Greenbelt Handbook

for

Assessors of Property

INTERACTIVE HANDBOOK INSTRUCTIONS

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1. **CLICK ON EACH CITED DECISION/OPINION (DECISIONS/OPINIONS ARE ITALICIZED IN FOOTNOTES) WHICH WILL TAKE YOU DIRECTLY TO THAT FULL, ORIGINAL DECISION/OPINION.**

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The Purpose of the Handbook

The purpose of this handbook is to provide assessors' offices with guidance concerning many issues often encountered under the Agricultural, Forest and Open Space Land Act of 1976— the law is commonly known as "greenbelt." The handbook will also help ensure uniformity across all 95 counties in administering the greenbelt program.

Disclaimer

This handbook contains interpretations of law by legal staff with the office of the Comptroller of the Treasury. This handbook has not been approved by the State Board of Equalization. These interpretations should be considered general advice regarding assessment practices as opposed to binding rulings of the Comptroller of the Treasury, the Division of Property Assessments, or the State Board of Equalization. Since some greenbelt issues will be unique, the outcome may be different in a particular situation. In other words, this handbook is not intended to provide definitive answers to all situations faced by assessors in the daily administration of greenbelt. Also included are policies and procedures of the Division of Property Assessments. Please feel free to contact the Division if you have any questions.

The Purpose of Greenbelt

In 1976, the Tennessee General Assembly ("General Assembly"), concerned about the threat to open land posed by urbanization and high land taxes, enacted the Agricultural, Forest and Open Space Land Act of 1976 (hereafter referred to as "Act" or "greenbelt law") which is codified at T.C.A. §§ 67-5-1001–1050. The purpose of the Act is to help preserve agricultural, forest, and open space land. This is accomplished by valuing these lands based upon their *present use*—"the value of land based on its current use as either agricultural, forest, or open space land and assuming that there is no possibility of the land being used for another purpose"(T.C.A. § 67-5-1004(11))—rather than at their *highest and best use*—"[t]he reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value." (*The Dictionary of Real Estate Appraisal*, 4th Ed., Appraisal Institute at 135). When property is valued at its highest and best use, the threat of development sometimes "brings about land use conflicts, creates high costs for public services, contributes to increased energy usage, and stimulates land speculation." T.C.A. § 67-5-1002(1). Therefore, without the benefit of present use valuation, landowners would be forced to sell their land for premature development because taxes would be based on the land's "potential for conversion to another use." T.C.A. § 67-5-1002(4). The constitutionality of the greenbelt law was upheld by the Court of Appeals in **Marion Co. v. State Bd. of Equalization,** 710 S.W.2d 521 (Tenn. Ct. App. 1986), *permission to appeal denied* April 21, 1986) ["**Marion Co.**"].

The Act recognizes that property receiving preferential assessment may be converted to a non-qualifying use at a future date. The Act specifically provides that one of its purposes is to prevent the "premature development" of land qualifying for preferential assessment. T.C.A. § 67-5-1003(1). In many situations, commercial development may actually constitute the highest and best use of the property. *See* **Bunker Hill Road L.P.** (Putnam County, Tax Year 1997, Initial Decision & Order, January 2, 1998) ["**Bunker Hill**"] at 4 ("The administrative judge finds it inappropriate to remove a property from greenbelt simply because it is zoned commercially or that commercial development represents its highest and best use."). Similarly, property may qualify for preferential assessment even

though the property owner periodically sells off lots or intends to convert the use to commercial development at some future date. **Bunker Hill** at 4 (". . . [T]he administrative judge [assumes] that many owners of greenbelt property intend to sell it for commercial development at some future time.") *See also* **Putnam Farm Supply** (Putnam County, Tax Year 1997, Initial Decision & Order, January 2, 1998) at 4-5.

The Act was a way for the General Assembly to issue "an invitation to property owners to voluntarily restrict the use of their property for agricultural, forest, or open space purposes." By restricting the property, it is "free from any artificial value attributed to its possible use for development." (**Marion Co.**, 710 S.W.2d at 523.) But, to take advantage of this, an application must be completed and signed by the property owner, approved by the assessor, and recorded with the register of deeds. *See* T.C.A. §§ 67-5-1005(a)(1), 1006(a)(1), 1007(b)(1), & 1008(b)(1). The recorded application provides notice to the world that this property is receiving favorable tax treatment for assessment purposes.

Since the land is receiving favorable tax treatment, *rollback taxes* will become due if the land is disqualified under the Act. T.C.A. § 67-5-1008(d)(1)(A)–(F). These taxes are a recapture of the difference between the amount of taxes due and the amount that would have been due if the property was assessed at market value. T.C.A. § 67-5-1008(d)(1). To prevent a county's tax base from being eroded, however, the General Assembly found that "a limit must be placed upon the number of acres that any *one* . . . owner . . . can bring within [the Act]." T.C.A. § 67-5-1002(5) (emphasis added). That limit is 1,500 acres per person per county. T.C.A. § 67-5-1003(3).

Agricultural land

§ 1. The definition of *agricultural land*

For land to qualify as agricultural, it must be at least 15 acres, including woodlands and wastelands, and either:

i. Constitutes a *farm unit engaged* in the production or growing of agricultural products; or

ii. Has been farmed by the owner or the owner's parent or spouse for at least 25 years and is used as the residence of the owner and not used for any purpose inconsistent with an agricultural use. T.C.A. § 67-5-1004(1)(A)(i)–(ii) (emphasis added).

First, land containing at least 15 acres and engaged in farming will qualify as agricultural. To be engaged in farming means the land must be actively utilized in the production or growing of crops, plants, animals, aquaculture products, nursery, or floral products. Land cannot qualify just because an owner *intends* to farm. In other words, the land cannot simply be *held for use*. It must be actively engaged in farming. For example, land not being farmed as of the assessment date (January 1)—or land that will be farmed after the assessment date—cannot qualify for the current tax year.

Here is a general, but not exhaustive, list of the most common farming activities:

- Crops: corn, wheat, cotton, tobacco, soybeans, hay, potatoes.
- Plants: herbs, bushes, grasses, vines, ferns, mosses.

- Animals: cattle, poultry, pigs, sheep, goats.
- Aquaculture: fish, shrimp, oysters.
- Nursery: places where plants are grown.
- Floral products: roses, poppies, irises, lilies, daisies.

Second, land can also qualify as agricultural if it (1) contains at least fifteen acres, (2) has been farmed for twenty-five years, and (3) is used as the owner's residence. This is commonly referred to as the *family-farm provision* (see § 6).

As noted above, for land to qualify as agricultural, it must constitute a "farm unit." Since the term "farm unit" is not defined anywhere in the Act, the assessor must determine whether the claimed farming activity represents the primary purpose for which the property is used or merely constitutes an incidental or secondary use. *See* **Swanson Developments, L.P.** (Rutherford County, Tax Year 2009, Final Decision & Order, September 15, 2011) at 3 ("[T]he predominant character of the tract supports further development, not farming, and the property in the aggregate does not, in our view, constitute a 'farm unit engaged in the production or growing of agricultural products.'") upholding **Swanson Developments L.P.** (Rutherford County, Tax Year 2009, Initial Decision & Order, January 20, 2010); *see also* **Sweetland Family Limited Partnership** (Putnam County, Tax Years 1999 & 2000, Final Decision & Order, September 30, 2001 at 2 (". . . the subject property cannot reasonably be considered a farm unit. Although hay is produced on the premises, we find the amount of production is minimal and incidental to the owner's primary interest and efforts with regard to subject property, i.e., holding the subject property for commercial development."); **Crescent Resources** (Williamson County, Tax Year 2007, Initial Decision & Order, April 14, 2008) at 4 ("The administrative judge finds that the taxpayer is a developer who purchased subject property solely for development purposes. . . . The administrative judge finds that any income generated from growing crops has been done to retain preferential assessment under the greenbelt program. The administrative judge finds that any farming done on subject property must be considered incidental and not representative of the primary purpose for which subject property is used or held."); and **Thomas H. Moffit, Jr.** (Knox County, Various Tax Years, Initial Decision & Order, June 27, 2014) at 10-11 (which became the Final Decision and Order of the Assessment Appeals Commission after it deadlocked on appeal).

Similar rulings of possible interest include **Centennial Blvd. Associates** (Davidson County, Tax Years 2003 & 2004, Order Affirming Greenbelt Determination and Remanding for Value Determination, August 24, 2005) at 1-2:

> Mr. Robinson testified to the problems he had establishing a farm use of this [17 acre] tract which adjoins his manufacturing facility. He stated he is currently trying to establish a stand of white pines, but pesticide spraying by the holder of utility easements on or near the property is making this difficult. The Commission finds this property does not constitute a farm unit engaged in production of agricultural products, and the withdrawal of greenbelt classification by the assessor was entirely proper. Centennial Blvd. Associates is not a farm struggling against a tide of encroaching industrial sprawl, it is one of many industrial and commercial owners of land in this area trying to maximize value of its investment. It has not demonstrated this property is used as a farm.

Church of the Firstborn (Robertson County, Tax Year 1997, Initial Decision & Order, August 11, 1998) at 2 wherein the administrative judge ruled that 2.75 acres carved out of approximately 300 acres designated as greenbelt for use as a subsurface sewage disposal system in conjunction with a residential subdivision did not qualify as agricultural land:

> The taxpayer's representative testified that the surface of the easement area is used for pasturing but that it would not be used for crops requiring tilling or any other use that might interfere with . . . subsurface sewage disposal purposes. The administrative judge finds . . . that any use of the easement area for agricultural purposes is minimal and insufficient to qualify the property for greenbelt status. The administrative judge specifically finds that the easement area is a necessary and incidental part of the residential subdivision notwithstanding the fact ownership remains in the name of the owner of the surrounding property which is assessed as greenbelt.

and **Richard Strock et al.** (Maury County, Tax Years 1999 & 2000, Final Decision & Order, December 20, 2000) at 2:

> Mr. Strock is correct in his assumption that a farmer may consider developing the farm even to the point of offering it for sale while still maintaining farm use, without jeopardizing the property's greenbelt status. Land may lie fallow, roads may be built, without giving rise to a presumption that farm use has been abandoned, if these measures are not inconsistent with continuing farm use of the property. This case presents a very close issue as to whether the farm use of these parcels has been abandoned, particularly considering the size of the parcels [a 20.19-acre tract and 2.06- acre tract divided by a road] and the overwhelming impact of the road construction on the minimal farm use for hay production. The assessor has acted in good faith in concluding that what he observed indicated abandonment of the farm use, but considering all the circumstances we find that continuing farm use has adequately been shown for the subject parcels in the resumption of the continuing and long-term program of hay production or other farm uses, coupled with the abandonment of further physical changes to the property intended to bring about a non-greenbelt (development) use.

In certain instances, a portion of the acreage that previously qualified as agricultural land may cease to qualify due to a change in use. *See* **Roger Witherow, et al.** (Maury County, Tax Year 2006, Initial Decision & Order, May 17, 2007) at 3-4, wherein the administrative law judge affirmed the assessor's determination that 10.0 acres of a 64.28 acre farm no longer qualified for preferential assessment as agricultural land (". . . [O]nce [the 10.0 acres] began being utilized exclusively for excavation purposes it was no longer capable of being used for farming purposes. Indeed, the administrative judge finds that excavating dirt and rock for fill squarely constitutes a commercial use. . . [and] the 10.0 acres . . . was no longer part of a farm unit engaged in the production or growing of agricultural products. Hence . . . the assessor properly assessed rollback taxes and reclassified the 10.0 acres commercially.")

Similarly, there are occasions when a change in the use of a portion of the property results in the disqualification of the entire parcel because it no longer meets the minimum acreage requirements. *See* **Vernon H. Johnson** (Robertson County, Tax Year 2002, Initial Decision & Order, January 17, 2003) at 3 wherein an entire 17.37-acre tract was disqualified from greenbelt after a 2.6-acre portion was leased for the erection of a cellular telephone tower. ("For the duration of the agreement, the lessee has an exclusive right to occupy and use that section of the property for non-agricultural purposes. A right-of-way easement, on the other hand, merely conveys a right to pass over the land. Such an encumbrance would not ordinarily restrict the owner of such land from farming it.")

§ 2. A gross agricultural income is a presumption of an agricultural use

Gross agricultural income is defined as the:

> . . . total income, exclusive of adjustments or deductions, derived from the production or growing of crops, plants, animals, aquaculture products, nursery, or floral products, including income from the rental of property for such purposes and income from federal set aside and related agricultural management programs[.] T.C.A. § 67-5-1004(4).

Pursuant to T.C.A. § 67-5-1005(a)(3), if land classified as agricultural produces gross agricultural income averaging at least $1,500 per year over any three-year period, then the assessor may *presume* that a tract of land is agricultural. The assessor may request an owner to provide a Schedule F from the owner's federal income tax return to verify this presumption. However, this presumption is rebuttable. In other words, it is not a requirement that an owner *prove* this income. It is only an aid for the assessor to use. Even if the land does not produce any income, it can still qualify, as long as the land is being actively farmed (see § 1). The following example illustrates when the income presumption may be rebutted:

> An owner has land containing 100 acres. He provides a Schedule F to the assessor proving a gross agricultural income of $1,500 or more per year. With just this information, the assessor can presume an agricultural use for the 100 acres.
>
> But after a review of the property, it is discovered that only 12 acres are being farmed. The other 88 acres are used for family activities such as four-wheeling and picnics. Most of these acres are covered with thistles and weeds. No other cultivation has been made of the land. Although the owner is farming a small portion of the property and can prove at least a $1,500 income, the 100-acre tract is not a farm unit (see § 1) engaged in the growing of agricultural products or animals. Any farming use is incidental to the other primary activities of the property. Here, the presumption is rebutted, even though a portion of the property is used for agricultural purposes and produces at least $1,500 of gross agricultural income per year. *See* **Crescent Resources** (Williamson County, Tax Year 2007, Initial Decision & Order, April 14, 2008) at 5 ("[T]he agricultural income presumption . . . constitutes a *rebuttable* presumption. The administrative judge finds that any presumption in favor of an 'agricultural land' classification due to agricultural income has been rebutted."). *See also* **Thomas Wilson Lockett** (Knox County, Tax Years 2012-2015, Initial Decision & Order, June 21, 2016) at 2 wherein the administrative found that the $1,500 agricultural income presumption had been rebutted. ("Because the agricultural activity on the subject property appears to be merely an incident to the bed and breakfast and event use of subject property, the administrative judge finds that the subject property did not qualify as agricultural land [footnote omitted].")

§ 3. Two noncontiguous tracts—one at least 15 acres, the other 10—may qualify

For agricultural land, two noncontiguous tracts *within the same county*, including woodlands and wastelands, can qualify. T.C.A. § 67-5-1004(1)(B). *See* **Joyce B. Wright** (Putnam County, Tax Year 1997, Initial Decision & Order, January 5, 1998) at 6 ("The administrative judge finds that parcels 58 [12.48 acres] and 74 [68.3 acres] constitute a farm unit satisfying the acreage requirements for non-contiguous parcels. The administrative judge finds that parcel 58.02 [3.5 acres] by itself cannot qualify as a non-contiguous 'farm unit' since it contains less than 10 acres."). As the ruling makes clear, one

tract must contain at least 15 acres and the other tract must contain at least 10 acres. Additionally, the two tracts must constitute a farm unit (see §1) and be owned by the same person or persons. The provision concerning qualification of noncontiguous tracts does not apply to forest or open space lands.

Example A

> John Smith owns a 100-acre tract and a 12-acre tract in Greenbelt County. Because both tracts are within the same county and John is the owner of both, these two tracts may qualify as agricultural land. (This assumes, however, that both tracts constitute a farm unit.)

Example B

> John Smith owns a 100-acre tract in Greenbelt County and a 12-acre tract in Urban County. The 12-acre tract cannot qualify with the 100-acre tract because both tracts are not within the same county.

Example C

> John Smith owns a 100-acre tract in Greenbelt County. John Smith and Jane Doe own a 12-acre tract in Greenbelt County. Because the ownership is not the same for the two tracts, the 12-acre tract cannot qualify. To qualify, the 12-acre tract would give Jane a property tax advantage that other owners of land with fewer than 15 acres cannot enjoy.

A taxpayer cannot qualify three noncontiguous tracts even if one has15 acres and the other two both have at least 10 acres.

> John Smith owns three noncontiguous tracts in Greenbelt County: a 50-acre tract, a 13-acre tract, and a 12-acre tract. Although all tracts are in the same county, only two tracts can qualify: either the 50 and 13-acre tracts or the 50 and 12-acre tracts. (This assumes, however, that both tracts constitute a farm unit.)

As discussed in § 1, the law does not define *farm unit*. But the word *unit* does connote being part of a whole or something that helps perform one particular function. Therefore, it must be determined whether both tracts are part of one farming operation.

> John Smith owns a 100-acre tract in Greenbelt County and a noncontiguous 12-acre tract in Greenbelt County. The 100-acre tract contains cows and horses. John uses the 12-acre tract to cut hay for the horses to eat. These two tracts are owned by the same person and used in one farming operation (i.e., both tracts constitute a farm unit). Therefore, these tracts will qualify as agricultural land.

§ 4. A home site on agricultural land

Land that meets the 15-acre minimum but has a home site on it can still qualify as agricultural. *See* **Bertha L. & Moreau P. Estes** (Williamson County, Tax Year 1991, Final Decision & Order, July

12, 1993) at 2 ("The per acre use value is used for all of a qualifying greenbelt property except that which is used as a home site."). The assessor will value the home site and generally up to one acre of land— sometimes more depending on how much land is necessary to support the residential structure— at market value. The remaining acreage will be classified and valued as agricultural. Sometimes a home site can be up to five acres. As long as the remaining acres are engaged in an agricultural use, the property should qualify.

§ 5. Farming the land

No clear standard, rule, or test exists to help determine how much land must be actively farmed for an entire parcel to be classified as agricultural. For example, a 15-acre tract with a 1- acre home site will still qualify as agricultural land. The assumption is that the remaining 14 acres, or a substantial portion of them, are being actively farmed. But land should not be classified as agricultural under this example:

> John Smith wants to qualify 50 acres as agricultural. He states that only two acres will be actively farmed as the rest of the land is woodlands and wastelands and not suitable for any other type of farming. This land should not qualify as agricultural. The owner should seek another classification—such as forest—if the land meets those qualifications.

See **Johnnie Wright, Jr.** (Putnam County, Tax Year 1997, Initial Decision & Order, January 2, 1998) at 5 (". . . [S]ubject property consists of a 41 acre farm unit, 15 acres of which [constitute] woodlands and wastelands."); *see also* **Gill Enterprises** (Shelby County, Tax Years 2008-2011, Final Decision & Order, June 19, 2012) at 3 (". . . [W]e find that acreage of a contended agricultural tract need not normally be adjusted for access roads and drives [noting in a footnote that "woodlands and wastelands are not deducted" and ". . .the assessor may consider whether the portions actually in use for farming are sufficient to support the property as a farm unit . . ."]).

§ 6. The family-farm provision

The family-farm provision provides that land may qualify, or continue to qualify, as agricultural if it (1) has been farmed for at least 25 years by the owner or owner's parent or spouse, (2) is used as the owner's residence, *and* (3) is not used for a purpose inconsistent with an agricultural use. T.C.A. § 67-5-1004(1)(A)(ii). In other words, the agricultural use can cease and the land will still qualify. But it is not a requirement for the land to have been previously classified as agricultural to meet the 25-year requirement. It only needs to have been farmed for at least 25 years.

Forest land

§ 7. The definition of *forest land*

For land to qualify as a forest, it must constitute a forest unit engaged in the growing of trees under a sound program of sustained yield management that is at least fifteen acres and that has tree growth in such quantity and quality and so managed as to constitute a forest. T.C.A. § 67- 5-1004(3). The assessor may request the advice of the state forester in determining whether land qualifies as a

forest. T.C.A. § 67-5-1006(b)(2) & (c). *See* **Carl & Barbara Burnette** (Claiborne County, Tax Years 2012-2015, Initial Decision & Order, May 9, 2016) at 2-3 wherein the administrative judge upheld the assessor's decision to remove forest land greenbelt status from 10 of the originally qualifying 47.3 acres ("The administrative judge finds that the disqualified area should include both the area currently accessible by campsite renters and, despite the presence of greater tree density, a reasonable estimate of the partially developed area that was used for conveyance of water to the campground and access to and servicing of the campground water source.")

In 2017, the law was amended to require a minimum of 15 acres to qualify as forest land. Under the previous definition of forest land, a forest unit could possibly contain less than 15 acres and still qualify as forest land. Due to this change in the law, tracts of less than 15 acres no longer qualify as forest land. As discussed in § 55, the disqualification of such tracts will not typically result in rollback taxes because the disqualification resulted from a change in the law.

§ 8. A forest management plan is required

A forest management plan is required for land to qualify as a forest. In 2018, the State Board of Equalization approved a template for forest management plans. Property owners are not required to use this particular template, but applications must ultimately have a forest management plan summarizing the taxpayer's management practices.

Sometimes, a property owner may request that land qualify as a forest prior to having completed a forest management plan. Although the policy has been to qualify land as a forest before a plan is completed, the owner needs to submit it as soon as possible. If a plan is never submitted, the land should be disqualified. But the best practice is to require the plan at the time the owner applies.

If land is qualified as a forest and it is later discovered that a plan was never submitted or has expired, then the property owner needs to be notified. A reasonable time period (e.g., 30 days, 45 days, etc.) should be allowed for the owner either to renew the plan or submit a new one. Otherwise, the land will be disqualified.

§ 9. The denial of a forest land classification is no longer appealed to the state forester

Historically, if an assessor denied an application for forest land, the denied owner was required to appeal to the state forester. The law was amended in 2017 to do away with this requirement. 2017 Tennessee Laws Pub. Ch. 297; T.C.A. § 67-5-1006(d). As discussed in § 36, appeal is now made to the county board of equalization and then to the State Board of Equalization.

§ 10. A home site on forest land

The same consideration for a home site on agricultural land also applies to forest land (see § 4).

Open space land

§ 11. The definition of *open space land*

Open space land is defined in T.C.A. § 67-5-1004(7) as land containing at least three acres characterized principally by an open or a natural condition and whose preservation would tend to provide the public with one or more of the benefits found in T.C.A. § 67-5-1002(2)(A)-(E):

- The use, enjoyment, and economic value of surrounding residential, commercial, industrial, or public use lands.
- The conservation of natural resources, water, air, and wildlife.
- The planning and preservation of land in an open condition for the general welfare.
- A relief from the monotony of continued urban sprawl.
- An opportunity for the study and enjoyment of natural areas by urban and suburban residents who might not otherwise have access to such amenities[.]

But for land to qualify as open space, the *planning commission* for the county or municipality *must* designate the area for preservation as open space land. T.C.A. § 67-5- 1007(a)(1). Once the planning commission adopts an area, then land within that area may be classified as open space. T.C.A. § 67-5-1007(a)(2). If the planning commission has not designated an area, then this classification is not available. Pursuant to T.C.A. § 67-5-1004(10), the term "planning commission" means a commission created under T.C.A. § 13-3-101 or § 13-4-101.

Pursuant to T.C.A. § 67-5-1004(7), open space land also includes lands primarily devoted to recreational use, However, it does not apply to golf courses. *See* Informal advisory opinion letter from William Leach, Jr., Tenn. Op. Atty. Gen. et al., to the honorable Loy L. Smith, State Representative (April 28, 1983) at 2-3; *see also* **Cherokee Country Club, et al.** (Knox County, Tax Year 2012, Initial Decision & Order, October 8, 2013) ["**Cherokee Country Club**"] at 4. The Attorney General wrote that golf courses are not in a "natural" condition and are too "carefully manicured and highly developed" to be considered "open" under the Act. The Attorney General further wrote at page 3 the following:

> Property that has undergone the extensive site improvements necessary for a golf course is no longer open or natural. It has been transformed to suit the needs of urban civilization, just as if homes and factories had been built on it. The [A]ct . . . is directed at the preservation of natural and undeveloped land, not the rendering of a tax benefit to golf clubs.

Relying on his prior decision in **Cherokee Country Club**, the same administrative judge ruled that the assessor properly removed from greenbelt a 25.2-acre parcel with various scattered improvements that had been receiving preferential assessment as open space land. *See* **Stephen Badgett, et al.** (Knox County, Tax Years 2013 & 2014, Initial Decision & Order, May 27, 2015) at 4 ("In [**Cherokee Country Club**], the undersigned administrative judge found that golf courses do not qualify for Greenbelt status. By the same reasoning, the undersigned administrative judge finds that the subject ball fields and accompanying improvements (bleachers, lights, concessions, restrooms, backstops, fences, baseball diamond preparations, treatments of access and parking areas, etc.) did not qualify for Greenbelt status.")

§ 12. A home site on open space land

The same consideration for a home site on agricultural land also applies to open space land (see § 4).

Open space easements

§ 13. The definition of an *open space easement*

An *open space easement* is defined as:

> . . . a perpetual right in land of less than fee simple that: (A) Obligates the grantor and the grantor's heirs and assigns to certain restrictions constituted to maintain and enhance the existing open or natural character of the land; (B) Is restricted to the area defined in the easement deed; *and* (C) Grants no right of physical access to the public, except as provided for in the easement. T.C.A. § 67-5-1004(6)(A)-(C) (emphasis added).

§ 14. Three types of open space easements that may qualify

Land encumbered by an open space easement may qualify for greenbelt under T.C.A. § 67- 5-1009. But only three types of easements are provided for under the Act: (1) an easement that has been donated to the state (T.C.A. § 11-15-107; *see also* T.C.A. § 67-5-1009); (2) an easement for the benefit of a local government (T.C.A. § 67-5-1009(a)); and (3) an easement for the benefit of a qualified conservation organization. (T.C.A. § 67-5-1009(a); *see also* T.C.A. § 67-5-1009(c)(1)). If an easement has been donated to the state, the Commissioner of Environment & Conservation is required to record the easement and notify the assessor. T.C.A. § 11-15-107(c).

§ 15. An application must be filed for open space easements

An application must be filed with the assessor for land to be qualified and assessed as an open space easement (see § 28). T.C.A. § 67-5-1009(d); *see also* T.C.A. § 67-5-1007(b)(1).

§ 16. Assessing land encumbered by an open space easement

If an open space easement has been executed and recorded for the benefit of a local government, a qualified conservation organization, or the state, the property shall be valued on the basis of:

> *(1)* Farm classification and value in its existing use . . . taking into consideration the limitation on future use as provided for in the easement; *and*
>
> *(2)* Such classification and value . . . as if the easement did not exist; but taxes shall be assessed and paid only on the basis of farm classification and fair market value in its existing use, taking into consideration the limitation on future use as provided for in the easement. T.C.A. § 67-5-1009(a)(1)–(2) (emphasis added).

However, "[t]he value of the easement interest held by the public body shall be exempt from

property taxation to the same extent as other public property." T.C.A. § 11-15-105 (b)(1).

Land that qualifies as open space and contains at least 15 contiguous acres can be classified and assessed as an open space easement. But the easement must be conveyed and accepted, in writing, to a *qualified conservation organization*. T.C.A. § 67-5-1009(c)(1) (emphasis added).

§ 17. The definition of a *qualified conservation organization*

A *qualified conservation organization* is defined as "a nonprofit organization that is approved by the Tennessee Heritage Conservation Trust Fund Board of Trustees and meets the eligibility criteria established by the trustees for recipients of trust fund grants or loans...[It] also includes any department or agency of the United States government which acquires an easement pursuant to law for the purpose of restoring or conserving land for natural resources, water, air and wildlife." T.C.A. § 67-5-1009(c)(5). An example of a qualified conservation organization is the Land Trust for Tennessee. Please contact the Tennessee Heritage Conservation Trust Fund Board at (615) 532-0109 for more information about other organizations that may have been approved.

§ 18. Rollback taxes are due when an open space easement is cancelled

If an open space easement for the benefit of a local government is cancelled, rollback taxes (see § 45) will be due for the previous 10 years. The amount of rollback taxes will be based on the difference between the taxes actually paid and the taxes that would have been due if the property had been assessed at market value and classified as if the easement had not existed. T.C.A. § 67-5-1009(b)(1)(D).

§ 19. Rollback taxes for portions of land that are reserved for non-open space use

Portions of land that are reserved for future development, construction of improvements for private use, or any other non-open space use will be disqualified when those uses begin. Rollback taxes (see § 45) will be due plus an additional amount equal to 10% of the taxes saved. T.C.A. § 67-5-1009(c)(3).

§ 20. Conservation easements are different than open space easements

Conservation easements are separate and distinct from open space easements under the greenbelt law. Conservation easements are governed by the Conservation Easement Act of 1981 (the "Conservation Act"). T.C.A. §§ 66-9-301-309. *See also* **Sarah Patten Gwynn** (Marion & Blount Counties, Order Concerning Applicability of Greenbelt Law to Conservation Easement Valuation, Tax Year 2010, November 10, 2011). Conservation easements are assessed "on the basis of the true cash value of the property . . . less such reduction in value as may result from the granting of the conservation easements." T.C.A. § 66-9-308(a)(1). "The value of the easement interest held by the public body or exempt organization . . . [is] exempt from property taxation to the same extent as other public property." T.C.A. § 66-9-308(a)(2).

It is not necessary to file a greenbelt application to receive preferential assessment under the Conservation Act. Additionally, property which qualifies for preferential assessment under the Conservation Act is not required to be appraised in the same manner as property receiving preferential assessment under the greenbelt law. *See* **Sarah Patten Gwynn** (Marion County, Tax Year 2010,

Agreed Order for Resolution of Appeal, August 13, 2013) at 1 ("[T]he owner of property on which a conservation easement is placed under the Conservation [Act] is not required to file an application with the . . . [a]ssessor under the [greenbelt law] in order to be entitled to a reduction in property valuation caused by the creation of such conservation easement, as such valuation is determined under the provisions of Tenn. Code Ann, § 66-9-308.")

§ 21. The effect of a conservation easement on greenbelt land

To determine whether a conservation easement would disqualify greenbelt land will require a reading of the conservation easement deed. For example:

> Currently, land in Greenbelt County is classified as agricultural. A conservation easement deed is recorded and states that farming is a permitted use. Because the conservation easement permits farming, the underlying use of the land has not changed. Therefore, the land would still qualify and be assessed as agricultural.
>
> But if the easement provides that any type of farming is prohibited, then the land would be disqualified. Here, the underlying use of the land has changed. The owner would have to seek a different classification, if possible or permitted. Also, the land will be disqualified and rollback taxes (see § 45) will be assessed.

If the easement's restrictions prohibit the land from being classified as agricultural, forest, or open space, then the land will be assessed as explained in § 20.

It is possible for a portion of the land to qualify for preferential assessment under both the greenbelt law and Conservation Act or just under the latter program. *See* **Sarah Patten Gwynn** (Marion County, Tax Year 2010, Agreed Order for Resolution of Appeal, August 13, 2013) at 2 wherein the Assessment Appeals Commission summarized the agreed valuation of the property under appeal.

Combining parcels

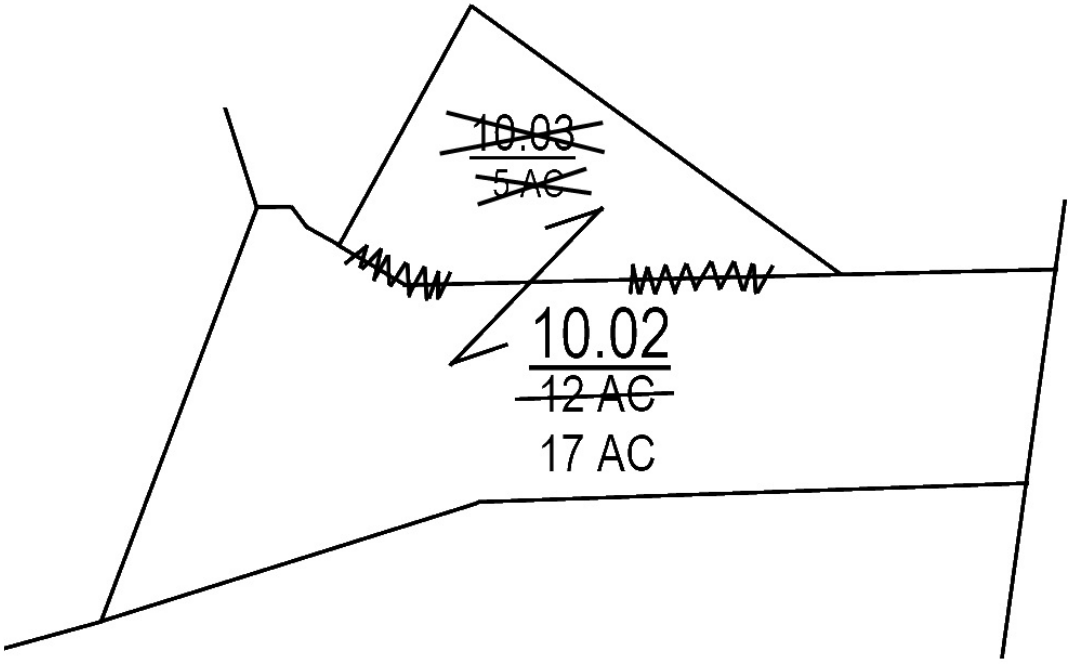
§ 22. Contiguous parcels may be combined to create one tract

Sometimes owners do not have a single parcel that meets the minimum acreage requirement (e.g., 15 acres for agricultural). But if the owner has two or more contiguous parcels, those parcels may be combined to meet the acreage minimum. To be *contiguous* means the parcels must be "touching at a point or along a boundary; adjoining." CONTIGUOUS, Black's Law Dictionary (10th ed. 2014). If they are not touching, then the parcels cannot be combined. *See* **Sowell J. Yates, Jr.** (Robertson County, Tax Year 1997, Initial Decision & Order, October 26, 1998) at 3 wherein the taxpayer sought greenbelt status for eight parcels. The requested classification was granted for seven of the parcels. The remaining parcel, a 1.07-acre tract, did not qualify because it ". . . is separated from the other seven tracts by another tract of land about 100 feet wide owned by another party."

Please review the following examples:

Example A

John Smith owns two parcels that are contiguous. One parcel has 12 acres; the other has 5. John is actively farming both parcels as a farm unit. He can combine these parcels to have one tract containing 17 acres. These 17 acres can now be classified as agricultural.

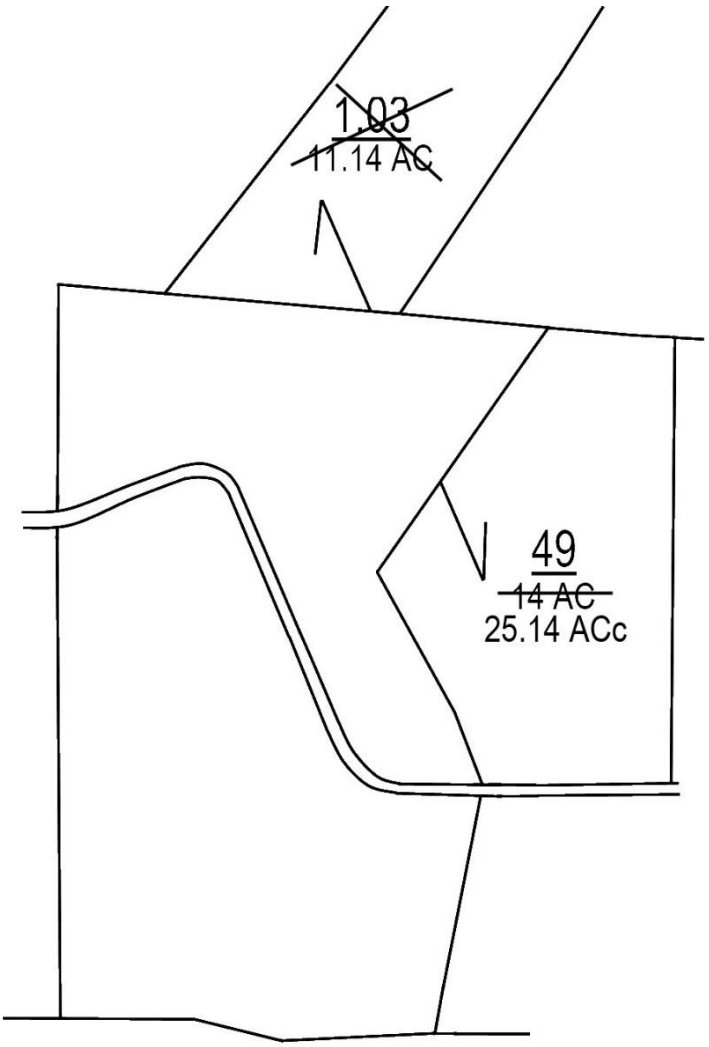


Example B

John Smith owns two parcels that are contiguous. One parcel has 50 acres; the other has 2. The 2-acre parcel cannot qualify because it's under the 15-acre minimum. Therefore, the 2 acres must be combined with the 50 acres to create a 52-acre parcel.

But parcels that are separated by another parcel cannot be combined nor can the parcels be *land hooked* (see § 23). For example:

John Smith owns two parcels: one is 14 acres and the other is approximately 11 acres. But the two parcels are separated by land owned by Jane Doe. In other words, the two parcels are not contiguous. These parcels cannot be combined or land hooked. The following mapping example is unacceptable:



Parcels that are mapped this way must be removed from greenbelt.

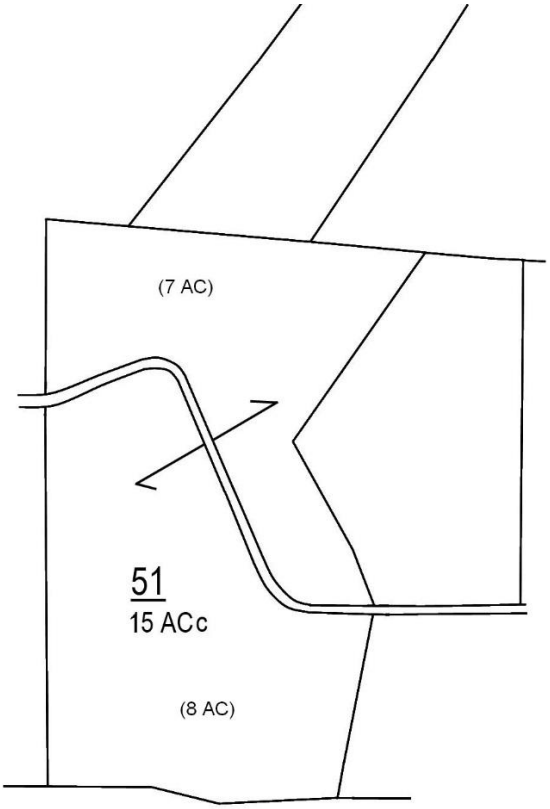
In certain instances, parcels may be contiguous but cannot be combined for greenbelt purposes due to a restrictive covenant. For example, in **Gudridur H. Matzkiw** (Moore County, Tax Year 1999, Initial Decision & Order, May 15, 2000), the taxpayer sought to combine a 1.44-acre subdivision lot with a contiguous 4.0-acre and 19.8-acre tract already being assessed as a qualifying farm unit. There was no dispute that the taxpayer was growing hay on the subdivision lot as well as the remainder of her property. Nonetheless, the administrative judge ruled at page 3 that the subdivision lot could not qualify as agricultural land because ". . . the absolute prohibition of the restrictive covenants on any use other than residential use proscribes the haying operation which the taxpayer conducts on the [lot]."

When combining parcels, the assessor will end up with one parcel identification number. The discarded number cannot be used again.

§ 23. The use of land hooks to combine parcels

An owner may have parcels that are separated by a road, body of water, or public or private easement. Under these circumstances, the parcels can be *land hooked* in order to combine the parcels into one. *See* **Joyce B. Wright** (Putnam County, Tax Year 1997, Initial Decision & Order, January 5, 1998) at 6 (". . . [L]andhooks can be used to show . . . ownership of [contiguous] parcels separated by roads that do not prevent access from one parcel to the other. . . . [S]ubject parcels therefore qualify for preferential assessment as a 15.98-acre 'farm unit'. . . "). Once the parcels are land hooked, however, the assessor will end up with one parcel identification number. The discarded number cannot be used again. For example:

> John Smith owns two parcels that are separated by a public road. One parcel has seven acres; the other has eight. John is actively farming both parcels as a farm unit. He can combine these parcels by the use of a land hook in order for him to have one parcel that is 15 acres. These 15 acres can now be classified as agricultural as the following mapping example shows:


(7 AC)
51
15 ACc
(8 AC)

§ 24. The ownership for all parcels to be combined must be the same

To combine parcels that are contiguous to each other or to land hook parcels, the ownership for each parcel must be the same. For example:

> John Smith owns a 10-acre parcel. John Smith and Jane Doe own a 10-acre parcel that is contiguous with John's 10 acres. Because the ownership between these two parcels is different, they cannot be combined. To combine both parcels would subject Jane to taxes on John's 10 acres—a parcel in which Jane does not have an ownership interest. Also, it would give Jane a benefit on only 10 acres when the minimum acreage for agricultural is 15. Neither parcel can qualify.

In order to combine parcels, they must (1) be contiguous, and (2) be owned by the same person or persons. To land hook parcels, they must (1) be separated by a road, body of water, or public or private easement, and (2) be owned by the same person or persons.

§ 25. A residential subdivision lot cannot be combined with contiguous greenbelt land

A residential subdivision lot cannot be combined with a greenbelt parcel that is contiguous to it. Property that is being, or has been, developed as a residential subdivision cannot qualify for greenbelt (see § 45.3; but see § 27). T.C.A. § 67-5-1008(d)(1)(C). *See* **Gudridur H. Matzkiw** (Moore County, Tax Year 1999, Initial Decision & Order, May 15, 2000) which is summarized in Section 22.

§ 26. Multiple residential subdivision lots generally cannot be combined

Vacant lots in a residential subdivision cannot be combined in order to meet the minimum acreage requirements under greenbelt. But if no part of the plat is being or has been developed and all of the lots are owned by one owner, then *all*—but not some—of the lots can be combined. But when any portion of the property is being developed or any lot is conveyed, then the entire property would be disqualified with rollback taxes being assessed (see § 45.3). T.C.A. § 67-5-1008(d)(1)(C). A single lot can qualify, however, if it meets the minimum acreage requirement and no restrictions or covenants prohibit the greenbelt use (see § 27).

§ 27. A single lot within a residential subdivision may qualify

A single lot within a subdivision or unrecorded plan of development may qualify under greenbelt if it meets the minimum acreage requirement, no restrictions or covenants prohibit a greenbelt use, and no part of the plat or unrecorded plan of development is being or has been developed. Note T.C.A. §67-5-1008(d)(1)(C) also provides that ". . . where a recorded plat or an unrecorded plan of development contains phases or sections, only the phases or sections being developed are disqualified[.]" But multiple lots cannot be combined in order to meet the minimum acreage requirement (see § 26).

Property split by a county line

Property that is split by a county line can qualify for greenbelt. For example:

> John Smith owns a 15-acre tract that is split by a county line. Ten acres are in Greenbelt County and 5 acres are in Urban County. John is actively farming this 15-acre tract. To qualify, an application will need to be filed in both counties. The deed references for both counties will need to be stated on the application. If any portion of the property is sold, one assessor will know to contact the other in case the property becomes too small to qualify.

