings and other buildings customarily provided in conjunction with the farm use. To be farm use land, the owner must be actively engaged in farming the land, and derive at least one-fourth of his yearly gross income from the farm use land. The provisions of this section do not apply to land respecting which the owner has granted, and has outstanding, a lease or option to buy the surface rights. (§ 2 ch 118 SLA 1972)

Sec. 29.53.040. Mobile homes. Mobile homes, trailers, house trailers, trailer coaches and similar property used or intended to be used for residential, office or commercial purposes and attached to the land or connected to water, gas, electric or sewage utilities are classed as real property for tax purposes except those expressly classified as personal property by ordinance. This section does not apply to house trailers and mobile homes which are unoccupied and held for sale by persons engaged in the business of selling mobile homes. (§ 2 ch 118 SLA 1972)

Sec. 29.53.050. Tax limitation. No municipality may levy and tax for any purpose in excess of three per cent of the assessed valuation of property within the municipality in any one year. (§ 2 ch 118 SLA 1972)

Limitation on taxing power relates to use of revenue for ordinary municipal purposes.—The provisions of this section limiting the taxing power of the town to three per cent of the assessed valuation upon all property relate to the use of revenues for ordinary municipal purposes. Lund v. Town of Petersburg, 293 F. 893 (9th Cir. 1923).

The 1983 amendment, effective July 9, 1983, added paragraph (b)(3).

The 1984 amendment, effective January 1, 1985, added paragraph (4) to subsection (b).

Editor's notes. — Prior to January 1, 1985 subsection (b) read as follows:

"(b) Municipalities may by ordinance

"(1) classify boats and vessels for purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage; a tax based upon a tonnage valuation shall not exceed $5 a year for a boat or vessel of less than five net tons and shall not exceed $15 a year for a boat or vessel of more than five net tons;

"(2) classify and exempt from taxation

"(A) the household furniture over $500 in value and the effects of the head of a family or a householder;

"(B) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes, provided that income derived from rental of such property does not exceed the actual cost to the owner of the use by the renter;

"(C) historic sites, buildings and monuments; and

"(D) land of a nonprofit organization used for agricultural purposes if rights to subdivide the land are conveyed to the state and the conveyance includes a covenant restricting use of the land to agricultural purposes only; rights conveyed to the state under this subparagraph may be conveyed by the state only in accordance with AS 38.05.069(c);

"(3) exempt business inventories from taxation."

Legislative history reports. — For legislative intent in enacting ch. 44, SLA 1983, see 1983 Senate Journal, p. 639, and 1983 House Journal, p. 1707.

Opinions of attorney general. — A home rule city has the power to enact an ordinance exempting from local taxation any class of real or personal property, if such an exemption is not prohibited by the city's home rule charter. 1969 Op. Att'y Gen., No. 1, decided under former, similar law.

The fact that first class cities may choose the tonnage valuation of ships for the purposes of taxation does not preclude them from making a valuation of full and true value for the purposes of taxation. It necessarily follows that boats and vessels should be valued at full and true value for the purpose of AS 14.17.010 et seq. 1962 Op. Att'y Gen., No. 18, decided under former, similar law.

The rules applicable to boats and vessels in first class cities apply equally to those under the jurisdiction of second class cities. 1962 Op. Att'y Gen., No. 18, decided under former, similar law.

NOTES TO DECISIONS

City may not exempt property without express authority. — The authority of a municipal corporation to allow exemptions of particular property from taxation, unless expressly conferred by law, has very generally been denied. Valentine v. City of Juneau, 36 F.2d 904 (9th Cir. 1929), decided under former, similar law.

Sec. 29.53.030. Mining claims. The assessed value of an unimproved unpatented mining claim which is not producing, and a nonproducing patented mining claim upon which the improvements originally required for patent have become useless and valueless through depreciation, removal or otherwise, is fixed at $200 for each 30 acres or fraction of 20 acres. If the surface ground of a claim has a separate and independent value for nonmining uses, the real and personal property is assessed at its full and true value. (§ 2 ch 118 SLA 1972)

Sec. 29.53.035. Farm or agricultural lands. (a) Farm use lands included in a farm unit and not dedicated or being used for nonfarm purposes shall be assessed on the basis of full and true value for farm

use, and shall not be assessed as if subdivided or used for some other nonfarm purpose. The assessor shall maintain records valuing the farm use land for both full and true value and farm use value. Should the farm use land be sold, leased, or otherwise disposed of for uses incompatible with farm use or be converted to a use incompatible with farm use by the owner, the owner is liable to pay an amount equal to the additional tax at the current mill levy together with eight per cent interest for the preceding seven years, as though the land had not been assessed for farm use purposes. Payment by the owner shall be made to the state to the extent of its reimbursement for revenue loss under (e) of this section for the preceding seven years. The balance of the payment shall be made to the city or borough.

(b) An owner of farm use land must, to secure the assessment, make application to the assessor before May 15 of each year in which the assessment is desired. The application shall be made upon forms prescribed by the state assessor for the use of the local assessor and shall include information which may reasonably be required to determine the entitlement of the applicant. If the farm use land is leased for farm use purposes, the applicant shall furnish to the assessor a copy of the lease bearing the signatures of both lessee and lessor along with the completed application. The applicant shall furnish the assessor a copy of the lease covering the period for which the exemption is requested.

(c) In this section "farm use" means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or for dairying or another agricultural use for profit or any combination thereof. To be farm use land, the owner or the lessee must be actively engaged in farming the land, and derive at least 10 per cent of yearly gross income from the farm use land. The provisions of this section do not apply to land respecting which the owner has granted, and has outstanding, a lease or option to buy the surface rights. A property owner wishing to file for farm use classification having no history of farm-related income may submit a declaration of intent at the time of filing the application with the assessor setting out the intended use of the land and the anticipated percentage of income. An applicant using this procedure shall file with the assessor before February 1 of the following year a notarized statement of the percentage of gross income attributable to the farm use land. Failure to make the filing required in this subsection forfeits the exemption.

(d) In the event of a crop failure by an act of God the previous year, the owner or lessee may submit an affidavit affirming that 10 per cent of gross income for the past three years was from farming.

(e) Subject to legislative appropriations for the purpose, the state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of this section. (§ 2 ch 118 SLA 1972; am § 1 ch 90 SLA 1974; am § 3 ch 229 SLA 1976; am § 1 ch 66 SLA 1978)

Offered: 4/22/74
Referred: Rules

Original sponsor: Judiciary Committee

IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE

SENATE CS FOR HOUSE BILL NO. 827

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act authorizing farm use property tax assessment."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 29.53.035 is amended to read:

Sec. 29.53.035. FARM OR AGRICULTURAL LANDS. (a) Farm use lands <u>included in a farm unit and not dedicated or being used for nonfarm purposes</u> shall be assessed on the basis of full and true value for farm use, and shall not be assessed as if subdivided or used for some other nonfarm purpose. The assessor shall maintain [SEPARATE ASSESSMENT] records <u>valuing</u> [EVALUATING] the farm use land for <u>both full and true value and farm use value</u> [OTHER THAN FARM USE PURPOSES, WHERE APPLICABLE]. Should the farm use land be sold, leased, or otherwise disposed of, for other than farm use purposes <u>or be converted to nonfarm use by the owner</u>, the owner shall be liable to pay <u>an amount equal to</u> the additional tax <u>together with five per cent interest</u> for the preceding <u>seven years</u> [TWO YEARS, AND THE APPLICABLE PORTION OF THE CURRENT TAX YEAR], as though the land had not been assessed for farm use purposes. <u>Payment by the owner shall be made to the state to the extent of its reimbursement for revenue loss under (e) of this section. The balance of the payment shall be made to the city or borough.</u>

(b) An owner of farm use land must, to secure the assessment, make application to the assessor before February 1 of each year in which the assessment is desired. The application shall be made upon forms <u>prescribed by the state assessor for the use of the local assessor</u> [PREPARED AND SUPPLIED BY THE ASSESSOR] and shall include information

which may reasonably be required to determine the entitlement of the applicant. If the farm use land is leased for farm use purposes, the applicant shall furnish to the assessor a copy of the lease bearing the signatures of both lessee and lessor along with the completed application. The applicant shall furnish the assessor a copy of the lease covering the period for which the exemption is requested.

(c) In this section "farm use" means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or for dairying or another agricultural use for profit or any combination thereof [AND INCLUDES THE PREPARATION OF THE PRODUCTS RAISED ON THE FARM USE LAND AND DISPOSAL BY MARKETING OR OTHERWISE. IT INCLUDES THE CONSTRUCTION AND USE OF DWELLINGS AND OTHER BUILDINGS CUSTOMARILY PROVIDED IN CONJUNCTION WITH THE FARM USE]. To be farm use land, the owner or the lessee must be actively engaged in farming the land, and derive at least 10 per cent [ONE-FOURTH] of his yearly gross income from the farm use land. The provisions of this section do not apply to land respecting which the owner has granted, and has outstanding, a lease or option to buy the surface rights. A property owner wishing to file for farm use classification having no history of farm-related income may submit a declaration of intent at the time of filing the application with the assessor setting out the intended use of the land and the anticipated percentage of income. An applicant using this procedure shall file with the assessor before February 1 of the following year a notarized statement of the percentage of gross income attributable to the farm use land. Failure to make the filing required in this subsection forfeits the exemption.

(d) In the event of a crop failure by an act of God the previous year, the owner or lessee may submit an affidavit affirming that 10 per cent of his gross income for the past three years was from farming.

(e) Subject to legislative appropriations for the purpose, the state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of this section.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

REX B. LANTZ, JR.,

Appellant,

v.

FAIRBANKS NORTH STAR BOROUGH,

Appellee.

Case No. 4FA-89-0986 Civil

MEMORANDUM DECISION

This is an appeal from a decision by the Fairbanks North Star Borough Assessor. The Assessor denied appellant Lantz's [Lantz] application for tax exempt farm use status for his commercial greenhouse operation. Jurisdiction is vested in the superior court pursuant to AS 29.45.200(c).1/

FACTS

Lantz has operated a commercial greenhouse since 1977. The property upon which the greenhouse is located has been continuously utilized as a commercial greenhouse facility since 1947. In his earlier years in business, Lantz was unaware of the farm

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1/AS 29.45.200(c) provides:

> (a) The governing body [of a municipality] sits as a board of equalization for the purpose of hearing an appeal from a determination of the assessor,....
>
> ....
>
> (c) Notwithstanding other provisions in this section, a determination of the assessor as to whether property is taxable under law may be appealed directly to the superior court.

use exemption from real property taxation.[2] Lantz became aware of the farm use exemption in 1981. He thereafter applied for and received the exemption every year until 1989 when the exemption was denied. This appeal followed.