Mapping property where only a portion is used for greenbelt

If only a portion of greenbelt land can qualify, then the qualified portion should be clearly identified by the applicant and mapped accordingly. This will help the assessor designate what portion is being assessed at use value and what portion is being assessed at market value. If only part of the land is later conveyed, then assessor will know if any rollback taxes (see § 45) are due. *See* **Stephen Badgett, et al.** (Knox County, Tax Years 2013 & 2014, Initial Decision & Order, May 28, 2015) at 11:

> In 1983, Greenbelt status was denied to four of the 176 acres. There was no subsequent Greenbelt application. For tax years 2013 and 2014, the assessor's office recommended that four one-acre home/mobile home sites be deemed the four acres that were denied Greenbelt status. Particularly, given that the areas identified by the assessor were not used for agricultural purposes, the assessor's recommended identification of the denied four acres appears fair as well as consistent with the most reasonable interpretation of the uncertain history of the subject's Greenbelt status. . . . The administrative judge should also point out that the taxpayer presented no viable alternative interpretation of the identity of the four acres that were never legally approved for Greenbelt. . .

Application requirements

§ 28. Filing an application

As discussed below, in order to have land classified as agricultural, forest, or open space, an owner must file an application with the assessor of property. In 2018, the State Board of Equalization approved revised forms which are available on its website. Additionally, the Board authorized assessors to use their own application forms, but any such applications must first be approved by the Board.

Any owner of land can file an application with the assessor to have land classified as agricultural, forest, or open space. T.C.A. §§ 67-5-1005(a)(1), 1006(a)(1), & 1007(b)(1). An *owner* is defined as "the person holding title to the land." T.C.A. § 67-5-1004(8). *See* **Concord Yacht Club, Inc.** (Knox County, Tax Years 2010-2016, Initial Decision & Order, February 8, 2017) at 3 wherein the administrative concluded that ". . . a leasehold interest assessable under Tenn. Code Ann. § 67-5-

502(d) is not eligible for Greenbelt. . . " The administrative judge went on to state at page 9 of his ruling that ". . . [he] agrees with the assessor's office that, as a matter of law, the taxpayer was not eligible to seek Greenbelt status because the taxpayer was not the 'owner of land' [footnote referencing T.C.A. §§ 67-5-1005(a)(1), 67-5-1006(a)(1), and 67-5-1007(b)(1) omitted]."

A *person* is defined as "any individual, partnership, corporation, organization, association, or other legal entity." T.C.A. § 1004(9). Application for classification of land as agricultural, forest, or open space land shall be made using a form prescribed by the state board of equalization, in consultation with the state forester for forest land classification. It should set forth a description of the land, a general description of the use to which it is being put, and such other information as the assessor (or state forester) may require to assist in determining whether the land qualifies for classification as agricultural, forest, or open space land, including aerial photographs if available for forest land classification. T.C.A. § 67-5-1005(b), 1006(c), & 1007(b)(3).

The application does not require the signature of all the owners. But the person signing must be an owner. It is recommended, however, that the names of all owners appear on the application. This will help the assessor's office keep track of the acreage limit for each person. For artificial entities, an owner of the entity would need to sign and the names of all owners of the entity should appear on the application.

After the assessor approves the application, it must be filed with the register of deeds. The applicant must pay the recording fee. A copy of the recorded application needs to be kept with the assessor's file. T.C.A. § 67-5-1008(b)(1).

§ 29. The deadline to file a greenbelt application is March 1

With the exception of the situation discussed in § 30, the law provides that an application must be filed with the assessor by March 1. T.C.A. §§ 67-5-1005(a)(1), 1006(a)(1), & 1007(b)(1). This has been interpreted to mean on or before March 1. But if March 1 falls on a Saturday or Sunday, then an application filed on the following Monday will be deemed to have been timely filed. Additionally, applications sent through the U.S. mail are deemed to be timely filed if postmarked on or before the deadline date. T.C.A. § 67-1-107(a)(1).

Owners who are applying for the first time for land that did not previously qualify as agricultural, forest, or open space must apply on or before March 1. Land cannot qualify for the current tax year if the application is filed after March 1. *See* **Stephen M. & Susan Bass, et al.** (Maury County, Tax Year 2007, Initial Decision & Order, April 10, 2008) at 3 (". . . [S]ince the .. . greenbelt application was not filed until November 20, 2007, subject property cannot receive preferential assessment until tax year 2008.") *See also* **Jeffrey and Deborah Whaley** (Coffee County, Tax Year 2016, Initial Decision & Order, May 7, 2018) at 3 ("The Assessment Appeals Commission has repeatedly and consistently held that deadlines and requirements are clearly set out in the law, and owners of property are charged with knowledge of them. There is simply no recourse afforded by the greenbelt statute for the failure to timely file a required application.") No appeal procedure is available for those who file late. March 1 is the deadline. The denial of a **timely** filed greenbelt application, however, can be appealed to the county board of equalization (see § 36). *See* **Dwin C. & Emily T. Dodson** (Rutherford County, Tax Year 2012, Initial Decision & Order, January 8, 2015) at 3:

> . . . Mr. Dodson filed his . . . greenbelt application on September 26, 2012. Since March 1, 2012 was the deadline for filing a greenbelt application for tax year 2012,

the assessor properly granted the application effective for tax year 2013. The county board's inability to grant Mr. Dodson a hearing is of no real relevance insofar as the deadline to file a greenbelt application had already passed.

§ 30. Filing an application after March 1 to continue previous greenbelt use

If an owner is applying to continue the previous classification—agricultural, forest, or open space—and fails to file by March 1, then the assessor can accept a late application. But this late application must be filed within 30 days from the date the assessor sends notice (see Appendix "A") that the property has been disqualified. A late application fee of $50.00—payable to the county trustee—must accompany the application. T.C.A. § 67-5-1005(a)(1), 1006(a)(1), & 1007(b)(1). If the 30 days have expired, however, the property will be disqualified and assessed at market value and rollback taxes will be assessed. *See* **Paul Sorrells, et al.** (Lincoln County, Tax Year 2016, Initial Decision & Order, August 24, 2017). Although the denial of a *timely* filed application can be appealed to the county board of equalization, no appeal procedure is technically available after the 30 days have expired. However, the State Board of Equalization has historically allowed taxpayers to bring procedural challenges when notice or the like is at issue. *See* **Bryson Alexander** (Sumner County, Tax Years 2012 – 2015, Initial Decision & Order, August 27, 2015) at 4 ("The Administrative Judge finds that the Assessor properly removed subject property from the Greenbelt program because the [T]axpayer failed to timely file an application and failed to file a late application within thirty (30) days of the notice of disqualification.")

The State Board has no authority to waive deadlines for filing applications. *See* **Clara T. Miller** (Robertson County, Tax Year 1999, Final Decision & Order, December 14, 2000) at 1-2 ("Unlike the deadline for appealing assessments to the State Board of Equalization, the greenbelt deadline also fails to provide a mechanism for the Board to consider whether reasonable cause existed to excuse the failure to meet the deadline.")

§ 31. Calculating the 30-day period for late-filed applications

The 30-day period only applies to those owners who want to continue the previous greenbelt use but miss the March 1 deadline. If an owner misses the deadline, the assessor needs to send notice (see Appendix "A") that the property has been disqualified. T.C.A. § 67-5- 1005(a)(1), 1006(a)(1), & 1007(b)(1). Once the notice is sent, the 30-day period begins. To compute the 30-day period, the day the notice is sent is excluded but the last day is included, unless the last day is a Saturday, a Sunday, or a legal holiday. *See* T.C.A. § 1-3-102. Please review the following examples:

Example A

A notice of disqualification is sent by the assessor on Monday, March 7, 2016. The first day to be counted is Tuesday, March 8. The last day counted (the thirtieth day) is Wednesday, April 6. This is the last day a property owner would have to file a late application with the $50.00 late fee to continue the previous classification.

Example B

A notice of disqualification is sent by the assessor on Thursday, March 3, 2016. The first day to be counted is Friday, March 4. The last day counted (the thirtieth day) is Saturday, April 2. Because the thirtieth day falls on a Saturday, however, the last day for a property owner to file a late application with the $50.00 late fee is

Monday, April 4.

If the property owner fails to submit an application and pay the $50.00 late fee within 30 days of the assessor's notice, the property will be disqualified and rollback taxes will be assessed. T.C.A. § 67-5-1008(d)(1)(D). No appeal procedure is available after the 30 days expire with the limited exception discussed in section § 30.

§ 32. Notice of disqualification to be sent after March 1

When an owner misses the March 1 deadline to continue the previous greenbelt use, the law requires an assessor to send a notice of disqualification (see §§ 30 and 31). T.C.A. §§ 67-5- 1005(a)(1), 1006(a)(1), & 1007(b)(1). But the law does not specify what language is needed in the notice. The assessment change notice required to be sent under T.C.A. § 67-5-508 would appear to be sufficient to indicate that the property's classification has changed. But it doesn't inform an owner that an application with a late-fee payment of $50.00 will be accepted if made within 30 days (see § 31). Therefore, it is suggested that the assessor send a notice similar to the one in Appendix "A."

§ 33. A life estate owner may file an application, but the remainderman cannot

A life estate owner has the present right to possess property, whereas a remainderman's interest does not vest until some future date. **Sherrill v. Bd. of Equalization,** 452 S.W.2d 857, 858 (Tenn. 1970) ["**Sherrill**"]("A remainder interest and a life interest in real estate are separate interests in that the holder of the vested remainder interest has the privilege of possession or enjoyment postponed to some future date, whereas the life tenant has the present right to possession or enjoyment."). Because of this present right, the life estate owner is legally responsible to pay the property taxes. ("…[T]he life tenant is held to be under a duty to pay taxes which accrue during the period of his tenancy.") **Sherrill** at 858; *see also* **Hoover v. State Bd. of Equalization**, 579 S.W.2d 192, 196 (Tenn. Ct. App. 1978) *cert. denied* April 2, 1979 ("…[T]he full value of the land is taxed in the hands of the life tenants, notwithstanding the fact that a life tenant has less than a full and unrestricted ownership of the land."). Therefore, a life estate owner is the only one who can file an application for greenbelt—none of the remaindermen can apply. *See* **Ethel Frazier Davis L/E; Lana Cheryll Jones**, (Claiborne County, Tax Years 2003, 2004 & 2005, Initial Decision & Order, June 11, 2007) at 2 ("It is doubtful that the mere transfer of a remainder interest in agricultural land would necessitate the filing of a new greenbelt application by the holder of such interest."). Please review the following example:

> John Smith has a life estate on 50 acres and Jane Doe has the remainder. John has the present right to possess the property. Jane cannot legally possess the property until John's life estate is terminated. Furthermore, John is the one who is legally responsible to pay the property taxes. Therefore, the only person who can file an application is John. But, once John's life estate terminates, Jane will have to file an application in order to continue the previous use (see § 35). *See* T.C.A. §§ 67-5-1005(a)(1), 1006(a)(1), & 1007(b)(1) ("Reapplication thereafter is not required so long as the ownership as of the assessment date remains unchanged.").

Also, there may be situations where property has been subdivided and then conveyed to different persons but the grantor retains a life estate. If a life estate owner has an interest in several contiguous tracts but each tract has a different remainderman, the property can still be combined (see §§ 22 and 24) and qualify for greenbelt. Please review the following examples:

Example A

> John Smith owns a 40-acre tract. For estate planning purposes, he subdivides the land into four 10-acre tracts. He then conveys a tract to each of his four children while retaining a life estate in each tract. Because of this, John is still the owner—for property taxation purposes—of the 40-acre tract. He can qualify these acres for greenbelt even though each tract has a different remainderman. But once John's life estate terminates, the land will no longer qualify as each tract will be under the 15-acre minimum. Rollback taxes will then be assessed.

Example B

> John Smith owns a 100-acre tract that is currently classified as agricultural. For estate-planning purposes, John subdivides the land into four 25-acre tracts. He then conveys a tract to each of his four children while retaining a life estate in each tract. No new application would need to be filed as John—the life-estate owner—is the only one with the present right to possess the 100-acre tract (*i.e.,* he is still the owner for property taxation purposes). But once John's life estate terminates, each child will then need to file an application for his or her own 25-acre tract because the ownership as of the assessment date will have changed.

§ 34. Fees an applicant must pay

The only fee that the applicant is required to pay is the recording fee (payable to the register of deeds) so the application can be recorded with the register of deeds. T.C.A. § 67-5-1008(b)(1). Also, those owners who are continuing the previous classification and whose application is filed after the March 1 deadline must pay a $50.00 late fee to the county trustee. T.C.A. §§ 67-5-1005(a)(1), 1006(a)(1), & 1007(b)(1).

§ 35. Reapplication is required when ownership changes

Reapplication under greenbelt is not required unless the ownership as of the assessment date (January 1) changes. T.C.A. §§ 67-5-1005(a)(1), 1006(a)(1), & 1007(b)(1). In **Muriel Barnett** (Robertson County, Greenbelt Removal & Rollback Taxes, Initial Decision & Order, July 31, 2014) at 1-2, the administrative judge ruled that an ownership change did not occur simply because the taxpayer married and changed her name. In **Ethel Frazier Davis L/E Rem: Lana Cheryll Jones** (Claiborne County, Tax Years 2003, 2004, 2005, Initial Decision & Order, June 11, 2007) at 3, the administrative judge observed that ". . . the earlier quitclaim deed which created a tenancy by the entirety unmistakably *did* result in a change of ownership of the subject property." (Emphasis in original). In addition, T.C.A. § 67-5-1008(a) states that "[i]t is the responsibility of the applicant to promptly notify the assessor *of any change in the use or ownership* of the property that might affect its eligibility…" (Emphasis added). When ownership does change, a new application must be filed. If a new application is not filed, however, then the property will be disqualified and rollback taxes will be assessed in accordance with T.C.A. § 67-5-1008(d)(1)(D). (see § 45.4; but see §§ 30, 31, and 32). Please review the following examples:

Example A

> As of January 1, 2009, John Smith owns 20 acres classified as agricultural. On May

1, 2009, John sells his 20 acres to Jane Doe. Jane must file an application with the assessor by March 1, 2010, because the ownership as of the assessment date (January 1, 2010) changed.

Example B

As of January 1, 2009, John Smith and Jane Doe own 20 acres classified as agricultural. On May 1, 2009, John Smith and Jane Doe sell a one-third interest to William Bonny. They each now own a one-third interest in the land. A new application is required to be filed by March 1, 2010, with the assessor because the ownership as of the assessment date (January 1, 2010) changed.

Example C

As of January 1, 2009, John Smith and Jane Doe own 20 acres classified as agricultural. On May 1, 2009, Jane sells her one-half interest to John. John is now the sole owner of the 20 acres. A new application is required to be filed with the assessor by March 1, 2010 because the ownership changed as of the assessment date (January 1, 2010).

Example D

As of January 1, 2009, John Smith, Jane Doe, and William Bonny own 1,500 acres classified as agricultural. On May 1, 2009, John, Jane, and William create Farm Properties, LLC. Each has a one-third interest in the company. On June 1, 2009, John, Jane, and William convey the 1,500 acres to Farm Properties. A new application is required to be filed by March 1, 2010, with the assessor because the ownership as of the assessment date (January 1, 2010) changed. Farm Properties—an artificial entity—now owns the land.

Although some of the owners in the examples remain the same, a new application is required because, in every example, ownership changed. But a new application is *not* required under this example:

As of January 1, 2009, John Smith owns 500 acres classified as agricultural. On April 1, 2009, John Smith conveys all 500 acres to Jane Doe and William Bonny. But John retains a life estate. A new application would *not* be required because John—the life-estate owner—is the only one who has a present right to possess the property. This means he is the only one who can apply for greenbelt. Therefore, a new application is *not* required so long as John Smith's life estate is valid. Once John's life estate terminates, however, a new application will be required from Jane and William, the remaindermen.

Also, a new application is *not* required when one spouse has died and the qualified property was owned by the husband and wife as *tenancy by the entirety* (see § 42). However, a new application *is* required when one spouse has died and the qualified property was owned by the husband and wife as *tenants in common* or *joint tenancy with right of survivorship.*

A new application is required when an individual quitclaims greenbelt property to himself and his spouse as tenants by the entirety because ownership changed. **Raymond F. Tapp** (Fayette County, Tax Years 1997-1999, Initial Decision & Order, November 21, 2001) at 2.

Moreover, when property is conveyed into a revocable trust, *it does not result in a change of ownership requiring a new application.* The reason for this is that a revocable trust can be revoked at any time by the person who created it. It is not until a revocable trust becomes irrevocable that a new application will be required. A revocable trust will become irrevocable upon the death of the grantor.

§ 36. Appealing the denial of a timely filed greenbelt application

Any owner of property may appeal the denial of a *timely* filed greenbelt application. Appeal is made to the county board of equalization and then to the State Board of Equalization. But there is no appeal procedure for first-time late-filed applications (see § 29).

Late-filed applications from owners wanting to continue the previous classification must pay the $50.00 late fee within the 30-day period that is provided in the notice (see Appendix "A") sent by the assessor (see §§ 30, 31, and 32). Failure to pay the $50.00 late fee by the end of the 30 days will cause the property to be disqualified and rollback taxes (see § 45) will be assessed. Except for the limited exception discussed in § 30, no appeal procedure exists for late-filed applications or after the 30-day period expires.

Acreage limitations

§ 37. An acreage limit exists for owners of greenbelt land

The law provides that no "person" may place more than 1,500 acres under greenbelt within any one taxing jurisdiction. T.C.A. § 67-5-1003(3); *see also* T.C.A. § 67-5-1002(5): "The findings of subdivisions (1)–(4) must be tempered by the fact that in rural counties an overabundance of land held by a single landowner that is classified on the tax rolls by the provisions of this part could have an adverse effect upon the ad valorem tax base of the county, and thereby disrupt needed services provided by the county. To this end, a limit must be placed upon the number of acres that any one (1) owner within a tax jurisdiction can bring with the provisions of this part." However, the 1,500-acre limit does *not* apply to an agricultural classification that an owner obtained before July 1, 1984. T.C.A. § 67-5-1003(3). The 1,500-acre limit does apply, however, to forest and open space land classifications obtained before July 1, 1984. T.C.A. § 67-5-1008(g). The 1,500-acre limit includes all classifications of greenbelt land. *See* **John J. Ross & E.W. Ross, Jr.** (Hardin County, Tax Year 1991, Final Decision & Order, November 19, 1993) at 4 ("We believe the law limits owners to 1,500 acres of greenbelt land, whether it be agricultural, forest, or open space, or any combination thereof.")

A *person* is defined as "any individual, partnership, corporation, organization, association, or other legal entity." T.C.A. § 67-5-1004(9). *See* **John J. White, III & Simon White** (Hardin County, Tax Year 1995, Initial Decision & Order, March 1, 1996) at 3-4 wherein it was held that two brothers who owned 3,553.5 acres of "forest land" as tenants in common did not constitute an "entity" and could each therefore qualify 1,500 acres (3,000 acres in total) for preferential assessment. *See also* **White Bros, LLC** (Hardin County, Tax Year 2000, Initial Decision & Order, December 18, 2000) wherein the same brothers subsequently transferred ownership of the property to an LLC which was then merged into a general partnership. The administrative judge ruled that since the property did not revert to the

brothers as tenants in common, the LLC and general partnership could only qualify a maximum of 1,500 acres as separate legal entities.

As discussed in Section 20, conservation easements are separate and distinct from open space easements under the greenbelt law. The 1,500-acre limit under the greenbelt law does not apply to acreage qualifying for preferential assessment under the Conservation Act. *See* ***Sarah Patten Gwynn*** (Marion County, Tax Year 2010, Agreed Order for Resolution of Appeal, August 13, 2013) at 1-2 ("[A] property owner who establishes a conservation easement under the [Conservation] Act is not limited to a maximum of 1,500 acres as the amount of land that can be covered by an easement, or which would be included in the reduced valuation of the property for property tax determination under Tenn. Code Ann. § 66-9-308(a)(1).")

§ 38. Attributing acres to individuals

For individuals, the number of acres attributed to each will equal the percentage of the individual's ownership interest in the parcel. T.C.A. § 67-5-1003(3). Please review the following example:

> John Smith, Jane Doe, and William Bonny each own a one-third interest in a 1,500-acre tract. The acres would be attributed as follows: 500 acres to John; 500 acres to Jane; and 500 acres to William. But each can still qualify an additional 1,000 acres before reaching the 1,500-acre limit.

§ 39. Acres are attributed to artificial entities and their owners

Artificial entities—such as partnerships, corporations, LLCs, trusts, or other legal entities—are also subject to the 1,500-acre limit. T.C.A. § 67-5-1003(3). For example:

> Farm Properties, Inc. owns a 1,500-acre tract that's currently qualified as agricultural. Because Farm Properties is at its 1,500-acre limit, it cannot qualify any more acres under greenbelt.

Persons having an ownership interest in an artificial entity are attributed a percentage of the total acreage that equals that person's percentage interest in the ownership or net earnings of the entity. T.C.A. § 67-5-1003(3). For example:

> John Smith, Jane Doe, and William Bonny each own a one-third interest in Farm Properties, Inc. If Farm Properties owns a 1,500-acre tract that's qualified as agricultural, then acreage would be attributed as follows: Farm Properties would have 1,500 acres; John would have 500 acres; Jane would have 500 acres; and William would have 500 acres. Farm Properties is at its 1,500-acre limit and, therefore, cannot qualify anymore acres. But John, Jane, and William can still qualify—individually—an additional 1,000 acres each.

§ 40. Aggregating artificial entities having 50% or more common ownership or control between them

Although the 1,500-acre limit applies to each artificial entity, two or more artificial entities having 50% or more common ownership or control between them are aggregated in determining the

limit. T.C.A. § 67-5-1003(3). Please review the following examples:

Example A

> Farm Properties, Inc. owns a 1,500-acre tract that is classified as agricultural. John Smith, Jane Doe, and William Bonny each own a one-third interest in that entity. Horse Farms, Inc. owns a 1,500-acre tract that it wants to qualify as agricultural. The owners of this entity are John Smith, Jane Doe, and James Davis—each has a one-third interest. The acres for the land owned by Farm Properties and Horse Farms would be aggregated because there is more than a 50% common ownership between them—John and Jane are the common owners with more than 50% ownership. Therefore, Horse Farms cannot qualify any of its 1,500 acres as agricultural.

Example B

> Farm Properties, Inc. owns a 1,500-acre tract that is classified as agricultural. John Smith, Jane Doe, and William Bonny each own a one-third interest in that entity. Horse Farms, Inc. owns a 1,500-acre tract that it wants to qualify as agricultural. The owners of this entity are John Smith, Archibald Leach, and James Davis—each has a one-third interest. The acres for Farm Properties and Horse Farms would not be aggregated because there is not more than a 50% common ownership between them. John Smith is the only common owner. And he only has a one-third interest in each company. Therefore, the acreage for the artificial entities and the individuals would be attributed as follows: Farm Properties has 1,500 acres; Horse Farms has 1,500 acres; John has 1,000 acres; Jane has 500 acres; William has 500 acres; Archibald has 500 acres; and James has 500 acres.

§ 41. Land owned by a person who is at the 1,500-acre limit

Once an owner qualifies 1,500 acres for preferential treatment, that owner cannot qualify any additional acreage for preferential treatment. T.C.A. § 67-5-1003(3). For example:

> John Smith and Jane Doe each own 1,000 acres that qualify as agricultural land. William Bonny owns 1,500 acres that qualify as agricultural land. Currently, John and Jane have 1,000 acres each and William has 1,500 acres. John, Jane, and William then acquire a 1,500-acre tract that they desire to qualify as agricultural land. Because William reached his 1,500-acre limit for preferential treatment, only 1,000 acres will qualify for greenbelt. In other words, William's portion of the property (i.e., the 500 acres that is attributed to him) is ineligible because he is at the 1,500-acre limit.

§ 42. A husband and wife owning property as tenancy by the entirety are limited to 1,500 acres

A husband and wife owning property as tenancy by the entirety are limited to a maximum of 1,500 acres because they own the property in its entirety. This means that the husband and wife have the right of survivorship and are both deemed to have a 100% ownership interest rather than separate interests in the property. "Neither [the husband or the wife] can separately, or without the assent of the

other, dispose of or convey away any part." **Tindell v. Tindell**, 37 S.W. 1105, 1106 (Tenn. Ct. App. 1896). ["**Tindell**"]. In fact, upon the death of either the husband or wife,

> [t]he survivor . . . has no increase of estate or interest by the deceased having, before the entirety, been previously seised of the whole. The survivor, it is true, enjoys the whole, but not because any new or further estate or interest becomes vested, but because of the original conveyance, and of the same estate and same quantity of estate as at the time the conveyance was perfected. **Tindell** *at 1106.*

Upon the death of a spouse, no new application is required to be filed because the property was held as tenancy by the entirety (see § 35).

If the husband and wife own the property as *tenants in common*, however, then each can be attributed 1,500 acres. But the deed must explicitly state that the property is held as tenants in common. Otherwise, it is held as tenancy by the entirety.

Rollback taxes

§ 43. Calculating the amount of rollback taxes

Rollback taxes are the amount of taxes saved over a certain period of time that the land qualified as agricultural, forest, or open space. They are calculated by the difference between the use value and market value assessments. T.C.A. §§ 67-5-1004(12) & 1008(d)(1). These taxes are not a penalty; they are a recapture of the amount of taxes saved. (However, see §§ 18 and 19 for special provisions that apply when an open space easement is cancelled or development begins on portions of land reserved for non-open space use). For agricultural and forest land, rollback taxes are calculated each year for the preceding three years. T.C.A. § 67-5-1008(d)(1). For open space land, they are calculated each year for the preceding five years. T.C.A. § 67-5-1008(d)(1). For example:

> As of January 1, 2008, a 15-acre tract has qualified as agricultural for the last 10 years. On November 1, 2008, the 15-acre tract no longer qualifies as agricultural. Rollback taxes are due for 2008, 2007, and 2006. Therefore, the amount of taxes saved by the difference between the use value and market value assessments for each of those years would be the total amount of rollback taxes.

See also **Church Fellowship Bible of** (Williamson County, Initial Decision & Order, February 15, 2018) at 1-2 (". . . the rollback assessment in this case was made in 2016. . . which means the rollback assessment must be limited to the sum of the tax savings attributable to tax years 2013, 2014, and 2015. To the extent the assessment was or would be computed on the basis of tax year 2012 savings, the assessment is invalid. To the extent the assessment was or would be computed on the basis of tax year 2015 savings the assessment would be $0 because the State Board approved an application for property tax exemption effective January 1, 2015.")

T.C.A. § 67-5-1008(d)(2) provides how rollback taxes are to be calculated when the current year's tax rate is not yet known:

> When the tax rate for the most recent year of rollback taxes is not yet available, the assessor shall calculate the amount of taxes saved for the most recent year by using

> the last made assessment and rate fixed according to law, and the trustee shall accept . . . the amount determined to be owing. T.C.A. § 67-5-1008(d)(2).

This situation arises when property is disqualified early in the tax year (e.g., February 1). The tax rate, and potentially the assessment, may not be known at that time. The amount of rollback taxes due for the current year would be the same amount that is calculated for the previous year (i.e., the last made assessment and rate fixed according to law).

§ 44. Rollback taxes become delinquent on March 1 following the year notice is sent

Rollback taxes are payable from the date written notice (see Appendix "B") is sent by the assessor and become delinquent on March 1 of the following year. T.C.A. § 67-5-1008(d)(3). By statute, it is the assessor of propertywho must calculate rollback taxes. T.C.A. § 67-5-1008(d)(1).

§ 45. Circumstances that trigger rollback taxes

T.C.A. § 67-5-1008(d)(1)(A)–(F) provides that rollback taxes are due if any of the following occur:

> (1) [The] land ceases to qualify as agricultural land, forest land, or open space land as defined in § 67-5-1004;
> (2) The owner . . . requests in writing that the classification as agricultural land, forest land, or open space land be withdrawn;
> (3) The land is covered by a duly recorded subdivision plat or an unrecorded plan of development and any portion is being developed; except that, where a recorded plat or unrecorded plan of development contains phases or sections, only the phases or sections being developed are disqualified;
> (4) An owner fails to file an application as required by [statute];
> (5) The land exceeds the acreage limitations of § 67-5-1003(3); or
> (6) The land is conveyed or transferred and the conveyance or transfer would render the status of the land exempt.

§ 45.1. Rollback taxes are assessed when land no longer meets the definition of agricultural, forest, or open space

T.C.A. § 67-5-1004 provides for the definitions of agricultural, forest, and open space land (see §§ 1, 7, and 11). When land no longer meets these definitions, the land must be disqualified and rollback taxes assessed. Tenn. Op. Atty. Gen. 86-15 (January 23, 1986) at 2. For example, agricultural land no longer engaged in farming or used as a residence under the family-farm provision should be assessed rollback taxes. *See also* T.C.A. § 67-5-1008(e)(4) which provides that in certain circumstances there is no rollback if the disqualification resulted from "an assessor's correction of a prior error of law or fact." This provision is discussed in greater detail in § 55.

In one case, however, property was properly disqualified after a qualifying tract was subdivided into three smaller tracts of less than 15 acres. Nonetheless, the Court allowed the transfer to be rescinded retroactively and ordered the reinstatement of greenbelt and the setting aside of the rollback assessment triggered by the original subdivision. *See* **Griffin v. Johnson**, No. CH-16-0542-3 (Shelby Chancery, Agreed Final Order, December 7, 2016).

§ 45.2. Requests from owners to remove land from greenbelt must be in writing

If an owner is requesting property to be withdrawn, the request must be in writing—do *not* accept a verbal request. The writing should specify, at a minimum, the following: (1) the current owner; (2) the name of the person making the request; (3) the parcel identification number; and (4) a description of the property. If only a portion of the land is being withdrawn, a description must be provided outlining the portion to be removed.

§ 45.3. Rollback taxes are due on land that is being developed

The recording of a subdivision plat or other plan of development does not automatically disqualify property from greenbelt. But if any portion contained within the plat or plan is being developed, then the entire property is disqualified. If the plat or plan contains phases or sections, however, then only the phases or sections being developed is disqualified. T.C.A. § 67-5-1008(d)(1)(C).

It does not matter whether the plat or plan is recorded. It is the development of property in furtherance of the plat or plan that will trigger rollback taxes.

§ 45.4. Rollback taxes are assessed when an application is not filed to continue previous greenbelt use

If a new application is not filed by the appropriate deadline date—March 1 or 30 days after notice of disqualification is sent—or if there is a failure to pay the $50.00 late fee, then greenbelt land will be disqualified and rollback taxes will be assessed (see §§ 29, 30, 31, 32, 33, 34 and 35).

§ 45.5. Land that exceeds the 1,500-acre limit is subject to rollback taxes

Rollback taxes are due for property that may currently qualify for greenbelt but will be disqualified because an owner exceeds the 1,500-acre limit. This can occur when the ownership interest changes for one or more owners. For example:

> John Doe, David Smith, and William Bonny own 3,000 acres classified as agricultural. Each owner is attributed as owning 1,000 acres. John and David also own 1,000 acres classified as agricultural and are attributed 500 acres each. Both are now at their 1,500-acre limit while William has only 1,000 acres attributed to him. Later, William conveys his one-third interest to John and David. Because of this conveyance, John and David are now each attributed 1,500 acres for this property. But they were already at their 1,500-acre limit. Therefore, 1,000 acres will be disqualified and rollback taxes will be due because John and David have now exceeded the 1,500-acre limit.

But no rollback taxes are due when greenbelt property passes to a lineal descendant who will, by virtue of receiving the land, exceed the 1,500-acre limit (see also § 55). This assumes, however, that no other disqualifying events (e.g., the property is being developed as a residential subdivision) happen before the property has been assessed at market value for three years. T.C.A. § 67-5-1008(h). In other words, the property will be assessed at market value after the lineal descendant inherits the property. For example:

> Mary Smith owns 1,500 acres that are currently classified as agricultural. Mary dies and the 1,500 acres pass to her son, John Smith. But John already has 1,500 acres under greenbelt (i.e., he is at the 1,500-acre limit). No rollback taxes will be due because John is a lineal descendant of Mary. But the property will be assessed at market value. Rollback taxes may be assessed, however, if a disqualifying event occurs before the property has been assessed at market value for three years.

§ 45.6. Land conveyed or transferred to a governmental entity

Rollback taxes are due when property is transferred or conveyed to a governmental entity. T.C.A. § 67-5-1008(d)(1)(F). Property acquired by the government takes on an exempt status and is considered a change in the property's use. Therefore, even if the greenbelt use continues, rollback taxes are still assessed. Tenn. Op. Atty. Gen. No. 10-71 (May 21, 2010) at 1-3.

But property purchased by the government through the State Lands Acquisition Fund (T.C.A. § 67-4-409(j)(5)) is not subject to rollback taxes. T.C.A. § 11-14-406(b). Additionally, T.C.A. § 11-14-406(b) specifically states that acquisition of greenbelt property under the U.A. Moore Wetlands Acquisition Act (T.C.A. §§ 11-14-401–407)"shall not constitute a change in the use of the property, and no rollback taxes shall become due solely as a result of [the] acquisition."

Also, property purchased under the Tennessee Heritage Conservation Trust Fund Act of 2005 (T.C.A. §§ 11-7-101–110) is not subject to rollback taxes because property acquired under this Act does not constitute a change in the use of the property. T.C.A. § 11-7-109(b).

§ 46. Determining personal liability for rollback taxes

Determining who is personally liable to pay rollback taxes will depend on the facts of each particular situation. Generally, whoever changes the use of the property is personally liable. *See* T.C.A. § 67-5-1008(d)(3) ("Rollback taxes . . . shall . . . be a personal responsibility of the current owner or seller of the land as provided in this part."). However, when a sale results in the land being disqualified, then the seller is liable for rollback taxes, *unless otherwise provided by written contract* or statute. See T.C.A. § 67-5-1008(f) (emphasis added) and T.C.A. § 67-5-1008(e)(1). *See also* Tenn. Op. Atty. Gen. No. 10-71 (May 21, 2010) at 4-5; **Anderson v. Hendrix**, 2010 WL 2977921 (Tenn. App. 2010); and (**Richard Brown** (Henry County, Initial Decision & Order, May 24, 2002) at 3.

Unlike most other taxes, the personal liability for rollback taxes can be shifted to another person by written contract. So, if a buyer declares in writing at the time of sale an intention to continue the greenbelt use but fails to file an application within 90 days from the sale date, rollback taxes will become solely the responsibility of the buyer. Also, if a deed states that the grantee agrees to assume the liability for rollback taxes, then the personal liability is shifted from the grantor (seller) to the grantee (buyer). T.C.A. § 67-5-1008(e)(1).

In certain instances, the current owner of the land may be responsible for rollback taxes even though a previous owner initially changed the use. As explained in administrative rulings, greenbelt status does not simply cease by operation of law. Rather, a property continues to receive preferential assessment until the assessor changes the classification and assesses rollback taxes. *See* **Bobby G. Runyan** (Hamilton County, Tax Year 2005, Final Decision & Order, October 31, 2007) at 2 ("[R]ollback liability also gives rise to a lien. . . . That the assessor may have been unaware of circumstances that might have triggered rollback liability earlier, or to a prior owner, does not relieve the current owner of

liability occasioned by the current owner's change of use or other disqualification.") affirming **Bobby G. Runyan**, (Hamilton County, Tax Year 2005, Initial Decision & Order, August 24, 2006) at 3 wherein the administrative found "no legal authority" for the proposition that "greenbelt status simply ceases by operation of law." Thus, even though the prior owner may have changed the use, the property continued to receive preferential assessment and "Tennessee law specifically imposes liability on the current owner or seller of property when the property is disqualified from greenbelt."); *see also* **Ethel Frazier Davis L/E Rem: Lana Cheryll Jones** (Claiborne County, Tax Years 2003, 2004 & 2005, Initial Decision & Order, June 11, 2007) at 3 ("Thus, while new landowners must apply for continuation of a greenbelt classification in their own names, greenbelt status does not automatically expire if the required application is not received by the statutory deadline. Rather, such status terminates only upon the official entry of a different property classification on the tax roll.")

§ 47. Rollback taxes are a first lien on the disqualified land

Rollback taxes are a first lien on the disqualified land and are collected in the same manner as other property taxes. T.C.A. § 67-5-1008(d)(3). Therefore, even if the personal liability of the rollback taxes is with the seller, the disqualified land is still subject to any unpaid rollback taxes. In certain circumstances, assessors will assess a landowner's property as two tax parcels. That does not mean, however, that the lien will only attach to a portion of the property in the event of delinquent taxes. For example, in **Pinnacle Towers Acquisition LLC v. Penchion**, 523 S.W.3d 673, (Tenn. Ct. App. 2017), the assessor began assessing the property as two separate tax parcels to reflect that the landowner had granted a perpetual easement over a portion of the property to a telecommunications tower company. The company paid all taxes due on its portion of the real property, but the landowner failed to pay the taxes due on the remainder of the tract. The Court of Appeals ruled at page 679 that the lien attached to the entire property because ". . . such 'division' of parcels for tax assessment purposes has no bearing on the ownership of the fee or the lien that attaches to the fee when real property taxes are not timely paid." Presumably, the Court's reasoning would not apply when only a portion of the property is disqualified resulting in rollback taxes for just that acreage. (see § 52). In that situation, the property has been assessed as a single parcel and the lien is against the land that was disqualified not the entire property.

§ 48. Rollback taxes can only be appealed to the State Board of Equalization

The liability for rollback taxes can only be appealed directly to the State Board of Equalization. An appeal must be made by March 1 of the year following the date the assessor sends notice (see Appendices "A" and "B") that the property has been disqualified and rollback taxes are due. T.C.A. § 67-5-1008(d)(3). Appeals filed after the March 1 deadline will normally be dismissed. *See* **Reedy, Scott M. et ux. Tracy Renee** (Perry County, Tax Year 2013, Initial Decision & Order Dismissing Appeal, August 11, 2014 at 3 ("Thus, his appeal to the State Board contesting the imposition of rollback taxes did not meet the statutory deadline.")

§ 49. Property values must be appealed each year, not after rollback taxes have been assessed

Property values that are used to calculate the amount of rollback taxes can only be appealed as specifically provided by law. T.C.A. § 67-5-1008(d)(3). For example:

> John Smith owns property that has been classified as agricultural land since 1990. On October 1, 2009, the property is disqualified and rollback taxes are assessed. John would owe rollback taxes for tax years 2009, 2008, and 2007. But he wants to dispute the amount of rollback taxes because he believes the market value—as determined by the assessor—is excessive. In order for John to have challenged the market value in those tax years, he needed to have appealed to the county board for each of those tax years. Because John failed to appeal, those values are deemed final and conclusive. T.C.A. § 67-5-1401 ("If the taxpayer fails, neglects or refuses to appear before the county board of equalization prior to its final adjournment, the assessment as determined by the assessor shall be conclusive against the taxpayer, and such taxpayer shall be required to pay the taxes on such amount…"). Technically, John could appeal the market value for tax year 2009 to the State Board of Equalization, but the threshold issue would be jurisdiction. John would have to establish "reasonable cause" under T.C.A. § 67-5-1412(e) for not having appealed the 2009 appraisal to the county board of equalization.

§ 50. The use value can only be appealed to the State Board of Equalization

Pursuant to T.C.A. § 67-5-1008(c)(4), a property's use value *cannot* be appealed to the county boards of equalization. To challenge the use value, a petition of at least 10 owners of greenbelt property, or a petition of any organization representing 10 or more owners of greenbelt property, must be filed with the State Board of Equalization. The petition must be filed "on or before twenty (20) days after the date the division of property assessments publishes notice of the availability of the proposed use value schedule in a newspaper of general circulation within the county." Once petitioned, the State Board will hold a hearing "to determine whether the capitalization rate has been properly determined by the division of property . . . assessments, whether the agricultural income estimates determined by the division of property . . . assessments are fair and reasonable, or if the farm land values have been determined in accordance with [§ 67-5-1008]." *See* **Davidson County 1993 Use Value Schedule** (Davidson County, Tax Year 1993, Initial Decision & Order, October 27, 1993); and **Johnson County Use Value Schedule** (Johnson County, Tax Year 1995, Initial Decision & Order, May 9, 1995) for examples of rulings involving such petitions. Only the State Board of Equalization has authority to adjust use values. *See* **James O.B. Wright, et al.** (Marion County, Tax Year 1998, Final Decision & Order, September 8, 2000) at 2 ("The Greenbelt Law does not allow any adjustments to the land schedules by either the local assessor or the local county boards of equalization.") Taxpayers cannot individually appeal the use value utilized to appraise their property. *See* **Elsie Prater, Lucinda and Natalie Fletcher** (Knox County, Tax Year 2013, Initial Decision & Order, February 14, 2014) at 2– 3 (". . . [T]he use values utilized to appraise subject acreage were developed pursuant to the statutory formula. . . [T]hose duly adopted values must be utilized by the assessor to value subject acreage. . . Since no . . . petition was filed, the proposed use values were adopted and used to value properties like the subject."). *See also* **Ursula Perry** (Hawkins County, Tax Year 2016, Initial Decision & Order, November 28, 2016) at 2; and **Rodney Cooper** (Bedford County, Tax Year 2016, Initial Decision & Order, August 9, 2017) at 4.

Although taxpayers cannot individually appeal the duly adopted use values utilized to appraise their property, taxpayers are free to appeal the land use categories assigned to their acreage. *See* **Mary Sue Haren (**Polk County, Tax Years 1998-1999, Final Decision & Order, November 28, 2001) at 2 ("Taxpayers generally are given an opportunity to contest some of the use value formula components in the schedule after it is initially adopted. Ms. Haren's appeal is not a challenge to the schedule but rather to the land use categories assigned to her specific properties after the schedule itself became final."); *see also* **Charles T. Alsup** (Wilson County, Tax Years 1999-2000, Final Decision & Order, January 30, 2001) at 5 ("Based on Ms. Alsup's testimony and that of the county extension agent, we find . . . that none of the property should be classified as row crop or rotation crop land.); **Mary Ann Womack McArthur** (Sumner County, Tax Year 1992, Final Decision & Order, August 1, 1994) at 1-2 ("Although the taxpayer has ably presented a breakdown of the various actual uses of subject property showing that most of it is indeed used as pasture, it is the *potential* use of the land that governs how it must be graded for greenbelt classification, and the assessor has convincingly shown that the majority of the subject property is suitable for rotation use even though it is not currently used as such."); and **Ben F. & Vera Morris** (Franklin County, Tax Year 1985, Final Decision & Order, May 22, 1986) at 2 ("Since use and market value are based on different factors, a factor justifying a change in one of the values does not necessarily justify a change in the other. The Assessment Appeals Commission also finds that the factors cited in the Commission's opinion for reducing the market value of subject land (steep land, susceptibility to flood and a drainage ditch) would not necessarily reduce the use value of the land.")

§ 51. The notice for rollback taxes must be sent by the assessor

Written notice that greenbelt property has been disqualified and rollback taxes are due must be sent to the collecting official. Simply having the rollback taxes added to the current tax bill is not sufficient. T.C.A. § 67-5-1008(d)(3) requires the notice for rollback taxes to include at least: (1) the amount of rollback taxes due; (2) the reason why the property was disqualified; and (3) the person the assessor finds to be personally liable for the rollback taxes (see Appendix "B"). T.C.A. § 67-5-1008(d)(3).

If the person the assessor finds personally liable is a seller, then a copy of the notice should also be sent to the buyer—or whomever the current owner is—as rollback taxes are a first lien on the land. Also, it's recommended that when property is disqualified from greenbelt, notice should be sent immediately.