The farm use exemption was originally enacted in 1967. The statutory definition expressly included horticulture.[3] The statute was amended in 1972 and the term "horticultural" was deleted. The term "horticultural" was not deleted from the FNSB ordinance until 1986. Prior to the 1986 change, the Borough's defintion of farm use mirrored the pre-1972 Alaska statute.

In April 1989, the Fairbanks North Star Borough Assessor notified Lantz that the farm use exemption was no longer applicable to commercial greenhouse operations and thus denied his application. In making this determination, the Assessor relied upon an Attorney General's opinion which had concluded that greenhouses were not entitled to farm use deferments. This interpretation was contrary to the practices of the borough since 1969.

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[2] The pertinent parts of both AS 29.45.060(c) and FNSB Ordinance 3.12.020(c) read as follows:

> In this section, the term "farm use" means the use of land for profit for raising and harvesting crops, for the feeding, breeding and management of livestock, for dairying, or another agriculture use, or any combination thereof....

[3] [F]arm use means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or for dairying or another agricultural or horticultural use or any combination thereof.... 1967 S.L.A. 82

The question before the Court is whether horticulture is included within the meaning of "agriculture use" in the statute, such that the legislature's deletion of "horticulture" from the prior enactment should be viewed as non-substantive and would not, therefore, defeat Lantz's claim for exemption, or whether the deletion of horticulture, combined with the strict construction required of tax exemption statutes under City of Nome v. Catholic Bishop of Northern Alaska, 707 P.2d 870 (Alaska 1983), justifies the Assessor's denial of Lantz's application.

DISCUSSION

It is well recognized that it is within the court's special competency to independently interpret a statute. Weaver Bros., Inc. v. Alaska Transportation Commission, 588 P.2d 819, 821 (Alaska 1978). An administrative agency's interpretation of a statute is not binding on a court, but is merely entitled to some weight in deciding the correct interpretation of an ambiguous statute. State, Dept. of Highways v. Green, 586 P.2d 595, 602 n.21 (Alaska 1978).

Cases relying on contemporaneous administrative construction usually also note agency reliance on a long standing and continuous construction of the statue. Wien Air Alaska, Inc. v. Dept. of Revenue, 647 P.2d 1087, 1090 (Alaska 1982). While contemporaneous administrative construction is a valuable aid in determining the meaning of a statute, it is not conclusive. Public Defender Agency v. Superior Court, 534 P.2d 947, 952 (Alaska 1975); see Annot., 39 L.Ed.2d 942, §§ 2,8,9 (1975) (col-

lection of United States Supreme Court cases on weight to be given administrative constructions of statutes).

A fundamental principle of statutory interpretation is that a statute means what its language reasonably conveys to others. North Slope Borough v. Sohio Petroleum Corporation, 585 P.2d 534 (Alaska 1978). Unless words have acquired a peculiar meaning, by virtue of statutory definition or judicial construction, they are to be construed in accordance with their common usage. State v. Debenham Electric Supply Company, 612 P.2d 1001, 1002 (Alaska 1980).[4] These concepts are embodied in what is referred to as the "plain meaning" rule. The question necessarily arises, therefore, whether the term agriculture encompasses the term horticulture.

One perusing lay encyclopedias learns that horticulture is commonly described as a branch of agriculture, concerned with fruits, vegetables, flowers and other plants. Similarly, two legal encyclopedias, Corpus Juris Secundum and American Jurispru-

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[4]/See also AS 01.10.040

dence 2d, define agriculture as including horticulture.[5] Black's Law Dictionary defines agriculture as:

> The art or science of cultivating the ground, including the harvesting of crops, and in a broad sense, the science or art of production of plants and animals useful to man, including in a variable degree, the preparation of these products for man's use. In the broad sense, it includes farming, horticulture, forestry, together with such subjects as butter, cheese, making sugar, etc.

The opinion of the Alaska Division of Agriculture is contrary to that of the Assessor. According to the Director of the Division of Agriculture, "[t]he Division of Agriculture has always interpreted the term 'horticulture' to be included within the term agriculture."[6]

The director of the Division's Plant Material Center has emphatically set forth the Division's view:

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[5] In a broader sense, "agriculture" is the science or art of the production of plants and animals useful to man; and in its general sense, "agriculture" includes gardening or horticulture, fruit growing, and storage and marketing. In the broad sense agriculture includes farming, horticulture ... subjects as butter....

....

In modern usage, agriculture is a wide and comprehensive term, and statutes using it without qualification must be given an equally comprehensive meaning.

3 C.J.S. Agriculture § 2.

[6] Letter from Frank Mielke to Charles and Elaine Hawks (May 12, 1989).

> Horticulture staff at the Plant Material Center has thoroughly research [sic] the common, accepted and scientific definitions of the word horticulture. There is no question that "horticulture" falls clearly within the definition of "agriculture," and as a general rule greenhouse operations are within the scope of activities categorized as agricultural.
>
> The Division of Agriculture has consistently interpreted the term agriculture in this manner since Territorial days. Greenhouse operations are eligible for agricultural loans, and other assistance from the Division.

The utilization of the "plain meaning" rule as a strict exclusionary rule with respect to legislative history has been rejected in Alaska. North Slope Borough v. Sohio Petroleum Corporation, 585 P.2d 534 (Alaska 1978). While the legislative history pertaining to the deletion of horticulture from the then existing statute is scant, the Seventh Legislature did state the following:

> The proposed revised municipal code is primarily a series of technical changes which reconcile inconsistent provisions in existing law, modernize the archaic language found throughout Title 29 and provide a more workable and immensely more understandable basic framework for local government.

Both the House and the Senate originally passed identical bills which included the word horticulture. The Free Conference Committee returned a bill in 1972 with the term horticultural deleted. It is telling that the Free Conference Committee first considered the deletion following receipt of a letter from the

chairman of the Greater Anchorage Area Borough. The letter set forth the following recommendation:7/

> Sec. 29.53.035(c) includes in the definition of "farm use" lands put to a "horticultural use."
>
> Problem: Garden supply and plant stores have been claiming the farm and agricultural reductions.
>
> Recommendation: Exclude the term "horticultural use" from the definition of "farm use."

A review of the Committee's deliberations reveals that the discussion referred to the borough's letter. Thus, it appears that the Committee too was sufficiently concerned by potential abuse by garden supply and plant stores so as to delete the term horticultural. Greenhouses were not targeted for such exclusion, nor must they necessarily fall victim to it. Correctly viewed, the focus of the exclusion is where plants are sold, as distinguished from where they are grown. Accordingly, the deletion by the Free Conference Committee can reasonably be viewed as non-substantive, a reduction of redundancy. Moreover, it is improbable that the Free Conference Committee would decide to substantively alter a legislative directive previously agreed upon by both the House and the Senate.

The majority of jurisdictions that have considered such a question have found that the term agriculture includes horticul-

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7/Letter from Sheila Gallagher to Senator Merdes (December 7, 1971).

ture.[8] Especially instructive is the reasoning set out by the Reiniger Brothers court:

> Reiniger is engaged in the business of raising flowers and plants in greenhouses.
>
> ...
>
> When interpreting a statute, we are guided by the plain meaning rule of Construction 1 Pa.C.S. § 1903. In Fidler v. Zoning Board of Adjustment, 408 Pa. 260, 182 A.2d 692 (1962), we had occasion to discuss the definition of agriculture. Therein we stated:
>
> > The word "agriculture" is a derivative of two Latin words, "agri" meaning field, and "cultra", meaning cultivation. In its narrowest sense, it concerns the tilling and cultivating of the soil. See, Commonwealth v. Carmalt, 2 Binney 235 (1810). However, it has from an early date reasonably and logically assumed a much broader meaning.
> >
> > Webster's New International Dictionary (2d ed. 1961) defines "agriculture" as: "The art or science of cultivating the ground, and raising and harvesting crops, often including also feeding, breeding, and management of livestock; tillage; husbandry; farming; in a broader sense, the science and art of the production of plants and animals useful to man, including to a variable extent the preparation of these products for man's use and their disposal by marketing or otherwise. In this broad use it includes farming, horticulture, forestry, dairying, sugar making, etc."
> >
> > The Oxford Universal Dictionary (3d ed. 1955) defines "agriculture" as: "The science and art of cultivating the soil,; (sic) including the gathering in of the

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[8]/See County of Lake v. Cushman, 353 N.E.2d 399 (Ill. App. 3d 1976); Nielsen v. Erickson, 272 N.W.2d 82, (S.D. 1978); Reiniger Brothers, Inc. v. Commonwealth of Pennsylvania, 522 A.2d 187 (Pa. Commw., 1987).

> crops and the rearing of livestock; farming (in the widest sense)."
>
> Id. at 264-265, 182 A.2d at 694, 695. Peters Orchard, 511 Pa. at 471, 515 A.2d at 552-53 (emphasis added).
>
> The term "horticulture" is, in turn, defined in Webster's Third New International Dictionary 1093 (1966) as "the cultivating of an orchard, garden, or nursery on a small or large scale: the science and art of growing fruits, vegetables, flowers, or ornamental plants."
>
> ....
>
> We conclude that Reiniger is indeed involved in the business of "agriculture."

While certainly not binding upon this Court, the rationale of the Pennsylvania decision is both logical and persuasive.

The Assessor acknowledged that his decision was based largely upon an Attorney General's opinion.[9/] Upon examination of the opinion, this Court finds the Attorney General's opinion to be flawed for two reasons.

First, the opinion was based in most part upon one Oregon case, Salem Nursery, Inc. v. Department of Revenue, 497 P.2d 371 (Or. 1972). At issue in that case was the question whether greenhouse grown azalea plants were exempt from tangible personal property tax, under the status of "shrubs growing upon agricultural land." (emphasis added). The court concluded they were not. The Salem case is distinguishable from the instant case and in fact may be read as consistent with the Cushman analysis of the definition of agriculture discussed herein. Regardless of

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[9/] 1981 Op. Atty. Gen. No. J-66-801 (Alaska, June 23, 1981)

such a finding, Salem does not stand for the general proposition that a greenhouse is not an agricultural use of land. Salem held that such items were taxable as any other merchant's stock in trade.