§ 52. Assessing rollback taxes when only a portion of land is disqualified

When only a portion of land is disqualified, the assessor must still send a notice for rollback taxes (see Appendix "B"). The assessment of the parcel must be apportioned on the first tax roll prepared after the rollback taxes become payable. This apportioned amount must be entered on the tax roll as a separately assessed parcel. T.C.A. § 67-5-1008(d)(4)(A).

§ 53. Determining the tax years that are subject to rollback taxes

The tax years subject to rollback taxes depend on whether the property qualifies for greenbelt as of January 1, the assessment date. Please review the following examples:

Example A

> Fifty acres have been classified as agricultural land since 1990. As of January 1, 2016, the property still qualifies. On April 1, 2016, the owner requests, in writing, for the property to be removed as agricultural land. The use of this property did not change until after January 1, 2016. Therefore, rollback taxes would be due for 2016, 2015, and 2014. The property will be assessed at market value beginning January 1, 2017.

Example B

> Fifty acres have been classified as agricultural land since 1990. On December 15, 2015, the owner requests, in writing, for the property to be removed from this classification. As of January 1, 2016, the property no longer qualifies. Therefore, rollback taxes would be due for 2015, 2014, and 2013. The property will be assessed at market value beginning January 1, 2016.

However, as noted in § 46, greenbelt status does not simply cease by operation of law. Thus, rollback taxes are not assessed until the assessor changes the classification. This can result in rollback taxes being assessed for the most recent tax years even though the disqualifying change in use occurred at a prior point in time.

§ 54. An assessment change notice must be sent when property is assessed at market value as of January 1

The first year the disqualified property is assessed at market value is when an assessment change notice must be sent. *See* T.C.A. § 67-5-508(a)(3) ("…the assessor or the assessor's deputy shall notify, or cause to be notified, each taxpayer of any change in the classification or assessed valuation of the taxpayer's property."). Please review the following examples:

Example A

> Fifty acres have been classified as agricultural land since 1990. As of January 1, 2016, the property still qualifies. On April 1, 2016, the owner requests, in writing, for the property to be removed as agricultural land. Because the use of the property did not change until after January 1, 2016, it still qualifies for greenbelt for tax year 2016. For tax year 2017, an assessment change notice must be sent because the value and classification as of January 1, 2017, changed.

Example B

> Fifty acres have been classified as agricultural land since 1990. On December 15, 2015, the owner requests, in writing, for the property to be removed from this classification. On January 1, 2016, the property is no longer being used as agricultural land. Therefore, an assessment change notice must be sent for the 2016 tax year.

§ 55. Circumstances when rollback taxes are not assessed

Rollback taxes are not due if property passes to a *lineal descendant* and the property is disqualified solely because the 1,500-acre limit is exceeded. T.C.A. § 67-5-1008(h). A lineal descendant is a "blood relative in the direct line of descent. Children, grandchildren, and great-grandchildren are lineal descendants." DESCENDANT, Black's Law Dictionary (10th ed. 2014). This is an exception to T.C.A. § 67-5-1008(d)(1)(E) which provides that rollback taxes are due if the "land exceeds the acreage limitations . . . " But rollback will be due if other disqualifying events occur before the property has been assessed at market value for three years. T.C.A. § 67-5-1008(h).

When a portion of property is taken by eminent domain and the taking results in the property being under the minimum acreage requirements, the remaining acres will continue to qualify for greenbelt. The property will continue to qualify so "long as the landowner continues to own the . . . parcel and for as long as the landowner's lineal descendants collectively own at least 50% of the . . . parcel . . . " T.C.A. § 67-5-1008(e)(2).

Property purchased by the government through the State Land Acquisition Fund (T.C.A. §67-4-409(j)(5)) is not subject to rollback taxes. This fund is used to acquire property under the U.A. Moore Wetlands Acquisition Act (T.C.A. § 11-14-406(b)). Once acquired, it does not constitute a change in use. T.C.A. § 11-14-406(b). Therefore, no rollback taxes are due.

Rollback taxes are not due for property purchased under the Tennessee Heritage Conservation Trust Fund Act of 2005 (T.C.A. §§ 11-7-101–110). The purchase of property under this Act does not constitute a change in the use of the property. T.C.A. § 11-7-109(b).

Also, rollback taxes are not assessed when property is disqualified as agricultural, forest, or open space land if the disqualification is due to a change in law or as a result of an assessor's correction of a prior error of law or fact. However, the property owner will be liable for rollback taxes under these circumstances if the erroneous classification resulted from any fraud, deception, intentional misrepresentation, misstatement, or omission of any full statement by the property owner or the property owner's designee. T.C.A. § 67-5-1008(e)(4)(A). A property owner will not be relieved of liability for rollback taxes under this law if other disqualifying circumstances occur before the property has been assessed at market value for three years. T.C.A. § 67-5-1008(e)(4)(B).

§ 56. Rollback taxes that have been imposed in error may be voided

An assessor may void rollback taxes if it's determined that the taxes were imposed in error. But there shall be *no* refund when the taxes have been collected at the request of a buyer or seller at the time of sale. T.C.A. § 67-5-1008(d)(3). The statute does not provide a time limitation for when an assessor can no longer void rollback taxes. But, if a delinquent tax lawsuit has been filed, then the assessor can no longer void the taxes. *See*, *e.g.*, T.C.A. §§ 67-5-509(d), last sentence, ("Once a suit has been filed for the collection of delinquent taxes [under] § 67-5-2405, the assessment and levy for all county, municipal and other property tax purposes are deemed to be valid and are not subject to correction under this section.") and 67-5-903(e), eighth sentence ("Amendment of a personal property schedule shall not be permitted once suit has been filed to collect delinquent taxes related to the original assessment.")

Eminent domain or other involuntary proceedings

§ 57. The government is responsible for rollback taxes when there is a taking

When greenbelt land—or a portion of it—is taken by eminent domain or other involuntary proceeding, the agency or body doing the taking is responsible for the rollback taxes. Land that is transferred and converted to an exempt or non-greenbelt use is considered to have been converted involuntarily if the transferee or an agent for the transferee (1) sought the transfer *and* (2) had power of eminent domain. T.C.A. § 67- 5-1008(e)(1). But no rollback taxes are due if land is acquired under the Moore Wetlands Acquisition Act T.C.A. § 11-14-406(b). or the Tennessee Heritage Conservation Trust Fund Act of 2005 (see § 55). T.C.A. § 11-7-109(b).

§ 58. Land that is too small to qualify because of a taking can still qualify

If the taking results in the property being too small to qualify, the property can still qualify so long as the landowner continues to own and use the remaining portion of the property and for so long as the landowner's lineal descendants collectively own at least 50% of the remaining portion (see § 55). T.C.A. § 67-5-1008(e)(2). However, once those lineal descendants no longer own at least 50% of the remaining portion, rollback taxes will be due because the property will not meet the minimum acreage requirement.

§ 59. No rollback taxes when greenbelt land is acquired by a lender in satisfaction of a debt

Rollback taxes are *not* to be assessed when property is acquired by a lender in satisfaction or partial satisfaction of a debt. Rollback taxes will only be assessed against a lender if the property is used for a non-greenbelt purpose. This also applies to property that is transferred to a bankruptcy trustee. T.C.A. § 67-5-1008(e)(3). No application is required during the time the lender or trustee has the property. But when the property is sold, rollback taxes may be due under the following circumstances:

> (1) [The] land ceases to qualify as agricultural land, forest land, or open space land as defined in § 67-5-1004;
> (2) The owner . . . requests in writing that the classification as agricultural land, forest land, or open space land be withdrawn;
> (3) The land is covered by a duly recorded subdivision plat or an unrecorded plan of development and any portion is being developed; except that, where a recorded plat or unrecorded plan of development contains phases or sections, only the phases or sections being developed are disqualified;
> (4) An owner fails to file an application as required by [law];
> (5) The land exceeds the acreage limitations of § 67-5-1003(3); or
> (6) The land is conveyed or transferred and the conveyance or transfer would render the status of the land exempt.

T.C.A. § 67-5-1008(d)(1)(A)–(F).

Appendix A
Notice of Disqualification Letter (Example)

Greenbelt County Assessor of Property
123 Main Street, Courthouse
Hometown, TN 37777
615-555-5555

4 April 2016

John Smith
123 Rural Road
Hometown, TN 37777

Re: Application for Greenbelt and Rollback Taxes

Dear Mr. Smith:

The property located at 123 Rural Road, Hometown, TN 37777 (Parcel ID# 011-001.01) was previously classified as *agricultural land* under the greenbelt program. To have continued this classification, an application was required to have been filed by March 1, 2016. As of the date of this letter, no application has been filed. Therefore, this property has been disqualified from this classification and will be assessed at market value for tax year 2016. Also, rollback taxes are now due in the amount of $1,000 and will become delinquent on March 1, 2017.

But the rollback taxes can be voided and the property can continue to be classified as agricultural land if you (1) file an application and (2) pay the statutory late fee of $50.00 (payable to the Greenbelt County Trustee) within 30 days of this letter. The last day to do this is May 4, 2016.

Please call us at 615-555-5555 if you have any questions.

Sincerely,

David R. Sealy

c: Jack R. Marley, Greenbelt County Trustee

Appendix B
Notice of Rollback Taxes Letter (Example)

Greenbelt County Assessor of Property
123 Main Street, Courthouse
Hometown, TN 37777
615-555-5555

4 April 2016

Jack R. Marley
Greenbelt County Trustee
123 Main Street
Hometown, TN 37777

Re: Rollback Taxes for 123 Rural Road, Hometown, TN 37777
Parcel ID# 011-001.01

Dear Mr. Marley:

It has been determined by our office that the property located at 123 Rural Road, Hometown, TN 37777 (Parcel ID# 011-001.01) no longer qualifies as agricultural land. The property is currently being developed as a residential subdivision. Therefore, rollback taxes are assessed to John Smith in the amount of $1,000.00.

These taxes are payable from the date of this notice and become delinquent on March 1, 2017. Also, the taxes are a first lien on the land and if not paid, can subject the property to a delinquent tax lawsuit.

The liability for these rollback taxes may be appealed to the State Board of Equalization by March 1, 2017.

Sincerely,

David K. Sealy

c: John Smith

return to handbook

State of Tennessee

EXHIBIT A

WILLIAM M. LEECH, JR.
ATTORNEY GENERAL & REPORTER

WILLIAM B. HUBBARD
CHIEF DEPUTY ATTORNEY GENERAL

ROBERT B. LITTLETON
SPECIAL DEPUTY FOR LITIGATION

OFFICE OF THE ATTORNEY GENERAL
450 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37219

DEPUTY ATTORNEYS GENERAL
DONALD L. CORLEW
JIMMY G. CREECY
ROBERT A. GRUNOW
WILLIAM J. HAYNES, JR.
ROBERT E. KENDRICK
MICHAEL E. TERRY

April 28, 1983

The Honorable Loy L. Smith
State Representative
115 War Memorial Building
Nashville, Tennessee 37219

Dear Representative Smith:

In your letter of April 25, 1983, you requested the opinion of this office with respect to the following matter:

QUESTION

Should golf courses be classified as open space under T.C.A. § 67-653 for purposes of property taxation?

OPINION

No. It is the opinion of this office that golf courses do not qualify as open space under present law.

ANALYSIS

The Agricultural, Forest, and Open Space Land Act of 1976, codified as T.C.A. § 67-650 et seq., was enacted to encourage the preservation of greenbelts around urban areas. It is designed to help control urban sprawl by eliminating the incentive for development that might otherwise result from the property tax structure. The act provides that the designated areas will be assessed according to their current use

rather than the higher value that the potential for development would cause the land to bring.

The instant question is the application of this act to golf courses. While golf courses are not agricultural or forest land, a closer question arises concerning whether they qualify as "open space." T.C.A. § 67-653(c) gives the following definition:

> "Open space land" means any area of land other than agricultural and forest land, of not less than three (3) acres, characterized principally by open or natural condition, and whose preservation would tend to provide the public with one or more of the benefits enumerated in § 67-651 and which is not currently in agricultural land or forest land use. This term includes greenbelt lands or lands primarily devoted to recreational use.

Application of this definition thus hinges on the purposes of the act, as expressed in certain benefits enumerated in § 67-651. These include, inter alia, enhancement of the use of surrounding lands, conservation of natural resources, prevention of urban sprawl, and enjoyment of natural areas by urban residents.

While certainly not devoid of public benefits, golf courses do not very well fit within the intent of this act. The benefits enumerated contemplate the preservation of undeveloped green areas around cities, not the high degree of development and preparation inherent with a golf course. Though golf courses may be esthetically pleasing, they are not the sort of nature preserves contemplated by the framers of the act.

Section 67-653(c) requires that open space land be "characterized principally by open or natural condition." Golf courses certainly are not in natural condition. Moreover, it is doubtful that they are open in the sense intended by the legislature. While "open" must mean something other than "natural,"

it does not include land that is carefully manicured and highly developed for a specific use. Property that has undergone the extensive site improvements necessary for a golf course is no longer open or natural. It has been transformed to suit the needs of urban civilization, just as if homes and factories had been built on it. The act in question is directed at the preservation of natural and undeveloped land, not the rendering of a tax benefit to golf clubs.1/

Some ecological advantage attaches to golf courses just as to a home or business with a large and manicured lawn. Open space, however, as used in the act, carries a different connotation; while it does not require land to be in a strictly natural state, it does mean that the land must have a rustic character that is not totally overwhelmed by the landscapping of man. A golf course is too developed to come within its purview.

Therefore, it is the opinion of this office that golf courses should not be classified as "open space land" under § 67-653 for purposes of property taxation.

Sincerely,

WILLIAM M. LEECH, JR.
Attorney General

William B Hubbard

WILLIAM B. HUBBARD
Chief Deputy Attorney General

Charles L. Lewis by gpc

CHARLES L. LEWIS
Assistant Attorney General

1/ The act refers to and permits recreational use. This does not obviate the necessity of complying strictly with its other provisions.

EXHIBIT
B

State of Tennessee

WILLIAM M. LEECH, JR
ATTORNEY GENERAL & REPORTER

WILLIAM B. HUBBARD
CHIEF DEPUTY ATTORNEY GENERAL

ROBERT B. LITTLETON
SPECIAL DEPUTY FOR LITIGATION

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JIMMY G. CREECY
ROBERT A. GRUNOW
WILLIAM J. HAYNES, JR.
ROBERT E. KENDRICK
MICHAEL E. TERRY

March 26, 1984

Honorable Jerry C. Shelton
Executive Secretary
State Board of Equalization
1400 James K. Polk State Office
Building
Nashville, Tennessee 37219

Dear Mr. Shelton:

In your letter of March 7, 1984, you requested the opinion of this office on the following topic:

> May land in excess of three acres used as a golf course qualify as "open space land" under the Agriculture, Forest, and Open Space Land Act, T.C.A. § 67-5-1001, et seq?

On April 28, 1983, this office previously opined that "golf courses do not qualify as open space under present law." Please find a copy of that opinion attached to this letter. This office has reviewed the Report to the State Board of Equalization on Status of Golf Courses as Open Space Land under T.C.A. § 67-5-1001, et seq. dated February 16, 1984. Based upon the information presented in this report, it is still the opinion of this office that golf courses do not qualify as open space land within the meaning of T.C.A. § 67-5-1001 et seq.

If you have any questions regarding this matter, please feel free to contact this office.

Sincerely,

WILLIAM M. LEECH, JR.
Attorney General and Reporter

WML/cjm

return to handbook

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Bryson Alexander**	)	**Sumner County**
	Property ID: 089 025.00 000	)	
	Greenbelt and Rollback Taxes	)	
		)	
	Tax Years 2012 - 2015	)	**Appeal No. 102260**

INITIAL DECISION AND ORDER

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on August 17, 2015, in Gallatin, Tennessee. The Taxpayer, Bryson Alexander, represented himself and was assisted by his wife, Karen Alexander. The Assessor of Property, John C. Isbell represented himself. Also in attendance for a portion of the hearing was Deputy Assessor Bonnie Graves.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This appeal concerns a farm located on Rogana Road in Sumner County, Tennessee which historically received preferential assessment under the Agricultural, Forest and Open Space Land Act of 1976 [hereafter referred to as "Greenbelt"] which is codified at Tenn. Code Ann. § 67-5-1001, *et seq.* The issues at hearing were (1) whether the property was properly removed from the Greenbelt program for tax year 2015; and (2) whether the rollback tax assessment for tax years 2012 – 2014 must be upheld due to the Taxpayer's failure to file a new application following his conveyance of the property to himself and his wife as tenants by the entirety.

The Assessor filed a Motion to Dismiss contending the pertinent facts are as follows:

1. On 14 October, 2014, a quitclaim deed was recorded adding Karen Webster Alexander as a tenant by the entirety. The deed was signed on 12 September 2014.

2. On 13 December, 2014, Deputy Assessor, Bonnie Graves, sent the Taxpayer a Sales Verification Questionnaire along with an Agricultural Greenbelt Application to 569 Greenfield Lane, Castalian Springs, TN 37031 [which is the Taxpayer's mailing address]. Neither the questionnaire nor the Greenbelt application had been returned by the last working day of February.

3. Having received no response from the Taxpayer, Mrs. Graves sent another letter on 27 February 2015 to 569 Greenfield Lane, Castalian Springs, TN 37031. This letter was sent at the end of the working day notifying the Taxpayer that the property was being removed from the Greenbelt program unless a completed application was recorded and a $50 late fee was paid within 30 days. The letter informed the Taxpayer that ". . . immediate action is required." No [r]esponse was received as of 1 April 2015.

4. On 13 April 2015, a Rollback Assessment was sent to the Sumner County Trustee . . .

On April 30, 2015, the Taxpayer filed an appeal with the State Board of Equalization. The appeal form was supplemented with a letter in which Mr. Alexander attempted to explain why he did not file a timely reapplication. Basically, Mr. Alexander did not dispute receiving the February 27, 2015 written communication from the Assessor concerning the need to file a new application due to the change in ownership. According to Mr. Alexander, he lost the letter and physically went to the Assessor's office on two occasions to attempt to rectify the situation. Mr. Alexander stated in his letter that whomever he spoke with could not locate a copy of the communication and advised him "everything looked fine." The letter indicates that these visits

took place in February and/or March. The letter goes on to state that

> . . . three days ago they miraculously found [the letter] with a substantial fee associated with it. This is when I discovered it changed because I added my wife to the deed. . . . This changed my status with the greenbelt laws which I would have taken care of then for $12 had I been told.
>
> [Underlining in original]

During the course of the hearing, Mr. Alexander essentially repeated much of what was stated in his letter. However, he was seemingly unsure of the dates he went to the Assessor's office. Mr. Alexander testified that he had no documentation concerning his visit(s), but he identified Bonnie Graves as the person he remembered speaking with.

Up to this point, Mrs. Graves was not in attendance at the hearing. Mrs. Graves joined the hearing and was asked to testify concerning her recollection of when Mr. Alexander came to the office. Unlike Mr. Alexander, Mrs. Graves appeared quite certain with respect to when she spoke with Mr. Alexander. Mrs. Graves testified that she had no communication the Taxpayer until **after** the Rollback Assessment was sent to the Sumner County Trustee on April 13, 2015.

Tennessee Code Ann. § 67-5-1005(a)(1) provides as follows:

> Any owner of land may apply for its classification as agricultural by filing a written application with the assessor of property. The application must be filed by March 1. **Reapplication thereafter is not required so long as the ownership as of the assessment date remains unchanged. Property that qualified as agricultural the year before under different ownership is disqualified if the new owner does not timely apply. The assessor shall send a notice of disqualification to these owners, but shall accept a late application if filed within thirty (30) days of the notice of disqualification** and accompanied by a late application fee of fifty dollars ($50.00).
>
> [Emphasis supplied]

Regrettably, the Administrative Judge must conclude that the Taxpayer failed to timely file a new application due to his own inadvertence or neglect. Although the Administrative Judge would certainly prefer to reach the opposite conclusion, the proof simply does not support the

conclusion that the Assessor's office was contacted in a timely fashion and unable to locate the pertinent record. As noted above, Mr. Alexander seemed anything but certain as to when he physically went to the Sumner County Assessor's office. Indeed, the Administrative Judge wonders if he may have mistakenly gone to the office of another county official at some point in time. In contrast, Mrs. Graves appeared to clearly remember when she first spoke with Mr. Alexander.

The Administrative Judge has no basis to find that the Taxpayer timely contacted the Assessor's office and was somehow misled concerning the need to file a new application. Thus, this is not a case where a Taxpayer could arguably contend that there was substantial compliance with the statute.

The Administrative Judge finds that the Assessor properly removed subject property from the Greenbelt program because the taxpayer failed to timely file an application and failed to file a late application within thirty (30) days of the notice of disqualification.

Tennessee Code Ann. § 67-5-1008(d)(1) requires the assessment of rollback taxes when a parcel ceases to qualify due to a number of reasons, including an owner's failure "to file an application as required by this part." Consequently, the Administrative Judge finds that rollback taxes must be assessed.

ORDER

It is therefore ORDERED:

(1) The removal of Greenbelt status for tax year 2015 is upheld; and

(2) The assessment of rollback taxes for tax years 2012, 2013 and 2014 is upheld.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 27th day of August 2015.

MARK J. MINSKY, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Bryson Alexander
569 Greenfield Lane
Castalian Springs, TN 37031

John C. Isbell
Sumner Co. Assessor of Property
355 N. Belvedere Drive, Room 206
Gallatin, Tennessee 37066

This the 27th day of August 2015.

Janice Kizer
Tennessee Department of State
Administrative Procedures Division

return to handbook

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
June 16, 2010 Session

STEVEN ANDERSON v. ROY W. HENDRIX, JR.

Direct Appeal from the Chancery Court for Shelby County
No. CH-07-1317 Kenny W. Armstrong, Chancellor

No. W2009-02075-COA-R3-CV - Filed July 30, 2010

The trial court entered summary judgment in favor of Plaintiff buyer of land, concluding that Defendant seller was liable for rollback taxes pursuant to Tennessee Code Annotated § 67-5-1008(f). We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed and Remanded

DAVID R. FARMER, J., delivered the opinion of the Court, in which ALAN E. HIGHERS, P.J., W.S. and J. STEVEN STAFFORD, J., joined.

J. Kimbrough Johnson and Michael Casey Shannon, Memphis, Tennessee, for the appellant, Roy W. Hendrix, Jr.

Emily Campbell Taube and James Bennett Fox, Jr., Memphis, Tennessee, for the appellee, Steven Anderson.

OPINION

This dispute concerns liability for rollback taxes assessed pursuant to Tennessee Code Annotated § 67-5-1008(f) against two parcels of land in Shelby County. The facts relevant to our disposition of this matter are not disputed. In June 2000, Defendant Roy W. Hendrix, Jr. (Mr. Hendrix) sold two parcels of land totaling approximately 65 acres to Plaintiff Steven Anderson (Mr. Anderson). Prior to the sale, the parcels were classified as "agricultural land" pursuant to the Agricultural, Forest and Open Space Land Act as codified at Tennessee Code Annotated § 67-5-1001 *et seq*. As property with "Greenbelt status," it was subject to reduced tax assessment rates under the Act. The property had been so classified since 1982, when Mr. Hendrix applied for the classification.

After the June 2000 sale, Mr. Anderson did not reapply for Greenbelt status as permitted by

the Act. In June 2001, the Shelby County Tax Assessor determined that the property ceased to qualify for Greenbelt status under the Act. Accordingly, the property was reassessed, resulting in an assessment increase in the amount of $45,125 for one parcel, and $74,950 for the other for the 1998, 1999, and 2000 tax years. In November 2001, the County issued a tax bill in the amount of $11,887 for rollback taxes for the 1998, 1999, and 2000 tax years to Mr. Hendrix. The taxes were due on March 1, 2002. Mr. Hendrix did not pay the taxes, but forwarded the tax bill to Mr. Anderson on November 5, 2001.

The record reflects that some discussion ensued between the parties with respect to which was liable for the rollback taxes, which remained unpaid. In 2006, Shelby County notified Mr. Anderson that the land would be sold at public auction to pay the taxes. Mr. Anderson paid the taxes and, in July 2007, filed a complaint against Mr. Hendrix in the Chancery Court for Shelby County. In his complaint, Mr. Anderson asserted claims for breach of contract and sought damages for unjust enrichment. He also sought a declaratory judgment that Mr. Hendrix was obligated to pay the costs and expenses arising from Mr. Hendrix's failure to pay the rollback taxes, attorney's fees and pre-judgment interest.

The parties filed cross-motions for summary judgment, which were heard in the trial court in September 2009. The trial court concluded that Tennessee Code Annotated § 67-5-1008(f) places the liability for rollback taxes on the seller unless a written contract or other writing provides otherwise. The court noted that it was undisputed that, at the time of sale, Mr. Anderson told Mr. Hendrix that he intended to use the land as his primary residence; that the parties did not discuss the fact that the land had been classified as Greenbelt land or that rollback taxes would be assessed in the event that it ceased to qualify as agricultural land; and that no written agreement existed by which Mr. Anderson agreed to be liable for rollback taxes or in which Mr. Anderson expressed an intention to continue the Greenbelt classification on the land.

On September 21, 2009, the trial court entered summary judgment in favor of Mr. Anderson, awarding him a judgment in the amount of $24,228.20. Mr. Hendrix filed a notice of appeal to this Court on October 2, 2009, and oral argument was heard in the matter on June 16, 2010. Upon review of the record, we determined that the trial court's September 2009 order was not a final judgment where it failed to adjudicate Mr. Anderson's request for attorney's fees and pre-judgment interest. Following this Court's order to show cause why the appeal should not be dismissed, on July 13, 2010, the trial court entered a consent order reiterating judgment in the amount of $24,228.20 in favor of Mr. Anderson, and denying Mr. Anderson's prayers for attorney's fees and pre-judgment interest. Having determined that the judgment in this cause is now final, we turn to the issues presented for our review.

Issues Presented

Mr. Hendrix raises the following issues:

(1) Whether the trial court erred in ruling that T.C.A. 67-5-1008(f) and the facts of the instant case require that Hendrix rather than Anderson is liable for the payment of rollback taxes, which were levied when Anderson failed to reapply for Greenbelt status of the property.

(2) In the alternative, whether Hendrix is liable for the whole amount of rollback taxes or a reduced amount, because Anderson failed to mitigate his damages.

Standard of Review

We review a trial court's award of summary judgment *de novo*, with no presumption of correctness, reviewing the evidence in the light most favorable to the nonmoving party and drawing all reasonable inferences in that party's favor. *Martin v. Norfolk Southern Ry. Co.*, 271 S.W.3d 76, 84 (Tenn. 2008) (citations omitted). Summary judgment is appropriate only where the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Id.* at 83 (quoting Tenn. R. Civ. P. 56.04). The burden is on the moving party to demonstrate that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. *Id.* (citations omitted).

After the moving party has made a properly supported motion, the nonmoving party must establish the existence of a genuine issue of material fact. *Id.* (citations omitted). To satisfy its burden, the nonmoving party may: (1) point to evidence of over-looked or disregarded material factual disputes; (2) rehabilitate evidence discredited by the moving party; (3) produce additional evidence that establishes the existence of a genuine issue for trial; or (4) submit an affidavit asserting the need for additional discovery pursuant to Rule 56.06 of the Tennessee Rules of Civil Procedure. *Id.* (citations omitted). The court must accept the nonmoving party's evidence as true, resolving any doubts regarding the existence of a genuine issue of material fact in that party's favor. *Id.* (citations omitted). A disputed fact that must be decided to resolve a substantive claim or defense is material, and it presents a genuine issue if it reasonably could be resolved in favor of either one party or the other. *Id.* (citations omitted). With this standard in mind, we turn to whether the trial courted erred by awarding summary judgment in this case.

Discussion

We first address Mr. Hendrix's assertion that the trial court erred in determining that Mr. Hendrix was liable for the rollback taxes under Tennessee Code Annotated § 67-5-1008(f). The section as it exists now and under the 2000 Code governing this dispute provides:

> If the sale of agricultural, forest or open space land will result in such property being disqualified as agricultural, forest or open space land due to conversion to an ineligible use or otherwise, the seller shall be liable for rollback taxes unless otherwise provided by written contract. If the buyer declares in writing

> at the time of sale an intention to continue the greenbelt classification but fails to file any form necessary to continue the classification within ninety (90) days from the sale date, the rollback taxes shall become solely the responsibility of the buyer.

Tennessee Code Annotated § 67-5-1008(f)(2006).

It is undisputed in this case that Mr. Anderson did not declare an intention to continue to maintain the Greenbelt classification of the property at the time of sale. It also is undisputed that the parties did not enter into a contract providing that Mr. Anderson would be liable for any potential rollback taxes. The parties also do not dispute that the property failed to qualify for Greenbelt status because Mr. Anderson did not reapply for that status subsequent to the sale. Further, the parties do not dispute that, at the time of sale, Mr. Anderson intended to construct a home on the property, potentially disqualifying it from greenbelt classification. This lawsuit does not concern whether the rollback taxes were properly assessed. Rather, Mr. Hendrix asserts in his brief that the seller's liability for the rollback taxes arises only when the sale will result "as a necessary consequence of the sale itself, in the disqualification of the property from Greenbelt status." He asserts that the sale did not "definitively" result in disqualification from Greenbelt status because the actual use of the land by Mr. Anderson did not result in disqualification. He asserts that because Mr. Anderson's unilateral failure to act to reapply for Greenbelt status caused the property to lose that status, Mr. Anderson should be liable for the rollback taxes. Mr. Hendrix cites a 1987 Attorney General Opinion, asserting the Opinion supports the proposition that the seller is liable for rollback taxes only where the sale necessarily results in a disqualifying use.

We find Mr. Hendrix's argument unpersuasive under the facts of this case where, as Mr. Hendrix notes in his brief to this Court, at the time of sale, "[Mr.] Anderson informed [Mr.] Hendrix that he intended to build a house, barn and lake on the [p]roperty." Mr. Hendrix asserts that the construction of such improvements would not have necessarily made the property ineligible for Greenbelt status. Mr. Anderson, however, asserts that the expressed intended use of the land would have removed it from Greenbelt classification, and that, at the time of sale, he did not intend to use or hold the land for farming or agricultural purposes. Additionally, whether Mr. Anderson could have chosen to apply for Greenbelt status at a future date is not relevant to our inquiry here. At the time of sale, Mr. Anderson did not declare an intent to maintain the Greenbelt status of the property. The parties did not specify who would be liable for rollback taxes on property classified as Greenbelt property but sold with the understanding that the buyer did not intend to hold it for agricultural use.

The statute clearly provides that the seller of Greenbelt property is liable for any rollback taxes if the property fails to qualify for Greenbelt status because of ineligible use *or otherwise*. The seller remains liable for the rollback taxes unless the parties provide otherwise in writing, or unless the buyer declares, in writing, an intent to continue the classification and fails to do so. Mr. Anderson expressed no intent to hold the property for agricultural use. He was under no obligation to reapply for Greenbelt status, and did not agree to be liable for rollback taxes assessed against it. We agree with the trial court that, under Tennessee Code Annotated 67-5-1008(f), Mr. Hendrix is liable for the rollback taxes assessed in this case.

We next turn to Mr. Hendrix's assertion that Mr. Anderson should be liable for at least a portion of the total tax bill due when Mr. Anderson paid it in 2006 because Mr. Anderson failed to mitigate his damages. Mr. Hendrix asserts that he informed Mr. Anderson that interest and penalties would accrue if the taxes were not paid, and that he proposed that they each pay one-half of the tax bill and "that the prevailing party in the litigation which [was] certain to ensue [would] be entitled to . . . recover the one-half of said taxes which he paid." Indeed, by December 2006, when Mr. Anderson paid the tax bill to avoid an auction sale, the total amount due was $24,228, including interest and penalties.

The record in this case includes correspondence between Mr. Hendrix and Mr. Anderson regarding which was responsible for the rollback taxes. As Mr. Hendrix asserts, he informed Mr. Anderson that interest and/or penalties would accrue on the unpaid taxes. Mr. Hendrix also offered to pay one-half of the taxes due. It is clear from the record that the parties disagreed on who was liable for the rollback taxes under the statutes. It is also clear, however, that the tax bill was received by Mr. Hendrix, and that Mr. Hendrix simply refused to pay it despite recognizing that interest and penalties would accrue. Further, it is undisputed that Mr. Hendrix took no action to appeal the assessment of rollback taxes to the state board of equalization as permitted by Tennessee Code Annotated § 67-5-1008(d)(3). Mr. Anderson paid the taxes to avoid a tax sale. In light of our determination that Mr. Hendrix was liable for the rollback taxes which were billed to him by Shelby County in 2001, we cannot say that it was Mr. Anderson's obligation to mitigate the damages in this case. As noted above, despite Mr. Hendrix's contention that Mr. Anderson may have avoided imposition of the rollback taxes by reapplying for Greenbelt status, Mr. Anderson was under no obligation to apply for Greenbelt status. Indeed, to have sought such status absent an intent to hold the land for agricultural purposes would have been contrary to the intended purposes of the Act.

Holding

In light of the foregoing, the judgment of the trial court is affirmed. Mr. Anderson's request for damages for a frivolous appeal are denied. Costs of this appeal are taxed to the Appellant, Roy W. Hendrix, Jr., and his surety, for which execution may issue if necessary.

DAVID R. FARMER, JUDGE

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Muriel Barnett**	)	**Robertson County**
	Property ID: 120 127.00	)	
		)	
	Greenbelt Removal & Rollback Taxes	)	**Appeal No. 93114**

INITIAL DECISION AND ORDER

Statement of the Case

On or after September 1, 2013, the Robertson County Property Assessor removed the subject property from the Greenbelt program and imposed rollback taxes pursuant to Tenn. Code Ann. § 67-5-1008(d). The taxpayer timely appealed to the State Board of Equalization ("State Board").

The undersigned administrative judge conducted the hearing on July 29, 2014 in Springfield. Taxpayer Muriel Barnett, Robertson County Property Assessor Chris Traughber, and Deputy Assessor Gail Brooksher participated.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Using her maiden name, the taxpayer filed a Greenbelt program application for the subject agricultural land on July 24, 1997. The Robertson County Property Assessor (the "assessor") approved the application.

In 2003, the taxpayer married and changed her name. On April 26, 2013, the assessor's office sent the taxpayer a notice that the subject no longer qualified for the Greenbelt program because "[o]wnership of property is not the same as other property, for example, one tract owned by husband & wife and another tract owned individually."

According to the testimony, the assessor's office chose a deadline of September 1 for responses to its disqualification notices, but received nothing from the taxpayer. After the deadline, the assessor removed Greenbelt classification and imposed a Greenbelt rollback tax assessment.

On October 16, 2013, the taxpayer reapplied for Greenbelt classification under her current name and provided a copy of her marriage certificate. The assessor's office accepted the marriage certificate as evidence that the taxpayer's current and maiden names reference the same person.[1] The assessor's office approved the new application, effective January 1, 2014, but the rollback tax assessment remained.

In pertinent part, Tenn. Code Ann. § 67-5-1008(d)(1) requires imposition of Greenbelt rollback taxes in the following situations:

> (A) Such land ceases to qualify as agricultural land... as defined in § 67-5-1004;
> (B) The owner of such land request in writing that the classification... be withdrawn;
> (C) [Situations involving development plats or plans not applicable here];
> (D) An owner fails to file an application as required by this part;
> (E) The land exceeds the acreage limitations of § 67-5-1003(3); or
> (F) The land is conveyed or transferred and the conveyance or transfer would render the status of the land exempt.

Here, the subject property was previously approved for Greenbelt classification under the ownership of the taxpayer. Ownership of the subject property did not subsequently change, and it is undisputed that the use of the subject property qualified during the relevant time period. Further, the minimum acreage requirement was met during the relevant time period.[2] Accordingly, there is no reason to affirm the rollback tax assessment and removal of the subject property from the Greenbelt program.

---

[1] The subject property remained titled under the taxpayer's maiden name.

[2] The subject's 5.47 acres (titled to the taxpayer under her maiden name) plus at least 40 contiguous acres (titled to the taxpayer and enjoying Greenbelt classification under her current name) exceeded the 15 acre minimum requirement for agricultural land Greenbelt program qualification under Tenn. Code Ann. § 67-5-1004(1)(B).

ORDER

It is therefore ORDERED that the rollback tax assessment and the removal of the subject property from the Greenbelt program are void.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 31st day of July 2014.

Mark Aaron, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Muriel Barnett
3285 Ott Wilson Road
Springfield, TN 37172

Chris Traughber
Robertson Co. Assessor of Property
521 South Brown Street
Springfield, Tennessee 37172

This the 31st day July 2014.

Janice Kizer
Tennessee Department of State
Administrative Procedures Division

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Stephen M. & Susan Bass, et al Dist. 7, Map 174, Control Map 174, Parcel 10 Farm Property Tax Year 2007	)) Maury County))

INITIAL DECISION AND ORDER DISMISSING APPEAL

Statement of the Case

An appeal has been filed on behalf of the property owners with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on April 7, 2008 in Franklin, Tennessee. In attendance at the hearing were Stephen and Susan Bass, the appellants, Robert Lee, General Counsel to the Comptroller, Jimmy Dooley, Assessor of Property, and Carol Dickey, Chief Deputy Assessor.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of an unimproved 403.4 acre tract located east of Lawrenceburg Highway in Columbia, Tennessee.

This appeal concerns the taxpayers' contention that subject property was erroneously assessed as "farm property" rather than as "agricultural land" from 1997-2007.[1] As will be discussed below, the taxpayers contended that their taxes should have been based on subject property's use value rather than its market value. The taxpayers seek a refund for each of the tax years equal to the difference between the taxes due on a market value appraisal versus a use value appraisal.

For ease of understanding, the administrative judge will briefly summarize how Tennessee values farmland for ad valorem tax purposes. Tennessee Code Ann. § 67-5-601(a) normally requires that all property be appraised at its market value. The primary exception to this general rule involves the Agricultural, Forest and Open Space Land Act of 1976 codified at Tenn. Code Ann. § 67-5-1001, et seq. [hereafter referred to as the "greenbelt law."]. The greenbelt law enables a property owner to file an application with the assessor of property to have his or her property classified as "agricultural land." Rather than being appraised at market value, "agricultural land" receives a valuation at a reduced rate referred to as "use value.[2]" Farmland that does not receive preferential assessment under the greenbelt law is referred to "farm property" pursuant to the subclassifications set forth in Tenn. Code Ann. § 67-5-801(a).

Beginning in 1985, subject property commenced receiving preferential assessment under the greenbelt law as agricultural land. In 1994, Maury County underwent a countywide reappraisal program. At that time, Tenn. Code Ann. § 67-5-1005(a)(1) required a property owner to reapply for

[1] See Tenn. Code Ann. §§ 67-5-501(3), 67-5-1004(1) and 67-5-1005.

[2] See Tenn. Code Ann. §§ 67-5-1005 and 67-5-1008(a). In the event acreage no longer qualifies for preferential assessment, Tenn. Code Ann. § 67-5-1008(d) provides for the recapture of the tax savings for the preceding three years. Such taxes, referred to as rollback taxes, reflect the difference between the taxes owed on a market value appraisal versus a use value appraisal.

an agricultural land classification during reappraisal years. The owner of subject property at that time failed to reapply and subject property was removed from the greenbelt program effective with tax year 2004. Thus, subject property began being valued as "farm property" rather than as "agricultural land" at that time.

The taxpayers purchased subject property in 1997. The taxpayers instructed their closing attorney, inter alia, that they wanted to make sure subject property received preferential assessment. For whatever reason, this did not occur. Unfortunately, the taxpayers encountered even more serious problems thereafter.

Dr. Bass testified that he contacted the assessor's office by telephone in 1998, 1999 and 2000 to request that the taxpayers' home address be used as their mailing address. Once again, for reasons that are unclear, the assessor's records were not changed. In 2001, subject property was sold on the courthouse steps for delinquent taxes. The taxpayers filed suit and regained their property that same year. In addition, Maury County paid their legal fees. Following the lawsuit, the taxpayers did, in fact, begin receiving notices from Maury County at their home address.

There is no dispute that the taxpayers received the assessment change notice issued by the assessor of property in conjunction with the 2006 countywide reappraisal program. However, the taxpayers erroneously assumed that the terms "farm" and "agricultural land" were synonymous. Indeed, the taxpayers continued to operate under the misapprehension that subject property was receiving preferential assessment.

Dr. Bass testified that he contacted the assessor's office in the latter part of 2007 due to the significant increase in his taxes. It was at this time that the taxpayers realized subject property had never received preferential assessment during their ownership. The taxpayers proceeded to file a greenbelt application which has been approved effective with tax year 2008.

The taxpayers essentially asserted that they had been victimized through no fault of their own. The taxpayers maintained that the appropriate remedy was to refund what they perceived as overpayments from 1997-2007.

Not surprisingly, the assessor of property opposed the taxpayers' position. Mr. Lee contended that the deadline for appealing tax years 1997-2006 has already passed and the State Board of Equalization lacks jurisdiction over those tax years. In addition, Mr. Lee argued that a greenbelt application was never filed prior to 2007 and the State Board of Equalization has no authority to retroactively grant such an application. Finally, with respect to tax year 2007, Mr. Lee maintained that the taxpayers failed to establish reasonable cause for not appealing to the Maury County Board of Equalization.

The administrative judge finds that the jurisdiction of the State Board of Equalization is governed in relevant part by Tenn. Code Ann. § 67-5-1412(e) which provides as follows:

> (e) Appeals to the state board of equalization from action of a local board of equalization must be filed on or before August 1 of the tax

> year, or within forty-five (45) days of the date notice of the local board action was sent, whichever is later. If notice of an assessment or classification change pursuant to § 67-5-508 was sent to the taxpayer's last known address later than ten (10) days before the adjournment of the local board of equalization, the taxpayer may appeal directly to the state board at any time within forty-five (45) days after the notice was sent. If notice was not sent, the taxpayer may appeal directly to the state board at any time within forty-five (45) days after the tax billing date for the assessment. *The taxpayer has the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the time for appeal to the state board began to run.*
>
> [Emphasis supplied]

The administrative judge finds that the taxpayers' appeal was received on December 4, 2007. The administrative judge finds that March 1, 1998 - March 1, 2007 constituted the deadlines for filing appeals for tax years 1997-2006. Accordingly, the administrative judge finds that the State Board of Equalization lacks jurisdiction to even hear appeals for those tax years. See *Trustees of Church of Christ* (Obion Co., Exemption Claim) wherein the Assessment Appeals Commission held that the State Board of Equalization lacks equitable powers and cannot simply waive statutory requirements reasoning in relevant part as follows:

> There is no doubt that during the tax years at issue here, 1988 and 1989, the applicant was an exempt religious institution using its property for the religious purposes for which it exists, as required by our statute to qualify for property tax exemption. The applicant had not, however, made its application as the statute requires for tax years 1988 and 1989. The church urges the Commission to exercise equitable powers and take into consideration the unfortunate circumstances that led it to delay its application. We have no power to waive the requirements of the exemption statute, however.

Final Decision and Order at 2.

The administrative judge finds that Tenn. Code Ann. § 67-5-1005(a)(1) requires greenbelt applications to be filed "by March 1 of the first year for which the classification is sought." The administrative judge finds that since the taxpayers' greenbelt application was not filed until November 20, 2007, subject property cannot receive preferential assessment until tax year 2008. As previously noted, the assessor has, in fact, approved the application effective with tax year 2008. Once again, the administrative judge finds that the State Board of Equalization cannot waive a statutory requirement and grant retroactive relief.

The administrative judge finds that the only issue properly before the State Board of Equalization concerns the issue of "reasonable cause" for tax year 2007. This jurisdictional issue arises from the fact that no appeal was made to the Maury County Board of Equalization.

The administrative judge finds that Tennessee law requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. Tenn. Code Ann. §§ 67-5-1401 & 67-5-1412(b). A direct appeal to the State Board is

permitted only if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. Tenn. Code Ann. §§ 67-5-508(a)(3) & 67-5-903(c). Nevertheless, the legislature has also provided that:

> The taxpayer shall have right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.

Tenn. Code Ann. § 67-5-1412(e). The Assessment Appeals Commission, in interpreting this section, has held that:

> The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the 'reasonable cause' provisions to waive these requirements except where the failure to meet them is due to illness or other circumstances beyond the taxpayer's control.

Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992). *See also John Orovets* (Assessment Appeals Commission, Cheatham County, Tax Year 1991). Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayer must show that circumstances beyond their control prevented them from appealing to the Maury County Board of Equalization.

The administrative judge finds for all practical purposes the taxpayers contended they should not be held responsible for their failure to receive preferential assessment because they assumed everything had been taken care of based on their instructions to the closing attorney. The administrative judge respectfully disagrees.

The administrative judge finds the problems the taxpayers experienced in conjunction with the sale of their property in 2001 were unfortunate, but have no relevance to the issues of greenbelt and failure to appeal to the Maury County Board of Equalization in 2007. The administrative judge finds that the taxpayers own other property in Williamson County receiving preferential assessment and surely were aware of the need to file a greenbelt application. The administrative judge finds the fact the closing attorney was instructed to handle matters such as greenbelt does not excuse the taxpayers from confirming that their wishes had been carried out. The administrative judge finds the taxpayers' inaction even more puzzling considering that Ms. Bass is an attorney, the taxpayers received and presumably reviewed copies of the closing documents, and paid the taxes each year.

Based upon the foregoing, the administrative judge finds that the taxpayers were not prevented from appealing to the Maury County Board of Equalization due to a circumstance beyond their control. Accordingly, the administrative judge further finds that this appeal must be dismissed for lack of jurisdiction.

ORDER

It is therefore ORDERED that this appeal be dismissed for lack of jurisdiction.

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 10th day of April, 2008.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Stephen M. and Susan Bass
Robert Lee, Esq.
Jimmy R. Dooley, Assessor of Property

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ASSESSMENT APPEALS COMMISSION

IN RE: Ben F. & Vera Morris)
Dist. 17, Map 45, Control) Franklin County
Map 45, Parcel 15.00A)
Tax Year 1985)

FINAL DECISION AND ORDER

An appeal has been filed on behalf of the property owner with the State Board of Equalization, the appellant having taken exception to the decision of the Administrative Law Judge. This matter was heard by the Assessment Appeals Commission pursuant to Tennessee Code Annotated Sections 67-5-1412, 67-5-1501 and 67-5-1502. The Assessment Appeals Commission conducted a hearing in this matter on April 22, 1986.

The Commission members present were W.C. Keaton, C.D. Elrod, J. Woodrow Norvell and John Rochford.

Upon the oral testimony of witnesses, the exhibits, the entire record in this cause and upon due consideration of all of which it appears to the Commission and the Commission does FIND, ORDER, ADJUDGE and DECREE as follows:

Subject property consists of a farm with 161.5 acres of land and various improvements.

Contentions of the Parties

Appellant contended that the use value of subject land should be reduced from $103,600 to approximately $90,000. In support of this position, it was stated that on July 30, 1984 the Assessment Appeals Commission issued an Official Certificate reducing the market value of subject land from $170,000 to $147,200. However, there was no corresponding reduction in the use value of the land. According to the appellant, the use value of subject land should be reduced by the same percentage as the market value was reached.

The County contended that the use value of subject land would be approximately $90,000 if it is permissible to reduce the use value by the same percentage as the Assessment Appeals Commission reduced the market value in 1984. However, this may not be permissible as market value and use value are calculated using different criteria.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of

speculative values . . ."

After having reviewed all the evidence in the case, it is the finding of the Assessment Appeals Commission that the use value of the subject land should be valued at $103,600. This determination is based upon a finding of fact that the appellant did not provide sufficient evidence to refute the recommended valuation of the subject property by the Administrative Judge.

Since the appellant is appealing from the determination of the Administrative Judge, the burden of proof in this matter is on the appellant. Big Fork Mining Company v. Tennessee Water Quality Control Board, 620 S.W.2d 515 (Tenn. App. 1981). For the reasons stated below, the Assessment Appeals Commission finds that the appellant has provided insufficient evidence to warrant any reduction in the use value of subject land.

The Agricultural, Forest, and Open Space Land Act of 1976, T.C.A. Section 67-5-1001, et seq. (hereafter referred to as "Greenbelt"), allows a landowner to apply to the tax assessor of the county where the property is located for a classification of the property as agricultural land. T.C.A. § 67-5-1005. When the property has been so classified, the value for assessment purposes is to be calculated as if that were its highest and best use. T.C.A. § 67-5-1008. Thus, the value of the land used for assessment purposes is not what a willing buyer in an arm's length transaction would pay for the property if it were not restricted in use (market value, T.C.A. § 67-5-601), but is to be based on farm income, soil productivity or fertility, topography, etc. (T.C.A. § 67-5-1008(a)(2).

When a property is classified as agricultural land under the "greenbelt" law, it is assigned a market and use value pursuant to the market and use value schedules for the county where the land is located. As previously indicated, market value results from an analysis of the factors set forth in T.C.A. § 67-5-601 while use value results from an analysis of the factors set forth in T.C.A. § 67-5-1008(a)(2). Thus, the two schedules are based on different criteria.

Since use value and market value are based on different factors, a factor justifying a change in one of the values does not necessarily justify a change in the other.

The Assessment Appeals Commission also finds that the factors cited in the Commission's opinion for reducing the market value of subject land (steep land, susceptibility to flood and a drainage ditch) would not necessarily reduce the use value of the land. Furthermore, even if it was assumed that those factors

support a particular use value. It does not follow that use value will necessarily decline by the same percentage as market value.

ORDER

It is therefore ORDERED, ADJUDGED AND DECREED, that the following values be adopted for tax years 1985 and that the property be subclassified as Residential and Agricultural.

	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
MARKET	$147,200	$11,900	$159,100	$39,775
USE	$103,600	$11,900	$115,500	$28,875

This decision, issued pursuant to Sections 4-5-314 et seq. and 67-5-1502, Tennessee Code Annotated, shall become final and binding on all parties hereto unless the State Board of Equalization at its sole discretion, enters an order requiring review of the action of the Commission within forty-five (45) calendar days of the date of the Commission's written opinion. If a party hereto desires to petition the State Board of Equalization to consider such review, a written petition must be filed with the Executive Secretary of the State Board of Equalization within fifteen (15) calendar days of the Commission's written opinion.

5-22-86
DATE

CHAIRMAN OR PRESIDING MEMBER

ATTEST:

KELSIE JONES, EXECUTIVE SECRETARY
STATE BOARD OF EQUALIZATION

S1t007

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

In Re:	Richard Brown	)	
	District 11, Map 131, Control Map 131, Parcel 9	)	Henry County
	Rollback Assessment	)	
	Tax Years 1998 through 2000	)	

INITIAL DECISION AND ORDER

Statement of the Case

This is an appeal from an assessment of "rollback taxes" on the subject parcel pursuant to Tenn. Code Ann. section 67-5-1008. The appeal was received by the State Board of Equalization (the "State Board") on March 4, 2002.[1] The administrative judge appointed under authority of Tenn. Code Ann. section 67-5-1505 conducted a hearing of this matter on May 7, 2002 in Paris, Tennessee. In attendance at the hearing were the appellant Richard Brown, former co-owner of the property in question, and Henry County Assessor of Property Charles Van Dyke (the "Assessor").

Findings of Fact and Conclusions of Law

Background. This appeal raises the issue of whether a seller of "greenbelt" land is liable for rollback taxes if the subsequent termination of that status is due solely to the buyer's failure to file the required application before the statutory deadline.

The parcel in question is a 66.9-acre tract located on Lakeview Manor Road. Mr. Brown, an associate professor of marketing at Freed-Hardeman University in Henderson, Tennessee, inherited his interest in this property from his grandfather. Used for raising cattle, the entire acreage was designated as "agricultural land" through tax year 2000 under the Agricultural, Forest and Open Space Land Act of 1976, as amended (the "greenbelt" law).[2]

In February of 2000, Mr. Brown and the other owners of the subject parcel at that time entered into an OPTION TO PURCHASE agreement with Larry D. and Janice T. Vick. Under the terms of this contract, the Vicks were given the right to purchase such property within a period of 60 days for $312,500. Paragraph 5 of the agreement provided as follows:

> Real estate taxes for the year in which the closing occurs shall be prorated as of the date of closing. Any back taxes shall be paid by Sellers. **Any special assessments or roll-back taxes which may be a lien against the Property at the date of closing, or which are assessed for a period prior to closing, shall be paid by Sellers.** [Emphasis added.]

[1]The mailed appeal form is deemed to have been filed on the postmark date of March 1, 2002. State Board of Equalization Rule 0600-1-.04(1)(b).

[2]The greenbelt law grants preferential tax treatment to owners of qualifying land by means of an assessment based on "present use value" rather than market value. *See* Tenn. Code Ann. sections 67-5-1001 *et seq*. On December 29, 1998, Mr. Brown signed a certification to the effect that he was using the subject property for agricultural purposes.

Mr. and Ms. Vick timely exercised the option and acquired title to the subject parcel by warranty deed dated May 9, 2000. When the Assessor learned of this transfer, he sent an application for classification of the property as "agricultural land" to the new owners along with a letter reminding them of the April 1, 2001 filing deadline for preservation of greenbelt status.[3] Though they continued to use the land for agricultural operations (the growing of corn), Mr. and Ms. Vick did not complete and return the application form. As a result, the Assessor reclassified the land as "farm property" for tax year 2001 and levied a rollback assessment against Mr. Brown and the other grantors. This appeal to the State Board ensued.

Contention of the Appellant. While conceding that he would be responsible for payment of any rollback taxes on the subject parcel, the appellant disputed the validity of such an assessment under the factual situation recited above. In an attachment to the appeal form, Mr. Brown asserted that:

> The property has not been converted to an ineligible use and it is still eligible as agricultural land. Clearly the land is not currently enrolled in the Greenbelt Program; just as clearly it qualifies to be in the program if the current owner chooses to enroll it. The phrase "or otherwise" (in Tenn. Code Ann. section 67-5-1008(f)) could be seen as a possible cause of the rollback taxes being due. However, neither I, nor anyone in Mr. Van Dyke's office, is able to ascertain a specific citation in the (Tennessee Code) that explains what the specific meaning of this "otherwise" is. We have not been able to find a place in the code that says rollback taxes are due solely because a property is sold and not enrolled in the program by the new owners.

Applicable Law. Insofar as it is relevant to this appeal, Tenn. Code Ann. section 67-5-1005(d) requires the assessor to initiate a rollback assessment if the land in question "ceases to qualify as agricultural land...as defined in section 67-5-1004." Subsection (f) of section 67-5-1008, cited by the appellant, reads as follows:

> If the sale of agricultural, forest or open space land will result in such property being disqualified as agricultural, forest or open space land due to conversion to an ineligible use or otherwise, the seller shall be liable for rollback taxes unless otherwise provided by written contract. **If the buyer declares in writing at the time of sale an intention to continue the greenbelt classification but fails to file any form necessary to continue the classification within ninety (90) days from the sale date, the rollback taxes shall become solely the responsibility of the buyer.** [Emphasis added.]

Analysis. The parties stipulated that the subject property has continuously met the definition of "agricultural land" set forth in the greenbelt law. Since it was not the *sale* of this property that caused the loss of its greenbelt status, the appellant argued, rollback taxes should not have been imposed.

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[3]The legislature has since changed the application deadline for a new owner of agricultural land to March 1 of the year following the year of transfer. Tenn. Code Ann. section 67-5-1005(a)(1).

Respectfully, the administrative judge disagrees. The subsection on which the appellant has focused his attention (Tenn. Code Ann. section 67-5-1008(f)) addresses the question of **who** is liable for rollback taxes resulting from a sale of greenbelt property. But that is not the issue in this case. It is subsection (d) of Tenn. Code Ann. section 67-5-1008 which specifies the conditions under which the assessor is obliged to make a rollback assessment.[4] One of those conditions is that the land in question "ceases to qualify as agricultural land."

Clearly, under the present greenbelt law, eligibility for a "use value" assessment is non-transferable. When agricultural or other qualifying land is sold, the filing of an application in the name(s) of the new owner(s) is a prerequisite to retention of the greenbelt classification. Tenn. Code Ann. section 67-5-1005(a)(1). If no such application is submitted, the land surely "ceases to qualify" for favorable tax treatment;[5] and the assessor must notify the trustee that rollback taxes are due and payable by the seller – unless the buyer promised in writing at the time of the transaction to file the necessary paperwork.

This interpretation is buttressed by the highlighted language in Tenn. Code Ann. section 67-5-1008(f). Implicit in that sentence is the recognition that rollback taxes *are* assessable if the buyer fails to file the application form "necessary to continue the (greenbelt) classification" – regardless of whether the actual use of the property in question changes. Further, no reason appears why the legislature would have mandated a rollback assessment against a *buyer* of greenbelt property who breaches a promise to file the necessary application form, but not against a *seller* of greenbelt property who receives no such commitment from the buyer.

Order

It is, therefore, ORDERED that the disputed assessment of rollback taxes be affirmed.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of

---

[4]Thus Tenn. Code Ann. section 67-5-1008(b)(3) refers to rollback taxes "as defined in section 67-5-1004 and as provided for in **subsection (d)**." [Emphasis added.]

[5]Under prior law, a buyer of land previously approved for an "agricultural" classification was merely required to file a certification of gross agricultural income. In 1996, the Tennessee General Assembly adopted an amendment to Tenn. Code Ann. section 67-5-1005(c) which provided (in relevant part) that:

> There shall be no rollback assessment when property is disqualified for lack of a certification pursuant to this subsection, so long as the property continues to be used as agricultural land and continues to qualify under the minimum size or maximum acreage provisions of this part. Such disqualified property shall be at risk of a rollback assessment until it has been assessed at market value under part 6 of this chapter for three (3) years, and during such time a rollback assessment shall be made if the property ceases to be used as agricultural land or ceases to qualify under the minimum size or maximum acreage provisions.

Acts 1996, ch. 707, section 1. Alas, when the law was changed to require that a new owner of agricultural land file a greenbelt application with the assessor, the legislature did not enact a similar provision for the benefit of the seller. It behooves the seller of agricultural land, then, to procure the buyer's commitment in the sale contract to file the necessary application within 90 days from the sale date.

the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 24th day of May, 2002.

Pete Loesch

PETE LOESCH
ADMINISTRATIVE JUDGE

cc: Richard Brown
Charles Van Dyke, Assessor of Property
Larry Ellis, CAE, Jackson Division of Property Assessments

BROWN.DOC

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Bunker Hill Road L.P. Dist. 1, Map 66, Control Map 66, Parcel 59 Farm Property Tax Year 1997	)) Putnam County))

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
MKT.	$2,303,000	$257,200	$2,560,200	$ -
USE	$ 30,000	$257,200	$ 287,200	$114,880

An appeal has been filed on behalf of Putnam County with the State Board of Equalization.

This matter was reviewed by the administrative judge pursuant to Tennessee Code Annotated Sections 67-5-1412, 67-5-1501 and 67-5-1505. The administrative judge conducted a hearing in this matter on December 5, 1997. Putnam County was represented by Jerry L. Burgess, Esq. The taxpayer was represented by Mr. and Mrs. Dowell.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 49 acre tract improved with a residence.

Putnam County contended that the Putnam County Board of Equalization erroneously ruled that subject property was entitled to receive preferential assessment as "agricultural land" pursuant to the Agricultural, Forest and Open Space Land Act of 1976 (hereafter referred to as "greenbelt"). Putnam County's position was most clearly set forth in the attachment to the amended appeal form which provided in pertinent part as follows:

> Tennessee Code Annotated 67-5-1005 clearly states that 'the assessor shall determine whether such land is agricultural land. . . .' In this particular case, the assessor has not classified the disputed land as agriculture/farm. Furthermore, the policy of the state of Tennessee is to appraise land at its highest and best use. The land in question is being sold as commercial lots and is zoned C-3. There is great demand for this commercial property. The county board erroneously placed the property in the greenbelt program. The subject

property should be assessed at fair market value as opposed to use value.

The administrative judge finds that the reasons underlying passage of the greenbelt law are best summarized in the legislative findings set forth in T.C.A. §67-5-1002 which provides in relevant part as follows:

> The general assembly finds that:
>
> (1) The existence of much agricultural, forest and open space land is threatened by pressure from urbanization, scattered residential and commercial development, and the system of property taxation. This pressure is the result of urban sprawl around urban and metropolitan areas which also brings about land use conflicts, creates high costs for public services, contributes to increased energy usage, and stimulates land speculation;
> (2) The preservation of open space in or near urban areas contributes to:
> (A) The use, enjoyment and economic value of surrounding residential, commercial, industrial or public use lands;
> (B) The conservation of natural resources, water, air, and wildlife;
> (C) The planning and preservation of land in an open condition for the general welfare;
> (D) A relief from the monotony of continued urban sprawl; and
> (E) An opportunity for the study and enjoyment of natural areas by urban and suburban residents who might not otherwise have access to such amenities;
> (3) Many prime agricultural and forest lands in Tennessee, valuable for producing food and fiber for a hungry world, are being permanently lost for any agricultural purposes and that these lands constitute important economic, physical, social, and esthetic assets to the surrounding lands and to the people of Tennessee;
> (4) Many landowners are being forced by economic pressures to sell such agricultural, forest, or open space land for premature development by the imposition of taxes based, not on the value of the land in its current use, but on its potential for conversion to another use; and
>
> * * *

The administrative judge finds that the policy of this state with respect to greenbelt type property is found in T.C.A. §67-5-1003 which provides in relevant part as follows:

> The general assembly declares that it is the policy of this state that:
>
> (1) The owners of existing open space should have the opportunity for themselves, their heirs, and assigns to preserve such land in its existing open condition if it is their

> desire to do so, and if any or all of the benefits enumerated in § 67-5-1002 would accrue to the public thereby, and that the taxing or zoning powers of governmental entities in Tennessee should not be used to force unwise, unplanned or premature development of such land;
>
> (2) The preservation of open space is a public purpose necessary for sound, healthful, and well-planned urban development, that the economic development of urban and suburban areas can be enhanced by the preservation of such open space, and that public funds may be expended by the state or any municipality or county in the state for the purpose of preserving existing open space for one (1) or more of the reasons enumerated in this section; . . .
>
> * * *

The administrative judge finds that the question which must be answered in this appeal is whether subject property qualifies for preferential assessment under the greenbelt law as "agricultural land." The term "agricultural land" is defined in T.C.A. §67-5-1004(1) as follows:

> 'Agricultural land' means a tract of land of at least fifteen (15) acres *including woodlands and wastelands* which form a contiguous part thereof, constituting a farm unit engaged in the production or growing of crops, plants, animals, nursery, or floral products. "Agricultural land" also means two (2) or more tracts of land including woodlands and wastelands, one (1) of which is greater than fifteen (15) acres and none of which is less than ten (10) acres, and such tracts need not be contiguous but shall constitute a farm unit being held and used for the production or growing of agricultural products;
>
> [Emphasis supplied]

The administrative judge finds that in deciding whether a given tract constitutes "agricultural land," reference must be made to T.C.A. §67-5-1005(a)(3) which provides as follows:

> In determining whether any land is agricultural land, the tax assessor shall take into account, among other things, the acreage of such land, the productivity of such land, and the portion thereof in actual use for farming or held for farming or agricultural operation. The assessor may presume that a tract of land is used as agricultural land if the land produces gross agricultural income averaging at least one thousand five hundred dollars ($1,500) per year over any three-year period in which the land is so classified. The presumption may be rebutted notwithstanding the level of agricultural income by evidence indicating whether the property is used as agricultural land as defined in this part.

The administrative judge finds that the question of whether subject property should be classified at "agricultural land" for purposes of the greenbelt law is a most difficult one. As will be discussed immediately below, the administrative judge finds that plausible arguments can be made in support of both parties' positions.

The administrative judge finds that there is no dispute between the parties concerning the fact that subject property is used for agricultural purposes which would normally satisfy the definition of "agricultural land" found in T.C.A. §67-5-1004(1). The administrative judge finds that the sole difference between the parties involves the fact that the taxpayer candidly admits that subject property is being held for eventual sale for commercial development. The administrative judge finds that Putnam County essentially maintained that basic principles of equity and fairness dictate that the greenbelt law be more strictly construed than has historically been the case.

Although the administrative judge sympathizes with Putnam County, the administrative judge finds that the greenbelt law does not prohibit a property owner from selling off lots or intending to eventually convert the use of a property from agricultural to commercial.[1] The administrative judge finds that rollback taxes are designed to cover such situations. Indeed, the administrative judge would assume that many owners of greenbelt property intend to sell it for commercial development at some future time. The administrative judge finds that T.C.A. §67-5-1003(1) recognizes this by making reference to "premature development of such land."

The administrative judge finds that viewed in its entirety, the evidence does not warrant removing subject property from the greenbelt program. The administrative judge finds that the burden of proof in this matter falls on Putnam County. *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981). The administrative judge finds it inappropriate to remove a property from greenbelt simply because it is zoned commercially or that commercial development represents its highest and best use. Indeed, the administrative judge finds that these are typical examples of the type situations greenbelt was intended to address.

The administrative judge finds that the status quo should not be disturbed for a related reason. The administrative judge finds that the question of whether a property is being used as "agricultural land" represents the type of issue county boards of equalization are especially well suited to decide.

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[1] The administrative judge finds that a taxpayer's intent is not necessarily determinative of whether a property qualifies for preferential assessment under greenbelt.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 1997:

	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
MKT.	$2,303,000	$257,200	$2,560,200	$ -
USE	$ 30,000	$257,200	$ 287,200	$114,880

The law gives the parties to this appeal certain additional remedies:

1. Petition for reconsideration (pursuant to Tenn. Code Ann. § 4-5-317). You may ask the administrative judge to reconsider this initial decision and order, but your request must be filed within ten (10) days from the order date stated below. The request must be in writing and state the specific grounds upon which relief is requested. You do not have to request reconsideration before seeking the other remedies stated below.

2. Appeal to the Assessment Appeals Commission (pursuant to Tenn. Code Ann. § 67-5-1501). You may appeal this initial decision and order to the Assessment Appeals Commission, which usually meets twice a year in each of the state's largest cities. *An appeal to the Commission must be filed within thirty (30) days from the order date stated below.* If no party appeals to the Commission, this initial decision and order will become final, and an official certificate will be mailed to you by the Assessment Appeals Commission in approximately seventy-five (75) days.

3. Payment of taxes (pursuant to Tenn. Code Ann. § 67-5-1512). You must pay at least the undisputed portion of your taxes before the delinquency date in order to maintain this appeal. No stay of effectiveness will be granted for this appeal.

ENTERED this 2d day of January, 1998.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

c: Bunker Hill Road, L.P.
Byron Looper, Assessor of Property
Jerry Lee Burgess, Esq.

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Carl & Barbara Burnette**	)	**Claiborne County**
	Property ID: 043 025.03 001	)	
		)	
	Tax Years 2012-2015	)	
	Greenbelt Removal and Rollback	)	**Appeal No. 105776**

INITIAL DECISION AND ORDER

Statement of the Case

The Claiborne County Property Assessor's office removed a portion of the subject property from the Greenbelt program and imposed rollback taxes per Tenn. Code Ann. § 67-5-1008(d). On November 23, 2015, the taxpayer appealed to the State Board of Equalization ("State Board"). The undersigned administrative judge conducted the hearing on April 26, 2016 in Tazewell. Carl and Barbara Burnette, Robert Lee, Esq., Judy Meyers, Josh Goins, and David Painter participated.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A preliminary issue is whether the State Board has jurisdiction with respect to the taxpayer's complaint on account of the taxpayer's failure to appeal to the Claiborne County Board of Equalization. The administrative judge finds that under Tenn. Code Ann. §§ 67-5-1008(d)(3) and 67-5-1412, the State Board's jurisdiction in this instance is limited to the removal of a portion of the subject property from the Greenbelt program and the imposition of rollback taxes. The administrative judge finds that any value or subclassification complaints should have first been appealed to the local board of equalization.

The subject property consisted of a primarily wooded 47.3 acre tract which had previously been approved for forest Greenbelt status in its entirety. On account of commercial campground use of a portion of the subject property, the assessor's office removed Greenbelt status from 10 of the 47.3 acres and imposed rollback taxes.

The taxpayer contended that only 3.69 acres had been developed for campground use and that the remainder of the parcel should continue to enjoy Greenbelt status. To support this position, the taxpayer presented a hand-drawn survey of the parcel on which the taxpayer had demarcated the section that he believed directly supported the current 20 campsites and bathhouse. The taxpayer testified that he had walked the area with a tape measure in order to calculate his 3.69 acre figure.

The assessor's office contended that 10 acres should be disqualified from Greenbelt status. To support this position, the assessor's office presented Mr. Goins' testimony as well as overhead and ground perspective photographs of the campground. The assessor's office's acreage estimate had been calculated via an online satellite view measurement tool.

The controversy was whether a portion of the subject property south of the roped-off section of the campground accessible by campsite renters qualified for Greenbelt status. The area included a gravel pathway to the campground's water source. The ground perspective photographs also depicted graveled spaces between trees that appeared to be functional as parking spaces and a waste receptacle.

Upon review of the record, the administrative judge finds the assessor's estimate of 10 acres more accurately depicted the area that no longer qualified for Greenbelt status. The administrative judge finds that the disqualified area should include both the area currently accessible by campsite renters and, despite the presence of greater tree density, a reasonable

estimate of the partially developed area that was used for conveyance of water to the campground and access to and servicing of the campground water source.

ORDER

It is therefore ORDERED that the assessor's removal of 10 acres from Greenbelt status and imposition of rollback taxes are affirmed.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 9th day of May 2016.

Mark Aaron, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Carl and Barbara Burnette
406 Archer Road
Luttrell, Tennessee 37779

Kay Sandifer
Claiborne Co. Assessor of Property
Post Office Box 57
Tazewell, Tennessee 37879

Robert T. Lee, Esq.
Post Office Box 1297
Mt. Juliet, TN 37121

This the 9th day of May 2016.

Janice Kizer
Tennessee Department of State
Administrative Procedures Division

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BEFORE THE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	CENTENNIAL BLVD. ASSOCIATES Map 080-00-0, Parcel 049.00 Commercial Property Tax Years 2003-2004	))))	Davidson County

ORDER AFFIRMING GREENBELT DETERMINATION AND REMANDING FOR VALUE DETERMINATION

Statement of the case

This is an appeal by the taxpayer from the initial decision and order of the administrative judge who recommended the assessor's withdrawal of greenbelt designation be affirmed, and the assessor's original appraised and assessed values for the subject property should be affirmed as follows:

Land Value	Improvement	Total Value	Assessment
$228,300	$ -0-	$228,300	$91,320

The appeal was heard on April 13, 2005 before Commission members Stokes (presiding), Brooks, Gilliam, Ishie and Kyles.[1] The taxpayer was represented by one of the partners, Mr. Tom Robinson, and the assessor was represented by Assistant Metro Attorney Margaret Darby. Without objection, the taxpayer was permitted to amend his appeal to include tax year 2004.

Findings of fact and conclusions of law

The subject property is a vacant 17 acre tract on Centennial Boulevard east of Briley Parkway. As of January 1, 2003, the property was used to store trailers. The assessor, having approved an agricultural classification under the "greenbelt" law[2] in 1987, discovered this nonfarm use and withdrew the greenbelt classification. The assessment thereafter was based on market value rather than use value.

Mr. Robinson testified to the problems he had establishing a farm use of this tract which adjoins his manufacturing facility. He stated he is currently trying to establish a stand of white pines, but pesticide spraying by the holder of utility easements on and near the property, is making this difficult.

[1] Mssrs. Gilliam and Ishie sat as designated alternates in the absence of members Jimmy White and Kay Sandifer. Tenn. Code Ann. §4-5-302 (e).

[2] The Agricultural, Forest, and Open Space Land Act of 1976, is also known as the "greenbelt" law and permits use value assessment of qualifying land (Tenn. Code Ann. §67-5-1001 *et seq.*).

The Commission finds this property does not constitute a farm unit engaged in production of agricultural products, and the withdrawal of greenbelt classification by the assessor was entirely proper. Centennial Blvd. Associates is not a farm struggling against a tide of encroaching industrial sprawl, it is one of many industrial and commercial owners of land in this area trying to maximize value of its investment. It has not demonstrated this property is used or useable as a farm.

The initial decision and order recited there was no dispute regarding market value but the testimony before the Commission indicated otherwise. There is conflicting proof as to value which has not yet been passed upon by the administrative judge, and we accordingly remand for this purpose.

Mr. Stokes discloses he is a friend of Mr. Robinson and abstains.

ORDER

It is therefore ORDERED, that the initial decision and order of the administrative judge is affirmed as to greenbelt classification. The matter is remanded for a value determination for tax years 2003 and 2004. This order is subject to reconsideration by the Commission, in the Commission's discretion. Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order. Other remedies await further proceedings on remand.

2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
3. Review by the Chancery Court of Davidson County or other venue as provided by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: Aug. 24, 2005

Presiding member

ATTEST:

Executive Secretary

cc: Mr. Tom Robinson
Mr. Jimmy Clary, Assessor's office
Ms. Margaret Darby, Metro Legal

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	CHARLES T. ALSUP	)	
	Map 161, Parcel 1	)	Wilson
	Farm Property	)	County
	Tax Years 1999-2000	)	
Appeal of:	CLYDE ALSUP	)	
	Map 156, Parcel 2	)	Wilson
	Farm Property	)	County
	Tax Years 1999-2000	)	
Appeal of:	ARLIE ALSUP ET AL.	)	
	Map 161, Parcels 5,10 & 13	)	Wilson
	Farm Property	)	County
	Tax Years 1999-2000	)	
Appeal of:	WAYNE ALSUP ET AL.	)	
	Map 155, Parcel 33.02	)	
	Map 156, Parcel 15	)	Wilson
	Farm Property	)	County
	Tax Years 1999-2000	)	
Appeal of:	STEVEN P. ALSUP ET AL	)	
	Map 156, Parcel 16	)	
	Map 155, Parcel 2	)	Wilson
	Farm Property	)	County
	Tax Years 1999-2000	)	

FINAL DECISION AND ORDER

Statement of the case

These are consolidated appeals by the state Division of Property Assessments from the initial decision and order of the administrative judge. The appeals involve proper categorization of agricultural land approved for participation in the "greenbelt" program[1]. The judge recommended the subject properties be assigned agricultural land grades as set forth in Attachment E of the initial decision and order. The appeal was heard in Nashville on November 28, 2000, before Commission members Isenberg (presiding), Crain, Millsaps, Rochford and Simpson, sitting with an administrative judge[2]. Mr. Neal Agee, Jr., attorney, represented the taxpayers and Mr. Robert Lee, counsel to the state Division of Property Assessments, represented the Division. Upon the deliberation of the appeal, the Commission determined to apply the result for tax year 2000 as well as 1999.

Findings of fact and conclusions of law

[1] The Division assists county assessors of property in developing greenbelt use value schedules and in assigning schedule grades to qualifying properties.

[2] An administrative judge other than the judge who rendered the initial decision and order sits with the Commission pursuant to Tenn. Code Ann. §4-5-301 and rules of the Board.

The Agricultural, Forest, and Open Space Land Act of 1976, or greenbelt law, allows qualifying land to be assessed for property taxes on the basis of its current use value rather than its market value in some more intensive use. Greenbelt use value is based on a schedule developed for each county that contains a grid of per acre values to be used for all land classified as greenbelt eligible. The schedule is developed by the state Division of Property Assessments for each county undergoing a county-wide reappraisal, and the schedule remains in use until the next reappraisal, an interval of as much as six years. A separate value is provided on the schedule according to four categories of land use (row crop, rotation, pasture, and woodland), with three grades (good, average, or poor) of land within each category. There is also a category for non-productive land, defined in the approved assessment manuals as that which is "generally unusable in its present state" for any farm use. The per acre use value for a given category and grade is partly dependent on "farm-to-farm" selling prices per acre and partly on farm product selling prices and yields estimated for the county by the Division.[3]

Taxpayers are given an opportunity to contest some of the use value formula components in the schedule after it is initially adopted. This proceeding is not a challenge to the schedule but rather to the use value categories assigned to the taxpayers' specific properties after the schedule itself became final. The taxpayers challenge categorization of some portions of their land and also the failure of the Division to consider any portion of their properties as non-productive. The administrative judge criticized the Division and the assessor for relying too much on the Wilson County Soil Survey produced by the U. S. Soil Conservation Service (SCS). She accepted the taxpayers' contentions regarding changing some productive categories but declined to adopt the view that some portions of the properties, in particular creeks, were non-productive. The judge also assigned additional improvement sites for Map 156, Parcel 15 and Map 161, Parcel 1.

The Division appealed the initial decision and order and bears the burden of proving that the administrative judge erred. The Division relied primarily on the testimony of Mr. Charles Smith, an employee responsible for apportioning rural properties among the use value categories following reappraisals. Mr. Smith, an experienced rural appraiser who also assisted in drafting state assessment manuals for rural property, nevertheless conceded he was not a soil scientist. He graded properties

[3] Tenn. Code Ann. §67-5-1008 (2000 Supp.).

based on soil capabilities, which he determined from the approved SCS soil surveys and information from owners and others in the farm community concerning farm prices and yields.

In developing the Wilson County use value schedule for the 1999 reappraisal Mr. Smith consulted with local SCS representative Christy Luna to identify potential trouble areas in use of the 1996 SCS Wilson County Soil Survey. Although he did not visit the subject properties or interview the owners in his initial categorizations, Mr. Smith did physically inspect the properties in preparation for the appeals and recommended some changes in the initial gradings. He testified that creeks present on the property were not viewed as non-productive land and may have utility to the farmer as well as a positive influence on the market value of the property. He stated that compared to earlier reappraisals, the 1999 Wilson County reappraisal did not assign non-productive rating to creeks. The subject parcels in particular, while plagued with rock outcroppings or shallow soils in places, did not according to Mr. Smith have any land that could properly be classed as non-productive. He pointed out that property may be located in a 100 year floodplain and yet suffer no adverse effect on its agricultural capability because flooding was so infrequent.

Mr. Dean Lewis, State Valuation Coordinator for the Division, supported Mr. Smith's testimony concerning development of the Wilson County use value schedule and land gradings. He had supervisory responsibility for state involvement in the 1999 Wilson County reappraisal. He testified that in the 1999 reappraisal, the state had graded no creeks as non-productive, confining that grading to eroded gullies, rock outcroppings, abandoned quarry properties, and the like. He was surprised on cross-examination by an exhibit indicating that a property located in the area of the subject properties and owned by a Division employee had creek areas graded as non-productive, and he testified this was merely a mistake if confirmed and not evidence of Division practice generally in the county

The taxpayers offered their own testimony as well as that of a Wilson County agricultural extension agent and a hired soil consultant. The extension agent, Mr. John Baker, stated that he was not a soil scientist either but had served as extension agent for over 20 years. He noted that the approved soil survey may not always precisely indicate the soil capability of land because it was based on core drillings on a large five acre grid. He stated he felt better positioned to express a view of the capabilities of the Alsup properties because of his knowledge of the properties as well as agricultural

yields in the county. In Mr. Baker's opinion, the properties were not suited for cropland at all and should be considered pasture land at best. He stated the creeks on the property produced no water in summer when it was most needed, and he was skeptical of any contribution the creeks may offer to the land even as pasture land.

Mr. Jay Andrews, a private soil consultant with an academic degree in plant and soil science, inspected the subject properties and took a number of soil samples. He testified he regularly encountered shallow soils and drainage and erosion problems on the subject properties and questioned the productivity conclusions of the Division. He acknowledged that most of his experience had been in percolation testing for improvement sites rather than for agriculture. Mr. Andrews identified specific differences in his conclusions about some of the soils compared to the Division conclusions.

Mrs. Debbie Alsup testified that the owners of the properties had long abandoned crop production and now used the properties only for pasture. She stated that the crop yields cited by the Division to support its rotation cropland gradings, were in fact based on experience of at least fifteen years earlier, and that federal support payments still being received were based on that earlier experience rather than actual recent production. She testified that areas of the properties were significantly eroded by regular "rushes" of water and these and rocky areas of the properties should be considered non-productive.

This case produced a length and depth of testimony that neither counsel nor staff for the Commission anticipated, yet even after several hours of testimony only parts of the subject properties were addressed. The appeal presented novel issues considerably removed from the usual questions of appraisal to which the Commission is accustomed, and we are left to draw general conclusions from the parts of this story we have heard and apply them to the whole. The Division testimony relied heavily on the Wilson County soil survey and other general information about agricultural production in the county. These sources are acknowledged by all to be reliable, and we do not question their sufficiency to allow the Division or county assessors to fashion a mass assessment tool that yields a reasonable result for the average property or the county as a whole, but they do not rebut the testimony of knowledgeable witnesses with specific training and/or experience concerning the properties at issue.

The average creek in Wilson County or elsewhere may positively impact the farm productivity of land but that premise is clearly not applicable universally, and

especially not when confronted with the experience of the owner and the opinion of knowledgeable observers concerning a particular creek and property. Likewise the Division's conclusions about other areas of the properties that suffered from water flow and other erosion problems have been effectively rebutted, in our view, by testimony of those closer to the problems. Based on Ms. Alsup's testimony and that of the county extension agent, we find like the administrative judge, that none of the property should be classified as row crop or rotation crop land. The assertions of the taxpayer, supported in this instance by knowledgeable witnesses familiar with the property, present a basis for grading the land that is superior to more general grading based on the county soil survey. Therefore, we adopt the contentions of the taxpayer as contained in Attachment C to the initial decision and order except as to the improvement sites. We accept the findings of the initial decision and order regarding improvement sites.

ORDER

By reason of the foregoing it is ORDERED, that the initial decision and order of the administrative judge is modified and the grading of the subject properties shall reflect the taxpayer's contentions as contained in Attachment C of the initial decision and order, except that a two acre improvement site is assigned from acreage otherwise graded non-productive, on each of Map 161, Parcel 1 and Map 156, Parcel 15. This order is subject to:

1. Reconsideration by the Commission, in the Commission's discretion. Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
3. Review by the Chancery Court of Davidson County or other venue as provided by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: Jan. 30, 2001

Ronald Sanders

Presiding member

ATTEST:

Executive Secretary

cc: Mr. Robert Lee, Esq.
Mr. Neal Agee, Jr., Esq.
Mr. Jimmy Carter Martin, Assessor

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Cherokee Country Club**	)	**Knox County**
	Property ID: 121B D 1.00	)	**Appeal No. 82278**
		)	
	Holston Hills Country Club, Inc.	)	
	Property ID: 083F A 8.00	)	**Appeal No. 82279**
		)	
	Greenbelt Removal & Rollback Taxes	)	

INITIAL DECISION AND ORDER

Statement of the Case

By notice dated September 28, 2012, the Knox County Property Assessor removed the open space classification previously enjoyed by the above-referenced parcels and imposed rollback taxes pursuant to Tenn. Code Ann. § 67-5-1008(d). The taxpayers timely appealed these actions to the State Board of Equalization.

Pursuant to an Agreed Order, the parties filed stipulations of fact and extensive briefs. The undersigned administrative judge heard oral argument on September 24, 2013 in Knoxville, Tennessee. Participants in the hearing were Wayne Kline, Esq., and Keith Burroughs, Esq., counsel for the appellants, Charles Sterchi, Esq., counsel for the Knox County Property Assessor, and Robert Lee, Esq., counsel for intervener Division of Property Assessments.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The subject properties are golf courses located in Knoxville, Tennessee. The administrative judge adopts the following stipulated facts:

1. The Agricultural, Forest and Open Space Land Act of 1976 ("Greenbelt Law") was enacted in 1976, Chapter 782, § 1, now Tenn. Code Ann. § 67-5-1001, *et. seq.* Tenn. Code Ann. § 67-5-1004(7) defines "open space land" under Greenbelt Law.

2. Cherokee's application for classification of land as Open Space Land was approved on July 6, 1983, instrument number 27581, Book 1791, Page 573, in the Register of Deeds Office, Knox County. Holston Hills' application for classification of land as Open Space Land was approved on July 7, 1983, instrument number 27652, Book 1791, Page 642, in the Register of Deeds Office, Knox County.

3. By letter of September 26, 2012, Robert T. Lee, General Counsel for the State of Tennessee's Comptroller's Office, responding to a request from Tom Fleming, Assistant to the Comptroller of the Treasury for the State of Tennessee, provided his legal opinion that golf courses do not qualify as Open Space Land under Tennessee's Greenbelt Law.

4. In reliance on Mr. Lee's opinion letter of September 26, 2012, Assistant to the Comptroller, Tom Fleming wrote an e-mail to Knox County Property Assessor dated September 27, 2012 stating in pertinent part, "Please make the necessary corrections to remove any golf courses classified as Open Space Land and institute the proper rollback taxes in accordance with T.C.A. § 67-5-1008(d)."

5. Following Mr. Fleming's September 27, 2012 e-mail directive, the Knox County Property Assessor removed Cherokee's Open Space Land classification by the Notice of Rollback Taxes Due dated September 28, 2012, also imposing Cherokee with rollback taxes pursuant to Tenn. Code Ann. § 67-5-1008(d) totaling $324,385.12.

6. Following Mr. Fleming's September 27, 2012 e-mail directive, the Knox County Property Assessor removed Holston Hills' Open Space Land classification by Notice of Rollback Taxes Due dated September 28, 2012, also imposing Holston Hills with rollback taxes pursuant to Tenn. Code Ann. § 67-5-1008(d) totaling $53,301.84.

7. On November 16, 2012, Cherokee filed this appeal to the State Board of Equalization, Nashville, Tennessee, formally appealing the September 28, 2012 removal of Cherokee's Open Space Land classification under the Greenbelt Law and the notice of rollback taxes from the Property Assessor.

8. On November 16, 2012, Holston Hills filed this appeal to the State Board of Equalization, Nashville, Tennessee, formally appealing the September 28, 2012 removal of Holston Hills's Open Space Land classification under the Greenbelt Law and the notice of rollback taxes from the Property Assessor.

9. On December 31, 2012, Cherokee paid into the Knox County Trustee's Office under protest and pursuant to T.C.A. § 67-5-1512 the

assessed County rollback taxes of $158,792.17 and paid into the City of Knoxville Property Tax Department under protest and pursuant to T.C.A. § 67-5-1512 the assessed City rollback taxes of $165,592.95. The total of rollback taxes paid by Cherokee was $324,385.12.

10. On December 31, 2012, Holston Hills paid into the Knox County Trustee's Office under protest and pursuant to T.C.A. § 67-5-1512 the assessed County rollback taxes of $26,093.86 and paid into the City of Knoxville Property Tax Department under protest and pursuant to T.C.A. § 67-5-1512 the assessed City rollback taxes of $27,207.98. The total of rollback taxes paid by Holston Hills was $53,301.84.