Secondly, the Attorney General's opinion states that greenhouses do not preserve agricultural lands or green space, perhaps the most predominant statutory purpose. This Court finds the Alaska State Division of Agriculture's contrary belief more persuasive:

> One purpose of the exception is "... to preserve green space." Greenhouses and nurseries do preserve green space. They expand the productivity of our resources by being able to produce on marginal land, with good water where traditional field crops may not be grown. This does not make them any less agricultural. They generally landscape around the facilities. They promote Alaska citizens and businesses to replant or landscape our homes and offices after the construction has left a naked lot. People receive help selecting the plants best suited to their locale, which will grow and recreate that green space destroyed by the construction of our expanding cities. They are themselves a green space, often the only one available when snow blankets the rest of Alaska.[10]

That horticulture has advanced technologically and has otherwise improved upon the lot in life that Alaskan's have been given by Mother Nature does not disqualify the use such of advancements from agricultural classification. It is not so simple a question whether the growth medium is soil in the earth or elevated for warmth, for protection, and for a prolonged growing sea-

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[10]/Letter from Frank Mielke to Mike Worley (July 7, 1989)

son. Improvements in the methods of growing fruits, vegetables, flowers and other plants, such as enclosures that capture the heat from the sun and provide substitute sources of heat in order to prolong the growth cycle and protect crops from an early and unexpected frost in Alaska's sometimes unpredictable summer, do not render the resulting crops any less the product of agriculture than field crops. Hot-house and hydroponic tomatoes, cucumbers and other vegetables are no less the product of agriculture than their smaller and less profitable cousins grown "naturally" in the field. Under the plain meaning rule and until such time as the legislature more clearly demonstrates a contrary intent, this Court concludes that agriculture includes horticulture and that the legislature's intent is met by the granting of such exemptions to greenhouse operations.

CONCLUSION

In view of this Court's interpretation of FNSB ordinance 3.12.020 and AS 29.45.060, the Assessor's decision is reversed. Appellants 1989 farm use application for a commercial greenhouse must be granted.

DATED at Fairbanks, Alaska, this 9 day of February, 1990.

RICHARD D. SAVELL
Superior Court Judge

THE SUPERIOR COURT OF THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

REX B. LANTZ, JR.,	)
	)
Appellant,	)
	)
vs.	)
	)
FAIRBANKS NORTH STAR BOROUGH,	)
	)
Appellee.	)
	)

No. 4FA-89-986 Civ.

APPEAL FROM THE MAY 16, 1989 FAIRBANKS NORTH STAR BOROUGH ADMINISTRATIVE DECISION DENYING THE FARM USE EXEMPTION TO COMMERCIAL GREENHOUSE OPERATIONS

APPELLANT'S BRIEF

Rex B. Lantz, Jr.
Appellant
1035 Blair Road
Fairbanks, Alaska 99701

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Statutes and Ordinances

Other

STATUTE AND ORDINANCE RELIED UPON

Alaska Statute 29.45.060:

> Farm or agricultural land.
>
> (a) Farm use land included in a farm unit and not dedicated or being used for nonfarm purposes shall be assessed on the basis of full and true value for farm use and may not be assessed as if subdivided or used for some other nonfarm purpose. . . .
>
> (c) In this section "farm use" means the use of land for profit for raising and harvesting crops, for the feeding, breeding, and management of livestock, for dairying, or another agricultural use, or any combination of these. To be farm use land, the owner or lessee must be actively engaged in farming the land, and derive at least 10 percent of yearly gross income from the land. This section does not apply to land for which the owner has granted, and has outstanding, a lease or option to buy the surface rights.

Fairbanks North Star Borough Ordinance 3.12.020:

> Farm and agriculture use--Assessment.
>
> A. In this section the term "farm use" means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or for dairying or another agricultural or horticultural use or any combination thereof and includes the preparation of the products raised on the farm use land and disposal by marketing or otherwise. It includes the construction and use of dwellings and other buildings customarily provided in conjunction with the farm use. To be farm use land, the owner must be actively engaged in farming the land, and derive at least one-fourth of his yearly gross income from the farm use land. The provisions of this section shall not apply to land which the owner has granted, or has outstanding, any lease or option to buy the surface rights.

JURISDICTIONAL STATEMENT

Appellant was notified by mail of the Borough's denial of his 1989 farm use application on May 16, 1989. The Superior Court has jurisdiction over this appeal pursuant to A.S. 22.10.020(d) and (g).

ISSUES PRESENTED FOR REVIEW

1. Whether a greenhouse operation for the commercial raising of plants, shrubs, or trees is farm use land within the meaning of A.S. 29.45.060.

2. Whether the Fairbanks North Star Borough Assessor's modification of the interpretation of the "farm use" statute was arbitrary and capricious, where there was no change in custom, circumstances, law, or definition.

STATEMENT OF THE CASE

This is an appeal from an administrative decision denying Appellant's 1989 farm use application for a commercial greenhouse.

Appellant has operated a commercial greenhouse in Fairbanks, Alaska, continuously since 1977. Appellant first became aware of the "farm use" exemption from real property taxation under A.S. 29.45.060 and Fairbanks North Star Borough Ordinance (hereinafter "FNSB Ord.") 3.12.020 in 1981, and has applied for and has received the exemption continuously since that time. (Record at 1-8). The subject property has been continuously utilized as a commercial greenhouse facility since 1947 when it was first acquired from the Bentley family.

Appellant filed for the 1989 farm use exemption, pursuant to A.S. 29.45.060, on March 24, 1989. (Record at 9). On April 29, 1989, Appellant received a letter dated April 27, 1989, wherein the Fairbanks North Star Borough Assessor (hereinafter "Assessor") denied Appellant's application and stated that the "farm use deferment for commercial greenhouse operations" was no longer allowed. (Record at 10). The Assessor stated that the denial was based on an "Attorney General Opinion, supported by several Municipal Attorneys throughout the State" which stated that commercial greenhouse operations were not entitled to a farm use deferment. The

Assessor's letter also stated that an appeal from that decision must be made to the Board of Equalization within 4 business days or to the Superior Court.

On or about May 1, 1989, Appellant filed an appeal with the Fairbanks North Star Borough Board of Equalization and arranged a meeting with the Assessor. (Record at 15). The appeal dealt with the assessed value of the greenhouse property and with the denial of the two parcels under application for "farm use." Appellant's Board hearing was scheduled for May 12, 1989. (Record at 17).

On May 4, 1989, the parties met at the Assessor's office to discuss Appellant's "farm use" applications, the assessed value of Appellant's property, and documentation in support of Appellant's application. The Assessor agreed to reconsider the applications, and to review with Borough counsel and the State Assessor the appropriateness of denying Appellant's commercial greenhouse operation as farm use property prior to making a final decision. Also at that meeting, the parties discussed whether the Board of Equalization was the proper authority to decide the complex issues of Statutory Farm Use Deferments. It was mutually agreed that it was not and that the matter properly should be placed before the court.

During a May 12, 1989, telephone conversation with Appellant, the Assessor indicated that Appellant's property

value had been reduced and that one of the "farm use" applications would be approved because it did not have a greenhouse. The Assessor also indicated that he was waiting for a letter from the State Assessor who was reviewing the greenhouse eligibility question for farm use deferments. Appellant thereupon withdrew the Board of Equalization appeal because the property value issue had been resolved and the parties had previously agreed that the remaining issue was not appropriate for the Board of Equalization. (Record at 17).

On or about May 15, 1989, the Assessor telephoned Appellant and stated that he had reviewed the remaining application and the State Assessor's letter and would deny the farm use application for the greenhouse property. The State Assessor's letter was mailed to Appellant on May 16, 1989, and is the basis of the Assessor's denial. (Record at 12).

Since 1969, the Fairbanks North Star Borough has interpreted and administered A.S. 29.45.060 through FNSB Ord. 3.12.020; under that scheme, commercial greenhouse operations have consistently been considered by the Borough to be qualified property for the "farm use" deferment. However, in the spring of 1989, the long-standing interpretation of greenhouses and agriculture was unexplainably and indepen-

dently modified by the Assessor. Accordingly, it has been placed before this Court.

ARGUMENT

I. A GREENHOUSE OPERATION FOR THE COMMERCIAL RAISING OF PLANTS, SHRUBS, OR TREES IS A FARM USE WITHIN THE MEANING OF A.S. 29.45.060.

Alaska state law permits the exemption of farm or agricultural land from local real estate taxation. Until recently, the State has reimbursed local governmental units for the taxes uncollected as a result of such exemption.

The Alaska Statute governing the tax exemption for land defined as "farm use" provides in pertinent part as follows:

> Sec. 29.45.060. Farm or agricultural land.
>
> * * *
>
> (c) In this section "farm use" means the use of land for profit for raising and harvesting crops, for the feeding, breeding, and management of livestock, for dairying, or another agricultural use, or any combination of these. To be farm use land, the owner or lessee must be actively engaged in farming the land, and derive at least 10 percent of yearly gross income from the land. This section does not apply to land for which the owner has granted, and has outstanding, a lease or option to buy the surface rights.

(Emphases added).

FNSB Ord. 3.12.020 also provides for the tax assessment of "farm use" land. The ordinance states in pertinent part, as follows:

> A. In this section the term "farm use" means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or

> for dairying or another agricultural or horticultural use or any combination thereof and includes the preparation of the products raised on the farm use land and disposal by marketing or otherwise. It includes the construction and use of dwellings and other buildings customarily provided in conjunction with the farm use. To be farm use land, the owner must be actively engaged in farming the land, and derive at least one-fourth of his yearly gross income from the farm use land. The provisions of this section shall not apply to land which the owner has granted, or has outstanding, any lease or option to buy the surface rights.

(Emphases added).

In analyzing the Alaska "farm use" deferment statute and FNSB Ord. 3.12.020, the Court must apply the accepted rules of statutory construction. The most important rule of statutory construction requires a reviewing court to construe a statute in accordance with its legislative intent. In Commercial Fisheries Entry Commission v. Apokedak, 606 P.2d 1255 (Alaska 1980), the Alaska Supreme Court held that the primary guide in ascertaining the meaning of a statute is the language used, construed in light of the purpose of the enactment. Similarly, in Morkunas v. Anchorage Telephone Utility, 754 P.2d 1117 (Alaska 1988), the Court held that a statute must be construed in a manner consistent with its legislative objective. In Morkunas, the Court interpreted a provision of the Anchorage Municipal Code entitling a municipal employee to a pre-demotion notice. The Court concluded

that the statute must be construed in a manner consistent with its legislative objective of notifying municipal employees of any negative change in job status.

The state Supreme Court in Anchorage Municipal Employees Association v. Municipality of Anchorage, 618 P.2d 575 (Alaska 1980), held that the Court will not construe a statutory provision in a manner inconsistent with the express objective of that very legislation. A fundamental principle of statutory interpretation is that a statute means what its language reasonably conveys to others. North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534 (Alaska 1978). Words in a statute should be given their ordinary meaning. Wilson v. Municipality of Anchorage, 669 P.2d 569 (Alaska 1983). Also, if the meaning of a statute is plain, it should be enforced as read without judicial modification or construction. Horowitz v. Alaska Bar Association, 609 P.2d 39 (Alaska 1980).

In the instant case, the Alaska "farm use" exemption is clearly applicable to commercial greenhouses. In addition to defining "farm use" as use of land for "raising and harvesting crops," A.S. 29.45.060(c) also includes use of land for "another agricultural use." The use of the word "agricultural" in the statute necessarily includes horticulture, as horticulture is the predominant item in one of the two branches of agriculture. In fact, greenhouse and nursery

operations in Alaska contribute $14.5 million annually to the State's economy, accounting for 47% of the total agricultural industry, and employ over 1,500 Alaskans. P. Holloway, Survey of the Alaska Greenhouse Industry at 36-38 (School of Agriculture, University of Alaska, 1986). (Record at 33).

Agriculture is comprised of two branches: 1) applied plant science; and 2) applied animal science. The section of applied plant science can be further divided into segments of horticulture, agronomy, and forestry. E. Denisen, Principles of Horticulture at 1 (2d ed. 1979). (Record at 37). Accordingly, the horticulture industry is a vital segment of the agriculture industry.

In order to fully define the meaning of the word "agriculture" in its statutory context it is necessary to review pertinent case law and statutes. The FNSB ordinance as discussed herein defines "farm use," in pertinent part, as use of land for raising and harvesting crops, or for "another agricultural or horticultural use or any combination thereof." The FNSB ordinance interprets the Alaska "farm use" statute, and Appellee must be held to that interpretation.[1] A horticultural use, such as a commercial greenhouse which

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[1]The power to amend or repeal a Borough ordinance rests with the Borough Assembly, not the Borough Assessor or the Board of Equalization. A.S. 29.20.050.

produces a marketable annual crop in the form of a plant, is equally entitled to the same "farm use" exemption given to any other horticultural use, such as raising potatoes. Both activities are horticulture and both produce an annual crop. Principles of Horticulture at 3. (Record at 33).

Courts in other jurisdictions have addressed the issue of whether agriculture or farm use includes horticulture. In County of Lake v. Cushman, 353 N.W.2d 399, 402 (Ill. App. Ct. 1976), the Court interpreted a "farm use" exemption statute and enunciated the commonly accepted definition of "agriculture:"

> "Agriculture" is defined as the "art or science of cultivating the ground, including harvesting of crops and rearing and management of livestock; tillage; husbandry; farming; in a broader sense, the science and art of the production of plants and animals useful to man, including to a variable extent the preparation of these products for man's use. In this broad use it includes farming, horticulture and forestry, together with such subjects as butter and cheese making, sugar making, etc." Unless restricted by the context, the words "agricultural purposes" have generally been given this comprehensive meaning by the courts of the country [citing Illinois cases].

Id. at 402 (emphasis added).

It is to be stressed that, according to the court in Cushman, the words "agricultural purpose" have generally been given the comprehensive meaning described above. Thus, in Cushman, poultry raising was held to be an agricultural use,

and the court took notice of the fact that the county had previously treated it as such. Similarly, the Borough recognized Appellant's nursery enterprise as agriculture from (at least) 1981 through 1988. (Record at 1-8). A majority of jurisdictions have followed the Illinois rule. See Benken v. Porterfield, 247 N.E.2d 749 (Ohio 1969); Sierra Club v. Kenney, 412 N.E.2d 970 (Ill. App. Ct. 1980); Nielsen v. Erickson, 272 N.W.2d 82 (S.D. 1978); Brewer v. Central Greenhouse Corp., 344 S.W.2d 518 (Tex. Civ. App. 1961); Klavon v. Zoning Hearing Board of Marlborough Township, 340 A.2d 631 (Pa. Commw. 1975); Reinger Brothers, Inc. v. Commonwealth, 522 A.2d 187 (Pa. Commw. 1987).

In Nielsen, the court considered the classification of land as agricultural or nonagricultural for school taxation purposes, and concluded that the property was agricultural. The court stated:

> Although restricted by the term "used exclusively" in this case, the words "agricultural purposes" are generally given a comprehensive meaning by courts. People v. City of Joliet, 321 Ill. 385, 152 N.E. 159 (1926); 3 C.J.S. Agricultural § 2 at p. 524. Agriculture has a broader meaning than farming and includes such areas as horticulture, viticulture, dairying, poultry, bee raising, and ranching. County of Lake v. Cushman, 40 Ill. App. 3d 1045, 353 N.E.2d 399 (1976). By providing that property "used exclusively for agricultural purposes" includes both tilled and untilled land and all buildings, structures, and improvements on such land, the legislature has

> indicated an expansive meaning for "used exclusively for agricultural purposes."

Nielsen v. Erickson, 272 N.W.2d at 85 (emphases added). Again the court endorsed the expansive definition of agriculture, as opposed to the more restrictive definition of "agronomy," in holding that use of land primarily for raising of crops, livestock or pastureland was for "agricultural purposes." Similarly, in Sierra Club v. Kennev, supra, the court held that the term "agriculture" is defined as the act or science of cultivating the ground, and its broad use does include farming, horticulture and forestry.

In Benken v. Porterfield, supra, the Supreme Court of Ohio reversed a decision of the Board of Tax Appeals denying an agricultural use exemption for equipment used in a greenhouse. The court concluded that under the taxation statute agriculture included planting, cultivating, harvesting and selling flowers and vegetables in greenhouses. In Benken, the court defined agriculture as follows:

> Webster's Third New International Dictionary defines "agriculture" as the "science or art of the production of plants and animals useful to man and in varying degrees the preparation of these products for man's use and their disposal." We believe that this definition embodies the ordinary meaning of agriculture.

Benken v. Porterfield, 247 N.E.2d at 752. That same dictionary has been expressly relied upon by this State's appellate courts in fulfilling the direction of A.S.

01.10.040 to construe words and phrases "according to their common and approved usage." Murphy v. City of Wrangell, 763 P.2d 229, 231-32 (Alaska 1988); Walker v. State, 742 P.2d 790, 791 (Alaska Ct. App. 1987).

The Webster's definition by itself, which is a reasonable statement of the ordinary meaning of the term "agriculture," would include horticulture. A horticulturist is clearly in the business of producing plants and other products that are in some way useful to society.

This fundamental concept is shared by the Alaska State Division of Agriculture:

> One purpose of the exception is ". . . to preserve green space." Greenhouses and nurseries do preserve green space. They expand the productivity of our resources by being able to produce on marginal land, with good water where traditional field crops may not be grown. This does not make them any less agricultural. They generally landscape around the facilities. They promote Alaska citizens and businesses to replant or landscape our homes and offices after the construction has left a naked lot. People receive help selecting the plants best suited to their locale, which will grow and recreate that green space destroyed by the construction of our expanding cities. They are themselves a green space, often the only one available when snow blankets the rest of Alaska.

(Record at 34(b), ¶b).

Within the Fairbanks North Star Borough alone, there are over 40 public parks, each with either lawns, flower gardens and outplantings of nursery products, or a combination

thereof, all of which are horticultural displays possible only as a direct result of greenhouse operations. Areas such as these are not possible without the enhanced environment created by a greenhouse to produce this plant material for these plantings which are certainly useful to society.

The fact that the nurturing and production of these plants take place inside a greenhouse is not relevant, as the end result is the same. According to the Court in Benken, the "production of plants and animals useful to man" is the ordinary meaning of the word "agriculture."

Thus, applying the rules of statutory construction to the instant case, the word "agriculture" in the farm use statute must include "horticulture." The ordinary meaning of the word "agriculture" includes horticultural pursuits, and as discussed in the aforementioned cases, the word "agriculture" is most commonly defined as agriculture and all of its branches, including horticulture.

The foregoing body of authority indicates that the courts of other jurisdictions have interpreted the word "agriculture" in accordance with its generally accepted meaning, which includes farming and all its branches. The Borough's own ordinance and its historic practice confirm the conclusions of the other jurisdictions. The FNSB ordinance defining the Alaska farm use statute plainly states that "farm use" includes "horticulture use." Moreover, the farm

use statute at all times prior to 1989 has been interpreted as being applicable to commercial greenhouses. (Record at 1-8). Thus, it has formerly been the Borough's practice to interpret the farm use statute consistently with other jurisdictions which follow the definition of agriculture enunciated in County of Lake v. Cushman, supra.

According to the State Director of the Division of Agriculture, "the Division of Agriculture has recognized the horticultural industry as a viable segment of our agricultural industry for several years." (Record at 34). In terms of employment and dollar participation in the State agricultural economy, "commercial greenhouses" contribute a 47% share. Alaska Agricultural Statistics (1989) at 4.

The Alaska Department of Natural Resources, Division of Agriculture, states in plain terms that "there is no question that horticulture falls clearly within the definition of agriculture, and as a general rule greenhouse operations are within the scope of activities categorized as agricultural." (Record at 36).

It is logical and consistent to interpret the word agriculture as including farming and all of its branches. Farming in a field and greenhouse production involve the same activity, that is, the cultivation of fruits, plants, and vegetables for human use. A greenhouse and nursery grower raises, cultivates, and harvests crops just as any other

farmer raises, cultivates, and harvests certain crops for human use or consumption. Greenhouse and nursery growers are obviously full participants in the agriculture process, and horticulture is defined as the science of growing fruits, vegetables, or plants for human use or consumption.