The first issue before the administrative judge is whether the golf courses qualified as "open space land" within the meaning of the Greenbelt Law. Tenn. Code Ann. § 67-5-1007(a)(1) allows the local planning commission to designate areas that it recommends for "preservation" as areas of open space land. Tenn. Code Ann. § 67-5-1007 allows such land to be classified as open space land for purposes of property taxation if there has been no change in the use of area that has adversely "affected its essential character as an area of open space land." A land owner must apply to the assessor of property for open space classification. Tenn. Code Ann. § 67-5-1007(b)(1). The assessor then determines whether there has been any change in the area designated by the local planning commission as open space. Tenn. Code Ann. § 67-5-1007(b)(2). The application is to include "such other information as the assessor may require to aid the assessor in determining whether such land qualifies for such classification." Tenn. Code Ann. § 67-5-1007(b)(3).

Tenn. Code Ann. § 67-5-1004(7) defines open space land as follows:

> "Open space land" means any area of land other than agricultural and forest land, of not less than three (3) acres, characterized principally by open or natural condition, and whose preservation would tend to provide the public with one (1) or more of the benefits enumerated in § 67-5-1002, and that is not currently in agricultural land or forest land use. "Open space land" includes greenbelt lands or lands primarily devoted to recreational use.

Tenn. Code Ann. § 67-5-1002 enumerates the following benefits: prevention of urban sprawl; increased use, enjoyment, and value of surrounding land; conservation of natural resources; planning and preservation of land in an open condition for the general welfare; opportunity for study and enjoyment of natural areas; and prevention of premature development. Tenn. Code Ann. § 67-5-1003(1) declares that the policy of the state is to allow owners of existing open space "to preserve such land in its existing open condition" and that they should not be forced to prematurely develop such land. Tenn. Code Ann. § 67-5-1003(2) declares that the preservation of open space is a public purpose.

On April 28, 1983, the Tennessee Attorney General opined that golf courses do not qualify for open space classification. The basis of the opinion is that golf courses are developed to such an extent that they have lost the rustic character the Greenbelt Law was intended to preserve. On March 26, 1984, the Tennessee Attorney General reaffirmed the earlier opinion.

As exceptions from taxation, the statutes conferring Greenbelt classification are properly construed as tax exemptions. The Tennessee Supreme Court has stated that "exemptions are strictly construed against the taxpayer, who has the burden of proving entitlement to the exemption." *Steele v. Indus. Dev. Bd. of the Metro. Gov't of Nashville & Davidson County.*, 950 S.W.2d 345, 348 (Tenn. 1997).

The administrative judge finds the reasoning of the Tennessee Attorney General convincing with respect to the loss of rustic character caused by golf course development. The administrative judge observes that the term "preservation" is pervasive in the statutes governing open space land classification and indeed expresses their core purpose. Construction and preparation of golf course improvements constitutes development, not preservation. Accordingly, the administrative judge finds the removals of open space classification were correct.

The second issue before the administrative judge is whether rollback taxes were required by Tenn. Code Ann. § 67-5-1008. Tenn. Code Ann. § 67-5-1008 generally provides that land classified by the assessor as agricultural, forest, or open space land shall receive preferential tax treatment henceforth, but "[i]t is the responsibility of the applicant to promptly notify the assessor of any change in the use or ownership of the property that might affect its eligibility under this part." Tenn. Code Ann. § 67-5-1008(d)(1) requires imposition of rollback taxes in a number of situations; pertinent here is the imposition of rollback taxes when the "land ceases to qualify as agricultural land, forest land, or open space land as defined in § 67-5-1004." Generally, the statute imposes rollback taxes when some affirmative step such as changing to a non-qualifying use or transferring ownership has occurred, and the statute does not tend to impose rollback taxes where disqualification occurs due to circumstances outside a taxpayer's control.

The record demonstrates that the taxpayers clearly designated the properties as golf courses in their open space land classification applications to the assessor. The record reflects no changes in the use or ownership of the properties that triggered a duty for the taxpayers to report to the assessor. The administrative judge finds that the assessor's erroneous open space land classifications, as well as the taxpayers' continued reliance on those classifications, were based on a long-standing local administrative construction rooted in a not unreasonable mistake of law. Under these circumstances, the administrative judge finds that the impositions of rollback taxes should be reversed.

ORDER

It is therefore ORDERED that the removals of open space land classification are upheld. It is further ORDERED that the impositions of rollback taxes are reversed.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 8th day of October 2013.

Mark Aaron, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Wayne A. Kline, Esq.
Hodges, Doughty & Carson, PLLC
Post Office Box 869
Knoxville, Tennessee 37901

Keith H. Burroughs, Esq.
Burroughs, Collins & Newcomb, PLC
Suite 600, Riverview Tower
900 South Gay Street
Knoxville, Tennessee 37902

Charles F. Sterchi, III, Esq.
Knox Co. Deputy Law Director
City-County Building
400 West Main Street, Suite 612
Knoxville, Tennessee 37902

Robert T. Lee, Esq.
Comptroller of the Treasury
Division of Property Assessments
505 Deaderick Street, 17th Floor
Nashville, Tennessee 37243

Phil Ballard
Knox Co. Assessor of Property
City-County Building
400 West Main Street, Room 204
Knoxville, Tennessee 37902

This the 8th day of October 2013.

Janice Kizer
Tennessee Department of State
Administrative Procedures Division

return to handbook

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Church Fellowship Bible of**	)	**Williamson County**
	Property ID: 028 04700 000	)	
		)	
	Greenbelt Rollback Assessment	)	**Appeal No. 111058**

INITIAL DECISION AND ORDER

Statement of the Case

On or around February 19, 2016, the assessor's office imposed a rollback assessment on the subject property. The taxpayer timely appealed to the State Board of Equalization ("State Board").[1] The undersigned administrative judge conducted the hearing on December 12, 2017 in Franklin. William Koellin, Thomas E. Williams, III, Esq., Williamson County Property Assessor Brad Coleman, Melanie Edwards, Ken Young, Esq., and Michelle Koehly, Esq. participated.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

There is no dispute that the subject property ceased to be used for qualifying agricultural Greenbelt use in 2008 or 2009. The administrative judge rejected several arguments related to the original reasoning for the imposition of the rollback assessment, confusion, and communications between the parties prior to the imposition of the rollback assessment. Regardless of why the assessor's office decided to impose the rollback assessment or failed to do so earlier, imposition of a rollback assessment was correct as well as a non-waivable legal duty.[2]

With that said, the rollback assessment in this case was made in 2016. The only correct measure of an agricultural rollback assessment is "the amount of taxes saved by the difference in present use value assessment and value assessment under part 6 of this chapter, for each of the

[1] Tenn. Code Ann. §§ 67-5-1008(d)(3) and 67-1-107.
[2] Tenn. Code Ann. § 67-5-1008(d)(1)(A) and 67-5-509(b)(1).

preceding three (3) years...",[3] which means the rollback assessment here must be limited to the sum of the tax savings attributable to tax years 2013, 2014, and 2015.

To the extent the assessment was or would be computed on the basis of tax year 2012 savings, the assessment is invalid. To the extent the assessment was or would be computed on the basis of tax year 2015 savings, the assessment would be $0 because the State Board approved an application for property tax exemption effective January 1, 2015.

ORDER

It is therefore ORDERED that the Greenbelt rollback assessment is upheld only to an extent equal to the sum of the tax savings for tax years 2013 and 2014. It is further ORDERED that the Greenbelt rollback assessment is void to the extent it was computed on the basis of tax savings for any other tax year, including but not limited to tax year 2012 or 2015.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The

[1] Tenn. Code Ann. § 67-5-1008(d)(1).

petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 15th day of February 2018.

Mark Aaron, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Thomas E. Williams, III, Esq.
McCann & Hubbard
1804 Williamson Court, Suite 201
Brentwood, Tennessee 37027

Michelle Koehly, Esq.
Buerger, Moselely & Carson, PLC
306 Public Square
Franklin, Tennessee 37064

This the 15th day of February 2018.

Janice Kizer
Tennessee Department of State
Administrative Procedures Division

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

In re:	Church of the Firstborn District 11, Map 107, Control Map 107, Parcel 27.13, S.I.000 Tax Year 1997	))))	Robertson County

INITIAL DECISION AND ORDER

Statement of the Case

This property had formerly enjoyed greenbelt status as agricultural land pursuant to the "Agricultural, Forest and Open Space Land Act of 1976"[1] but was subclassified as residential property beginning with tax year 1997. The taxpayer contends the property should be put back into the agricultural classification and valued as greenbelt property. The taxpayer filed its appeal directly to the State Board of Equalization without first appealing to the Robertson County Board of Equalization. This appeal was heard before the undersigned administrative judge pursuant to Tenn. Code Ann. Sections 67-5-1412, 67-5-1501 and 67-5-1505.

Findings of Fact and Conclusions of Law

The first issue before the administrative judge involves jurisdiction and arises because the taxpayer did not first appeal the disputed classification to the Robertson County Board of Equalization as normally required by state statute. Tenn. Code Ann. Sec. 67-5-1412(b) provides that, as a prerequisite to appealing to the State Board, the taxpayer must first appeal to the local board of equalization unless the taxpayer was not notified of the change in the assessment. In that event the taxpayer may appeal directly to the State Board. Based on the testimony of the taxpayer's representative and that of the assessor, the administrative judge finds that there is a strong likelihood that the taxpayer did not get notice of the change in

[1] Tenn. Code Ann. Sec. 67-5-1001, et seq.

classification. Therefore the administrative judge finds that the State Board has jurisdiction of this appeal.

As to the classification issue, it appears that in 1996 the taxpayer created a four lot residential subdivision carved out of about 300 acres of land that had been designated as greenbelt. This subdivision was recorded in a plat as Section One, Spring View Acres Subdivision. The land to be used for residential purposes consists of two parts. One part contains 4.55 acres upon which the buildable parts of the four lots is located. In addition to this acreage, an additional 2.75 acres is set aside through easements for subsurface sewage disposal systems for the four residential lots. These easements were away from, but connected to, the four residential lots by way of other easements. Altogether the sewage easements comprise a total of about 2.75 acres of land. It is this area that is subject of this appeal. These easements are shown on the recorded plat a copy of which was received into evidence and made a part of this file. In reference to these easements, note no. 8 on the plat provides that "...SEWAGE EASEMENT AREAS ARE RESERVED FOR SSDS ONLY. ANY OTHER USE MAY VOID LOT APPROVAL." The letters "SSDS" obviously refers to "subsurface sewage disposal system."

The taxpayer's representative testified that the surface of the easement area is used for pasturing but that it would not be used for crops that required tilling or any other use that might interfere with for subsurface sewage disposal purposes. The administrative judge finds and concludes that any use of the easement area for agricultural purposes is minimal and insufficient to qualify the property for greenbelt status. The administrative judge specifically finds that the easement area is a necessary and incidental part of the residential subdivision notwithstanding the fact that ownership remains in the name of the owner of the surrounding property which is assessed as greenbelt. The legislature made specific findings when the greenbelt law was incorporated. These findings are set out in Tenn. Code Ann. Sec. 67-5-1002 and indicate that the purpose of the greenbelt law was to discourage urban sprawl through

scattered residential development. To give the greenbelt law the interpretation proposed by the taxpayer is contrary to the intent of the legislature as clearly expressed in the above referenced statute.

Therefore the administrative judge finds and concludes that the assessor was correct when he subclassified this 2.75 acre tract as residential which precludes its assessment as greenbelt property.

ORDER

It is therefore ORDERED that the determination of the Robertson County Assessor of Property and the Robertson County Board of Equalization is found to be correct and the property is subclassified residential and denied greenbelt status.

The law gives the parties to this appeal certain additional remedies:

1. Petition for reconsideration (pursuant to Tenn. Code Ann. § 4-5-317). You may ask the administrative judge to reconsider this initial decision and order, but your request must be filed within ten (10) days from the order date stated below. The request must be in writing and state the specific grounds upon which relief is requested. You do not have to request reconsideration before seeking the other remedies stated below.
2. Appeal to the Assessment Appeals Commission (pursuant to Tenn. Code Ann. § 67-5-1501). You may appeal this initial decision and order to the Assessment Appeals Commission, which usually meets twice a year in each of the state's largest cities. *An appeal to the Commission must be filed within thirty (30) days from the order date stated below.* If no party appeals to the Commission, this initial decision and order will become final, and an official certificate will be mailed to you by the Assessment Appeals Commission in approximately seventy-five (75) days.

3. Payment of taxes (pursuant to Tenn. Code Ann. § 67-5-1512). You must pay at least the undisputed portion of your taxes before the delinquency date in order to maintain this appeal. No stay of effectiveness will be granted for this appeal.

ENTERED this 11th day of August, 1998.

FOREST M. NORVILLE
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

c: The Church of the Firstborn
Mr. Larry Hardin
Mr. F. E. Head

return to handbook

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Concord Yacht Club, Inc.**	)	**Knox County**
	Property ID: 153 02000 A	)	
		)	
	Tax Years 2010-2016	)	**Appeal No. 63258, 70394, 80232, 87433**
	Property ID: 153 02000 A	)	**Exempt No. 83203**
	Property ID: 153 02000	)	**Exempt No. 83205**
	Personal Property Account No.: 1506869	)	**Exempt No. 84398**
	Claim of Exemption	)	

INITIAL DECISION AND ORDER

Statement of the Case

On May 17, 2010, the Knox County Property Assessor sent the taxpayer an assessment change notice for parcel 153 02000A indicating that the subject was no longer being treated as exempt with respect to the taxpayer and imposing an assessment of $1,322,440 based on a tax appraisal of the taxpayer's leasehold interest at $3,306,100. The taxpayer properly appealed the tax year 2010 assessment to the Knox County Board of Equalization ("County Board"), but was granted no relief.

The taxpayer timely appealed the County Board determination to the State Board of Equalization ("State Board") on September 9, 2010. The taxpayer's appeal to the State Board complaint included the contention that the property should have been lawfully exempt from assessment and taxation. The taxpayer repeated the process of appealing the tax year 2011-2013 assessments to the County Board and State Board. On or around May 1, 2014, the taxpayer filed property tax exemption applications directly with the State Board. On November 6, 2014, the

State Board designee denied the exemption applications. The taxpayer timely appealed the exemption application denials.

Subject property parcel 153 02000A is presently valued for tax years 2010-2016 as follows:

TAX YR	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
2010	$3,306,100	$	$3,306,100	$1,322,440
2011	$3,306,100	$	$3,306,100	$1,322,440
2012	$2,200,000	$413,600	$2,613,600	$1,045,440
2013	$	$2,860,000	$2,860,000	$1,144,000
2014	$	$2,860,000	$2,860,000	$1,144,000
2015	$	$2,860,000	$2,860,000	$1,144,000
2016	$	$2,860,000	$2,860,000	$1,144,000

As stated previously, the taxpayer timely appealed the value of parcel 153 02000A to the County Board and State Board for tax years 2010-2013, and the taxpayer's tax year 2013 appeal is amended to include tax years 2014, 2015, and 2016 per State Board Rule 0600-01-.10(2).

The undersigned administrative judge conducted the exemption hearing on April 21, 2015 in Knoxville. Ed Smith, Esq., Andrea Anderson, Esq., Eric Nicholls, and Sandra Ford-Johnson appeared on behalf of the taxpayer. Charles Sterchi, Esq. and Barry Mathis appeared on behalf of the Knox County Property Assessor.

The undersigned administrative judge conducted the valuation hearing on July 13, 2016 in Knoxville. Ed Smith, Esq., Andrea Anderson, Esq., Jason Long, and Ken Woodford appeared on behalf of the taxpayer. Charles Sterchi, Esq. and Barry Mathis appeared on behalf of the Knox County Property Assessor.

The proceedings were delayed due to unresolved issues involving the taxpayer's claim of Greenbelt status. The administrative judge and the parties discussed means of resolving the Greenbelt status claim without further evidentiary hearings, but reached an impasse. Upon

further reflection, the administrative judge finds he agrees with the assessor's office position that a leasehold interest assessable under Tenn. Code Ann. § 67-5-502(d) is not eligible for Greenbelt status as a matter of law. Accordingly, the administrative judge finds it appropriate to issue this initial decision and order without further evidentiary hearings regarding Greenbelt status. The claim of Greenbelt status is discussed in more detail below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Value – Parcel 153 02000A

Subject property parcel 153 02000A consisted of a leasehold interest in a sailboat marina on Northshore Drive in Knox County. The taxpayer contended the subject property should be valued as follows - 2010: $842,700; 2011: $826,300; 2012: $805,400; 2013: $779,700; 2014: $748,400. To support this position, the taxpayer presented an appraisal report and the testimony of its author. The assessor's office contended the subject property should be valued as follows - 2010: $1,399,700; 2011: $1,349,700; 2012: $1,294,600; 2013: $1,234,100; 2014: $1,167,500; 2015: $1,094,200; 2016: $1,013,700. To support this position, the assessor's office presented a valuation analysis and the testimony of its author.

As the party challenging the status quo, the taxpayer has the burden of proof to establish a more credible value.[1] "Value" is ascertained from evidence of the property's "sound, intrinsic

[1] *See* State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. Ct. App. 1981). Disproving assumptions underlying the current valuation or pointing out "the likelihood that a more accurate value is possible" - without more – neither invalidates the levy or judgment under appeal nor constitutes a prima facie case for a change. *Coal Creek Company* (Final Decision & Order; Anderson, Campbell, and Morgan counties; Tax Years 2009-2013; issued June 25, 2015).

and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values..."[2]

Each party relied on a discounted cash flow income approach analysis. The primary sources of disagreement were income generated by wet slips, income generated by dry storage, the operating expense ratio, and the discount rate.

The administrative judge finds the taxpayer's proof with respect to wet slip income more compelling. The taxpayer's data set was quantitatively superior, was more proximate to the assessment dates, and focused on sailboat marinas similar to the subject. The administrative judge further finds that the taxpayer's expert drew reasonable conclusions from the wet slip income data. Accordingly, the administrative judge adopts the taxpayer's rent figure of $150 per wet slip.

With respect to dry storage, the administrative judge finds the taxpayer's analysis underestimated the rate because it did not include the Hamilton Creek comparable, which should receive some weight. The administrative judge finds that the diagram at Ex. 4, pages 53-54 offers the best proof of the number of dry storage spaces. Accordingly, the administrative judge finds that the cumulative proof supports use of an average dry storage rate of $40 per month for 161 spaces.

The administrative judge finds that the parties' operating expense ratio analyses cumulatively justify an operating expense ratio of 51.7%, the median of the combination of the parties' data sets.[3]

With respect to the discount rate, the administrative judge finds that the taxpayer's survey analysis should be weighed roughly equally against the assessor's build up and band of

[2] Tenn. Code Ann. § 67-5-601(a).
[3] Ex. 1, page 66, and Ex. 4, pages 111-112.

investment technique analyses. Accordingly, the administrative judge finds that the cumulative proof supports the use of a 10% base discount rate.

Because the parties expressed the desire for the administrative judge to resolve as many tax years as possible, and in the interests of judicial economy, the administrative judge is carrying forward the assumptions discussed above to tax years 2015 and 2016.[4]

Exemption under Tenn. Code Ann. § 67-5-212

As a preliminary matter, the administrative judge finds that the timely County Board and State Board appeals constituted sufficient notice of the taxpayer's claims of exemption for tax years 2010 and following, and the administrative judge finds the taxpayer's uncertainty as to how to proceed given its combined claims of exemption under Tenn. Code Ann. §§ 67-5-203 and 67-5-212 understandable. Accordingly, the administrative judge deems the exemption application filing date to be on or before May 20, 2010 for the purposes of determining the effective date of exemption under Tenn. Code Ann. § 67-5-212(b).

The subject consists of the taxpayer's tangible personal property and leasehold interest in government-owned yacht club real property. The State Board designee denied the exemption applications as follows:

> The organization is a membership organization that primarily benefits members by providing them a place to store and/or launch their sailboats, engage in social and recreational activities and participate in regattas and other cruising and sailing events. There is no evidence that the applicant is a qualifying religious, charitable, scientific or [non-profit] educational institution within the meaning of Tennessee Code Annotated § 67-5-212. While some of the activities may have an educational aspect to them, they are not conducted by the applicant. These activities are conducted by Concord Sailing Club, a separate 501(c)(3) organization, which only owns personal property. That property is not the subject of this application. Finally, it is my understanding that the property is not readily available for public recreational use.

[4] See attachment to the initial decision and order for more detail on the calculations.

Article II, Section 28 of the Tennessee Constitution permits, but does not require, the legislature to exempt from taxation property which is "held and used for purposes purely religious, charitable, scientific, literary, or educational." Tenn. Code Ann. § 67-5-212(a)(1) provides that:

> There shall be exempt from property taxation the real and personal property, or any part of the real or personal property, owned by any religious, charitable, scientific or nonprofit educational institution that is occupied and actually used by such institution or its officers purely and exclusively for carrying out one (1) or more of the exempt purposes for which the institution was created or exists. There shall further be exempt from property taxation the property, or any part of the property, owned by an exempt institution that is occupied and actually used by another exempt institution for one (1) or more of the exempt purposes for which it was created or exists under an arrangement in which the owning institution receives no more rent than a reasonably allocated share of the cost of use, excluding the cost of capital improvements, debt service, depreciation and interest, as determined by the board of equalization.

According to its nonprofit corporation charter, the taxpayer, controlled by a board of directors and dues-paying members, had the purposes of "maintenance of a club for social enjoyment," "operation of a yachting and boating club," and "promotion of athletic sports." According to its bylaws, the taxpayer's membership could include qualifying sailing organizations, such as state-chartered corporations established for education and sailing training and official sailing organizations sponsored and regulated by a recognized educational institution. The taxpayer's 2013 IRS Form 990 indicated that the taxpayer had been approved for federal tax exemption under I.R.C. § 501(c)(7) (applicable to social clubs organized for pleasure, recreation, and other nonprofitable purposes).

Although a primary purpose of the taxpayer was to maintain and operate the subject as a boating club for the enjoyment of the taxpayer's individual members, the taxpayer's charter purposes were not so narrow that they excluded nonprofit educational programs. As will be discussed in more detail below, portions of the subject properties were primarily dedicated to

frequent onsite nonprofit educational programs. The administrative judge finds that the taxpayer was not primarily a nonprofit educational institution. Nonetheless, given precedents in analogous cases[5] and the extremely broad definition for charitable institutions found in Tenn. Code Ann. § 67-5-212(c),[6] the administrative judge finds that the taxpayer was a qualifying entity for property tax exemption purposes to the extent it devoted its efforts and property to charitable and nonprofit educational activities.

With respect to the actual use of the subject, the administrative judge respectfully disagrees with the taxpayer's claim that the subject was used as something of a public park. The record contains little if any evidence to establish a material amount of usage of the subject by the general public.

However, the record does demonstrate some nonprofit educational use of the subject by the taxpayer, nonprofit educational institutions, and exempt public entities. The clubhouse appears to have been used almost exclusively for the nonprofit educational programs.[7] While a majority of the slips, moorings, docks, and inland rack and trailer spaces were occupied by the taxpayer's members' boats and equipment, some were used for the nonprofit educational programs. 13 boat slips,[8] three summer slips, one mooring, and 12 inland parking spaces were typically occupied by boats and equipment used almost exclusively for the nonprofit educational

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[5] *LaManna v. Elec. Workers Local Union No. 474 of Int'l Bhd. of Elec. Workers, AFL-CIO*, 518 S.W.2d 348, 352-53 (Tenn. 1974); *Harold Vanderbilt Bridge Education Assoc.* (Final Decision & Order, Davidson County, issued May 27, 2015); *Tennessee Art League, Inc.* (Final Decision & Order, Davidson County, issued February 12, 2008).

[6] Tenn. Code Ann. § 67-5-212(c) provides,

> As used in this section, "charitable institution" includes any nonprofit organization or association devoting its efforts and property, or any portion thereof, exclusively to the improvement of human rights and/or conditions in the community.

[7] Only a handful of the clubhouse events were social in nature. The vast majority of events were nonprofit educational programs.

[8] The testimony was somewhat ambiguous on this point, as there were separate references to 11 floating "docks" and two floating "slips" used for the nonprofit educational programs. Giving the taxpayer the benefit of the doubt, the administrative judge reconciles the testimony to mean a total of 13 boat slips were used for the nonprofit educational programs.

programs. The administrative judge finds the taxpayer's interest in the residence occupied by the unrelated tenant taxable because the residence is not occupied by a qualifying exempt institution.

In order to determine the pro rata exemption applicable to the real property, the administrative judge relied on the income approach findings discussed above and divided the exempt items' estimated contribution to effective gross income by the total estimated effective gross income. The resulting figure was 20%.[9] In absence of evidence to the contrary, the administrative judge will assume that the tangible personal property is entitled to a like percentage exemption as is customary in State Board exemption determinations.

Greenbelt status

With respect to the taxpayer's claim that the real property was eligible for Greenbelt status, the threshold issue is jurisdiction. Because the taxpayer failed to timely apply for Greenbelt status for tax years 2010-2015, the State Board lacks jurisdiction over the taxpayer's claims of Greenbelt status for tax years 2010-2015.[10]

The administrative judge understands that in late 2015, the taxpayer filed a Greenbelt application upon which the assessor's office never took action. The filing was too late to be considered for tax year 2015. Arguably, the late 2015 filing date could be considered a timely filing for tax year 2016, and the assessor's office's failure to take action on the application until after the tax year 2016 County Board session would have provided a "reasonable cause" for the taxpayer's failure to follow the correct procedures for appealing the issue of Greenbelt status for tax year 2016. This, in addition to the amendment of the prior value appeals to include tax years through 2016, arguably created a basis for jurisdiction. Accordingly, the administrative judge

[9] See attachment to the initial decision and order for more detail on the calculations.
[10] Tenn. Code Ann. § 67-5-1005(a)(1), 67-5-1006(a)(1), and 67-5-1007(b)(1).

will proceed under the assumption that the State Board has jurisdiction over the taxpayer's tax year 2016 claim of Greenbelt status.

The administrative judge agrees with the assessor's office that, as a matter of law, the taxpayer was not eligible to seek Greenbelt status because the taxpayer was not the "owner of land."[11] The administrative judge holds so because of the plain language of the Greenbelt statutes and because the specific mechanism for valuing a leasehold interest assessable under Tenn. Code Ann. § 67-5-502(d) found in Tenn. Code Ann. § 67-5-605 cannot be logically reconciled or harmonized with the use value formula provided under the Greenbelt statutes. And in any event, the administrative judge believes that the use of the subject property would not qualify for Greenbelt status even if the taxpayer held a fee interest in the subject real property.[12] Accordingly, the taxpayer's claims of Greenbelt status for tax years 2010-2016 are dismissed.

Exemption under Tenn. Code Ann. § 67-5-203

The administrative judge also respectfully disagrees with the taxpayer's claim that the subject qualified for exemption under Tenn. Code Ann. § 67-5-203. The taxpayer is not a governmental entity. Although the fee interest in the subject real estate is owned by the government and is exempt, the taxpayer's favorable leasehold interest position is clearly assessable under Tennessee law.[13]

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[11] *Id.*

[12] *Stephen Badgett, et al.* (Initial Decision & Order, Knox County, issued May 27, 2015) (ballfields do not qualify for Greenbelt status); *Cherokee Country Club* and *Holston Hills Country Club, Inc.* (Initial Decision & Order, Knox County, issued October 8, 2013) (golf courses do not qualify for Greenbelt status).

[13] Tenn. Code Ann. §§ 67-5-502 and 67-5-605; *Wes Stowers et al.* (Final Decision & Order, Knox County, issued June 12, 2015) (Assessment Appeals Commission recognizing taxability of leasehold interests in exempt real property).

ORDER

It is therefore ORDERED that the following parcel 153 02000A values and assessments be adopted for tax years 2010-2016:

TAX YR	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
2010	$	$	$1,021,000	$408,400
2011	$	$	$996,000	$398,400
2012	$	$	$969,000	$387,600
2013	$	$	$935,000	$374,000
2014	$	$	$895,000	$358,000
2015	$	$	$847,000	$338,800
2016	$	$	$791,000	$316,400

Should the taxpayer appeal this ruling, the taxpayer should understand that jurisdiction for the tax year 2017 value of parcel 153 02000A cannot be established by an effort to simply amend the instant appeals to include subsequent tax years because tax year 2017 is a reappraisal year for Knox County.[14] If the taxpayer is dissatisfied with the tax year 2017 reappraisal value, the taxpayer will need to again appeal to the County Board and then, if needed, the State Board.

It is further ORDERED that the taxpayer's claims of Greenbelt status for parcel 153 02000A are dismissed.

It is further ORDERED that parcel 153 02000A (exempt record number 83203) is exempt to the extent of 20% of its value, effective January 1, 2010. The separate exemption application for parcel 153 02000 (exempt record number 83205) appears duplicative and made in error, and that file is therefore administratively closed.

Finally, it is ORDERED that tangible personal property account number 1506869 (exempt record number 84398) is exempt to the extent of 20% of its value, effective January 1, 2010 or as of the beginning of the tax year for which the tangible personal property account was originally created, whichever is later.

[14] State Board Rule 0600-01-.10(2).

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 8th day of February 2017.

Mark Aaron, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Eddy R. Smith, Esq.
Holbrook Peterson Smith PLLC
2607 Kingston Pike, Suite 150
Knoxville, Tennessee 37919

Charles F. Sterchi, III
Deputy Law Director
City-County Building
400 Main Street, Suite 612
Knoxville, Tennessee 37902

John Whitehead
Knox Co. Assessor of Property
City-County Building
400 Main Street, Room 204
Knoxville, Tennessee 37902

This the 8th day of February 2017.

Janice Kizer
Tennessee Department of State
Administrative Procedures Division

ATTACHMENT TO INITIAL DECISION AND ORDER

		2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	VALUE
EGI		$ 279,581	$ 285,287	$ 291,109	$ 297,050	$ 303,112	$ 309,298	$ 315,484	$ 321,794	$ 328,229	$ 334,794	$ 341,490	$ 348,320	$ 355,286	$ 181,196	
OE	51.7%	$ 144,543	$ 147,493	$ 150,503	$ 153,575	$ 156,709	$ 159,907	$ 163,105	$ 166,367	$ 169,595	$ 173,088	$ 176,550	$ 180,081	$ 183,683	$ 93,678	
NI		$ 135,038	$ 137,793	$ 140,606	$ 143,475	$ 146,403	$ 149,391	$ 152,379	$ 155,426	$ 158,535	$ 161,705	$ 164,940	$ 168,238	$ 171,603	$ 87,518	
Contract Rent		$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 500	
NOI		$ 134,038	$ 136,793	$ 139,606	$ 142,475	$ 145,403	$ 148,391	$ 151,379	$ 154,426	$ 157,535	$ 160,705	$ 163,940	$ 167,238	$ 170,603	$ 87,018	
Base	10.000%															
ETR	0.944%															
Discount	10.944%															
		1.1094	1.2309	1.3656	1.5148	1.6803	1.8640	2.0676	2.2936	2.5442	2.8223	3.1307	3.4728	3.8523	4.2733	
		0.9014	0.8124	0.7323	0.6602	0.5951	0.5365	0.4836	0.4360	0.3930	0.3543	0.3194	0.2880	0.2596	0.2340	
2010		$ 120,815	$ 108,898	$ 100,174	$ 92,162	$ 84,790	$ 78,008	$ 71,768	$ 66,001	$ 60,696	$ 55,818	$ 51,332	$ 47,205	$ 43,412	$ 39,923	**$ 1,021,004**
			1.1094	1.2309	1.3654	1.5146	1.6801	1.8637	2.0673	2.2933	2.5439	2.8219	3.1302	3.4723	3.8518	
			0.9014	0.8124	0.7324	0.6603	0.5952	0.5366	0.4837	0.4361	0.3931	0.3544	0.3195	0.2880	0.2596	
2011			$ 123,299	$ 113,421	$ 104,349	$ 96,003	$ 88,323	$ 81,226	$ 74,698	$ 68,694	$ 63,173	$ 58,096	$ 53,427	$ 49,132	$ 22,592	**$ 996,434**
				1.1094	1.2307	1.3652	1.5144	1.6798	1.8634	2.0670	2.2929	2.5435	2.8215	3.1298	3.4718	
				0.9014	0.8126	0.7325	0.6603	0.5953	0.5366	0.4838	0.4361	0.3932	0.3544	0.3195	0.2880	
2012				$ 125,834	$ 115,769	$ 106,509	$ 97,990	$ 90,115	$ 82,873	$ 76,212	$ 70,087	$ 64,454	$ 59,274	$ 54,509	$ 25,064	**$ 968,691**
Base	10.000%															
ETR	0.928%															
Discount	10.928%															
					1.1093	1.2305	1.3650	1.5141	1.6796	1.8631	2.0668	2.2926	2.5431	2.8211	3.1293	
					0.9015	0.8127	0.7326	0.6604	0.5954	0.5367	0.4839	0.4362	0.3932	0.3545	0.3196	
2013					$ 128,439	$ 118,166	$ 108,714	$ 99,977	$ 91,942	$ 84,553	$ 77,758	$ 71,508	$ 65,761	$ 60,475	$ 27,807	**$ 935,099**
						1.1093	1.2305	1.3650	1.5141	1.6796	1.8631	2.0668	2.2926	2.5431	2.8211	
						0.9015	0.8127	0.7326	0.6604	0.5954	0.5367	0.4839	0.4362	0.3932	0.3545	
2014						$ 131,079	$ 120,594	$ 110,902	$ 101,990	$ 93,793	$ 86,255	$ 79,322	$ 72,947	$ 67,084	$ 30,846	**$ 894,811**
							1.1093	1.2305	1.3650	1.5141	1.6796	1.8631	2.0668	2.2926	2.5431	
							0.9015	0.8127	0.7326	0.6604	0.5954	0.5367	0.4839	0.4362	0.3932	
2015							$ 133,772	$ 123,022	$ 113,135	$ 104,043	$ 95,681	$ 87,991	$ 80,918	$ 74,415	$ 34,217	**$ 847,193**
								1.1093	1.2305	1.3650	1.5141	1.6796	1.8631	2.0668	2.2926	
								0.9015	0.8127	0.7326	0.6604	0.5954	0.5367	0.4839	0.4362	
2016								$ 136,456	$ 125,499	$ 115,413	$ 106,137	$ 97,606	$ 89,761	$ 82,547	$ 37,956	**$ 791,384**

ATTACHMENT TO INITIAL DECISION AND ORDER

	Units	Rent	Months	PGI	EGI	Exe Units	Exe %	Exe EGI
Club House	2976	$ 12.00		$ 35,712	$ 32,141	2976	100%	$ 32,141
Basement	943	$ 3.00		$ 2,829	$ 2,546	943	100%	$ 2,546
Mobile Home	1	$ 500.00	12	$ 6,000	$ 5,700	0	0%	$ -
Boat Slips	105	$ 150.00	12	$ 189,000	$ 179,550	13	12%	$ 22,230
Summer Slips	25	$ 75.00	6	$ 11,250	$ 5,625	3	12%	$ 675
Moorings	20	$ 50.00	12	$ 12,000	$ 9,000	1	5%	$ 450
Dry Storage Boat/Trailer	161	$ 40.00	12	$ 77,280	$ 69,552	12	7%	$ 5,184
Trailer Storage Only								
Canoes/Kayaks	48	$ 10.00	12	$ 5,760	$ 5,184	0	0%	$ -
Total					**$ 309,298**		**20%**	$ 63,226

return to handbook

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Crescent Resources	)
	Dist. 8, Map 62, Control Map 62, Parcel 14.00, S.I. 000	) Williamson County
	Commercial Property	)
	Tax Year 2007	)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$15,058,400	$ -0-	$15,058,400	$6,023,360

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on April 7, 2008 in Franklin, Tennessee. The taxpayer was represented by registered agent L. Stephen Nelson. The assessor of property, Dennis Anglin, represented himself. Also in attendance at the hearing were Debbie Smith and Debbie Kennedy who assisted Mr. Nelson and Mr. Anglin respectively.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of an unimproved 215.12 acre tract located on Gillespie Road in Franklin, Tennessee. Subject property is bordered by I-65 and McEwen Drive and bisected by Carothers Road.

Subject property was originally part of two tracts containing a total of 277.64 acres the taxpayer purchased from SunTrust Bank in 1997 and 1998. The taxpayer subsequently had the two tracts combined into a single parcel. The reduction in acreage resulted from the sale of 50.12 acres to Nissan in 2005 and the construction of an office building in 2006-2007 known as Eight Corporate Centre.

At the time subject property was purchased, SunTrust Bank leased the acreage to Alfred Ladd "for farming purposes only." The taxpayer assumed the leases which were renewed annually until Mr. Ladd's death in 2005. Mr. Ladd was partners with his nephew, William B. Moss. After the death of Mr. Ladd, Mr. Moss took over his farming contracts. In 2007, Mr. Moss and the taxpayer signed a new lease.

The various leases provided that the lessees would pay the taxpayer as rental "an amount equal to one-fourth (1/4) of its gross crop sales harvested by Lessee from time to time on the [p]roperty." Pursuant to this provision, Mr. Ladd and/or Mr. Moss have made the following payments to the taxpayer since 2000:

August 3, 2000	$2,253.21
October 15, 2001	$2,110.00
December 12, 2002	$1,650.48
January 5, 2005	$2,757.44 (payment for 2004)
October 24, 2005	$4,219.88
December 6, 2006	$1,793.01

Following its purchase of subject property, the taxpayer filed a greenbelt application with the assessor of property. The assessor approved the application and subject property received preferential assessment under the greenbelt law.[1] The assessor removed subject property from greenbelt effective with tax year 2007 and rollback taxes were levied for tax years 2004, 2005 and 2006.

The taxpayer contended that subject property should not have been removed from the greenbelt program. The taxpayer seeks to have greenbelt reinstated and the rollback taxes set aside. The taxpayer essentially argued that subject property qualifies for preferential assessment for two reasons. First, subject property continues to be used to grow crops as it has been since its purchase. Second, subject property has continuously generated agricultural income averaging at least $1,500 per year over any three year period. Mr. Moss stated in his affidavit that no crops were planted in 2007 due to the drought. Mr. Nelson and Ms. Smith also testified that they have personally seen crops growing on subject property during the relevant time period.

The assessor of property contended that on January 1, 2007, the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a), subject property was not being used to grow crops. Mr. Anglin testified that he personally drove throughout subject property in 2006 and 2007 and observed no farming activity. Mr. Anglin stated that, in fact, he observed survey markers and the like. Moreover, Ms. Kennedy asserted that much of the acreage has effectively become woodland due to the lack of cultivation.

The administrative judge finds that the ultimate issue in this appeal concerns whether subject property qualifies for preferential assessment under the greenbelt law as "agricultural land." That term is defined in Tenn. Code Ann. § 67-5-1004(1) as follows:

> **(A)** 'Agricultural land' means land that meets the minimum size requirements specified in subdivision (1)(B) and that either:
>
> **(i)** *Constitutes a farm unit engaged in the production or growing of agricultural products*; or
>
> **(ii)** Has been farmed by the owner or the owner's parent or spouse for at least twenty-five (25) years and is used as the residence of the owner and not used for any purpose inconsistent with an agricultural use.

[1] See Tenn. Code Ann. § 67-5-1001, et seq.

(B) To be eligible as agricultural land, property must meet minimum size requirements as follows: it must consist either of a single tract of at least fifteen (15) acres, including woodlands and wastelands, or two (2) noncontiguous tracts within the same county, including woodlands and wastelands, one (1) of which is at least fifteen (15) acres and the other being at least ten (10) acres and together constituting a farm unit;

[Emphasis supplied]

The administrative judge finds that in deciding whether a particular parcel constitutes "agricultural land" reference must also be made to Tenn. Code Ann. § 67-5-1005(a)(3) which provides as follows:

In determining whether any land is agricultural land, the tax assessor shall take into account, among other things, the acreage of such land, the productivity of such land, and the portion thereof in actual use for farming or held for farming or agricultural operation. The assessor may presume that a tract of land is used as agricultural land, if the land produces gross agricultural income averaging at least one thousand five hundred dollars ($1,500) per year over any three-year period in which the land is so classified. *The presumption may be rebutted, notwithstanding the level of agricultural income by evidence indicating whether the property is used as agricultural land as defined in this part.*

[Emphasis supplied]

The administrative judge finds that the facts and issues in this appeal are quite similar to those addressed by the administrative judge in *Perimiter Place Properties, Ltd.* (Putnam Co., Tax Year 1997). In that case, the administrative judge ruled that the property was not entitled to preferential assessment as agricultural land reasoning in pertinent part as follows:

The administrative judge finds that the evidence, viewed in its entirety, supports Putnam County's contention that subject property should not be classified as 'agricultural land' for purposes of the greenbelt law. As will be discussed immediately below, the administrative judge finds that subject property does not constitute a 'farm unit' and that any presumption in favor of an 'agricultural land' classification due to agricultural income has been rebutted.

As previously indicated, the term 'agricultural land' as defined in T.C.A. § 67-5-1004(1) requires that the property constitute a 'farm unit'. The administrative judge finds that although the term 'farm unit' is not defined, subject property cannot reasonably be considered one based upon the testimony of the taxpayer's representatives.

The administrative judge finds that the taxpayer constitutes a limited partnership which holds only the subject property. The administrative judge finds that although the partnership agreement was not introduced into evidence, Mr. Legge's testimony established that the taxpayer's 1988 purchase of subject property for $491,900 was unrelated to any farming purpose. The administrative judge finds it reasonable to conclude from Mr. Legge's testimony that he is a developer and

> subject property was purchased for and is still being held for development. . . .
>
> The administrative judge finds that Putnam County posed several questions concerning the method by which the taxpayer reports any farm related income for federal income tax purposes. The administrative judge finds that although no definite conclusions can be reached absent additional evidence, it appears that no separate farm schedule has been filed to reflect farm income.
>
> The administrative judge finds the testimony also supports the conclusion that any income generated from the cutting of hay or sale of timber has been done primarily to retain preferential assessment under the greenbelt program and pay taxes. The administrative judge finds that such farming-related practices must be considered incidental and not representative of the primary use for which subject property is held.
>
> ***

Initial Decision and Order at 4-5. For ease of reference, the entire decision has been appended to this order.

Since the taxpayer is appealing from the determination of the Williamson County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the threshold issue concerns whether subject property constitutes a "farm unit" within the meaning of Tenn. Code Ann. § 67-5-1004(1)(A)(i). The administrative judge finds that although the term "farm unit" is not defined anywhere in the greenbelt law, subject property cannot reasonably be considered one based upon the evidence in the record.

The administrative judge finds that the taxpayer is a developer who purchased subject property solely for development purposes. Indeed, Mr. Anglin testified that when the taxpayer filed its greenbelt application it sought assurances that rollback taxes would be levied as particular acreage was developed. The administrative judge finds that any income generated from growing crops has been done to retain preferential assessment under the greenbelt program. The administrative judge finds that any farming done on subject property must be considered incidental and not representative of the primary purpose for which subject property is used or held.

The administrative judge finds the testimony clearly conflicted as to what, if any, farming activity took place on subject property in 2006. The administrative judge finds that Mr. Moss was not present to testify and his affidavit does not address this issue.

The administrative judge finds that the taxpayer's representative was unable to answer the administrative judge's query dealing with whether or how the taxpayer reports

any farm related income for federal income tax purposes. The administrative judge finds that if no separate farm schedule has been filed to reflect farm income subject property cannot be considered a "farm unit" for greenbelt purposes.

The administrative judge finds Mr. Nelson repeatedly stressed the income generated by growing crops. As the administrative judge noted at the hearing, the agricultural income presumption in Tenn. Code Ann. § 67-5-1005(a)(3) constitutes a *rebuttable* presumption. The administrative judge finds that any presumption in favor of an "agricultural land" classification due to agricultural income has been rebutted.

Based upon the foregoing, the administrative judge finds that the assessor of property properly removed subject property from the greenbelt program and the rollback taxes levied for tax years 2004-2006 are hereby affirmed.

ORDER

It is therefore ORDERED that the following value and assessment remain in effect for tax year 2007:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$15,058,400	$ -0-	$15,058,400	$6,023,360

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 14th day of April, 2008.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. L. Stephen Nelson
Dennis Anglin, Assessor of Property

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN THE MATTER OF: Davidson County 1993 Use Value Schedule

INITIAL DECISION AND ORDER

Pursuant to Tenn. Code Ann. Sections 67-5-1008 and 67-5-1505, the administrative judge conducted a public hearing in Nashville, Tennessee, on October 20, 1993, concerning the 1993 use value schedule for Davidson County. The hearing was convened upon a petition filed with the State Board of Equalization on August 31, 1993, by more than ten owners of agricultural, forest or open space land in Davidson County. Tennessee Code Annotated Section 67-5-1008(c)(4) permits such a hearing "to determine whether the capitalization rate has been properly determined by the division of property tax assessments, whether the agricultural income estimates determined by the division of property tax assessments are fair and reasonable, or if the values under the rural land schedule have been determined in accordance with . . . [state law]."

The legislature enacted the Agricultural, Forest, and Open Space Land Act of 1976 (known as the Greenbelt Law) to preserve from development land used in agriculture and forestry and land used as open space land by permitting such land to be taxed based on present use rather than market value. See Tenn. Code Ann. Section 67-5-1002. The legislature statutorily mandated the formula for the valuation of property under the Greenbelt Law. Tenn. Code Ann. Section 67-5-1008(c). To obtain the taxable value of greenbelt property, the State Division of Property Assessments must compute agricultural income estimates for agricultural and forest land and a capitalization rate as specified in Tenn. Code Ann. Section 67-5-1008(c)(2)(C). The capitalization rate, although dependent on state-wide averages for most components, also depends on the particular county's effective tax rate. A "use" value is computed by dividing the

agricultural income estimate by the capitalization rate. A land schedule value "based solely upon farm-to-farm sales not influenced by commercial, industrial, residential, recreational or urban development, the potential for such development, nor any other speculative factors," must also be developed. Tenn. Code Ann. Section 67-5-1008(c)(3). The greenbelt value for land enrolled in the program is then computed by dividing three into the sum of two times the "use" value plus the land schedule value.

Petitioners and other members of the public contended at the hearing that Davidson County had improperly computed the rural land schedule. Petitioners and others argued that there were no farm-to-farm sales within Davidson County with which to compute the rural land schedule. Additionally, petitioners and others complained that Davidson County used only two types of land--woodland and cleared--in calculating greenbelt values unlike many other counties that have categories for crop, rotation, pasture, and woodland.

The Division of Property Assessments maintained that the agricultural income estimates and capitalization rate used in the computation of the 1993 "use" values had been properly calculated in accordance with Tenn. Code Ann. Section 67-5-1008(c). The Division of Property Assessments presented documentation concerning the calculation of agricultural income estimates and the capitalization rate. Valuation specialist Charles Smith testified as to the computation of "use" value pursuant to the statutory formulas.

Davidson County, which calculated the rural land schedule, contended that it complied with state law. Davidson County introduced into evidence a map and work sheets used in producing the rural land schedule and its report to the Division of Property Assessments on the computation of the rural land schedule. Rural appraiser Jimmy Clary testified on behalf of the county concerning the actual construction of the rural land schedule. According to his testimony, the assessor's office used

sales in the northwest portion of Davidson County in the calculation of the rural land schedule. These sales were considered to be the sales of farm property in Davidson County that were the least influenced by urbanization, speculation, or other distorting market influences.

The administrative judge finds that no person at the hearing produced any evidence to show that the capitalization rate had been improperly determined by the Division of Property Assessments or that the agricultural income estimates determined by the Division of Property Assessments were unfair or unreasonable. In fact, other than the evidence presented by the Division of Property Assessments, no proof of any kind was introduced with respect to the capitalization rate and the agricultural income estimates. Furthermore, the Division's evidence showed that it correctly applied the statutory formulas in computing the capitalization rate and the agricultural income estimates.

The administrative judge also finds that no evidence was introduced by any person to show that any sale other than those used by Davidson County should be used in producing the rural land schedule. Some persons attending the hearing urged that farm sales from outside the county should be used in the construction of the rural land schedule, because there are, according to these persons, no farm-to-farm sales within Davidson County. The administrative judge finds that insufficient evidence was introduced to support a conclusion that there were no farm-to-farm sales within Davidson County. The county, in fact, introduced many vacant land sales in its Collective Exhibit 2. A difference of opinion evidently exists between the assessor's office and some taxpayers as to what constitutes a farm-to-farm sale--a term not specifically defined by statute. The administrative judge cannot say that the county's interpretation in accepting only those sales in the portion of the county deemed by the assessor's office to be influenced least by nonagricultural or nonforestry factors is so fundamentally

flawed as to call into question the integrity of the rural land schedule for tax year 1993. Furthermore, the use of sales only from within the county is a reasonable appraisal decision. To accept farm sales from outside the jurisdiction, as urged by some persons attending the hearing, would inevitably lead to the irresolvable problem of determining from which counties or even states one should select farm sales to construct the rural land schedule.

Finally, the administrative judge finds that the county's use of only two categories of land--cleared and wooded--in the rural land schedule is not impermissible under by state law or any appraisal manual issued by the Division of Property Assessments and adopted by the State Board of Equalization. Although the Division of Property Assessments used four land types in its calculations concerning the capitalization rate and the agricultural income estimates, state law does not mandate land types, but only provides that in valuing real property that the "[n]atural productivity of the soil" be considered. Tenn. Code Ann. Section 67-5-602. While the county's choice of only two classes may arguably not be the best categorization of land for computation of the rural land schedule, it is not prohibited.

Order

It is therefore ORDERED that the use value schedule as calculated by the Division of Property Assessments and the Davidson County assessor's office and shown in Attachment A to this decision be adopted for Davidson County for tax year 1993.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. Sections 4-5-301--324, Tenn. Code Ann. Section 67-5-1501, and the practices and procedures of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. Section 67-5-1501 within fifteen (15) days of the entry of the order; or

2. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. Section 4-5-316 within seven (7) days of the entry of the order; or

3. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. Section 4-5-317 within ten (10) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

ENTERED this 27th day of October, 1993.

Helen James

HELEN JAMES
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

ATTACHMENT A

1993
AGRICULTURE - USE VALUES

CLEAR (CROP)	SC	VALUES
GOOD	L	$1,030
AVG	K	830
POOR	J	660

WOODS (FOREST)	SC	VALUES
GOOD (N/A)	I	$ 480
AVG	H	460
POOR	G	400

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Dodson, Dwin C. et ux. Emily T.** **Property ID: 159 159 01301**	))	**Rutherford County**
	Tax Year 2012	)	**Appeal No. 78104**

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$85,700	$293,100	$378,800	$94,700

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on December 18, 2014, in Murfreesboro, Tennessee. The taxpayer, Dwin Dodson, represented himself. The assessor of property was represented by staff appraisers Marty Francis and Russell Key.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 26.5 acre tract improved with a single family residence and various outbuildings located at 1647 Walnut Grove Road in Christiana, Tennessee.

This appeal has its genesis in the taxpayer's prior appeal in 2010. That year the taxpayer filed a greenbelt application with the prior assessor, Bill Boner. The application was denied and the taxpayer filed an appeal with the Rutherford County Board of Equalization ["county board"]. The application was once again denied. As Mr. Dodson explained in Paragraph 17 of the appeal

form, the county board advised him he would need to appeal to the State Board of Equalization ["State Board"], but he chose not to because "I was very busy and did not have the time to appeal."

Mr. Dodson took no further action until 2012 when he attempted to appeal to the county board. He was unable to secure an appointment due to the volume of appeals. Mr. Dodson filed with the State Board a document prepared by the assessor's office listing a number of property owners that "could not be heard at the cboe level." Consequently, Mr. Dodson filed a direct appeal with the State Board on July 18, 2012.

On September 26, 2012, Mr. Dodson filed another greenbelt application with the assessor's office. The current assessor, Robert Mitchell, approved the application effective with tax year 2013.

At the hearing before the administrative judge, Mr. Dodson stated, in substance, that he was seeking one of two remedies. First, he believed that his original greenbelt application in 2010 should have been approved. Second, even if it is too late to pursue that matter, the assessor's approval of the second greenbelt application should apply retroactively.

Regrettably, the administrative judge finds that the State Board cannot grant the requested relief. Turning first to the 2010 application, Mr. Dodson could have appealed to the State Board but simply chose not to because of his busy schedule. The administrative judge finds that the absolute deadline to appeal the county board's denial of his greenbelt application was March 1, 2011. See Tenn. Code Ann. § 67-5-1412(c) and *VN Hotel Investors, LLC v. State Board of Equalization*, No. 06-2664-III (Davidson Chancery, September 4, 2007). The administrative judge finds that the State Board lacks jurisdiction over the 2010 appeal as the present appeal was filed on July 18, 2012.

The administrative judge finds that each tax year is independent and the taxpayer had the right to renew his quest for preferential assessment under the greenbelt program which he did in 2012. The deadline for filing a greenbelt application is March 1 of the tax year. See Tenn. Code Ann. § 67-5-1005(a)(1).

The administrative judge finds that Mr. Dodson is properly before the State Board for tax year 2012 as he timely attempted to appeal to the county board, but was not given an appointment due to the volume of appeals. The administrative judge finds that Mr. Dodson established "reasonable cause" under Tenn. Code Ann. § 67-5-1412(e) for not appearing before the county board.

As previously noted, Mr. Dodson filed his second greenbelt application on September 26, 2012. Since March 1, 2012 was the deadline for filing a greenbelt application for tax year 2012, the assessor properly granted the application effective for tax year 2013. The county board's inability to grant Mr. Dodson a hearing is of no real relevance insofar as the deadline to file a greenbelt application had already passed.

The administrative judge finds that the State Board lacks equitable powers and cannot simply waive the statutory deadline for filing a greenbelt application or somehow grant the application retroactively. See *Trustees of Church of Christ* (Exemption Claim) wherein the Assessment Commission ruled on February 9, 1993 in pertinent part as follows:

> There is no doubt that during the tax years at issue here, 1988 and 1989, the applicant was an exempt religious institution using its property for the religious purposes for which it exists, as required by our statute to qualify for property tax exemption. The applicant had not, however, made its application as the statute requires for tax years 1988 and 1989. The church urges the Commission to exercise equitable powers and take into consideration the unfortunate circumstances that led it to delay its application. We have no power to waive the requirements of the exemption statute, however.

Final Decision and Order at 2. Based upon the foregoing, the administrative judge must respectfully conclude that the State Board has no authority to approve the taxpayer's greenbelt application for any tax years prior to 2013.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2012:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$85,700	$293,100	$378,800	$94,700

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 8th day of January 2015.

MARK J. MINSKY, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Dwin and Emily Dodson
1001 Loblolly Drive
Murfreesboro, TN 37128-6178

Robert Mitchell
Rutherford Co. Assessor of Property
319 North Maple Street, Suite 200
Murfreesboro, Tennessee 37130

This the 8th day of January 2015.

Janice Kizer
Tennessee Department of State
Administrative Procedures Division

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BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	BERTHA L. ESTES Dist. 07, Map 013, Cont. Map 013, Parcel 47.02 Farm Property Tax Years 1991	)))))	Williamson County

FINAL DECISION AND ORDER

Statement of the case

This is an appeal by the taxpayer from the initial decision and order of the administrative judge, who recommended the property be valued for 1991 as follows:

Market value

Land	Improvement	Total value	Assessment
$522,000	$207,700	$729,700	$ -----

Use Value

Land	Improvement	Total value	Assessment
$65,600	$207,700	$273,300	$68,325

A use value is computed for the land because it has been classified agricultural under the Agricultural, Forest, and Open Space Land Act of 1976 ("Greenbelt Law"). The appeal was heard in Nashville on May 13, 1992, before Commission members Keaton (presiding), Crain, Isenberg, and Schulten. Mr. Moreau Estes represented the property owner.

Findings of fact and conclusions of law

The subject property is a 40.5 acre tract improved with a two houses, located on Beech Creek Road in Williamson County. The owner does not contest the value placed by the assessor on the houses or the land generally, but rather contests the values assigned to the two homesites, which are $40,000 and $20,000 respectively. Mr. Estes stated his opinion that the homesites should be valued no higher than $6,000 each.

The assessor explained that his valuations of the homesites derived from the most recent county wide reappraisal, in which the state Division of Property Assessments established schedules

of market values and greenbelt use values for all rural land in the county. The per acre market value for unimproved farmland in the greenbelt program is based purely on local sales of farmland, while the use value per acre is based on a formula established by law and calculated by the state Division of Property Assessments. The per acre use value is used for all of a qualifying greenbelt property except that which is used as a home site. Where a farm in the greenbelt program also contains a home, the homesite is valued like any other small acreage tract in a rural setting. In lieu of determining the precise amount of acreage that supports a home, the Division simply carves out an acre for homesite treatment. If more than one homesite exists for a single property, the Division uses one-half the value of the primary homesite for the second homesite.

The taxpayer in this case argues that this practice is arbitrary, that the cleared areas surrounding the two homes on the Estes property do not represent an acre each, and that the per acre value used in any event is too high. In support of his value contention Mr. Estes testified that a 1.2 acre lot in a nearby subdivision (with paved streets and sewer) had been offered for sale for over two years for $35,000 without a buyer.

The practice of declining to extend agricultural use value to a full acre in cases where a home is established on greenbelt property does not to the Commission seem arbitrary or without a logical basis. Use value under the greenbelt law was intended to favor land which is available for farming or other greenbelt uses, and to decide that a typical farmer would not farm within the acre of land on which his home sits, is not unreasonable. The alternative would be to painstakingly determine how much of the property was actually being "lived on" as opposed to being farmed, and it is unlikely this would be worth the effort. Land for homes, after all, derives its value not strictly from its square foot area so much as from its location and other features such as topography. Consistently assigning an acre as a homesite

promotes uniformity by avoiding the subjective determination of precisely how much of a farm is merely lived upon.

With regard to the property owner's value contentions, with all due respect to Mr. Estes, whose credentials as an appraiser are beyond question, we find that insufficient evidence has been introduced to support a defferent lot value for these homesites. The 1.2 acre lot cited by Mr. Estes may or not be comparable to the subject homesites. We know from Mr. Estes that the subdivision lot has more amenities (streets and severs), but we know nothing of their comparative locations or other features. We also have no actual sales of comparable properties, only this one listing of a property that may or may not be comparable.

ORDER

It is therefore ORDERED, that the initial decision and order of the administrative judge is affirmed and the assessment of the subject property is determined as follows for tax year 1991:

Market value

Land	Improvement	Total	Assessment
$522,000	$207,700	$729,700	$ -----

Use value

Land	Improvement	Total	Assessment
$65,600	$207,700	$273,300	$68,325

Pursuant to the Uniform Administrative Procedures Act, the parties are advised of their further remedies as follows:

1. A party may petition the State Board of Equalization in writing to review this decision. The petition must be filed with the executive secretary of the Board within 15 days from the date of this decision indicated below. If the Board declines to review this decision, a final assessment certificate will be issued after 45 days, and the decision will then be subject to review by chancery court if a written petition therefor is filed with the court within 60 days from the issuance of the certificate.

2. A party may petition this Commission in writing for reconsideration of its decision. The petition must include the specific grounds upon which relief is requested and must be filed within 10 days after the date of this decision. Petitions for reconsideration proposing new evidence are subject to the additional requirements of Rule 1360-4-1-.18, Uniform Rules Of Procedure For Hearing Contested Cases.

The Commission will not receive petitions for stay.

DATED: July 12, 1993

Presiding member

ATTEST:

Kelsie Jones, Executive Secretary
State Board of Equalization

cc: Mr. Moreau Estes, Esq.
Mr. Dennis Anglin, Assessor of Property

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re:	Ethel Frazier Davis L/E Rem: Lana Cheryll Jones District 3, Map 116, Control Map116, Parcel 16, Special Interest 000 Rollback Assessment Tax years 2003, 2004, 2005	)))))	Claiborne County

INITIAL DECISION AND ORDER

Statement of the Case

This is an appeal pursuant to Tenn. Code Ann. section 67-5-1008(d)(3) from an assessment of "rollback taxes" on the subject parcel. The appeal was filed with the State Board of Equalization ("State Board") on March 1, 2007.[1] The undersigned administrative judge conducted a hearing of this matter on May 23, 2007 in Knoxville. The property owner was represented by her daughter, Lana C. Jones. Ms. Jones was accompanied by George M. Coode, Jr., CPA (Knoxville). Judy Myers and Pam Smith, of the Claiborne County Property Assessor's Office, appeared on the Assessor's behalf.

Findings of Fact and Conclusions of Law

Background. The parcel in question, which consists of 76 forested and 19 cleared acres, is located on Barren Creek Road in New Tazewell. The appellant's late husband, Monte L. Davis, became sole owner of this property in 1944. In 1982, Mr. Davis applied for classification of the property as "agricultural land" under the Agricultural, Forest and Open Space Land Act of 1976, as amended – popularly known as the "greenbelt" law.[2] The Assessor's office approved the application, effective in tax year 1983.

On October 25, 2004, for "good and valuable consideration, including the signing of a Promissory Note," Mr. Davis executed a quitclaim deed which conveyed his interest in this property to himself and Ms. Davis. The expressed purpose of the transaction was "to create a tenancy by the entirety."

Mr. and Ms. Davis did not reapply for continuation of the subject property's greenbelt status.[3] Nevertheless, the property remained classified as agricultural (greenbelt) land in tax year 2005.

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[1]Though not actually received by the State Board until March 2, 2007, the mailed appeal form is deemed to have been filed on the March 1 postmark date. State Board Rule 0600-1-.04(1)(b).

[2]The greenbelt law grants preferential tax treatment to owners of qualifying land by basing the assessment thereof on its "present use value" rather than market value. *See* Tenn. Code Ann. sections 67-5-1001 *et seq.*

[3]*See* Tenn. Code Ann. section 67-5-1005(a)(1).

Mr. Davis passed away at the age of 96 in June, 2005. On November 17 of that year, Ms. Davis quitclaimed her ownership interest in the subject property to her daughter Lana C. Jones, retaining a life estate for herself.[4]

On January 6, 2006, the Assessor's office notified Ms. Davis in writing that "[o]ur records indicate that this parcel was previously in greenbelt but is no longer eligible" because of a change of ownership. This notice requested Ms. Davis, as the "purchaser" of such property, to state whether she intended to keep it in the greenbelt program. In a follow-up letter dated February 14, 2006, Assessor Kay M. Sandifer informed Ms. Davis that a forestry plan for the subject property was listed as "pending." But Ms. Davis failed to file a new greenbelt application by the March 1, 2006 deadline emphasized in the Assessor's letter.

There is no indication that an assessment change notice meeting the specifications of Tenn. Code Ann. section 67-5-508(a)(3) was ever sent to the property owner in 2006. However, on or about November 8, 2006, the Claiborne County Trustee issued a property tax notice which included a rollback tax assessment on the subject property for tax years 2003—05 in the amount of $1,757.[5] The property classification (for tax year 2006) shown on this tax bill was "agriculture."[6]

The Assessor has approved Ms. Jones' application for greenbelt assessment of the subject property as "forest land" for tax year *2007*.[7] In this appeal, Ms. Davis seeks relief from the above rollback assessment.

Testimony. At the hearing, Ms. Jones testified that she did not believe the second quitclaim deed of November 17, 2005 had effectuated any change of ownership of the subject property. Nor did she consider her mother to be a "purchaser" of this property when she (Ms. Davis) acquired co-ownership of it from Mr. Davis in 2004.[8] Further, Ms. Jones related that the period between late 2006 and early 2007 was "an extremely tumultuous time" for her and her mother, who was hospitalized in Kansas City during that time. Ms. Jones added that neither she nor Ms. Davis "would have intentionally missed a deadline."

Analysis. It is doubtful that the mere transfer of a remainder interest in agricultural land would necessitate the filing of a new greenbelt application by the holder of such interest. The

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[4]Ms. Davis, of course, had inherited the subject property by virtue of her right of survivorship.

[5]This amount represents the differential between the taxes calculated on the basis of the market value and present use value assessments for the years 2003, 2004, and 2005. *See* Tenn. Code Ann. section 67-5-1008.

[6]Thus the 2006 tax bill on the subject property only amounted to $247.00 (based on a "use value" assessment).

[7]*See* Tenn. Code Ann. section 67-5-1006.

[8]Mr. Coode, whom Ms. Davis and Ms. Jones had consulted regarding this matter, concurred in these views.

Supreme Court of Tennessee has held that this state "follows (the) accepted common law rule, taxing the full value of land in the hands of the life tenant and nothing to the remainderman." Sherrill v. Board of Equalization, 452 S.W.2d 857, 858 (Tenn. 1970). A remainder interest, the Court opined, was not "owned separately from the general freehold" so as to be assessable under Tenn. Code Ann. section 67-5-502(d).

Yet, as Ms. Myers pointed out, the earlier quitclaim deed which created a tenancy by the entirety unmistakably *did* result in a change of ownership of the subject property. That such property remained "in the family," as Ms. Davis put it in an attachment to the appeal form, does not negate this fact. Consequently, termination of the subject property's greenbelt status would have been appropriate in tax year *2005.* Such action would surely have been no less justified one year later, when the property owner named on the original greenbelt application was no longer even alive.

But the record in this proceeding does not establish that the subject property was actually reclassified in tax year 2006. Indeed, the only documentary evidence on this point – the aforementioned tax bill – indicates that the property was still designated as "agricultural" (greenbelt) land. In the recent rollback tax appeal of Bobby G. Runyan (Hamilton County, Tax Year 2005, Initial Decision and Order, August 24, 2006), Administrative Judge Mark J. Minsky found "no legal authority" for the proposition that "greenbelt status simply ceases by operation of law." *Id.* at p. 3. Thus, while new landowners must apply for continuation of a greenbelt classification in their own names, greenbelt status does not automatically expire if the required application is not received by the statutory deadline. Rather, such status terminates only upon the official entry of a different property classification on the tax roll.

Moreover, even assuming that the subject property was not listed as greenbelt land on the 2006 tax roll, the so-called application "deadline" is really a misnomer; for Tenn. Code Ann. section 67-5-1005 provides (in relevant part) that:

> New owners may establish eligibility after March 1 **... by appeal pursuant to parts 14 and 15 of this chapter, duly filed after notice of the assessment change is sent by the assessor**, and reapplication must be made as a condition to the hearing of the appeal. [Emphasis added.]

Had the Assessor sent the assessment change notice contemplated by this statute in 2006, Ms. Davis would have had the right to petition the Claiborne County Board of Equalization for restoration of the subject property's greenbelt classification pursuant to Tenn. Code Ann. section 67-5-1407. Failure of the property owner (or her authorized agent) to appear before the county board in that event would likely have resulted in the new assessment becoming final. *See* Tenn. Code Ann. sections 67-5-1401 and 67-5-1412(b)(1). However, due to the apparent lack of any assessment change notice in this instance, the taxpayer had the right to "appeal directly to the state board at any time within forty –five (45) days after the tax billing date for the assessment." Tenn. Code Ann. section 67-5-1412(e).

This complaint to the State Board was filed more than 45 days after the November 8, 2006 tax billing date. Nevertheless, in consideration of the appellant's medical condition at the time, the appeal may be accepted by the State Board under the following "reasonable cause" provision of Tenn. Code Ann. section 67-5-1412(e):

> The taxpayer has the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the board shall accept such appeal from the taxpayer **up to March 1 of the year subsequent to the year in which the assessment was made**. [Emphasis added]

Historically, the Assessment Appeals Commission has construed the term *reasonable cause* in this context to include an illness or other circumstance beyond the taxpayer's control. *See*, e.g., Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992, Final Decision and Order, August 11, 1994).

Though prompted by the 2003—2005 rollback taxes, then, this direct appeal to the State Board also affords the new owner of the subject property (Ms. Davis) the opportunity to "establish eligibility" for continuation of its greenbelt status in tax year *2006*. In the opinion of the administrative judge, the application which the Assessor has already approved for tax year *2007* is sufficient to justify that status. It follows that the appellant should not be liable for rollback taxes on this property.

Order

It is, therefore, ORDERED that the rollback assessment on the subject property for tax years 2003 through 2005 be voided.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is

requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 11th day of June, 2007.

Pete Loesch

PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Lana C. Jones
Kay Sandifer, Claiborne County Assessor of Property
John C.E. Allen, Staff Attorney, Division of Property Assessments

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BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

In re:

GILL ENTERPRISES

Ward 091, Block 25, Parcels 42, 43 & 44

Tax Years 2008-2011

Shelby County

SBOE Appeal Nos. 49851 & 75744

FINAL DECISION AND ORDER

Statement of the Case

Taxpayer appeals the initial decision and order of the administrative judge, who affirmed the assessor's disqualification of 'greenbelt' agricultural status for the property and affirmed a rollback assessment for prior years pursuant to Tenn. Code Ann. §67-5-1008. The appeal was heard in Memphis on April 24, 2012 before Commission members Wills (presiding), Hinton, Kyles and Wade.[1] Gill Enterprises was represented by attorneys Pat Moskal and Michael Hewgley, and the assessor was represented by her staff legal adviser, Mr. John Zelinka.

As a preliminary matter, taxpayer was permitted to amend the 2008 appeal to include subsequent years through 2011. The parties also pointed out that a separate appeal on parcel 42 had been dropped and was no longer part of

[1] Mr. Hinton and Mr. Kyles sat as designated alternates for absent members, pursuant to Tenn. Code Ann. §4-5-302. An administrative judge assigned by the Board sat with the Commission pursuant to Tenn. Code Ann. §4-5-301.

the appeal being heard. Based on the submitted proof and argument the Commission finds the initial decision and order should be reversed.

Findings of Fact and Conclusions of Law

The Agricultural, Forest, and Open Space Land Act of 1976, or greenbelt law, allows qualifying land to be assessed for property taxes on the basis of its current use value rather than its market value in some more intensive use. The law contains a minimum size requirement of fifteen acres for agricultural land, but a tract as small as ten acres may qualify as part of a farm unit comprising two non-contiguous tracts, at least one of which is fifteen acres.[2] The subject property is all that remains of a 100 acre tract referred to as the Bonnie Moore Farm purchased by Raymond Gill in 1987. For several years prior to 2008, the subject property was accepted by the assessor as part of a farm unit that included another 52 acre agricultural tract (Holmes Road tract) owned in common by Raymond Gill individually and Raymond Gill as trustee of The Gill Trust.

Mr. Gill has developed most of the old farm, but farming continues on the subject tract which includes all or most of the original farm buildings. In 2007 as an additional phase of the original 100 acres was being developed, the owner was obliged by local planners to construct an access road on part of the subject tract. In 2008 the assessor informed the owner the subject tract no longer qualified for greenbelt because construction of the road dropped the tract size below ten acres. Before the administrative judge the assessor also contended the subject property and the Holmes Road tract were not owned by the same

[2] Tenn. Code Ann. §67-5-1004.

legal entities. To the Assessment Appeals Commission the assessor cited prior decisions of the State Board denying greenbelt, on the basis that some activities associated with farming, such as hay or timber removal, may be considered merely incidental to an owner's demonstrated primary intent to develop property commercially.[3]

Addressing the last issue first, Mr. Gill testified he still raises livestock, fruits and vegetables on the subject tract, supported by hay from the Holmes Road tract. He offered close-shot photos (tomatoes and melons, hens and roosters, two feeding cattle) and 2005-2011 statements of income and expense (mostly expense). From this uncontroverted evidence the Commission concludes the subject property is actually farmed and is entitled to the presumption of farm use contained in Tenn. Code Ann. §67-5-1005. In attempting to rebut this presumption, the assessor cites Judge Minsky's ruling in the *Perimeter Place* appeal (footnote 3), but taxpayer in that case offered little documentation of farm activity beyond cutting of hay.[4]

The assessor did not press the minimum acreage issue before the Commission, but, like the administrative judge, we find that acreage of a contended agricultural tract need not normally be adjusted for access roads and drives.[5]

---

[3] *In re: Perimeter Place Properties, Ltd.* (Putnam Co.), initial decision and order dated January 2, 1998.

[4] Taxpayer cites *Batson East Land Co., Inc. v. Boyd et al*, 4 S. W. 3d 185 (Tenn. App., 1999) as controlling precedent, but *Batson* was decided under an earlier version of the statute that qualified land for greenbelt on the basis of being 'held for use' as well as in actual use.

[5] After all, woodlands and wastelands are not deducted (Tenn. Code Ann. §67-5-1004). However, the assessor may consider whether the portions actually in use for farming are sufficient to support the property as a farm unit (Tenn. Code Ann. §67-5-1005).The assessor did

With regard to alignment of ownership, the administrative judge was not provided copies of the deeds to the two tracts making up this farm unit, and he concluded the taxpayer had not borne the burden of proving common ownership. To the Commission Mr. Gill supplied the deeds, from which it appears the subject tract was owned in 2008 by a partnership consisting of Raymond Gill and a corporation wholly owned by Raymond Gill. The Holmes Road tract was owned in common by Raymond Gill and a revocable trust controlled by Raymond Gill. These were recorded deeds, and the assessor accepted this ownership as sufficient to establish greenbelt eligibility for a number of years. We find no basis for disqualifying the property based on ownership, and if the assessor concluded the ownership had changed she should have given the 'new' owners the opportunity to cure the flaw or apply under the new ownership before concluding the property was disqualified and subject to rollback.[6]

ORDER

By reason of the foregoing, it is ORDERED that the initial decision and order is reversed, the rollback assessment is void, and the subject property shall be assessed in the greenbelt agricultural classification for the years at issue. This Order is subject to:

1. **Reconsideration by the Commission**, in the Commission's discretion.

---

not base denial on the portion farmed here, however, but rather she merely deducted the road area from the total and concluded the minimum size requirement was not met.

[6] At times relevant to this appeal, the assessor was required to initiate a recapture of past taxes saved in greenbelt, *inter alia*, if a qualifying property ceases to qualify or the owner fails to file an application. Tenn. Code Ann. §67-5-1008 (2008 Supp.).

Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board of Equalization with fifteen (15) days from the date of this order.

2. **Review by the State Board of Equalization**, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

3. **Review by the Chancery Court** of Davidson County or other venue as provided by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: 6-19-12

Mike Wills by J. Jupin.
Presiding Member

ATTEST:

Kelsie Jones
Executive Secretary

cc: Ms. Pat Moskal, Esq.
Mr. John Zelinka, Esq.

return to handbook

IN THE CHANCERY COURT OF SHELBY COUNTY, TENNESSEE
THIRTIETH JUDICIAL DISTRICT
AT MEMPHIS, PART III

CYDNEY HARDY GRIFFIN and
MICHELE G. WHITEHEAD

Plaintiffs,

v. No. CH-16-0542-3

CHEYENNE JOHNSON, SHELBY COUNTY ASSESSOR OF PROPERTY; DAVID LENOIR, SHELBY COUNTY TRUSTEE; ASSESSMENT APPEALS COMMISSION; TENNESSEE STATE BOARD OF EQUALIZATION

Defendant(s).

AGREED FINAL ORDER

Plaintiffs, Cydney Hardy Griffin and Michele G. Whitehead, seek judicial review of the Final Decision and Order of the State Board of Equalization. Specifically, Plaintiffs urge this Court to void the dismissal of their appeal involving Greenbelt classification and the imposition of rollback taxes for tax years 2008, 2009, and 2010. The State Board denied Plaintiffs' appeal because the subject property did not satisfy the minimum acreage requirement for Greenbelt qualification under Tenn. Code Ann. § 67-5-1004(1)(B). Namely, the transfer of the subject property in 2010 divided the land into three smaller tracts. Although the original property had been classified as Greenbelt, none of the smaller tracts met the 15-acre requirement. Shelby County then properly imposed a rollback assessment for tax years 2008, 2009, and 2010 pursuant to Tenn. Code Ann. § 67-5-1008(d)(1)(A).

On September 26, 2016, however, this Court entered the Consent Order Reforming Deeds, retroactively amending that 2010 transfer. Specifically, the Consent Order rescinded the division

of the property into three smaller tracts, and re-conveyed the entire property to Plaintiffs as tenants in common, effective as of December 14, 2010. Accordingly, the subject property satisfies the minimum acreage requirement under Tenn. Code Ann. § 67-5-1004(1)(B). In other words, the subject property would not have been removed from Greenbelt in 2011, and Shelby County would not have imposed a rollback assessment for tax years 2008, 2009, and 2010.

For the foregoing reasons, it is ORDERED that the removal of Plaintiff's property from Greenbelt classification in 2011 is vacated. It is further ORDERED that the rollback assessment for tax years 2008, 2009, and 2010 is vacated. Plaintiffs, Cydney Hardy Griffin and Michele G. Whitehead, shall pay the court costs in this cause for which execution may issue. This case is hereby remanded to the State Board for further proceedings not inconsistent with this Order.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Entered this DEC - 7 2016 day of December, 2016.

JoeDae L. Jenkins

JOEDAE L. JENKINS
CHANCELLOR

PREPARED BY:

HERBERT H. SLATERY III
Attorney General and Reporter

S. Jae Lim

S. JAE LIM (#34764)
Assistant Attorney General
Office of the Attorney General
Tax Division
P.O. Box 20207
Nashville, TN 37202-0207
(615) 532-2935
Attorneys for Assessment Appeals Commission and State Board of Equalization

TRUE COPY-ATTEST
Clerk & Master

D. C. & M.

GREGORY D. COTTON (#13679)
195 S. Center Street, Suite 100
Collierville, TN 38017
(901) 683-1215
Attorney for Plaintiffs

JOHN B. TURNER, JR. (#18258)
Assistant County Attorney
Shelby County Government
160 N. Main Street, Suite 950
Memphis, TN 38103
(901) 222-2100
Attorney for Cheyenne Johnson and David Lenoir

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been served on all attorneys of record via U.S. Mail, postage prepaid, addressed to:

GREGORY D. COTTON
195 S. Center Street, Suite 100
Collierville, TN 38017
(901) 683-1215

JOHN B. TURNER, JR.
Assistant County Attorney
Shelby County Government
160 N. Main Street, Suite 950
Memphis, TN 38103

on this the 28th day of November, 2016.

S. Jae Lim

S. JAE LIM (#34764)
Assistant Attorney General

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

In re:

CYDNEY HARDY GRIFFIN
MICHELE G. WHITEHEAD

Parcel No. D02 44 A00428C (rollback)
Parcel No. D02 44 A00646
Parcel No. D02 44 A00647

Tax Year(s) 2011

Shelby County

Appeal No. 73181

FINAL DECISION AND ORDER ON RECONSIDERATION

Taxpayers seek further review of the Final Decision and Order entered February 3, 2016, on the basis there had been no change in the farm use of the subject parcels and therefore the 'greenbelt' rollback assessment imposed by the assessor should be void. Taxpayers' petition was directed to the original panel of the Commission which heard the appeal, including Commission members Keith Kyles (presiding), Calvin Hinton, and Syd Turnipseed[1].

The Commission finds taxpayers' argument regarding the rollback assessment was presented previously and for reasons noted in the order entered February 3, 2016, we decline to set aside the rollback assessment. On review of the record, however, including an internal memorandum from the assessor's office dated February 18, 2013 which was offered in evidence at the initial hearing of this matter in 2013, the Commission finds the rollback appeal

[1] Mr. Turnipseed sat as an alternate for absent regular member, pursuant to Tenn. Code Ann. §4-5-302.

should be amended to include the 2011 values of the split parcels.[2] Further, as stipulated in the memorandum, the 2011 values of the survivor parcels should be reduced, reflecting the total value of the parcels as recombined for 2012. It is so ORDERED, and the values and assessments of the subject parcels for 2011 is determined as follows:

Parcel	Land	Improvement	Total Value	Assessment
A00646	$240,900	$-0-	$240,900	$60,225
A00647	$240,900	$-0-	$240,900	$60,225

This Order is subject to:

1. **Review by the State Board of Equalization, in the Board's discretion**. This review must be requested in writing, state specific grounds for relief and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

3. **Review by the Chancery Court of Davidson County or other venue as provided by law.** A petition for review must be filed within sixty (60) days from the date this matter becomes final pursuant to T.C.A. § 67-5-1502. The date this matter becomes final for purposes of seeking judicial review will be posted at the Board's web site (inquire at http://www.comptroller.tn.gov/SBOnlineReport/Appeal Public.aspx about 15 days after the order entry date below).

Requests for stay of effectiveness will not be accepted.

DATED: April 12, 2016

[2] For tax year 2010 the parcels at issue made up a single farm tract of 29.47 acres, assessed as Parcel D0244-A00428C. Following the partition of this tract in December 2010, the surviving tracts were the two 13.5 ac. parcels at issue here (D02 44 A00646 (Whitehead) and D02 44 A00647 (Griffin)). Rollback was assessed on original tract following the partition, to the owner of the original tract at the time of partition, Clair Burrows Hardy. The lien of this assessment attached to the surviving separate tracts until discharged by payment.

Keith Kyles
Presiding Member

ATTEST:

Executive Secretary

cc: Attorney Gregory D. Cotton
Attorney Shawn Lynch, Shelby County Assessor's Office

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

In re:

CYDNEY HARDY GRIFFIN
MICHELE G. WHITEHEAD

Parcel No.: D02 44 A00428C

Tax Year(s) 2011

Shelby County

Appeal No. 73181

FINAL DECISION AND ORDER

Statement of the Case

Taxpayer appeals the Initial Decision and Order of the administrative judge dismissing an appeal involving Greenbelt and the imposition of rollback taxes for tax years 2008, 2009, and 2010.

The appeal was heard in Memphis, Tennessee on December 9, 2015 before Commission members Keith Kyles (presiding), Calvin Hinton, and Syd Turnipseed[1]. The taxpayers, Ms. Griffin and Ms. Whitehead, were present and were represented by Attorney Gregory Cotton. The county was represented by Attorney Shawn Lynch, the assessor's legal advisor.

Findings of Fact and Conclusions of Law

There is no dispute regarding the facts. The subject property consists of a 13.5-acre tract of land in Collierville, which had been part of a larger tract of land classified as Greenbelt. On December 14, 2010, pursuant to a living trust, the larger tract was sub-divided into three (3)

[1] Mr. Turnipseed sat as an alternate for absent regular member, pursuant to Tenn. Code Ann. §4-5-302.

smaller tracts, one 1.2-acre tract and two 13.5-acre tracts. Ms. Griffin and Ms. Whitehead each received a 13.5-acre tract. Since neither of the resulting parcels met the minimum acreage requirement under Greenbelt, the property was removed from Greenbelt in 2011 and the rollback taxes were imposed for the three most recent tax years, i.e., 2008, 2009, and 2010. Subsequently, in September 2011, a new deed was executed that rejoined the parcels. With the acreage requirement met, the property was returned to Greenbelt status for tax year 2012.

Attorney Cotton argues that his clients were "victims of unintended consequences" when they were deeded the property by their mother's trust. Furthermore, since the property has continued to be used as a farm and was not in Greenbelt status for a short period of time only, imposition of rollback taxes in this case would run counter to a common-sense application of the law.

Although the county agrees with all of the facts, Attorney Lynch argues that the county has no recourse but to abide by the minimum acreage provision of T.C.A. §67-5-1004 (1)(B).

This Commission agrees with the county. Although it may not have been the intended result, the division of the larger tract into the three smaller tracts resulted in the minimum acreage requirement under Greenbelt no longer being met. Therefore, the county properly put the property back on the tax roll and imposed the rollback taxes. The law, in this case, is very specific. This Commission does not find a basis to set aside the Initial Decision and Order.

Order

By reason of the foregoing, it is ORDERED that the decision of the administrative judge is affirmed.

This Order is subject to:

1. **Reconsideration by the Commission, in the Commission's discretion.**

   Reconsideration must be requested in writing, stating specific grounds for relief and the

request must be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

2. **Review by the State Board of Equalization, in the Board's discretion**. This review must be requested in writing, state specific grounds for relief and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

3. **Review by the Chancery Court of Davidson County or other venue as provided by law.** A petition for review must be filed within sixty (60) days from the date this matter becomes final pursuant to T.C.A. § 67-5-1502. The date this matter becomes final for purposes of seeking judicial review will be posted at the Board's web site (inquire at http://www.comptroller.tn.gov/SBOnlineReport/Appeal Public.aspx about 45 days after the order entry date below).

Requests for stay of effectiveness will not be accepted.

DATED: February 3, 2016

Keith Kyles
Presiding Member

ATTEST:

Kelsie James
Executive Secretary

cc: Attorney Gregory D. Cotton
Attorney Shawn Lynch, Shelby County Assessor's Office

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Cydney Hardy Griffin Michele G. Whitehead Property ID: D02 44 A00428C Tax Year 2011	)))))	Shelby County Appeal No. 73181

Initial Decision and Order Dismissing Appeal

An appeal for this parcel was filed with the State Board of Equalization ("State Board") on November 10, 2011.

The undersigned administrative judge conducted a hearing of this matter on February 22, 2013, in Memphis. The appellants, Cydney Hardy Griffin and Michelle Whitehead, appeared at the hearing and were represented by attorney Gregory Cotton. The Shelby County Assessor of Property was represented by her legal advisor John Zelinka. He was assisted by staff appraiser Nathan Chamness.

The subject property in this appeal consists of a 13.5 acre parcel of vacant land located on Sycamore Road, in Collierville. The property had previously been part of a larger parcel valued pursuant to the Agricultural, Forest and Open Space Land Act of 1976, as amended (commonly known as the "greenbelt" law).

There appears to be no dispute pertaining to the facts in this matter. Prior to 2011, the subject parcel was a part of a larger parcel of land identified as parcel 428C. On December 14, 2010, the Claire B. Hardy Revocable Living Trust executed deeds that split the larger parcel 428C into three smaller tracts. In addition to two, equal 13.5 acre tracts, a smaller

1.23 acre tract was also created. One of the two 13.5 acre tracts was deeded to Ms. Whitehead, while the other tract of the same size was deeded to her sister, Ms. Griffin.[1]

The acreage requirements for a property to enjoy greenbelt status are set out in Tenn. Code Ann. § 67-5-1004(1)(B), which says:

> To be eligible as agricultural land, property must meet minimum size requirements as follows: it must consist either of a single tract of at least fifteen (15) acres, including woodlands and wastelands, or two (2) noncontiguous tracts within the same county, including woodlands and wastelands, one (1) of which is at least fifteen (15) acres and the other being at least ten (10) acres and together constituting a farm unit.