In Reiniger Brothers, Inc. v. Commonwealth of Pennsylvania, supra, the court addressed an issue analogous to the issue being considered herein. A taxpayer filed a petition for a refund from a capital stock tax on the basis that the taxpayer was a family farmer exempt from the tax. The taxpayer, an incorporated enterprise, was engaged in the business of raising flowers and plants for commercial purposes. In analyzing this issue the court employed the well-settled plain meaning rule, and concluded that the taxpayer was engaged in the business of agriculture. The court stated as follows:

> The word "agriculture" is a derivative of two Latin words, "agri" meaning field, and "cultra" meaning cultivation. In its narrowest sense, it concerns the tilling and cultivating of the soil. See, Commonwealth v. Carmalt, 2 Binney 235 (1810). However, it has from an early date reasonably and logically assumed a much broader meaning. Webster's New International Dictionary (2d ed. 1961) defines "agriculture" as: "The art or science of cultivating the ground, and raising and harvesting crops, often including also feeding, breeding, and management of livestock; tillage; husbandry; farming; in a broader sense, the science and art of the production of plants and animals useful to man,

including to a variable extent the preparation of these products for man's use and their disposal by marketing or otherwise. In this broad use it includes farming, horticulture, forestry, dairying, sugar making, etc."

The Oxford University Dictionary (3d ed. 1955) defines "agriculture" as: "The science and art of cultivating the soil; including the gathering in of the crops and the rearing of livestock; farming (in the widest sense)." 3 C.J.S. Agriculture § 1, page 365, states: "In a limited sense, 'agriculture' is the cultivation of grain and other field crops for man and beast; but, in a broader sense, the word signifies the science or art of producing plants and rearing animals useful to man, including certain matters incidental thereto." Also on the same page "agriculture" is "the art or science of cultivating the ground, including harvesting of crops and rearing and management of livestock."

Id. at 264-65, 182 A.2d at 694, 695. Peters Orchard, 511 Pa. at 471, 515 A.2d at 552-53 (emphasis added).

The term "horticulture" is, in turn, defined in Webster's Third New International Dictionary 1093 (1966) as "the cultivation of an orchard, garden, or nursery on a small or large scale: the science and art of growing fruits, vegetables, flowers or ornamental plants."

We conclude that Reiniger is indeed involved in the business of "agriculture."

Reiniger Brothers, Inc. v. Commonwealth of Pennsylvania, 522 A.2d at 188. Thus, while agriculture does include tilling the land, it also extends to horticulture, forestry, and dairying.

In the instant case, it is contrary to the rules of statutory construction to adopt a definition of agriculture contrary to the definition that has been commonly accepted in Alaska and other jurisdictions. It is clear that the plain meaning of "agriculture" includes horticulture. Moreover, when the legislators enacted the state and local legislation at issue here, it must be presumed that they intended that agriculture be given its ordinary and commonly accepted meaning. If the legislators had intended that the exemption be limited to "farming," narrowly defined, as opposed to the broader agriculture uses, then the legislation would have defined it as such.

In determining that a greenhouse was an agricultural use, the court in Reiniger relied on the holding in In re Klein's Appeal, 149 A.2d 114 (Pa. 1959). In Klein's Appeal, the court held that a tract of land where flowers and trees would be grown in a greenhouse, including some pots, was a farm for the purpose of a zoning ordinance. In Klein's Appeal and Reiniger the courts focused on what the property was actually being used to produce rather than on the containers in which the plants were being cultivated. Clearly, the focus is on the raising and cultivating of the plants, not the fact that containers are used for aid in production. For example, the largest nursery grower in the United States, Baileys, produces over 12 million container grown shrubs on a

600 acre farm in Minnesota. That land is classified as agricultural because of its use. The fact that containers (pots) are utilized for that production is irrelevant. This is in accordance with the aforementioned cases and other authorities cited herein.

Moreover, it is inequitable to disallow the farm use exemption for greenhouse owners engaged in the same production activities as other farmers, solely because the production process takes place in a greenhouse. Applying the strict "farming" definition of agriculture illogically results in excluding the majority of the very individuals that the legislation is supposed to benefit. Also, it must be noted that the majority of Alaskan lands are not characteristic of good farm land elsewhere and a great deal of the statewide agricultural activity must begin in greenhouses. Without the greenhouse environment for early starts, a substantial portion of the subsequent field production would be impossible and substantially impair the industry. A denial of the farm use exemption to such lands will deny the exemption to many persons engaged in agricultural activity, who are entitled to be beneficiaries of the exemption.

It is a judicial function to construe statutes so as to avoid results that are glaringly absurd, and where the statute is susceptible to a construction which preserves its usefulness the court has the duty to give expression to the

intent of the law. Sherman v. Holiday Construction Co., 435 P.2d 16 (Alaska 1967). In the instant case, interpreting the farm use exemption to exclude greenhouses would, in fact, cause an absurd result. The exemption has routinely been granted in the past to farmers and greenhouse owners engaged in the business of raising and cultivating plants, fruits, and vegetables for human use. Clearly these individuals are fully participating in agricultural activity in the State of Alaska, entitling them to the farm use exemption.

In denying Appellant's application for the farm use exemption, the Assessor claimed reliance on a 1980 Attorney General Opinion. In support of his position the Attorney General cited Salem Nursery, Inc. v. Department of Revenue, 497 P.2d 371, 372-73 (Or. 1972). In Salem the Oregon Supreme Court held that azalea plants grown in small boxes and on the ground in greenhouses were taxable as merchandise and stock in trade and not exempt from taxation as shrubs growing on agricultural land. While somewhat analogous to this case, Salem must be confined to its specific factual situation. Salem addressed the issue of whether certain merchandise was exempt from taxation as personal property. In analyzing the issue, the court distinguished Salem from cases like the instant case, in which the specific issue was whether the landowner was entitled to a farm use exemption for the land, as opposed to an exemption for personal property.

In support of its position the court in Salem stated its reasoning as follows:

> The sole issue presented is whether the azalea plants are exempt from taxation pursuant to ORS 307.320 which reads:
>
> "The value of any deciduous trees, shrubs, plants or crops, whether annual or perennial, growing upon agricultural land devoted to agricultural purposes, shall be exempt from assessment and taxation and shall not be deemed real property under the provisions of ORS 307.010."
>
> Prior to 1955 the assessors in some counties of the state, including Jackson county, were not including the trees in assessing the true cash value of an orchard. As a result, the Tax Commission ordered the assessor to include the trees in determining the true cash value of the real property. The basis of this action was ORS 307.010 which defines real property for purposes of ad valorem taxation to include "trees * * * upon the land." State ex rel. Medford Pear Co. v. Fowler, 207 Or. 182, 295 P.2d 167 (1956).
>
> After the decision in Medford Pear Co. the legislature enacted ORS 307.320 above. The statute in effect states that in valuing real property for ad valorem taxation, the deciduous trees, shrubs, plants or crops growing upon agricultural land are not considered as being real property. Therefore, the value of the trees, for example, is exempt from ad valorem assessment although traditionally trees were considered as part of the soil in which they were growing and assessed as part of the real property under ORS 307.010. Obviously, like other farm exemption statutes, the purpose of ORS 307.320 was to relieve agricultural land from the increased valuation which would normally be given to it because of the orchard, plants or crops growing on the

> land at the time of the assessment. With the exemption given to trees, crops, etc., the land is valued as if it were bare land.
>
> The instant case is not one where the assessor, in assessing the true cash value of the real property, denied an exemption for shrubs growing upon the land. Here the assessment was for tangible personal property which, under ORS 307.020(3) includes merchandise and stock in trade.
>
> We conclude that the azalea plants were tangible personal property taxable as merchandise and stock in trade, and not exempt under ORS 307.320 as shrubs growing upon agricultural land.

Salem Nursery, Inc. v. Department of Revenue, 497 P.2d at 372-73.

In Salem, the court's discussion of the fact that the azalea plants were grown and sold in boxes has no bearing on the issue of whether a greenhouse is an "agricultural" use of land. In fact, the court, in dicta, was merely trying to establish the fact that the azalea plants, because they were sold in boxes, were characteristic of other taxable merchandise, capable of being moved or sold. For the purpose of the "personal property" tax the court does not view a greenhouse owner's inventory any differently from that of any other merchant. Clearly Salem cannot be cited as support for the broad general proposition that a greenhouse is not an agricultural use of land. In fact, a reading of the case indicates that its holding is actually consistent with the

Cushman analysis of the definition of agriculture discussed herein.

The Attorney General's interpretation of the statute is also based in part on a language change in the statute in 1972. This change removed "horticulture" from the statutory language. However, the term "other agricultural uses" was retained, and the administrative agencies (including the Fairbanks North Star Borough) continued to grant, without interruption and without modification to the Code of Ordinances, the farm use exemption to greenhouse owners. Thus, even after the statutory language change the administrative interpretation of the statute remained constant. The 1972 change in the language of the statute was the result of a free conference committee, and there are no available notes. However, during that same period there was a deliberate attempt by the legislature to overhaul statutory language by removing redundancies and personality from the law, and in accordance with the analysis herein the word "horticulture" is merely redundant of "agriculture." Moreover, if the legislature intended to define agricultural use as excluding horticulture, they would have done so with some affirmative language to that effect.

As further persuasive authority on this issue, other federal and state legislators or agencies have defined agriculture as including horticultural activities. For

example, the Alaska Wage and Hour Act establishing a minimum wage requirement exemption for individuals employed in "agriculture," which includes "the production . . . of any agricultural or horticultural commodities . . . ."[2] Horticulture businesses, greenhouses, and nurseries receive loans from the agricultural revolving loan fund. (Record at 34). Similarly the courts have held that the word "agriculture" in the Fair Labor Standards Act, excluding employees engaged in agriculture, was intended to cover farming and its other branches. Brewer v. Central Greenhouse Corp., supra. The Alaska Department of Natural Resources recognizes greenhouse operations to be "clearly" within the scope and meaning of agriculture. (Record at 36).

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[2] A.S. 23.10.055(1) provides:

> Sec. 23.10.055. Exemptions. The provisions of AS 23.10.050 - 23.10.150 do not apply to
>
> (1) an individual employed in agriculture, which includes farming in all its branches and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices, including forestry and lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with the farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market.