As noted above, when the deeds to separate the property were executed, neither sister was left with a parcel large enough to qualify for greenbelt status. Thus, in 2011, the Assessor removed the subject parcel from greenbelt and, pursuant to the statutory requirements, imposed rollback taxes for tax years 2008, 2009 and 2010.

In late 2011, a Quit Claim Deed was executed whereby the three parcels were rejoined into one, qualifying parcel. This resulted in a determination by the Assessor that the property again satisfied the minimum acreage requirement. Thus, the property was returned to greenbelt status beginning in tax year 2012. The appellants filed this appeal with the State Board pursuant to Tenn. Code Ann. § 67-5-1008(d)(3). That subsection authorizes appeals to the State Board to contest the liability of rollback taxes, but not the value of the property. Therefore, the only issue to be determined is the appropriateness of the imposition of rollback taxes.

As the party seeking to change the current assessment of the subject property, the appellant has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(1).

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[1] While the names of both sisters appear on the appeal form, only parcel 646, which was deeded to Ms. Whitehead, is under appeal.

At the hearing, the appellants testified that the property, which had been owned by their mother, was always used for farming and the use of the property had not changed after the first deeds were executed. Additionally, they corrected the minimum acreage mistake as soon as the problem came to light with the property's removal from greenbelt and the imposition of rollback taxes.

Respectfully, this is not sufficient to undo a valid transfer of property. The original deeds properly accounted for all of the property and presumably were reviewed by all of the involved parties. The Assessor merely followed the statutory requirements in removing the property from greenbelt and imposing rollback taxes.

The administrative judge is not unsympathetic to the plight of the appellants in this matter. It is beyond dispute that the use of the land makes it eligible for greenbelt. However, the requirements of the statute cannot simply be ignored. The administrative judge does not have equitable powers. At the time the subject property was removed from greenbelt, none of the existing parcels met the minimum acreage requirement. The original transfer of the property was accomplished through a deed that has to be taken at face value. While there is no reason to doubt the sincerity of the appellants, there are a multitude of reasons why property might be conveyed in a particular manner. The fact that a later transfer changes the ownership, however, is not enough to establish the intent of an earlier transfer.

Unfortunately, the statute gives the Assessor no latitude in applying the law and imposing rollback taxes. Because the original deed was facially valid, the administrative judge has little choice but to dismiss the appeal.

Order

It is, therefore, ORDERED that this appeal be dismissed.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

Entered this 21st day of May 2013.

Brook Thompson, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Gregory D. Cotton, Esq.
195 S. Center Street, Suite 100
Collierville, Tennessee 38017

Tameaka Stanton-Riley
Shelby Co. Property Assessor's Office
Appeals Department
1075 Mullins Station Road
Memphis, Tennessee 38134

This the 21st day of May 2013.

Janice Kizer
Department of State
Administrative Procedures Division

return to handbook

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Gudridur H. Matzkiw	)	
	District 02, Map 043, Control	)	
	Map 043, Parcel 011.04	)	Moore County
	Residential Property	)	
	Tax Year 1999	)	

INITIAL DECISION AND ORDER

Statement of the Case

The issue in this appeal is whether the subject property qualifies for preferential assessment pursuant to the Agricultural, Forest and Open Space Land Act of 1976, Tenn. Code Ann. §§ 67-5-1001–1050 (greenbelt).

Gudridur H. Matzkiw, the taxpayer, filed this appeal from the determination of the Moore County Board of Equalization that the subject property did not qualify for greenbelt status. The administrative judge heard the matter pursuant to Tenn. Code Ann. §§ 67-5-1412, 67-5-1501 and 67-5-1505 on February 28, 2000, in Lynchburg, Tennessee. Ms. Matzkiw represented herself at the hearing. Moore County Assessor of Property Wayne Harrison appeared on his own behalf.

Findings of Fact and Conclusions of Law

Subject property consists of a 1.44-acre subdivision lot contiguous to 4.0 acres of farmland owned by the taxpayer in Moore County. The taxpayer owns an additional 19.8 acres in Franklin County that are part of the same farm unit as the 4.0 acres in Moore County. Both the 19.8 acres in Franklin County and the 4.0 acres of farmland in Moore County are assessed pursuant to the greenbelt program.

The taxpayer seeks inclusion of the 1.44-acre subdivision lot in the greenbelt program as part of the farm unit comprised of the remaining acreage. There appears to be no dispute that she is growing hay on the subdivision lot as well as the remainder of her property. The parties also agree that the taxpayer's farming operation on the 25.24 acres produces gross

agricultural income on the average of $1500 per year over any three year period.

Nevertheless, the subdivision lot, as are all the other lots in the subdivision, is subject to restrictive covenants that prohibit use of the lot for purposes other than residential.[1] The restrictive covenants specifically state that "[a]ll of the lots in Majors Point Subdivision shall be for residential use **only**." Exhibit 4 (Emphasis added). The covenants also expressly prohibit cows, hogs, and chickens from being kept on the lots. Id.

The assessor testified that greenbelt status was refused for the subject property because the property is subject to the restrictive covenants limiting use to residential purposes and because the property had been rezoned residential prior to the subdivision. He pointed out that a change in the restrictive covenants of the subdivision would require the consent of a majority of the landowners, each of whom may enforce the covenants.

Greenbelt is a program by which agricultural, forest and open space land is valued for ad valorem tax purposes at its value in use rather than at market value. To qualify for agricultural classification, land must constitute "a farm unit engaged in the production or growing of agricultural products." Tenn. Code Ann. § 67-5-1004(1)(A)(i). A farm unit must consist of either a tract of at least 15 contiguous acres or two noncontiguous tracts, one of which is 15 acres and the other being at least 10 acres. Tenn. Code Ann. § 67-5-1004(1)(B). In determining whether land qualifies as agricultural land, the assessor "shall take into account, among other things, the acreage of such land, the productivity of such land, and the portion thereof in actual use for farming." Tenn. Code Ann. § 67-5-1005(a)(3). An assessor "may presume that a tract of land is used as agricultural land if the land produces gross

[1]The Statement of Restrictive Covenants Majors Point Subdivision is registered in the office of the Moore County Register of Deeds.

agricultural income averaging at least one thousand five hundred dollars ($1,500) per year over any three-year period," but this presumption may be rebutted by other evidence. Id. Land presently in the greenbelt program which is covered by a recorded subdivision plat is disqualified as agricultural land "unless the owner of the property proves to the assessor that such owner meets the agricultural income requirements set out in § 67-5-1005(a)(3)."

The subject parcel, but for the restrictive covenants imposed by the subdivision, would qualify for preferential assessment under greenbelt. It is contiguous to other parcels which together form a farm unit. The agricultural income aggregated from all of the parcels would be sufficient to meet the statutory presumption.

Nevertheless, the absolute prohibition of the restrictive covenants on any use other than residential use proscribes the haying operation which the taxpayer conducts on the property.[2] The covenants state that "[t]he purpose of these restrictive covenants is to insure the use of the . . . subdivision for **attractive residential purposes only**." Exhibit 4. The covenants, in another section, reiterate that lots shall be used for residential purposes only.

The assessor in valuing property must consider any legal restriction on use. Tenn. Code Ann. § 67-5-602(b)(5). Zoning ordinances may prohibit certain uses of property, but also private restrictions and deed restrictions may ban certain activities. In appraising property, the most restrictive provisions, whether public or private, typically prevail in determining highest and best use. Appraisal Institute, The Appraisal of Real Estate, 11th ed., 304 (1996). Just as an assessor in appraising property should never consider an illegal or prohibited use, property should not be granted greenbelt status for a forbidden use.

---

[2]Admittedly, the covenants do not specifically exclude haying as they do keeping cows, hogs and chickens, but the prohibition of all agricultural use is clear.

In requesting that the subject property be included in the greenbelt program, the taxpayer relies on a letter from Kelsie Jones, Executive Secretary of the State Board of Equalization, to Phillip Hayes, Franklin County Assessor of Property. (copy attached). In that letter, Mr. Jones opined that subdivision restrictions alone, that prohibit pasturing but not haying, would not affect greenbelt qualification "so long as some reasonable activity in support of the farm is permitted." The administrative judge agrees with Mr. Jones' analysis. If some farming is allowed, then inclusion in greenbelt would be possible. But in this case reasonable activity in support of the farm is not permitted by the subdivision's restrictive covenants.

Thus, the subject parcel shall not be assessed as agricultural property under greenbelt .

Order

It is therefore ORDERED that the subject property does not qualify for preferential assessment pursuant to the Agricultural, Forest and Open Space Land Act of 1976 (greenbelt).

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301--324, Tenn. Code Ann. § 67-5-1501, and the practices and procedures of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 within thirty (30) days of the entry of this order; or
2. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order; or
3. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the

order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 15th day of May, 2000.

Helen James

HELEN JAMES
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

cc: Gudridur H. Matzkiw
Wayne Harrison, Assessor of Property

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ASSESSMENT APPEALS COMMISSION

In re:	:	
	:	
Sarah Patten Gwynn	:	Marion County
	:	
Dist. 03, Map 052, Ctrl. Map 052, Parcel 008.01	:	Appeal No. 58493
Dist. 03, Map 052, Ctrl. Map 052, Parcel 008.02	:	Appeal No. 58492
Tax Year 2010	:	

AGREED ORDER FOR RESOLUTION OF APPEAL

The Assessment Appeals Commission ("Commission") was informed at the hearing scheduled on May 29, 2013, that the parties to this Appeal, Sarah Patten Gwynn ("Taxpayer") and the Marion County Assessor ("Assessor"), had reached a full and complete agreement pertaining to all matters in dispute.

This matter came before the Commission on two separate appeals from rulings by Administrative Judge Mark Minsky, including Judge Minsky's decision on valuation of the property at issue, as rendered May 16, 2011, and his decision regarding the inapplicability of Tennessee's Greenbelt laws to conservation easements and easement valuation under Tenn. Code Ann. § 66-9-308, as rendered on November 10, 2011.

Since the entry of the two Orders by Judge Minsky, Taxpayer has commissioned an additional appraisal on the subject properties, and the Taxpayer and Assessor, through their attorneys, have conducted lengthy discussions and settlement negotiations. Based on these negotiations, a compromise on all issues has been reached, and is therefore **ORDERED** and **DECREED** as follows:

1. The Commission affirms the ruling of Judge Minsky that the owner of property on which a conservation easement is placed under the Conservation Easement Act of 1981, Tenn. Code Ann. § 66-9-301 et seq., is not required to file an application with the County Property Assessor under the provisions of the Agricultural, Forest and Open Space Act of 1976 (the "Greenbelt Act"; Tenn. Code Ann. § 67-5-1001 et seq.) in order to be entitled to a reduction in property valuation caused by the creation of such conservation easement, as such valuation is determined under the provisions of Tenn. Code Ann. § 66-9-308.

2. The Commission affirms the ruling of Judge Minsky that property which is subject to a conservation easement is not required to be appraised and assessed in the same manner as property receiving preferential assessment under the Greenbelt Act, rather, valuation should be determined in the manner indicated in Tenn. Code Ann. § 66-9-308(a)(1).

3. The Commission affirms the ruling of Judge Minsky that a property owner who establishes a conservation easement under the provision of the Conservation Easement

Act is not limited to a maximum of 1,500 acres as the amount of land that can be covered by an easement, or which would be included in the reduced valuation of the property for property tax determination under Tenn. Code Ann. § 66-9-308(a)(1).

4. No rollback taxes are due on any of the parcels under this appeal. If any rollback taxes have been assessed, then those rollback taxes are void.

5. The values as agreed to by the Taxpayer and the Assessor are attached as Exhibit "A." The Commission finds that these agreed upon values should be adopted. Therefore, it is ordered that the final values for tax years 2010, 2011, 2012, and 2013 are those as listed in Exhibit "A."

6. The basis for valuation of the tax parcels at issue in this litigation involves both the use of the statutory valuation rate established under the Greenbelt Act, as well as the determination of valuation for properties which are encumbered by two different conservation easements.

For Parcel 8.01, the entire tract is encumbered by a conservation easement on which mineral rights have not yet been extinguished (but will be in the near future). Most of the tract (over 1,000 of the 1,114 acres) is also included within the Greenbelt valuation. Accordingly, the per-acre values used for determination of the property value included in Exhibit "A" for Parcel 8.01 include the following:

- For the portion of 8.01 included within both the conservation easement and the Greenbelt area, the value is established at $395 per acre (the applicable Greenbelt valuation);
- For the remaining portion of 8.01 encumbered by the conservation easement but not included within the Greenbelt area, the value is determined to be $475 per acre.
- Once the mineral interests on 8.01 have been terminated, this enter Parcel 8.01 will be valued in the same manner as Parcel 8.02, where the mineral interests have already been terminated; and
- For Parcel 8.02, which is entirely covered by a conservation easement upon which no mineral rights have been reserved, the entire tract is valued at $380 per acre (plus improvements when applicable). No portion of 8.02 is presently included within any Greenbelt designation.

7. This order is subject to:

A. **Reconsideration.** A petition for reconsideration may be made under T.C.A. § 4-5-317 within fifteen (15) days from the entry of this Order. The petition must (1) be filed with the Executive Secretary of the State Board of Equalization and (2) state the specific grounds upon which relief is requested. The filing of the petition is not a prerequisite for seeking administrative or judicial review.

Exhibit "A"

Dist. 03, Map 052, Ctrl. Map 052, Parcel 008.01

Although this parcel contains 1,114 acres, the portion that qualifies for Greenbelt is different for tax years 2010, 2011, 2012, and 2013. The breakdown includes those acres that qualify for Greenbelt and those that do not. The first column, labeled Total Land Value, shows the market value of the parcel without consideration of any "use value" under the Greenbelt Act. The third column, labeled Total Value, shows the combined value of the portion of the land that qualifies for Greenbelt and the portion that does not.

Tax Year 2010

Total values for 1,114 acres

Total Land Value	**Total Imp. Value**	**Total Value**	**Total Assessed Value**
$529,200	**$0**	**$446,500**	**$111,625**

Breakdown of the values

Use value for 1,031.72 acres of the 1,114 acres

Land Value	Improvement Value	Use Value (The Greenbelt area)	Assessed Value
$490,100	$0	$407,500	$101,875

Value for 82.28 acres of the 1,114 acres

Land Value	Improvement Value	Total Value (Non-Greenbelt area within conservation easement)	Assessed Value
$39,100	$0	$39,100	$9,775

B. **Discretionary Review by the State Board of Equalization**. This review must be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order. The filing of this review is not a prerequisite for seeking administrative or judicial review.

C. **Review by the Chancery Court**. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued within forty-five (45) days after the entry of this Order if no party has appealed.

Requests for a stay of effectiveness will not be accepted. This Order does not become final until an official certificate is issued by the State Board of Equalization.

Dated: 8-13-13

Ogden Stoker
Presiding Member

Attest:

Kelsie Jones
Kelsie Jones, Executive Secretary

Approved for Entry:

Allen L. McCallie
Allen L. McCallie, Attorney for
Sarah Patten Gwynn

John Allen, Attorney for Marion
County Assessor's Office

Tax Year 2013

Total value for the 1,114 acres

Total Land Value	Imp. Value	Total Value	Assessed Value
$529,100	**$0**	**$442,000**	**$110,500**

Breakdown of the values

Use value for 1,088.68 acres of the 1,114 acres

Land Value	Improvement Value	Use Value (The Greenbelt area)	Assessed Value
$517,100	$0	$430,000	$107,500

Value for 25.32 acres of the 1,114 acres

Land Value	Improvement Value	Total Value (Non-Greenbelt Area within conservation easement)	Assessed Value
$12,000	$0	$12,000	$3,000

Dist. 03, Map 052, Ctrl. Map 052, Parcel 008.02

Although this parcel is within a conservation easement, no part of it qualifies for Greenbelt.

Tax Years 2010–12

Value for 1,892.09 acres (all in conservation easement)

Land Value	Improvement Value	Total Value	Assessed Value
$719,000	**$0**	**$719,000**	**$179,750**

Tax Year 2013

Value for 1,892.09 acres (all in conservation easement)

Land Value	Improvement Value	Total Value	Assessed Value
$719,000	**$6,500**	**$725,500**	**$181,375**

Tax Year 2011

Total values for 1,114 acres

Total Land Value	Total Imp. Value	Total Value	Total Assessed Value
$529,100	**$0**	**$447,000**	**$111,750**

Breakdown of the values

Use value for 1,026.62 acres of the 1,114 acres

Land Value	Improvement Value	Use Value (The Greenbelt area)	Assessed Value
$487,600	$0	$405,500	$101,375

Value for 87.38 acres of the 1,114 acres

Land Value	Improvement Value	Total Value (Non-Greenbelt area within conservation easement)	Assessed Value
$41,500	$0	$41,500	$10,375

Tax Year 2012

Total values for 1,114 acres

Total Land Value	Total Imp. Value	Total Value	Total Assessed Value
$529,200	**$0**	**$442,200**	**$110,550**

Breakdown of the values

Use value for 1,086.69 acres of the 1,114 acres

Land Value	Improvement Value	Use Value (The Greenbelt area)	Assessed Value
$516,200	$0	$429,200	$107,300

Value for 27.31 acres of the 1,114 acres

Land Value	Improvement Value	Total Value (Non-Greenbelt area within conservation easement)	Assessed Value
$13,000	$0	$13,000	$3,250

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Sarah Patten Gwynn**	**Marion County**
	Dist. 03, Map 052, Ctrl. Map 052, Parcel 008.01	**Appeal No. 58493**
	Dist. 03, Map 052, Ctrl. Map 052, Parcel 008.02	**Appeal No. 58292**
	Three Sisters Two Associates, LLC	**Blount County**
	Dist. 18, Map 051, Ctrl. Map 051, Parcel 015.03	**Appeal No. 62882**
	Dist. 18, Map 051, Ctrl. Map 051, Parcel 015.04	**Appeal No. 62883**
	The Singing Brook Conservancy	**Blount County**
	Dist. 18, Map 082, Ctrl. Map 082, Parcel 067.17	**Appeal No. 62887**
	Hurricane Mountain Conservancy	**Blount County**
	Dist. 18, Map 094, Ctrl. Map 094, Parcel 006.00	**Appeal No. 62910**
	Dist. 18, Map 094, Ctrl. Map 094, Parcel 009.00	**Appeal No. 62911**
	The Blair Branch Conservancy	**Blount County**
	Dist. 18, Map 082, Ctrl. Map 082, Parcel 085.00	**Appeal No. 62912**
	Tax Year 2010	

ORDER CONCERNING APPLICABILITY OF GREENBELT LAW TO CONSERVATION EASEMENT VALUATION

Statement of the Case

The undersigned administrative judge conducted a hearing in this matter on October 25, 2011 in Knoxville, Tennessee. The Marion County taxpayer, Sarah Patten Gwynn, was represented by Allen L. McCallie, Esq. The various Blount County taxpayers were represented by R. Louis Crossley, Jr., Esq. The Marion County Assessor of Property and Division of Property Assessments were represented by Robert T. Lee, Esq. The Blount County Assessor of Property was represented by John C.E. Allen, Esq.

BACKGROUND

These appeals concern 3006.09 acres of land in Marion County and 3,563 acres of land in Blount County encumbered by conservation easements.[1] There is no dispute that the various conservation easements were all established in accordance with the Tennessee Conservation Easement Act of 1981, T.C.A. § 66-9-301 *et seq.* and the easements are held by exempt organizations.

The administrative judge conducted a valuation hearing in the Marion County matter on May 5, 2011. On May 16, 2011, the administrative judge issued an initial decision and order finding that the land had a market value of $500 per acre after giving due consideration to the loss in value caused by the conservation easements. On June 13, 2011, the administrative entered on order granting the petition for reconsideration filed by the Marion County Assessor of Property and Division of Property Assessments.[2] Reconsideration was granted for the limited purpose of determining whether a taxpayer seeking a reduced valuation for a parcel encumbered by a conservation easement must file an application and qualify for preferential assessment pursuant to Tenn. Code Ann. § 67-5-1009. That issue had not been raised at the hearing. The administrative judge noted in the order that the same issue was pending in the Blount County matter scheduled for hearing on August 10, 2011.

On July 6, 2011, the Marion County Assessor of Property and Division of Property assessments filed a motion to consolidate the Marion County and Blount County matters for hearing on the issue of whether a taxpayer seeking a reduced valuation for a parcel encumbered by a conservation easement must file an application and qualify for preferential assessment

[1] The Blount County acreage figure was derived by summing the acreage provided for each parcel on the appeal forms. The Marion County acreage is the same as reflected in the initial decision and order.
[2] The Division had previously intervened and for all practical purposes represented the Marion County Assessor of Property as well.

pursuant to Tenn. Code Ann. § 67-5-1009. The administrative judge granted the motion, without opposition, and a consolidated hearing was conducted on October 25, 2011.

ISSUES

For purposes of this consolidated hearing, the administrative judge must resolve the following issues:

1. Is the owner of property encumbered by a conservation easement required to file a written application with the county property assessor pursuant to Tenn. Code Ann. § 67-5-1007(b) in order to be entitled to the reduction in property valuation available under Tenn. Code Ann. § 66-9-308?

2. Is property which is subject to a conservation easement required to be appraised and assessed in the same manner as a "greenbelt assessment" under the "Agricultural Forest and Open Space Land Act of 1976," T.C.A. § 67-5-1001 *et seq.* [hereafter referred to as "the greenbelt law"]?

3. Is a property owner who establishes a conservation easement under the provisions of the Conservation Easement Act of 1981, T.C.A. § 66-9-301 *et seq.*, [hereafter referred to as "the Conservation Easement Act"] limited to 1,500 acres in the amount of land that can be included in a reduced valuation for property tax purposes?

CONTENTIONS

The taxpayers maintained that the assessment of subject property is governed by the Conservation Easement Act. Property encumbered with a conservation easement is taxed differently than property not so encumbered pursuant to Tenn. Code Ann. § 66-9-308(a) which provides in pertinent part:

> (1) When a conservation easement is held by a public body or exempt organization for the purposes of this chapter, the subject real property shall

> be assessed on the basis of the true cash value of the property or as otherwise provided by law, less such reduction in value as may result from the granting of the conservation easement.
>
> (2) The value of the easement interest held by the public body or exempt organization shall be exempt from property taxation to the same extent as other public property.

Unlike the greenbelt law, the Conservation Easement Act does not expressly require an application to receive a reduced assessment or limit the amount of acreage that can enjoy preferential assessment.

As will be discussed in greater detail below, the taxpayers contended that the greenbelt law and Conservation Easement Act should be deemed mutually exclusive because (1) they were created for and serve different purposes; (2) the more specific act, the Conservation Easement Act, controls over the greenbelt law; and (3) appraisals and valuations of lands subject to conservation easements are different than greenbelt valuations.

The Marion County Assessor, the Blount County Assessor and the Division of Property Assessments [hereafter referred to collectively as "the assessing authorities"] contended that when the Conservation Easement Act and greenbelt law are read *in pari materia*, it should be concluded that a taxpayer seeking a reduced valuation for property encumbered by a conservation easement must file an application with the assessor in that county and a maximum of 1,500 acres can receive preferential assessment.

The assessing authorities' maintained that the legislature enacted Tenn. Code Ann. § 67-5-1009 to provide a "special tax assessment" for property encumbered by an open space easement in favor of a qualified conservation organization. The statute provides in relevant part as follows:

> (a) Where an open space easement as defined in § 67-5-1004 has been executed and recorded for the benefit of a local government or a qualified conservation organization as provided in this section or as provided in § 11-15-107, the assessor of property shall

> henceforth assess the value and classification of such land, and taxes shall be computed and recorded each year both on the basis of:
>
> (1) Farm classification and value in its existing use under this part, taking into consideration the limitation on future use as provided for in the easement; and
>
> (2) Such classification and value, under part 6 of this chapter, as if the easement did not exist; but taxes shall be assessed and paid only on the basis of farm classification and fair market value in its existing use, taking into consideration the limitation on future use as provided for in the easement .
>
> * * *
>
> (d) Any owner of open space easement land who seeks to have the land classified for assessment pursuant to this part shall apply to the assessor as provided in § 67-5-1007(b) and record a copy of the easement and the grantee's written acceptance with the register of deeds.

In addition, the assessing authorities asserted that the language in Tenn. Code Ann. § 66-9-308(a) "as otherwise provided by law" should be construed as including the greenbelt law. Finally, the assessing authorities argued that the 1,500 acre limitation set forth in Tenn. Code Ann. § 67-5-1003(3) should apply to any recipient of a "special assessment" just like any other provision of the greenbelt law.

Given the foregoing, the assessing authorities claimed that the taxpayers' failure to file greenbelt applications preclude them from receiving reduced valuations because their land is encumbered by conservation easements. Additionally, the assessing authorities maintained that even if the taxpayers were entitled to reduced valuations under the greenbelt law, a maximum of 1,500 acres can qualify.

ANALYSIS

The administrative judge finds that the following considerations lead to the conclusion that the greenbelt law and Conservation Easement Act are mutually exclusive. Accordingly, the owner of a property encumbered by a conservation easement is not required to file a greenbelt

application to receive a reduced valuation and the 1,500 acre limitation in the greenbelt law does not apply to situations governed by the Conservation Easement Act.

The legislative intent of the Conservation Easement Act, and the scope and purposes of that Act, are entirely different than those of the greenbelt law. The greenbelt law has as its express stated purpose the reduction of property tax burdens for landowners who own forest, agricultural, or open space land, whom the legislature believes should not be economically pressured by increasing property tax rates into selling or developing those lands. These landowners are given the right to enroll qualifying lands in the greenbelt program, which provides for property tax relief based on the *present use* of the lands, so long as the lands meet the requirements of use as forest, agricultural, or open space, and *for so long as there is not a change in use of the lands*. The statute on its face contemplates the potential for change in use, and confers property tax benefits only for so long as the original uses remain in place.[3] A landowner may initiate greenbelt protections unilaterally through filing an application, and is not required to enter into a third-party easement agreement or to permanently conserve the land in question.

By contrast, the Conservation Easement Act requires *permanent* land protection; requires the creation of an enforceable easement held by a third-party governmental agency or nonprofit organization; and requires the long-term conservation of property rather than the temporary grant of property tax relief.

The Conservation Easement Act was adopted five years after the greenbelt law and yet makes no mention of the earlier Act, and requires no unified approach or connection between the two statutes. Further, the Conservation Easement Act on its face requires no application or

[3] Indeed, Tenn. Code Ann. § 67-5-1002(4) sets forth the legislative intent to prevent the "premature development" of qualifying land.

enrollment with an assessor's office and specifies no special property tax valuation or assessment procedures.

The definitional sections of the greenbelt law at T.C.A. § 67-5-1004, including the definition of "open space easement," are said to apply *only to the greenbelt law itself, and to T.C.A. §§ 11-14-201, 11-15-107, and 11-15-108* (pertaining to publicly-owned recreational space within the State of Tennessee), and the definition *is nowhere extended to include easements created under the Conservation Easement Act.*

Valuations of lands subject to conservation easements are different than greenbelt valuations. The administrative judge finds that the valuation and assessment procedures under the two statutory frameworks are fundamentally different in operation and application, and are intended by the legislature to be different because these two laws serve different purposes. Specifically, except for determining rollback taxes, the greenbelt law expressly disregards the "fair market value" of the property for determination of property taxes, and focuses instead on *present use value*. Indeed, Tenn. Code Ann. § 67-5-1008(b)(4) specifically provides in pertinent part follows:

> . . . value as determined under subdivision (b)(2)(B) shall not be deemed determinative of fair market value for any purpose other than the administration of property tax under this title.

Hence, the "market value" utilized for rollback taxes is not intended to reflect the property's market value for any other purpose. Similarly, use value is calculated by the statutory formula and in no way reflects market value.

The foregoing is best illustrated by the Marion County appeal which has already had a valuation hearing. As a result of that hearing, the administrative judge determined that the property, as encumbered by the conservation easements, had a market value of $500.00 per acre. In contrast, the assessor's pre-hearing filing indicates that under greenbelt the property would

have a market value of $800.00 per acre and use value of $395.00 per acre. The administrative judge finds that the market and use values under greenbelt do not even reflect the valuation mandated by the Conservation Easement Act.

The administrative judge finds that use value under the greenbelt law is essentially a "one size fits all" approach whereas parcels encumbered by conservation easements may have drastically different market values. However, differences in market value have no relevance under the greenbelt law except in the context of rollback taxes. Properties receiving preferential assessment under the greenbelt law are taxed on their present use value pursuant to a statutory formula. Generally, the present use value of a parcel is significantly less than its market value. Properties subject to conservation easements, by contrast, are required to be appraised at full fair market value, less the reduction in value caused by the easement.

In the context of conservation easement valuation, one size cannot fit all if the market value of an individual parcel is being determined. Conservation easements must be evaluated based on the underlying restrictions and limitations within the easement, just as would be the case with appraising an unencumbered piece of land. By way of a simple example, if one easement protects 1,000 acres as forest land and allows no development whatsoever (other than the maintenance of a sustainable forestry program), and an identical piece of land subject to a more permissive conservation easement would allow the creation of up to ten homes over time, then it is clear that the "fair market value" of the land on which no development is allowed is substantially below the fair market value of the land on which ten houses can be built over time. Unlike present use valuation under the greenbelt law, conservation easements are often tailored to the specific wishes of the landowner and the organization holding the easement, which vary widely. The land which is subject to that easement will then be valued based on the extent of the restrictions established in that particular easement.

CONCLUSION

1. The owner of property encumbered by a conservation easement is not required to file a written application with the county property assessor pursuant to Tenn. Code Ann. § 67-5-1007(b) in order to be entitled to the reduction in property valuation available under Tenn. Code Ann. § 66-9-308.

2. Property subject to a conservation easement is not required to be appraised and assessed in the same manner as property receiving preferential assessment under the greenbelt law.

3. A property owner who establishes a conservation easement under the provisions of the Conservation Easement Act is not limited to 1,500 acres in the amount of land that can be included in a reduced valuation for property tax purposes.

ORDER

It is therefore ORDERED that the Marion County appeal be transferred back to the Assessment Appeals Commission pursuant to the appeal filed with that tribunal by the taxpayer.

It is FURTHER ORDERED that the Blount County appeal be transferred to Administrative Judge J. Richard Collier for any necessary further proceedings.

ENTERED this 10th day of November 2011

MARK J. MINSKY, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
James K. Polk Building
505 Deaderick Street, Suite 1700
Nashville, Tennessee 37243-1402

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Robert J. Fletcher
Fletcher Realty, Inc.
P.O. Box 30381
Knoxville, TN 37930

Mike Morton
Blount Co. Assessor of Property
351 Court Street
Maryville, Tennessee 37804

Judy Brewer
Marion Co. Assessor of Property
1 Courthouse Square
Jasper, Tennessee 37347

Henry Glascock
Henry Glascock Company
3908 Tennessee Avenue, Suite A
Chattanooga, Tennessee 37409

R. Louis Crossley, Jr., Esq.
Long, Ragsdale & Waters, P.C.
1111 Northshore Drive, Suite S-700
Knoxville, Tennessee 37919

Allen L. McCallie, Esq.
Miller & Martin PLLC
Suite 1000, Volunteer Building
832 Georgia Avenue
Chattanooga, Tennessee 37402

John C.E. Allen, Esq.
Robert T. Lee, Esq.
Comptroller of the Treasury
Division of Property Assessments
505 Deaderick Street, 17th Floor
Nashville, Tennessee 37243

This the 10th day of November 2011

Janice Kizer
Tennessee Department of State
Administrative Procedures Division

579 S.W.2d 192
Court of Appeals of Tennessee, Middle Section.

Eph H. HOOVER, Jr., Betty Hoover Derryberry and Dorothy Crawford Hoover Milam, Plaintiffs-Appellees,
v.
STATE BOARD OF EQUALIZATION, Defendant-Appellant.

Dec. 27, 1978.
|
Certiorari Denied by Supreme Court April 2, 1979.

In a certiorari proceeding, the Chancery Court, Davidson County, Robert S. Brandt, Chancellor, held that a State Board of Equalization decision not to consider alienability restrictions in deeds violated a real estate taxation statute. The Board appealed. The Court of Appeals, Lewis, J., held that a court-imposed restriction limiting life tenant's ability to alien, convey or encumber his estate or to lease the estate for a period of longer than one year did not constitute "legal restriction(s) on use" to be considered in determining valuation for property tax purposes.

Chancellor's decision reversed, and valuations as determined by Assessment Appeals Commission reinstated.

West Headnotes (3)

[1] Taxation
Deduction of Encumbrances on Real Property
Taxation
Deduction of Indebtedness in General

For property tax purposes, value attaches to property itself, not to interest of current party in possession, and statute recognizes existence of restrictions and encumbrances that affect value of fee simple estate, if they are restrictions which run with the land, but not if they are personal to parties in possession. T.C.A. §§ 67–606, 67–606(5).

4 Cases that cite this headnote

[2] Taxation
Matters Considered and Methods of Valuation in General

Court-imposed restriction limiting life tenant's ability to alien, convey or encumber estate or to lease estate for period of longer than one year did not constitute "legal restriction(s) on use" to be considered in determining valuation for property tax purposes. T.C.A. §§ 67–606, 67–606(5).

5 Cases that cite this headnote

[3] Taxation
Determination and Relief

Chancellor's statement, as ground for reversal of Assessment Appeals Commission decision, that conclusion that alternate uses of realty were not precluded by deed restrictions was conclusion which was unsupported by evidence in the record was not conclusion which affected merits of the decision, within statute providing that no agency decision pursuant to hearing in contested case shall be reversed, remanded or modified by reviewing court unless for errors which affect matters of decision complained of; any error was thus harmless, and did not afford chancellor basis for reversal. T.C.A. § 4–523(i).

2 Cases that cite this headnote

Attorneys and Law Firms

***192** William W. Burton, D. Russell Thomas, Murfreesboro, Lewis B. Hollabaugh, Nashville, for plaintiffs-appellees.

William Leech, Atty. Gen., David S. Weed, Sr. Asst. Atty. Gen., Nashville, for defendant-appellant.

***193** OPINION

LEWIS, Judge.

This appeal raises an issue concerning the proper interpretation of T.C.A. s 67-606(5): Whether a court-imposed restriction that limits a life tenant's ability to alien,

convey, or encumber their estate or to lease the estate for a period of longer than one year constitutes a "legal restriction(s) on use" and thereby should be considered in the basis of valuation for property tax purposes.

Plaintiffs acquired property in Rutherford County upon the intestate demise of their mother, Mrs. Eleanor Hoover, and their father's relinquishment of his estate by courtesy. The property was conveyed to the children plaintiffs by the court which imposed restrictions in the deeds to protect their interests as minors. All deed restrictions are the same and are accurately represented by the following granting clause in one of the deeds.

> "I, James R. Jetton, as Clerk and Master, do hereby transfer and convey to E. H. Hoover, Jr., his heirs and assigns, for and during the period of his natural life and at his death to his child, children, or descendants thereof living at the time of his death per stirpes and if he have no child, children or descendants thereof living at the time of his death, then to Miriam Martha Hoover, Eleanor Elizabeth Hoover and Dorothy Crawford Hoover, or such of them as may be living at the time of his death and to the descendants, living at the time of the death of the said E. H. Hoover, Jr., of such as may be dead, per stirpes and not per capita, free from the debts, contracts, and liabilities of each respective grantee and exempt from attachment or execution and without the power in each respective grantee to alien, convey or incumber their respective estates and without the power in each respective grantee to lease said property for a longer term than one year in any one contract."

The plaintiffs appealed their property tax assessment for the year 1975. The Hearing Examiner for the State Board of Equalization adjusted the valuation of the properties to reflect the deed restrictions effect on the valuation of the properties.

The Assessment Appeals Commission reinstated the original Rutherford County evaluation, asserting that the deed restrictions affected the alienability of the property and, thus, fell outside the scope of T.C.A. s 67-606(5). The State Board of Equalization refused to review the Commission's decision.

The valuation placed by each of the authorities are:

VALUES PLACED BY RUTHERFORD COUNTY

Description	Land Value	Improvement Value	Total Value	Assessment
Map 176, P-22	$ 22,750	$ 2,400	$ 25,150	$ 6,288
Map 112, P-1	257,000	61,000	312,000	78,000
Map 112, P-3	375,000	22,850	397,850	99,463
Map 177, P-14	30,600	6,500	37,100	9,275
Map 177, P-15	23,350	-0-	23,350	5,838
Total	$708,700	$92,750	$795,450	$198,864

VALUES PLACED BY HEARING EXAMINER

Description	Land Value	Improvement Value	Total Value	Assessment
Map 176, P-22	$ 14,400	$ 2,400	$ 16,800	$ 4,200
Map 112, P-1	156,875	60,990	217,865	54,466
Map 112, P-3	234,475	22,850	257,225	59,306
Map 177, P-14	22,000	4,000	26,000	6,500
Map 177, P-15	13,400	-0-	13,400	3,350
TOTAL	$441,150	$90,240	$531,290	$127,822

VALUES PLACED BY ASSESSMENT APPEALS COMMISSION AND AFFIRMED BY THE STATE BOARD OF EQUALIZATION

Description	Land Value	Improvement Value	Total Value	Assessment
Map 176, P-22	$ 22,750	$ 2,400	$ 25,150	$ 6,288
Map 112, P-1	257,000	61,000	312,000	78,000
Map 112, P-3	375,000	22,850	397,850	99,463
Map 177, P-14	30,600	6,500	37,100	9,275
Map 177, P-15	23,350	-0-	23,350	5,838
TOTAL	$708,700	$92,750	$795,450	$198,864

***194** Plaintiffs filed a Petition for Writ of Certiorari in the Chancery Court for Davidson County. The Chancellor held that the State Board of Equalization decision not to consider the alienability restrictions in the deeds violated T.C.A. s 67-606. The case was "remanded to the Board of Equalization for a determination of the assessment considering the alienability restrictions in the deeds as legal restrictions on use as required by T.C.A. s 67-606."

Defendant has duly perfected its appeal and assigns two (2) errors:

1. The Lower Court erred in holding that the decision of the State Board of Equalization not to consider the alienability restrictions in the deeds violates T.C.A. s 67-606.

2. The Lower Court erred in reversing the decision of the State Board of Equalization because:

"The conclusion that alternative uses are not precluded by the deed restrictions is a conclusion which is unsupported by the evidence in the record."

Tennessee Code Annotated s 67-606 has been amended but subsequent amendments are immaterial to this appeal. Following is the statute as it applies to facts of this case (Supp.1975):
67-606. Basis of valuation. The value of all property shall be ascertained from the evidences of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values.

In determining the value of all property of every kind, the assessor shall be guided by, and follow the instructions, of the appropriate assessment manuals issued by the state division of property assessments and approved by the state board of equalization.

For determining the value of real property, such manuals shall provide for consideration of the following factors:

(1) location;

(2) current use;

(3) whether income bearing or nonincome bearing;

(4) zoning restrictions on use;

(5) legal restrictions on use;

***195** (6) availability of water, electricity, gas, sewers, street lighting, and other municipal services;

(7) natural productivity of the soil, except that the value of growing crops shall not be added to the value of the land; and

(8) all other factors and evidences of value generally recognized by appraisers as bearing on the sound, intrinsic and immediate economic value at the time of assessment.

For determining the value of industrial, commercial, farm machinery and other personal property, such manuals shall provide for consideration of the following factors:

(1) current use

(2) depreciated value

(3) actual value after allowance for obsolescence

(4) all other factors and evidences of value generally recognized by appraisers as bearing on the sound, intrinsic and immediate economic value at the time of assessment.

It is the legislative intent hereby declared that no appraisal hereunder shall be influenced by inflated values resulting from speculative purchases in particular areas in anticipation of uncertain future real estate markets; but all property of every kind shall be appraised according to its sound, intrinsic and immediate economic value which shall be ascertained in accordance with such official assessment manuals as may be promulgated and issued by the state division of property assessments and approved by the state board of equalization pursuant to law.

Provided, that if the tax computed on an erroneous basis of valuation or assessment has been paid prior to certification of the corrected assessment by the assessor, the trustee or municipal collector shall, within sixty (60) days after receipt of such certification from the assessor, refund to the taxpayer that portion of such tax paid which resulted from the erroneous assessment, such refund to be made without the necessity of payment under protest or such other requirements as usually pertain to refunds of taxes unjustly or illegally collected. (Acts 1973, Ch. 226, s 6; 1974 (Adj.S.), ch. 771, s 8.)

Tennessee Code Annotated s 67-606(5), so far as we are able to determine, has never been construed by the courts of this State. However, in properly deciding the issues presented here, there is some guiding analogous authority in this and other jurisdictions.

In Town of Secaucus v. Damsil, 120 N.J.Super. 470, 295 A.2d 8 (App.Div.1972), concerning the effect of a cloud on the title to property, the court stated:
As this Court said in Re Appeal of Neptune Tp., 86 N.J.Super. 492, 207 A.2d 330 (Appeal Div.1965):

"The law requires an assessment of the value, not of the owner's title, but of the land; the assessed value represents the value of all interests in the land. Stack v. Hoboken, 45 N.J.Super. 294, 300, 132 A.2d 314 (App.Div.1957) (at 499, 207 A.2d 330)." . . .

It is understandable that the purchaser will insist on a discount from the true value of the property if he buys a doubtful title, but the fact that he does so affords no justification for applying a discount in a tax valuation case. Such a sale and discount is entitled to no essential weight in ascertaining what 'a willing buyer would pay a willing seller' for all the interest in the land. Id. at 474, 295 A.2d at 10.

[1] For property tax purposes, value attaches to the property itself, not to the interest of the current party in possession. The purchase and sale between the hypothetical parties envisions a hypothetical transfer of the present possessory interest(s) and any future interest attendant thereto. Here, the property interest consists of the present possessory life estate and the expectant remainder interest that completes the full fee in the lands.

In placing a valuation on the property, T.C.A. s 67-606 recognizes the existence of ***196** restrictions and encumbrances that affect the value of the fee simple estate, i. e. zoning restrictions, easements, etc. These are restrictions that run with the land, rather than those that are personal to the parties in possession.

[2] In NeBoShone Ass'n v. State Tax Commission, 58 Mich.App. 324, 227 N.W.2d 358 (1975), a nonprofit association which owned land used as a wildlife reserve appealed its valuation as it was affected by a navigable river running through the property.

Concerning the self-imposed restriction on the use of the land, the Michigan Court of Appeals stated:

> A private individual could not self-impose a restriction whereby he might be able to limit or avoid paying his just share of the ad valorem taxes due to government nor can a corporation. Id. at 334, 227 N.W.2d at 363.

In Stack v. City of Hoboken, 45 N.J.Super. 294, 132 A.2d 314 (App.Div.1957), concerning a title holder's status in relation to the property, the court stated:

> It must be apparent that in assessing the value of land, account should not be taken of the condition of the title of the alleged land owner or of any cloud upon it; nor should account be taken of the possibility that he would be unwilling to sell it because of an understanding with his grantor, or of the possibility that a purchaser would be put on notice that this grantor has an equitable interest in the property. The law requires an assessment of the value, not of the purported owner's title, but of the land; the assessed value of the land represents the value of all interest in the land. Id. at 300, 132 A.2d at 317-8.

Defendant contends that this principle is applicable to the law in Tennessee and that "the condition of appellees' title is irrelevant with respect to tax assessment and valuation purposes."

Defendant directs our attention to Sherrill v. Board of Equalization for the State of Tennessee, 224 Tenn. 201, 452 S.W.2d 857 (1970). There, the remaindermen appealed from a dismissal of their petition for certiorari based on an allegation that the State Board of Equalization incorrectly had affirmed an assessment which assessed the remaindermens' interest in the property.