In the instant case, applying the strict construction rule of statutory interpretation, Appellant has demonstrated that greenhouse owners are entitled to the same farm use exemption as any other farmer. Although statutes granting tax exemptions are to be narrowly construed, strict construction is an aid to interpretation, not a substitute. City of Nome v. Catholic Bishop of Northern Alaska, 707 P.2d 870 (Alaska 1985). Therefore, any statutory interpretation must be reasonable. In the instant case, Appellant has demonstrated entitlement to the "farm use" deferment, and a reasonable interpretation of the statute in question also leads inevitably to that conclusion.

II. THE BOROUGH ASSESSOR'S MODIFICATION OF THE INTERPRETATION OF THE FARM USE STATUTE WAS ARBITRARY AND CAPRICIOUS, AS THERE WAS NO CHANGE IN CUSTOM, CIRCUMSTANCE, LAW, OR DEFINITION.

In the instant case, the Assessor's modification of the long-standing interpretation of A.S. 29.45.060 was arbitrary and capricious. As discussed herein, the action was not based on any change in custom, circumstance, or law, but on an unsupportable change in a well-settled practice. Additionally, that modification was in direct contravention of the Borough's own law, FNSB Ord. 3.12.020. At all known times prior to 1989, the farm use exemption has been interpreted as being applicable to greenhouses. According to the Assessor the denial of Appellant's application was based on

its interpretation of the word agriculture. As discussed herein, the word agriculture has been consistently interpreted by the judicial and administrative branches of government to mean agriculture and all of its branches. The courts in other jurisdictions have defined agriculture to include its progeny horticulture, and that definition has been previously applied in Alaska by the Borough and State Assessors. It is still applied by virtually every other state and federal agency. It is also clear from the discussion herein that the definition of the word agriculture as consistently recognized by courts nationally has not changed. Similarly, the statute being considered here has not undergone any substantive changes and the FNSB Ord. 3.12.020 has not changed.

Alarmingly, there appears to have been a sudden independent re-interpretation of "agriculture" by borough and state assessors. This shift "appears to be one of statewide concern" and is not isolated to the Fairbanks North Star Borough. (Record at 38). It is also unexplainable in view of the fact that there has been no modification of law or regulation; there has been no change in custom; and there has been no public participation or indication that the agricultural use of land would be redefined.

Rather, the Assessor issued a pre-determined denial of farm use applications to all greenhouse operations on April 27, 1989. (Record at 10). That denial was issued without

consideration as to whether or not commercial greenhouses were actively engaged in plant and field production of a crop as opposed to being merchants selling horticultural commodities.

The Assessor states that the 1989 farm use denials for commercial greenhouses is the result of a 1980 Attorney General's Opinion which cites Salem Nursery, Inc. v. Department of Revenue, supra, in which the court held azalea plants were taxable as personal property. The Salem case, however, has no relevance to the issue in the instant case. Furthermore, even the court in Salem followed the majority rule of interpretation that agriculture includes horticulture, and that a greenhouse owner is entitled to the exemption for real property used for agricultural purposes. Rather than redefining agriculture, the court in Salem carved out a limited exception. Thus, the ruling has no persuasive authority to support the Assessor's claim that the word agriculture is now limited to farming directly on land, and not in greenhouses.

This court has the power to review an action of an administrative official or agency alleged to be arbitrary and capricious. Barrington v. Eastern Washington University, 703 P.2d 1066 (Wash. Ct. App. 1985). The reasonable basis test is the appropriate standard when reviewing agency action alleged to be arbitrary and capricious. Arndt v. State of Alaska, 583 P.2d 799 (Alaska 1978). Under the reasonable

basis test the court seeks to determine if there was some reasonable basis for the agency action. In the instant case, there was no such reasonable basis for the Assessor's modification of the long-standing interpretation of the farm use exemption. There was no change in the law, custom, or practice regarding agricultural use of land in Alaska that necessitated such a change, and, as discussed herein, the definition of agriculture has consistently included horticulture. Therefore, the Assessor's decision to modify the interpretation of farm use was arbitrary and capricious and lacked a reasonable basis. On this basis, distinct from and in addition to the erroneous legislative interpretation itself, the Assessor's decision should be overturned.

CONCLUSION

Appellant has clearly demonstrated that commercial greenhouse operations are a legitimate horticultural activity and are clearly within the meaning of agriculture. The body of authority affirming that position is overwhelming. In view of the foregoing, Appellant requests that the court enter a declaratory judgment ordering the Fairbanks North Star Borough Assessor to grant Appellant's 1989 application for the farm use exemption, and for such other and further relief as the court deems just and equitable.

Respectfully submitted this _____ day of August, 1989, at Fairbanks, Alaska.

REX B. LANTZ, JR.
1035 Blair Road
Fairbanks, Alaska 99701
907/452-8653

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF AGRICULTURE

P.O. BOX 949
PALMER, ALASKA 99645-0949
PHONE (907) 745-7200

July 17, 1989

Wayne Leiser
Alaska Greenhouses
1301 Muldoon Road
Anchorage, Alaska 99504

Dear Mr. Leiser:

Prior to receiving your telephone call, the Division of Agriculture had responded to a request from Hawks Greenhouse in North Pole on the issue of applicability of the statutory agricultural tax exemption (AS 29.45.060) to horticultural businesses.

Horticulture staff at the Plant Material Center has thoroughly research the common, accepted and scientific definitions of the word horticulture. There is no question that "horticulture" falls clearly within the definition of "agriculture," and as a general rule greenhouse operations are within the scope of activities categorized as agricultural.

The Division of Agriculture has consistently interpreted the term agriculture in this manner since Territorial days. Greenhouse operations are eligible for agricultural loans, and other assistance from the Division.

Enclosed is a staff memorandum, with references, explaining the definition of "horticulture." It should be noted that the Alaska approach coincides with the federal policy defining the term agriculture to include horticulture. As far as can be determined, all other States likewise follow the same approach.

The information in this letter will be forwarded to the appropriate agencies and individuals. if the Department of Natural Resources can be of further assistance on this issue, please call or write.

Sincerely,

Frank Mielke

Frank Mielke
Director

Enclosures

FM/kjh

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES

State of Alaska

DIVISION OF AGRICULTURE

TO: Mike Worley, State Assessor
Division of Municipal/Regional Affairs

DATE: July 7, 1989

FILE NO.:

TELEPHONE NO.: 745-7200

THRU:

SUBJECT: Greenhouses and Nurseries and Farm-Use Land Assessment

FROM: Frank Mielke
Director

Numberous greenhouse and nursery operators have asked the Division of Agriculture to address the issue on the agricultural tax exemption as it applies to greenhouses and nurseries.

The 1980 opinion relied on by assessors has been reviewed by Division staff. While we are not questioning the legal analysis as such, it appears that the opinion was written without a good understanding of agriculture, horticulture, or the greenhouse and nursery business. I would like to address some of the factual assumptions in that opinion.

(1) "A greenhouse does not use land, but rather containers .....". There are cases where this is true, but there are many cases where plants may be grown inside a greenhouse and then planted in the ground, and subsequently harvested, or grown and severed or uprooted for sale. If the only criteria were use of the ground, many of the greenhouse and nursery operations would "plainly fall within" the meaning of the statute.

(2) The exemption applies to "raising and harvesting crops .... for profit". Greenhouse and nursery growers raise and harvest crops just as another farmer raises potatoes, vegetables, which are also horticultural crops; grass seed, grain, pork, beef or dairy animals. Their crops are bedding plants, poinsettias (one (one Alaska grower alone produces 15,000 6-inch pots of poinsettias; another raises 15,000 - 20,000 pots), seasonal flowering plants, cut flowers, vegetables, foliage plants and flowering hanging baskets. They raise these several thousand flats of bedding plants, potted plants, hanging baskets, cut flowers and vegetables for profit. They employ over 1,500 Alaskans to raise and harvest these crops.

(3) Tax exemption "....implies a level of agricultural activity in excess of a greenhouse...." The growers who have inquired about the farm-use land assessment are not hobby gardeners operating out of a greenhouse in their back yard. Some hold degrees in horticulture or agriculture or employ those with such degrees. Granted, some growers may have begun as hobby growers, but expanded their enterprises

into viable, profit-making organizations out of the back yard and into a commercial location. The production of a profitable crop requires knowledge of a plant's growth cycle, fertility requirements, insect and disease control, and light and moisture requirements. It is not in any way less difficult or less of an activity than the field production of potatoes, vegetables, grain, grass seed, and animals for meat or dairy production. Container nursery production, the production of nursery stock above ground increases in popularity as labor costs rise and management techniques are developed.

(4) One purpose of the exception is "...to preserve green space." Greenhouses and nurseries do preserve green space. They expand the productivity of our resources by being able to produce on marginal land, with good water where traditional field crops may not be grown. This does not make them any less agricultural. They generally landscape around the facilities. They promote Alaska citizens and businesses to replant or landscape our homes and offices after the construction has left a naked lot. People receive help selecting the plants best suited to their locale, which will grow and recreate that greenspace destroyed by the construction of our expanding cities. They are themselves a green space, often the only one available when snow blankets the rest of Alaska.

As was said earlier, greenhouse and nursery growers are horticulturists. They are members of the horticulture industry which is one segment of the total agriculture industry. Agriculture is comprised of two sections, applied plant science and applied animal science. The section of applied plant science can be further divided into segments of horticulture, agronomy and forestry. An illustration from Ervin L. Denisen's book, Principles of Horticulture, which explains these divisions is attached.

The Division of Agriculture has recognized the horticulture industry as a viable segment of our agriculture industry for several years. Horticulture businesses of greenhouses and nurseries receive loans from the Agricultural Revolving Loan Fund. Guidelines for horticultural crops for the 'Alaska Grown' marketing program have been approved by the Division.

I invite you to a tour of some of Alaska's production greenhouses, and to discuss the purposes of the exemption so that some better guidelines may be written. Please contact me so that a tour and meeting can be arranged.

FM/kjh

Attachments

cc: Lennie Gorsuch, Commissioner

Dimond Greenhouses, Inc.

The Growing Place *Wayne Leiser*

February 19, 1992

Representative Pat Parnell
Alaska House of Representatives
State Capitol
Juneau, Alaska 99801-1182

Re: House Bill # 495

Dear Representative Parnell,

Thank you for giving me the opportunity to comment on HB 495 regarding Farm Tax Deferment. As you know, the words "or Horticulture" were removed from the statute several years ago but horticulture is, in fact, a major branch of agriculture. I have asked you to re-incorporate the words "or Horticulture" into the bill.

Several states have a similar statute to help keep farmland from being developed into residential or commercial property. By taxing the land as agricultural (or horticultural) the owners receive a break that helps them continue in business. And our business is growing. We provide plants, seeds, trees and shrubs and related items to businesses and home-owners which help keep the community green and attractive. In other words, we make for a better living environment.

The horticultural industry is very seasonal in Alaska. We have 4 full time employees year round and hire additional help for our spring and summer seasons. Many high school and college students receive their first experience working summers in a horticultural related field.

The tax deferment will help allow us to be able to afford to expand which will, in turn, give us the opportunity to hire more Alaskans in a meaningful occupation. We are planning on building an additional 9000 square feet of greenhouse this summer. Future expansion plans include another 18000 to 30000 square feet of greenhouse which will open up several more full time and part time jobs.

Mailing Address: 1050 W. Dimond Anchorage, AK 99515 349-2552

There is a definite need for more greenhouses in Alaska. With our severe climate and short growing season, plants help make a better quality of life for all Alaskans. The market is here but we need to expand to meet this market. The tax deferment will help the industry as a whole.

I encourage you to pursue this bill with vigor. A recent court case in Fairbanks was decided favorably for the tax deferment. Many growers don't have the financial capacity to obtain legal council to obtain the tax deferment. It costs the grower as well as the state. When we all know that horticulture is a major branch of agricultural, I fail to see why the Municipality denies our application every year.

I hope this information is helpful.. If you have any questions or need additional information, pleasc feel free to contact me.

Sincerely,

Wayne

Wayne Leiser
President

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

MAR 0 7 1991

WALTER J. HICKEL, GOVERNOR

REPLY TO:

☑ *1031 W 4th AVENUE SUITE 200*
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697

☐ *KEY BANK BUILDING*
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

☐ *P.O. BOX K— STATE CAPITOL*
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

March 6, 1991

APR 0 8 1991

Honorable Curt Menard
Alaska State Senator
P.O. Box V
Juneau, Alaska 99811

Re: Tax Benefits For Farm Use Land - AS 29.45.060(c)

Senator Menard:

By letter dated October 30, 1989, you requested that the Attorney General's Office (A.G.O.) review a 1980 and a 1981 informal opinion as to whether tax benefits for Farm Use Land [AS 29.45.060(c)] should be granted to greenhouses and nurseries. The A.G.O. determined it inappropriate to respond at that time because the issue was raised in a then pending appeal from a denial of tax benefits in the case Rex B. Lance, Jr. v. Fairbanks North Star Borough, 4FA-89-986 Civil.

By order in Lance v. FNSB dated February 9, 1990, Superior Court Judge Richard D. Savell ruled that a commercial greenhouse operator is eligible for farm use tax benefits under AS 29.45.060 and related Borough ordinance. A copy of Judge Savell's Memorandum Decision is enclosed for your information. The Borough indicates that it does not intend to appeal this decision.

Please feel free to contact us if we can be of further assistance to you related to the applicability of tax benefits under AS 29.45.060.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: Brian Bjorkquist
Brian D. Bjorkquist
Assistant Attorney General

BDB:sb
enclosure

cc: Frank Mielke, Director, Division of Ag.

03-C5LH

ALASKA MUNICIPAL LEAGUE

217 Second Street, Suite 200 • Juneau, Alaska 99801 • Tel (907) 586-1325, Fax (907) 463-5480

February 27, 1992

TO: Representative Jerry Mackie, Chair
Members, House Community and Regional Affairs Committee

FROM: Scott A. Burgess, Executive Director

SUBJECT: HB 495 - Farm use exemption from municipal taxation for agricultural land and greenhouses

The Alaska Municipal League opposes HB 495, which would include greenhouses and other land used for the raising of ornamental plants within the farm use land assessment program. Including an additional type of property in this program would further erode the tax base, and thus the financial position, of Alaska's local governments.

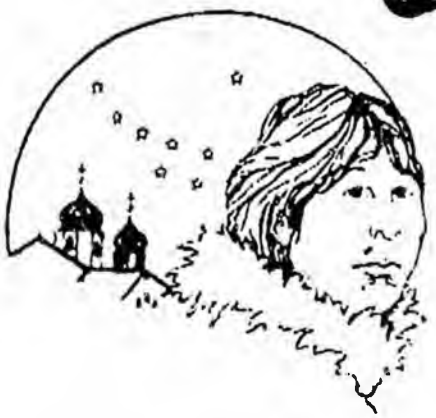
The League's **1992 Policy Statement** (I.D.2) specifically opposes any additional mandated exemptions from municipal taxes and, in fact, calls for repeal of state-mandated tax exemptions for which funding is not appropriated by the Legislature: " . . . the League opposes the imposition of state-mandated exemptions of certain classes of property, individuals, organizations, or commodities from the application of taxes unless full compensation is made for revenues lost due to these exemptions. If the reimbursements for state-mandated exemptions are not fully funded, currently or in the future, the exemptions should be repealed or prorated." Adding greenhouses and land used to raise ornamental plants to the definition of "farm use" would expand exemptions from municipal property tax.

The Farm Use Land Assessment Program has not been fully funded since FY 85 and has not been funded at all since FY 87. Adding an additional exemption for greenhouses would add to the existing tax burden of over $295,000 that the Legislature has already placed on affected local governments by not providing funding for the mandated exemption for farm use land. HB 495 would, in effect, mandate an additional municipal tax increase due to erosion of the tax base without reimbursement from the State.

The Alaska Municipal League opposes HB 495 and any other efforts to add mandated exemptions from municipal property taxes.

cc: Representative Pat Parnell

C92test:HB 495.227



Kodiak Island Borough

710 MILL BAY ROAD
KODIAK, ALASKA 99615-6340
PHONE (907) 486-5736

REFER: HB 495, inclusion of Greenhouses & Horticulture in the Farm Use Program

I am writing this letter to express my opposition to HB 495. The net effect of this bill is to provide a special exemption for a few select business's. This in my opinion, violates the general principal of property taxation in the state of Alaska, in that all classes of property owners be treated in a fair and equitable manner. The existing statute is poorly written in the first place, as evidenced by the two state attorney general opinions, one which states the program absolutely does not include greenhouses, while another says it does. This new legislation only serves to compound the existing administrative problems and to create the potential for more confusion.

If the proposed legislation would become law, I believe the wording is such that it allows an expansion of the program, which brings up the major problem from a local level. The state of Alaska has reduced their contribution to the program to zero, which is unfair to those municipalities with farm properties within their boundaries in relation to those with none. To further expand the amount of recipients of the exemption without some type of approval from the taxpayers who pay for the exemption is unfair.

My understanding of the original legislative intent for the exemption program was to insure that legitimate farmers who utilize large tracts of land could be afforded some tax relief in order to remain profitable and continue to operate. To expand this program in order to include a few retail business operations in the larger communities, who are in direct competition with other retailers, would be in direct opposition to the original intent.

I respectfully request that you consider these facts in your deliberations, and appreciate the opportunity to express my opinions.

Sincerely yours,

Patrick S Carlson

Patrick S. Carlson, Assessor
Kodiak Island Borough

MUNICIPALITY OF ANCHORAGE

MEMORANDUM

DATE: February 27, 1992

TO: Crystal Smith, AML

FROM: Jerry Anderson, Chief Fiscal Officer

SUBJECT: HB 495, Allowing Greenhouse Operations to be Included in the Farm Use Deferment Program

Under existing state law, AS 29.45.060, land which is used for raising and harvesting crops, feeding, breeding and management of livestock or other agricultural uses is assessed based upon it's farm use value. In almost all cases (statewide), this results in assessments much less than the highest and best use value of the property. This translates into special tax treatment for these property owners.

The original intent of this legislation was to help farmers resist the urge to sell their property to developers and replace this open green space with residential or commercial development. It was thought that farming was a marginal business and a high tax burden could help force the farmer out of business. The high tax burden would be the result of speculative property values initiated by developers.

HB 495 allows greenhouse operations which raise ornamental plants to be included in this program. Typically, these operations are located in existing developed areas which do not need an incentive to resist development as the area has been developed. Unlike typical farms around the state, these operations do not require large amounts of land to operate. Consequently, it does not make sense to include these type operations in this program as there is no pressure to sell the land for development purposes.

Under existing law, the farmers in Alaska are not forced to sell their farms due to high taxes, thus helping to keep valuable open green space out of development. If HB 495 becomes law, a small segment of Alaska's businesses get a special tax treatment with no obvious benefits to the rest of Alaska. Therefore, I would urge AML to oppose this bill.

HB

500

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN
SEAT A

3111 "C" STREET, SUITE 450
ANCHORAGE, ALASKA 99503
(907) 561-7629 (FAX) 562-1376

ALASKA LANDINGS • BENTZEN • BIRCHWOOD • CHESTER CREEK • HEATHER MEADOWS • LINCOLN PARK • MIDTOWN • NORTHSTAR
NORTHWOOD • ROMIG • ROOSEVELT PARK • SPENARD • THOMPSON • TURNAGAIN • WINDEMERE • WOODLAND PARK

CHAIRMAN
JUDICIARY COMMITTEE

VICE CHAIRMAN
REGULATION REVIEW COMMITTEE

MEMBER
RULES COMMITTEE
LABOR AND COMMERCE COMMITTEE

SPONSOR STATEMENT

HOUSE BILL 500

HB 500 appropriates $75,000 from the general fund for the design, construction, and installation of a statue commemorating the internment of Alaskan Aleuts during World War II.

1992 is the 50th anniversary of the government's decision to move the Aleuts of the Pribilof Islands to several sites in Southeast Alaska. This was done against the wishes of the Aleut people, and while it was supposedly done for protection, whites on the islands were not moved. In fact, during the seal hunting season of 1943, the Aleut men were allowed to return to the islands to hunt, only to be removed again once they had sold their furs to government traders.

The location of the statue was influenced by three issues. First, during the improvements made to Spenard Road, there were three areas designed and constructed for the placement of statuary. This location is one of those places. Secondly, Spenard Road is the major road link between Anchorage International Airport and the downtown business and hotel area. The statue would be seen by those travelling to and from the airport, and would be on the travelling route of most city tours. Finally, Northwood Drive is used by children going to and from school and would spark their curiosities about this event in Alaskan history.

I believe that this statue will serve to remind Alaskans and visitors alike of this tragic event in our state's history, so that we never again repeat such treatment.

JUNEAU OFFICE
(During Legislative Session January through May)
P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3892 (FAX) 463-5661

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN
SEAT A

3111 "C" STREET, SUITE 450
ANCHORAGE, ALASKA 99503
(907) 561-7629 (FAX) 562-4376

ALASKA LANDINGS • BENTZEN • BIRCHWOOD • CHESTER CREEK • HEATHER MEADOWS • LINCOLN PARK • MIDTOWN • NORTHSTAR
NORTHWOOD • ROMIG • ROOSEVELT PARK • SPENARD • THOMPSON • TURNAGAIN • WINDEMERE • WOODLAND PARK

CHAIRMAN
JUDICIARY COMMITTEE

VICE CHAIRMAN
REGULATION REVIEW COMMITTEE

MEMBER
RULES COMMITTEE
LABOR AND COMMERCE COMMITTEE

HOUSE BILL 500

ALEUT MEMORIAL STATUE

DESCRIPTION OF COSTS

The initial cost will go to the search for an artist and design of a statue appropriate for the subject and the location. The search will be done with the intention of selecting an Alaskan artist who will be sensitive to this subject. This phase will cost approximately $5,000.00.

The second phase of the project will be the actual construction of the statue. Because the statue will be done in bronze, making it more capable of withstanding the weather, this construction will cost approximately $60,000.00.

The final phase of the project is the actual installation of the statue. Because the selected location is already designed for statuary, the costs will be only for placement and securing of the work. However, because earthquakes, high winds, and heavy snow must be taken into consideration, as well as vandalization, the cost of this phase will be approximately $10,000.00.

The total cost breakout as follows:

Selection of Artist and Statue Design	$ 5,000.00
Construction of Bronze Statue	$60,000.00
Installation and Securing of Statue	$10,000.00
Total:	$75,000.00

JUNEAU OFFICE
(During Legislative Session January through May)
P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3892 (FAX) 463-5661

HB

507

(7)

Date Referred: February 18, 1992 FURTHER REFERRALS: State Affairs

Date of Committee Action: 3/11/92

The COMMUNITY AND REGIONAL AFFAIRS Committee considered: HB 507

HOUSE BILL NO. 507 LBC ANNEXATION PROPOSALS

"An Act relating to certain annexation proposals submitted by the Local Boundary Commission to the legislature."

RECOMMENDATIONS: [ ] the same title
be replaced with _____ [ ] a new title

[ ] have attached amendments(s)
[X] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal impact _____

[X] zero fiscal note DCRA

APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) _____

[ ] zero fiscal note(s) _____

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*DNP*	*NR*	*AM*
Cheri Davis	—				
	✓				
	—				
Richard Foster	X				

CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 507

Revision Date: _____
Title: "...relating to certain annexation proposals submitted by the Local Boundary Commission..."
Sponsor: Representative Mackie
Requestor: (H) CRA

Department Affected: Community and Regional Affairs
BRU: _____
Component: _____

COMPONENT SERIAL NO. 0 0 0 0

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Remond Henderson
Division: Administrative Services Division
Phone: 465-4708
Date: 3/6/92

Approved by Commissioner: Ed Bell
Agency: Department of Community and Regional Affairs
Date: 3-6-92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).
Rev 10/7/91

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

150 THIRD STREET
JUNEAU, ALASKA 99801-1291
PHONE: (907) 465-4700

949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508-4302
PHONE: (907) 563-1073

March 9, 1992

POSITION PAPER

RE: HB 507

SPONSOR: Representative Mackie

Program Effects of Bill:

This legislation would prohibit the Local Boundary Commission (LBC) from submitting an annexation proposal having a deferred effective date (other than a step annexation under AS 44.47.567 (b)(2)) to the legislature.

Comments:

In the more than 33 years since statehood, there have only been two instances where the Local Boundary Commission has submitted deferred annexation proposals to the legislature.

The first instance involved an annexation to the City of Haines in the mid-1980's. When the LBC approved an annexation, officials of the Haines Borough asked the Commission to defer the annexation for two years so that local officials could bring a unification proposal before the voters. The deferral was granted.

The second instance involved the present annexation of the area around Greens Creek mine to the City and Borough of Juneau. The rationale for the deferral requested by Juneau was to limit financial hardship (from taxes and municipal land use regulation) on the property owner in the territory proposed for annexation.

In the Greens Creek annexation, the petitioners considered the step annexation process set out in AS 44.47.567 (b)(2). This option was not available, however, because the process requires approval of voters within the territory to be annexed and the territory in question was uninhabited. DCRA opposed the deferral request due largely to the fact that the CBJ had authority under existing law to grant tax relief. The LBC chose to approve deferral of the annexation.

HB 507 was introduced in response to the deferred annexation of the Greens Creek mine by the CBJ. While in the judgment of the Department that deferral lacked merit, there may be other annexation proposals in the future that warrant deferral.

The Department urges restraint in proposals to limit the options available to the LBC. HB 507 should be opposed unless AS 44.47.567 (b)(2) is amended in the same legislation to allow step annexations of uninhabited territory.

Edgar Blatchford, Commissioner

C. REASONS FOR IMMEDIATE ANNEXATION

DCRA believes that immediate annexation of the territory is warranted for the following reasons.

1. Territory Currently Needs CBJ Services

The LBC concluded in its written statement of decision concerning the CBJ annexation adopted October 8, 1990, that:

> The area is in need of municipal services which the CBJ can provide more efficiently than another municipality or the State. Thus, the standard set out in 19 AAC 10.190(a)(3) is satisfied. This conclusion is based upon the following findings.
>
> While the area has no permanent residents, it is a major industrial site in close proximity to Juneau. More than 200 individuals reportedly work at the Greens Creek Mine. All of these individuals are believed to reside within the boundaries of the CBJ.
>
> The CBJ would provide the following direct services to the area upon annexation:
>
> - emergency police services (offered in a limited capacity and only in emergencies);
> - search and rescue;
> - emergency medical services;
> - planning, zoning and coastal management;
> - tax assessment and collection; and
> - building inspection.
>
> In addition, services delivered by the CBJ in other locations, but available to the workers in the annexed area include:
>
> - Juneau public school system;
> - Juneau International airport;
> - Juneau hospital;
> - Juneau harbor facilities;
> - social services;
> - cemeteries;
> - libraries;
> - convention facilities; and
> - museums.

Thus, the LBC has concluded that there are presently unfulfilled needs for municipal services in the area proposed for annexation. KGCMC officials dispute this finding of the LBC. In their comments of April 15, 1991 (see appendix), Mr. Clark states:

> There is not a single service that the CBJ can offer that Greens Creek "needs". The mine is completely sulf-sufficient and has its own emergency response

unaware of any circumstance which suggests that it is not possible to extend immediate services to the Greens Creek Mine upon annexation. As such, the LBC's regulations contemplate that annexation occur immediately.

D. CONCERNS OVER DUE PROCESS

Mr. Clark indicates in his comments of April 15, 1991 that "KGCMC has previously asserted and continues to assert that the LBC did not have authority to approve the application for annexation after it was withdrawn by the CBJ Assembly on July 13, 1989".

DCRA and the LBC have taken every conceivable measure to ensure the rights of KGCMC in this matter. The reconsideration process has followed all of the steps which would be required of a new petition.

Mr. Clark's comments of April 15 conflict with testimony provided to the Commission in November (see appendix). The November testimony states on page 5:

> Greens Creek urges the commission to grant its request for reconsideration because the proper measure of due process has not occurred to date. In order to rectify the situation, the CBJ pecition with the 1994 deferred effective date should be noticed and the LBC procedures begun anew. This would give all interested parties the opportunity to submit testimony on the issue and allow the commission to make an informed decision. (emphasis added)

The concerns expressed by Mr. Clark last November were fully addressed in the procedures used in the reconsideration DCRA believes that these procedures are in substantial compliance with all applicable requirements.

SECTION III - CONCLUSIONS AND RECOMMENDATION

The CBJ initiated its petition for annexation in May of 1989. That annexation, which might have been implemented as early as March of 1990, was delayed by one year as a result of the model boundaries project. The annexation was delayed an additional year as a result of the current reconsideration proceedings. The earliest that the annexation could now be implemented is March of 1992. The Greens Creek Mine has already gained nearly one million dollars in tax relief.

The Department does not believe that further delay in the annexation of the Greens Creek Mine is warranted. This position is based upon the following:

- The LBC has formally concluded that the Greens Creek Mine is presently in need of municipal services.

CORRECTION

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C. REASONS FOR IMMEDIATE ANNEXATION

DCRA believes that immediate annexation of the territory is warranted for the following reasons.

1. Territory Currently Needs CBJ Services

The LBC concluded in its written statement of decision concerning the CBJ annexation adopted October 8, 1990, that:

> The area is in need of municipal services which the CBJ can provide more efficiently than another municipality or the State. Thus, the standard set out in 19 AAC 10.190(a)(3) is satisfied. This conclusion is based upon the following findings.
>
> While the area has no permanent residents, it is a major industrial site in close proximity to Juneau. More than 200 individuals reportedly work at the Greens Creek Mine. All of these individuals are believed to reside within the boundaries of the CBJ.
>
> The CBJ would provide the following direct services to the area upon annexation:
>
> - emergency police services (offered in a limited capacity and only in emergencies);
> - search and rescue;
> - emergency medical services;
> - planning, zoning and coastal management;
> - tax assessment and collection; and
> - building inspection.
>
> In addition, services delivered by the CBJ in other locations, but available to the workers in the annexed area include:
>
> - Juneau public school system;
> - Juneau International airport;
> - Juneau hospital;
> - Juneau harbor facilities;
> - social services;
> - cemeteries;
> - libraries;
> - convention facilities; and
> - museums.

Thus, the LBC has concluded that there are presently unfulfilled needs for municipal services in the area proposed for annexation. KGCMC officials dispute this finding of the LBC. In their comments of April 15, 1991 (see appendix), Mr. Clark states:

> There is not a single service that the CBJ can offer that Greens Creek "needs". The mine is completely sulf-sufficient and has its own emergency response