The Supreme Court held that the full value of the land is taxed in the hands of the life tenants, notwithstanding the fact that a life tenant has less than a full and unrestricted ownership of the land.

The restrictions present in the deed before us are primarily restrictions on the alienability of the property. The term "primarily" is used in recognition of the reality that when alienation is restricted, there is a resultant effect on the use of the property. However, the incidental effect on the use is not within the concerns of T.C.A. s 67-606(5). That section directs consideration to "legal restrictions on use" only.

These properties are not subject to any direct restrictions on use. In fact, plaintiffs are free to lease the property within the ambit of the restriction on such alienation. It is their concern

that such restrictions greatly inhibit one avenue of use which may, in fact, be one of the prime values of the properties.

However, an alternate construction of T.C.A. s 67-606(5), as argued by the plaintiffs, would have a far-reaching effect on property taxation in Tennessee. To value and assess real property by taking into consideration a self-imposed or court-ordered temporary restriction, as in the facts at hand, would negate the clear mandate of the willing buyer and willing seller concept and could allow property owners to effectively control the valuation of their properties for taxation purposes by careful imposition of limited restrictions in the deeds to their properties.

Defendant's first assignment of error is sustained.

[3] Defendant's second assignment of error asserts that if an administrative agency commits harmless error, the reviewing court cannot use it as a proper basis for reversal of the agency's decision. Defendant's ***197** contention is in accord with T.C.A. s 4-523(i), which provides:

> No agency decision pursuant to a hearing in a contested case shall be reversed, remanded, or modified by the reviewing court unless for errors which affect the merits of the decision complained of. Id. Supp.1978.

The Chancellor stated as a ground for reversal of the Assessment Appeals decision:

> (T)he conclusion that alternate uses are not precluded by the deed restrictions is a conclusion which is unsupported by evidence in the record.

Such a conclusion, whether or not supported by material and substantial evidence in the record, does not affect the merits of the decision as contemplated by T.C.A. s 4-523(i).

Therefore, the error, if in fact it constituted error, was harmless and, thus, did not afford the Chancellor a basis for reversal.

It results that the decision of the Chancellor is reversed and the valuations as determined by the Assessment Appeals Commission are reinstated.

Costs are taxed to plaintiffs-appellees.

TODD and DROWOTA, JJ., concur.

All Citations

579 S.W.2d 192

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Jeffrey and Deborah Whaley**	)	**Coffee County**
	Property ID: 038 014.04	)	
		)	
	Tax Year 2016	)	**Appeal No. 111056**

INITIAL DECISION AND ORDER

Statement of the Case

This is an appeal by Jeffery and Deborah Whaley pursuant to Tenn. Code Ann. § 67-5-1008 from an action by the Coffee County Assessor of Property to impose rollback taxes. The appellant filed appeals with the State Board of Equalization ("State Board") on February 28, 2017.

The undersigned administrative judge conducted a hearing of this matter on January 23, 2018, in Manchester. The appellant, Deborah Whaley, represented herself at the hearing. Coffee County Assessor of Property Beverly Robertson appeared on her own behalf. She was assisted by Bobby Spencer, a consultant with the Assessor's office.

Findings of Fact and Conclusions of Law

The subject property of this appeal is a 55.12 acre tract of land located at 400 Willow Lake Farm Road in Wartrace. Prior to tax year 2016, the property was valued pursuant to the Agricultural, Forest and Open Space Land Act of 1976, as amended (commonly known as the "greenbelt" law).

This appeal involves the removal of greenbelt status for tax year 2016 and a rollback tax assessment for tax years 2013-2015. Tenn. Code Ann. § 67-5-1008(d)(1)(D) imposes rollback

taxes when an owner of property classified as greenbelt "fails to file an application as required by this part."

The facts of this matter are not in dispute. According to a timeline provided by the Assessor:

1. The original parcel approved for greenbelt consisted of 57.13 acres and was placed on greenbelt status for tax year 2008.

2. On September 16, 2014, 1.7 acres was transferred to the appellant's son, leaving 55.43 acres. Because the transfer resulted in a *decrease* in property covered by greenbelt, the Assessor required no further action.

3. On February 5, 2015, an additional 2.10 acres was transferred to the son, leaving 53.42.

4. On May 12, 2015, the son transferred back to the appellants 1.7 acres, creating a new parcel.

5. On October 5, 2015, the appellant asked that the new 1.7 acre parcel be combined with the original parcel that was under greenbelt protection. This resulted in an *increase* in the acreage of the original parcel to 55.12 acres. Because of this increase, the Assessor mailed a notification to the appellants notifying them that a new greenbelt application would be required.

6. On March 2, 2016, a second notice was mailed to the appellants again notifying them that a new greenbelt application was required. It appears Mr. Whaley called the Assessor upon receipt of this letter and was told about the need for a new application.

7. On June 14, 2016, the notification of disqualification of greenbelt status and imposition of rollback taxes was mailed to the appellants.

8. On September 14, 2016, Mr. Whaley appeared at the Assessor's office to file the new greenbelt application. This application resulted in the parcel again qualifying for greenbelt status beginning in tax year 2017.

Thus, the appellants made one transfer of property in 2014 and another in 2015. These transfers, which lowered the coverage acreage, did not require any action on the part of appellants in order for greenbelt status to continue. However, the transfer of property in 2015

back to the appellants, coupled with recombining the transferred land with the original parcel, triggered the need for a new application.

Tenn. Code Ann. § 67-5-1005(a)(1) provides as follows:

> Any owner of land may apply for its classification as agricultural by filing a written application with the assessor of property. The application must be filed by March 1. Reapplication is not required so long as the ownership as of the assessment date remains unchanged. Property that qualified as agricultural the year before under different ownership is disqualified if the new owner does not timely apply. The assessor shall send a notice of disqualification to these owners, but shall accept a late application if filed within thirty (30) days of the notice of disqualification and accompanied by a late application fee of fifty dollars ($50.00).

Respectfully, it appears the appellants had every opportunity to prevent the removal of the parcel from the greenbelt list and prevent the imposition of rollback taxes. The Assessor made numerous, timely attempts to persuade the appellants to file an application for greenbelt status.

The administrative judge is not unsympathetic to the seemingly harsh situation resulting from missing the deadline to file an application on a parcel that had recently been covered. However, given the legal transfer of the property back to the appellants (even from a family member), an application is required.

The Assessment Appeals Commission has repeatedly and consistently held that deadlines and requirements are clearly set out in the law, and owners of property are charged with knowledge of them. There is simply no recourse afforded by the greenbelt statute for the failure to timely file a required application.

Order

It is, therefore, ORDERED that both the removal from greenbelt status for tax year 2016 and the imposition of a rollback assessment for tax years 2013-2015 are affirmed.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

Entered this 7th day of May 2018.

Brook Thompson, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Jeffrey and Deborah Whaley
400 Willow Lake Farm Road
Wartrace, Tennessee 37183

Beverly Robertson
Coffee Co. Assessor of Property
1341 McArthur Street, Suite 3
Manchester, Tennessee 37355

This the 10th day of May 2018.

Janice Kizer
Department of State
Administrative Procedures Division

036-002

return to handbook

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	JOHN J. ROSS, JR. & E.W. ROSS, JR.	)	
	Dist. 5, Map 101, Cont. Map 101	)	
	Parcel 94.01, Spec. Int. 000	)	
	Dist. 9, Map 150, Parcel 3.00, Spec.	)	
	Int. 000	)	
	Dist. 3, Map 116, Cont. Map 116,	)	Hardin County
	Parcel 1.01, Spec. Int. 000	)	
	Dist. 3, Map 116, Cont. Map 116,	)	
	Parcel 1.00, Spec. Int. 001	)	
	Farm Property	)	
	Tax Year 1991	)	

FINAL DECISION AND ORDER

Statement of the case

This is an appeal by the taxpayer from the initial decision and order of the administrative judge, who recommended no change in the status of the subject properties under the Agricultural, Forest, and Open Space Land Act of 1976 (Tenn. Code Ann. §67-5-1001 *et seq.*, known as the "greenbelt" law) and also recommended that the subject properties be valued for property taxes as follows:

Parcel	Land	Improvement	Total value	Assessment
94.01	$286,100	-0-	$286,100	$71,525
3.00	$127,100	-0-	$127,100	$31,775
1.01	$261,900	-0-	$261,900	$65,475
1.00	$183,800	-0-	$183,800	$45,950

43,800 214,725

The appeal was heard in Memphis on October 27, 1992, before Commission members Keaton (presiding), Crain, Isenberg, Schulten, Simpson, and Stokes. Mr. John Ross, Jr. an attorney, represented himself, and Mr. W. Lee Lackey represented the assessor. At the conclusion of the hearing, the parties were permitted to submit briefs, and the Commission reconvened to deliberate their decision on December 18, 1992, with members Keaton (presiding), Isenberg, Simpson, and Stokes participating.

Findings of fact and conclusions of law

The subject properties are rural tracts totaling 4,223.64 acres of varying topography and features. Mr. Ross and his late uncle, E.W. Ross, Jr., previously obtained greenbelt classifications for this and more than 3,000 additional acres they own through applications filed with the assessor prior to July 1, 1984. Although the greenbelt law was amended in 1984 to limit greenbelt holdings by any one owner to 1,500 acres, a "grandfather" clause protected holdings such as

the Ross's which were enrolled prior to July 1, 1984. In 1987 the grandfather clause was amended to exclude the forest and open space categories from the grandfather clause, and the assessor declassified all but 1,500 acres of the Ross's property. Mr. Ross appealed the declassification (beginning with the 1989 assessment) to the State Board of Equalization. The administrative judge allowed greenbelt for an additional 1,500 acres because two separate persons owned the property and each, in the judge's view, was entitled to his 1,500 acre maximum. The judge denied greenbelt for the remainder, and no further appeal was taken until Mr. Ross renewed his claim in this appeal for the 1991 tax year. Once again the administrative judge has recommended rejection of the claim for additional greenbelt acreage beyond the 3,000 acres already granted.

Mr. Ross argues that the 1987 amendment, being limited to the forest and open space categories, creates a separate maximum ownership limit for these categories, such that he and his uncle are entitled to 1,500 acres each of forest land in greenbelt in addition to the agricultural land already approved. He also argues that the property previously approved for greenbelt should not be attributed to either himself or his uncle because, under deeds he subsequently prepared, neither is more than a 50% owner of the property. Mr. Lackey for the assessor argues that the initial decision and order of the administrative judge should be affirmed, but on the basis that the grandfather clause, having not been codified in Tennessee Code Annotated, is inapplicable and therefore the owners are bound by the 1,500 acre limitation regardless of the 1987 legislation.

Though since revised, the greenbelt law at the time relevant to this appeal provided as follows:

> No single owner within any one (1) taxing jurisdiction shall be permitted to place more than one thousand five hundred (1,500) acres of land under the provisions of this part.

Tenn. Code Ann. §67-5-1003(3). This language was added by Chapter 685 of the Public Acts of 1984, which also provided as follows:

> [I]n determining the maximum limit of one thousand five hundred (1,500) acres available for any one (1) owner to place under the provisions of this part, all affiliated ownership shall be taken into consideration, regardless of how same is held if the owner has legal title or equitable title to more than fifty percent (50%) of the ownership interest therein.

Unlike the foregoing provisions, the grandfather clause in Public Chapter 685 was not codified. It provided as follows:

> The provisions of this act shall not operate to change the classification of any land which has been classified under the provisions of this part prior to July 1, 1984.

Three years later the legislature "degrandfathered" forest and open space land:

> [T]he maximum acreage available for any one (1) owner classified as forest or open space land under the provisions of this part shall be one thousand five hundred (1,500) acres. The provisions of this subsection shall operate to change the classification of any such land in excess of one thousand five hundred (1,500) acres which has been so classified under the provisions of this part prior to July 1, 1984.

This provision *was* included in Tenn. Code Ann., §67-5-1008(g), but we attach no significance to the inclusion or exclusion of these provisions from the Tennessee Code Annotated. The code itself directs that provisions such as these, which "sav[e] rights accrued or status fixed under previous acts or laws", shall continue to have legal effect even though omitted from the codified acts. *See*, Tenn. Code Ann. §1-2-105. We therefore will give effect to the "grandfather" as well as the "degrandfather" amendments.

We believe the maximum ownership limit relates to all greenbelt land, and that it is not merely a limit within each greenbelt category. The failure of the 1987 amendment to reference the agricultural classification does not to us suggest that the limit for forest and open space is separate. When the legislature amended the law in 1984 to impose the ownership limit, it clearly spoke in terms of land classified under "this part" of the Code, which includes the entire greenbelt law. Even the stated findings which preface the law were amended to state the rationale of the limit:

> [I]n rural counties an over abundance of land held by a single landowner which is classified on the tax rolls by the provisions of this part could have an adverse effect upon the ad valorem tax base of the county, and thereby disrupt needed services provided by the county. To this end, a limit must be placed upon the number of acres that any one (1) owner within a tax jurisdiction can bring within the provisions of this part.

Tenn. Code Ann. §67-5-1002. Given this clear expression of legislative concern over excessive concentrations of greenbelt land in a single owner, we are not inclined to read into the law a separate limit for each greenbelt category where the law does not specifically so provide. The first limit, stated in the 1984 amendment, applied the limit to any property classified for use value assessment under the greenbelt law, with no distinction or separate limit stated for agricultural as opposed to forest or open space. The second limit referred only to the forest and open space categories but the purpose was not to enlarge but further limit eligibility for greenbelt by eliminating the grandfather clause for the latter two

classifications. We believe the law limits owners to 1,500 acres of greenbelt land, whether it be agricultural, forest, or open space, or any combination thereof.

The second point raised by Mr. Ross is that he and his uncle are entitled to greenbelt classification for the subject properties because they as owners are not legally attributable with the acreage already approved. Although the administrative judge who approved this acreage, 1,500 acres each, in the 1989 appeal specifically attributed the acres to Mr. Ross and his uncle, Mr. Ross has since restructured the ownership to avoid either he or his uncle being more than a 50% owner. The administrative judge denied this portion of Mr. Ross's claim on the basis that no new applications had been presented reflecting the new ownership, and we agree that this claim must be evaluated on the existing applications, for the reasons expressed by the administrative judge.

Based on the foregoing, we find that the initial decision and order of the administrative judge should be affirmed. Mr. Keaton, concurring in the result of this decision, states his view that the 1987 "degrandfather" amendment should be applied to the agricultural as well as the forest and open space classifications because to do otherwise would render the amendment constitutionally invalid as class legislation, under Tennessee Constitution, Article 11, §8.

ORDER

It is therefore ORDERED, that the initial decision and order of the administrative judge is affirmed, the properties are determined to be ineligible for greenbelt for tax year 1991, and the values of the property for property taxes are determined as follows for tax year 1991:

Parcel	Land	Improvement	Total value	Assessment
94.01	$286,100	-0-	$286,100	$71,525
3.00	$127,100	-0-	$127,100	$31,775
1.01	$261,900	-0-	$261,900	$65,475
1.00	$183,800	-0-	$183,800	$45,950

This order is subject to:

1. Reconsideration by the Commission, in the Commission's discretion. Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within ten (10) days from the date of this order.
2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

3. Review by the Chancery Court of Davidson County or the county where the property is located. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: November 19, 1993

Presiding member

ATTEST:

Executive Secretary

cc: Mr. John J. Ross, Jr., Esq.
Mr. W. Lee Lackey, Esq.
Ms. Roena Gray, Assessor of Property

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ADMINISTRATIVE JUDGE

In re: JOHNSON COUNTY USE VALUE SCHEDULE	)	Johnson
Tax Year 1995	)	County

INITIAL DECISION AND ORDER

Statement of the case

Petitioners in this proceeding are owners of land in Johnson County classified as agricultural land under the Agricultural, Forest, and Open Space Land Act of 1976 (the Greenbelt Law). This law creates an exception to the general principle that land is valued for property taxes in Tennessee at its fair market value according to its highest and best use. Land qualifying in one of the three greenbelt classifications is taxed instead according to value in the qualifying greenbelt use. If the land is later converted to a nongreenbelt use, the owner may have to repay taxes saved for the three most recent years, so the assessor must calculate market value as well as the greenbelt value for qualifying land, in case a rollback assessment becomes necessary. The law contains a formula for calculating greenbelt value set forth in Tenn. Code Ann. Section 67-5-1008, and the State Division of Property Assessments (DPA) is responsible for creating a schedule of per acre greenbelt values for each county according to various categories of agricultural land. The Division also calculates market value in the form of a schedule of per acre selling prices for rural tracts (rural land schedule).

Upon petition of ten or more greenbelt owners or an organization representing ten or more greenbelt owners, the State Board of Equalization must convene a hearing to determine if the greenbelt value schedule and the rural land schedule have been properly calculated, and that is the basis of this proceeding. The hearing was conducted, after newspaper notice, in Jonesboro on April 25, 1995. Testimony was presented by Mr. Charles Smith, a rural valuation specialist for the DPA, Mr. Lyle Lane, responsible in the DPA Johnson City regional office for development of the Johnson County greenbelt schedule, and Johnson County Assessor of Property Clarence Howard.

Findings of fact and conclusions of law

Johnson County was reappraised for property tax purposes in 1995, and the DPA developed a greenbelt schedule and rural land schedule as a part of the reappraisal. Greenbelt value is determined by assigning two-thirds weight to a use

value component and one-third weight to a land schedule value component, the latter to be taken simply from the rural land schedule. The use value component takes into account the relative productivity of agricultural land in four categories, row crop being the most productive category in terms of projected agricultural income, followed by rotation, pasture, and woodland. Each category is graded good, average, or poor and a projection of agricultural income per acre is developed for each grade and category. The income estimate is divided by a capitalization rate derived from sources specified in the law to yield a per acre use value which is different for each grade and category. The petitioners did not dispute the use value component in the DPA's proposed 1995 Johnson County greenbelt value schedule.

The land schedule value component is to be derived from the rural land schedule, "based solely upon farm-to-farm sales not influenced by commercial, industrial, residential, recreational or urban development, the potential for such development, nor any other speculative factors." Tenn. Code Ann. § 67-5-1008 (c)(3). The rural land schedule developed in this case by the Division for Johnson County for 1995, is based on thirteen sales of rural property the Division feels are qualified sales under the law. Ten of the sales were graded "C", or average, for location, two were "D" locations, which is property negatively influenced by poor access or topography, and one sale property was in a better than average location. If there are no sales of properties for a particular category, condition grade, or location grade, then a per acre value is derived by interpolation. The resulting value per acre becomes part of the rural land schedule. The Division also uses these per acres values, but from the C location only, and assigns them one-third weight on the greenbelt schedule. The greenbelt schedule differentiates by category (row crop, rotation, etc.) and condition (good-average-poor) but not by location. The Division uses the C location only on the greenbelt schedule because location is supposed to have little effect on agricultural productivity.

The assessor testified that Johnson County has very few farms. Of about 2,000 rural tracts, only one-fourth provide a living for a farmer. He stated the proposed greenbelt schedule developed by the Division had three defects: (1) almost all rural sales in the county, including those used to develop the rural land schedule by the Division, are influenced by nonfarm considerations; (2) average farm sizes for the sales identified for the schedule were smaller than the county average, and smaller size usually means higher selling price per acre; and (3) the Division could just as well have used "D" location values from the rural land

schedule to derive the greenbelt schedule, and if it had done so the resulting use values would have increased at a more moderate rate.

By law, this proceeding is to be conducted in accordance with the Uniform Administrative Procedures Act, and petitioners therefore bear the burden of establishing entitlement to relief by a preponderance of evidence. While the assessor's arguments concerning the sales sample used by the Division may have some intuitive appeal, no proof was offered in support. No information was offered to indicate why any of the thirteen sales in the sample should have been excluded or modified, nor were alternative sales offered to demonstrate a more appropriate market value for rural land in Johnson County. Furthermore, the Division's rationale for using a single, average location factor for the market (land schedule) value component is reasonable. The greenbelt law provides for assessment of agricultural land based on value in agricultural use. Unlike the value of land generally, the value of land based on agricultural use should be relatively unaffected by its proximity to roads, schools and other urban amenities. Therefore it is appropriate to deemphasize location factors in development of greenbelt values. Selection of an average location factor achieves this result, and there is no evidence that it is unreasonable. Testimony was offered that use of the average location factor would yield an unacceptable rate of increase in greenbelt values compared to the previous year, but this factor alone of course cannot be used to thwart a method which appears reasonable on its face.

ORDER

It is therefore ORDERED that the use value schedule as calculated by the Division of Property Assessments and shown in Exhibit A be adopted for use in Johnson County for tax year 1995. This order is subject to the following:

1. Reconsideration. Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the administrative judge within ten (10) days from the date of this order.
2. Review by the State Board of Equalization. This review must be requested in writing and the request must state the specific ggrounds for relief and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order. If review is not timely requested the Board will be asked to adopt this decision as its final decision without further proceedings. Requests for stay of effectiveness will not be accepted.

Dated: May 9, 1995

Kelsie Jones
Acting administrative judge

cc: Mr. Clarence Howard, Assessor of Property
Mr. Charles Smith, Division of Property Assessments
Mr. J. Norman Dugger, Chairman, Johnson County Board of Equalization

Ex. 2 4-25-95

COUNTY : Johnson

COUNTY # : 46

SUBMITTED BY : LL

DATE : 1/25/95

ASSESSOR:
REAPPRAISAL: X

USE VALUE SCHEDULE

LAND CODES	S/C	A	B	C	D
45	G	966 .00	966 .00	966 .00	966 .00
45	A	914 .00	914 .00	914 .00	914 .00
45	P	859 .00	859 .00	859 .00	859 .00
46	G	826 .00	826 .00	826 .00	826 .00
46	A	777 .00	777 .00	777 .00	777 .00
46	P	691 .00	691 .00	691 .00	691 .00
54	G	618 .00	618 .00	618 .00	618 .00
54	A	546 .00	546 .00	546 .00	546 .00
54	P	378 .00	378 .00	378 .00	378 .00
62	G	437 .00	437 .00	437 .00	437 .00
62	A	363 .00	363 .00	363 .00	363 .00
62	P	248 .00	248 .00	248 .00	248 .00

row crop

rotation

pasture

woodland

710 S.W.2d 521
Court of Appeals of Tennessee,
Middle Section, at Nashville.

MARION COUNTY, Tennessee, Gene West, Assessor of Property of Marion County, and Gene West, Individually, Plaintiffs-Appellants,
v.
STATE BOARD OF EQUALIZATION, State Division of Property Assessments, and W.J. Michael Cody, Attorney General and Reporter, Defendants-Appellees.

No. 85-28-II
|
Feb. 11, 1986.
|
Application for Permission to Appeal Denied by Supreme Court
April 21, 1986.

County and tax assessor attacked constitutionality of Agricultural, Forest, and Open Space Land Act. The Chancery Court, Davidson County, Irvin H. Kilcrease, Jr., Chancellor, dismissed complaint. County and tax assessor appealed. The Court of Appeals, Cantrell, J., held that: (1) legislature was constitutionally empowered to create subclasses of real property; (2) Constitution required all farm property to be taxed uniformly and equally; and (3) valuation of property arrived at under legislation inviting property owners to voluntarily restrict use of property for agricultural, forest, or open space purposes and under statute of general applicability would be the same.

Affirmed and remanded.

West Headnotes (3)

[1] Taxation
Classification of Subjects, and Uniformity as to Subjects of Same Class

Legislature had bare constitutional power to create subclasses of real property for purposes of tax assessment notwithstanding that Constitution did not specifically allow such subclassification. T.C.A. §§ 67–5–601, 67–5–1001 et seq., 67–5–1002, 67–5–1007, 67–5–1008, 67–5–1008(a)(2); Const. Art. 2, § 28.

3 Cases that cite this headnote

[2] Taxation
Constitutional requirements and operation thereof

State Constitution requires all farm property to be taxed uniformly and equally, regardless of location and whether legislature has provided that some of it may be called “forest” or “open” land. Const. Art. 2, § 28.

2 Cases that cite this headnote

[3] Constitutional Law
Assessment and Collection

Statutes
Taxation

Taxation
Discrimination as to mode of assessment or valuation

Valuation of property under statute inviting property owners to restrict use of property for agricultural, forest, or open space purposes was same as that which would result from statute of general applicability; therefore, constitutional requirements that all farm property be taxed uniformly and equally, constitutional prohibition of special legislation, and due process were not violated. T.C.A. §§ 67–5–601, 67–5–1008(a)(2); Const. Art. 2, §§ 28, 29; Art. 11, § 8; U.S.C.A. Const.Amend. 14.

1 Cases that cite this headnote

Attorneys and Law Firms

***521** Thomas W. Graham, Cameron, Leiderman & Graham, Jasper, for plaintiffs-appellants.

***522** W.J. Michael Cody, Atty. Gen. and Reporter, William P. Sizer, Asst. Atty. Gen., for defendants-appellees.

Edward C. Blank, II, Dan H. Elrod, Trabue, Sturdivant and DeWitt, Nashville, for Tennessee Farm Bureau Federation.

OPINION

CANTRELL, Judge.

Marion County and its Tax Assessor attack the constitutionality of the Agricultural, Forest, and Open Space Land Act of 1976, T.C.A. § 67–5–1001 et seq. The Chancellor dismissed the plaintiffs' complaint. We affirm.

In 1976 the Legislature, concerned about the threat to open land posed by urbanization and high land taxes, passed an act to encourage landowners to keep their property open. T.C.A. § 67–5–1002. If their open land had taken on an inflated value because of its location and its potential use for residential or commercial development, the act, known generally as the "Greenbelt Law," allowed the owner to apply to the tax assessor of the county for a classification of the property as agricultural, forest, or open space land. T.C.A. § 67–5–1007. When the property has been so classified, the value for assessment purposes is to be calculated as if that were its highest and best use. T.C.A. § 67–5–1008. Thus, the value of the land used for assessment purposes is not what a willing buyer in an arm's length transaction would pay for the property if it were not restricted in use—we will call that the fair market value, T.C.A. § 67–5–601—but is to be based on farm income, soil productivity or fertility, topography, etc. T.C.A. § 67–5–1008(a)(2). If the use changes, the owner is required to pay the taxes that would have been paid on the full unrestricted value of the land, going back three years on agricultural and forest land and five years on open space land.

The appellants contend that this legislative scheme violates Article 2, § 28 and § 29 of our constitution and the due process provisions of the federal and state constitutions.

Article 2, § 28 of the Tennessee Constitution provides that real property shall be classified as public utility property, industrial and commercial property, residential property or farm property. Public utility property is to be assessed at fifty-five percent of value, industrial and commercial property at forty percent of value, and residential and farm property at twenty-five percent of value.

The appellants' first contention is that the statute is unconstitutional because it creates three additional sub-classes of real property.

[1] We think this contention fails. Although the constitution does not specifically allow the legislature to divide real property into sub-classes—as it does with respect to personal property—it does not prohibit the legislature from doing so. Under the general law, the right to tax property is peculiarly a matter for the legislature and the legislative power in this respect can only be restricted by the distinct and positive expressions in the constitution. *Vertrees v. State Board of Elections*, 141 Tenn. 645, 214 S.W. 737 (1919). *See also Hoffmann v. Clark*, 69 Ill.2d 402, 14 Ill.Dec. 269, 372 N.E.2d 74 (1977). Thus, the legislature has the bare power to create sub-classes of real property provided the act of creating these sub-classes does not violate other provisions of the constitution.

Next, the appellants contend that the statute in question results in some farm property being taxed on twenty-five percent of its fair market value while other farm property is taxed on twenty-five percent of an arbitrarily fixed lower value. If so, the appellants contend, the statute violates the following constitutional provisions: Article 2, § 28 of the Tennessee Constitution, which requires the the ratio of assessment to value of property in each class or sub-class to be equal and uniform throughout the state; the requirement in Article 2, § 29 of the Tennessee Constitution that all property shall be taxed according to its value; the provision in ***523** Article 11, § 8 of the Tennessee Constitution that prohibits special legislation; and the due process provisions of the Fourteenth Amendment to the United States Constitution.

[2] With respect to these contentions we make two preliminary observations. First, although we have held that the legislature may create other sub-classes of real property, we think the requirement in Article 2, § 28 that the ratio of assessment to value be equal and uniform in any class or sub-class refers to the classes and sub-classes created in the constitution. Otherwise, there would be no question about this statute; the legislature would be free to provide that farm property, close to a populated area and thus the subject of inflated values, be taxed on a different basis than other farm property, simply by creating a new sub-class. Therefore, we think the constitution requires that all farm property be taxed uniformly and equally, regardless of its location and regardless of whether the legislature has provided that some of it may be called "forest" or "open" land.

Secondly, there are many different definitions of value. The constitution does not give any clue as to how value is to be determined; instead it leaves the method of determining value

to the legislature. Article 2, § 28, Constitution of Tennessee. In T.C.A. § 67–5–601, the legislature said:

> (a) The value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values, and when appropriate subject to the provisions of the Agricultural, Forest, and Open Space Land Act of 1976, codified in Part 10 of this chapter.
>
> (b) It is the legislative intent to hereby declare that no appraisal hereunder shall be influenced by inflated values resulting from speculative purchases in particular areas in anticipation of uncertain future real estate markets; but all property of every kind shall be appraised according to its sound, intrinsic and immediate economic value which shall be ascertained in accordance with such official assessment manuals as may be promulgated and issued by the state division of property assessments and approved by the state board of equalization pursuant to law.

In *L & N Railroad Co. v. P.S.C.*, 631 F.2d 426 (6th Cir.1980), the federal court said the Tennessee Constitution required all property to be valued at "full market value." The State in its brief in this case contends that the definition in T.C.A. § 67–5–601 is of "fair market value." We are of the opinion that the correct name for this value which the legislature has described is irrelevant; what is important is the same standards be used in all cases in arriving at the value to be used for assessment purposes.

[3] With these two preliminary ideas in mind we think the remaining issues are all disposed of if the value arrived at under T.C.A. § 67–5–1008 is equal to the value that would result from the general statute, T.C.A. § 67–5–601.

When the two statutes are examined closely we think the value arrived at under either would be the same. It seems to us that in enacting this legislation, the legislature has issued an invitation to property owners to voluntarily restrict the use of their property for agricultural, forest, or open space purposes. Once assumed, that restriction affects the property's value. If it can only be used for farm purposes for instance, then it would be free from any artificial value attributed to its possible use for development. It should have the same value as any similar property that is as productive and accessible as it is. *See* T.C.A. § 67–5–1008(a)(2). It results that the property is being valued at its fair market value for agricultural purposes. The same is true of forest or open space land. Therefore, in passing the act in question the legislature did not violate the constitutional provisions relied on by the appellants.

The judgment of the court below is affirmed and the cause is remanded to the Chancery Court of Davidson County for ***524** any further proceedings necessary. Tax the costs on appeal to the appellants.

TODD, P.J., M.S., and LEWIS, J., concur.

All Citations

710 S.W.2d 521

End of Document

LEWIS 083-001

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	MARY ANN WOMACK MCARTHUR	)	
	Dist. 10, Map 106, Control Map 106,	)	
	Parcel 018.00, Special Interest 000	)	Sumner County
	Farm Property	)	
	Tax Year 1992	)	

FINAL DECISION AND ORDER

Statement of the case

This is an appeal by the taxpayer from the initial decision and order of the administrative judge, who recommended that the subject properties be valued for property taxes as follows:

Land Value	Improvement Value	Total Value	Assessment
Market			
$125,500	$40,600	$166,100	$ -
Use			
$55,900	$40,600	$96,500	$24,125

The appeal was heard in Nashville on January 12, 1994 before Commission members Keaton (presiding), Isenberg, Simpson, and Stokes.

Findings of fact and conclusions of law

The subject property is a farm comprising 119 acres, including a homesite, located off Highway 31E in Sumner County. It is classified as agricultural property under the Agricultural, Forest, and Open Space Land Act of 1976 ("Greenbelt Law"), and therefore the property is assigned both a market value like other property and also a use value, but it is the use value which under the greenbelt law is the basis of the assessment for property taxes. Use value for greenbelt properties is determined from a county wide, per acre schedule of values that takes into account the potential use and quality of different types of rural land. In this case the only dispute concerns the proper allocation of the subject property among the various types of rural land to be found on the use value schedule. The parties' biggest difference is 92 acres which the taxpayer argues should be classified as pasture rather than rotation land. On the county use value schedule, good pasture land is valued at $411 per acre while rotation land is valued at from $451 to $567, depending on additional qualitative factors.

Although the taxpayer has ably presented a breakdown of the various actual uses of the subject property showing that most of it is indeed used as pasture, it is

the *potential* use of the land that governs how it must be graded for greenbelt classification, and the assessor has convincingly shown that the majority of the subject property is suitable for rotation use even though it is not currently used as such. We are aware that the greenbelt law requires that land be valued for property taxes according to its actual greenbelt use rather than its market value for some more intensive use. Within the constraints of the use value presumption, however, the assessor must be free to determine the most likely use value. The greenbelt law was meant to favor agricultural uses over more intensive nonagricultural uses, but not to favor one type of agricultural use over another. Before the administrative judge, the assessor reviewed the use value classification of the subject property and made some adjustments of his original allocation of the property among the various classes, which the administrative judge accepted. We are shown no basis to disturb that allocation, and accordingly, we find that the initial decision and order should be affirmed.

ORDER

It is therefore ORDERED, that the initial decision and order of the administrative judge is affirmed and the value of the subject property is determined as follows for tax year 1992:

Land Value	Improvement Value	Total Value	Assessment
Market			
$125,500	$40,600	$166,100	$ -
Use			
$55,900	$40,600	$96,500	$24,125

This order is subject to:

1. Reconsideration by the Commission, in the Commission's discretion. Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within ten (10) days from the date of this order.
2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
3. Review by the Chancery Court of Davidson County or the county where the property is located. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: August 1, 1994

Presiding member

ATTEST:

Executive Secretary

cc: W. Perry McArthur
Tommy Marlin, Assessor of Property

return to handbook

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	MARY SUE HAREN	)	
	Dist. 1, Map 15, Cont. Map	)	
	15, Parcel 3.03	)	Polk County
	Farm Property	)	
	Tax Years 1998-1999	)	

FINAL DECISION AND ORDER

Statement of the case

This is an appeal by the assessor of property from the initial decision and order of the administrative judge. The appeal involves proper categorization of agricultural land approved for participation in the "greenbelt" program. The judge recommended the subject properties be assigned agricultural land grades as set forth in Exhibit B of the initial decision and order, with resulting values and assessments as follows:

Tax Year 1998

	Land	Improvement	Total	Assessment
Market	$215,600	$69,000	$284,600	N/A
Use	$109,900	$69,000	$178,900	$44,725

Tax Year 1999

	Land	Improvement	Total	Assessment
Market	$219,300	$179,900	$399,200	N/A
Use	$114,300	$179,900	$294,200	$73,550

The appeal was heard in Knoxville on March 23, 2001, before Commission members Isenberg (presiding), Ishie, and Millsaps, sitting with an administrative judge[1]. Mr. Frank Haren represented the taxpayer and Polk County Assessor Mr. Randy Yates represented himself.

Findings of fact and conclusions of law

The Agricultural, Forest, and Open Space Land Act of 1976, or greenbelt law, allows qualifying land to be assessed for property taxes on the basis of its current use value rather than its market value in some more intensive use. Greenbelt use value is based on a schedule developed for each county that contains a grid of per acre values to be used for all land classified as greenbelt eligible. The schedule is developed by the

[1] An administrative judge other than the judge who rendered the initial decision and order sits with the Commission pursuant to Tenn. Code Ann. §4-5-301 and rules of the Board.

state Division of Property Assessments for each county undergoing a county-wide reappraisal, and the schedule remains in use until the next reappraisal, an interval of as much as six years. A separate value is provided on the schedule according to four categories of land use (row crop, rotation, pasture, and woodland), with three grades (good, average, or poor) of land within each category. The per acre use value for a given category and grade is partly dependent on "farm-to-farm" selling prices per acre and partly on farm product selling prices and yields estimated for the county by the Division.[2]

Taxpayers generally are given an opportunity to contest some of the use value formula components in the schedule after it is initially adopted. Ms. Haren's appeal is not a challenge to the schedule but rather to the land use categories assigned to her specific properties after the schedule itself became final.

This is not the first time the issue of the categorization or grading of this property has been before the Commission. Ms. Haren appealed previously for tax year 1993, and we rendered a decision in 1997 accepting her contention that much of her property graded as crop land should in fact be graded as pasture because of erosion problems. During the 1998 reappraisal of Polk County, the assessor restored the previous grading on the basis of the soil conservation maps used in the earlier reappraisal to grade the subject property and all other properties in the county, and on the basis that the property could be planted in crops using "no-till" methods. The administrative judge found that the Assessment Appeals Commission had previously determined the proper categorization of the taxpayer's property in the 1993 appeal, and that none of the rationale of that ruling had been established as being in error.

No soil scientists testified to the Commission at our hearing. The assessor presented affidavits of neighboring farmers who affirmed that "no-till" methods could in fact be used to produce a crop in the area. A letter was also introduced into evidence from an official of the U. S. Department of Agriculture, Natural Resources Conservation Service, stating that the subject property could be cropped with certain conservation practices. Mr. Haren testified that the property had been exhausted by cropping in the 1970's and 1980's, that no-till methods had been tried without success, and that cattle pastured on the property had to be moved often because grass on the property "does not come back well."

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[2] Tenn. Code Ann. §67-5-1008 (2001 Supp.).

As the party appealing the decision of the administrative judge, the assessor bears the burden of proving that the initial decision and order is in error. The general soil studies of the USDA, represented in the approved soil surveys, are invaluable as an instrument for the grading of agricultural property as part of a mass appraisal. In this case, however, the owner has established the likelihood of specific grading errors pertaining to her property with which she has had ample experience, and only comparable information specific to the subject property can properly call us to revisit our earlier determination. It is laudable that the assessor seeks consistency in the agricultural land gradings, but where a taxpayer demonstrates that reliance on soil surveys alone has failed to account for unique aspects of a particular property, relief is warranted. In this case, the possibility that Ms. Haren's land could be cropped by no-till methods does not necessarily mean that its natural soil capability is crop land.

The only expert evidence at our hearing came in the form of a letter from USDA district conservationist Lorella Jennings. She stated in her letter that Ms. Haren's property could be cropped with certain accompanying measures to avoid erosion, and she identified the types of soil that *the survey indicated* were part of Ms. Haren's property. Ms Jennings was not present to explain her assertions that some of the soil types present on Ms. Haren's property were "prime farm land", she was not present for questions or cross-examination, and it was not apparent to what extent she had actually visited the property. Her letter alone does not provide a basis therefore for our overturning our previous determination regarding agricultural grades for this property.

ORDER

By reason of the foregoing it is ORDERED, that the initial decision and order of the administrative judge is affirmed, and the subject properties shall be assessed as follows:

Tax Year 1998

	Land	Improvement	Total	Assessment
Market	$215,600	$69,000	$284,600	N/A
Use	$109,900	$69,000	$178,900	$44,725

Tax Year 1999

	Land	Improvement	Total	Assessment
Market	$219,300	$179,900	$399,200	N/A

Use	$114,300	$179,900	$294,200	$73,550

This order is subject to:

1. Reconsideration by the Commission, in the Commission's discretion. Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
3. Review by the Chancery Court of Davidson County or other venue as provided by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: Nov. 28, 2001

Ronald Steuby
Presiding member

ATTEST:

Kelsie Jones
Executive Secretary

cc: Ms. Mary Sue Haren
Mr. Randy Yates, Assessor

BEFORE THE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	CLARA T. MILLER Dist. 13, Map 137, Cont. Map 137, Parcel 2 Farm Property Tax Year 1999	)))))	Robertson County

FINAL DECISION AND ORDER

Statement of the case

This is an appeal by the taxpayer from the initial decision and order of the administrative judge who determined the deadline for applying for a greenbelt classification for the subject property prevented the taxpayer from qualifying for tax year 1999. The appeal was heard on October 18, 2000 before Commission members Isenberg (presiding), Crain, Ishie, Millsaps, and Rochford, sitting with an administrative judge[1]. Mr. Richard Miller represented the taxpayer and Mr. Chris Traughber, an assistant to the assessor, represented the assessor.

Findings of fact and conclusions of law

Mr. Miller testified the taxpayer did not receive notice from the assessor in 1997 when the property was removed from the greenbelt program for failure of the taxpayer to return the certification of continued farm use then required by law during county reappraisals[2]. Mr. Traughber testified the certification forms and explanations were mailed to greenbelt owners in November 1996 and an assessment change notice was sent warning of the loss of greenbelt, in April of 1997. A final reminder was sent later in 1997, when there was still time to supply the certification by a timely filed appeal to the boards of equalization. The property was removed from greenbelt for the 1997 and 1998 tax years. In April 1999, the taxpayer came in to pay the delinquent 1998 taxes and complained of the loss of greenbelt. By then, however, she had missed the deadline to reapply for greenbelt for tax year 1999.

The statute imposing a deadline for certifying farm use in the greenbelt program contains no provision for waiver. Unlike the deadline for appealing assessments to the State Board of Equalization, the greenbelt deadline also fails to provide a mechanism for the Board to consider whether reasonable cause existed to excuse the failure to meet

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[1] An administrative judge other than the judge who rendered the initial decision and order sits with the Commission pursuant to Tenn. Code Ann. §4-5-301 and rules of the Board.

[2] The law has since been amended to eliminate recertification during reappraisal. Instead, new owners of greenbelt property are now required to reapply in their own names and declare, in the case of agricultural classifications, their current farm use.

the deadline. We therefore have no alternative except to affirm the initial decision and order of the administrative judge.

ORDER

It is therefore ORDERED, that the initial decision and order of the administrative judge is affirmed. This order is subject to:

1. Reconsideration by the Commission, in the Commission's discretion. Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
3. Review by the Chancery Court of Davidson County or other venue as provided by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: Dec. 14, 2000

Presiding member

ATTEST:

Executive Secretary

cc: Ms. Clara Miller
Mr. Chris Traughber, Assessor's office

return to handbook

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Thomas H. Moffit, Jr.**	)	**Knox County**
	Property ID: 083F A 20.00	)	
		)	
	Various Tax Years	)	**Appeal No. 94065**

INITIAL DECISION AND ORDER

Statement of the Case

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on June 17, 2014 in Knoxville, Tennessee. The taxpayer was represented by Arthur G. Seymour, Jr. of the Knoxville law firm of Frantz, McConnell & Seymour, LLP. The assessor of property was represented by Daniel A. Sanders, Deputy Law Director for Knox County. Also in attendance at the hearing were John H. Moudy, the taxpayer's Business Manager and A. Dean Lewis, the Director of Assessments for the Knox County Assessor of Property.

This appeal concerns two distinct issues which were consolidated for hearing. First, the taxpayer appealed the assessor's assessment of rollback taxes for tax years 2011, 2012 and 2013. Second, the taxpayer appealed the assessor's denial of his greenbelt application dated February 27, 2014.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Background

Subject property consists of a 34.75 acre tract located at 1566 Cliffside Lane in Knoxville. The property is located between the Holston Hills Country Club and Holston River.

Since at least 1965 radio transmission towers have been located on the property. The property is improved with three broadcast towers supported by guy wires, one self-supporting broadcast tower, six small concrete block buildings used to store equipment, a transmitting building, and chain link fencing around each tower. The towers are all approximately 328 feet high. The various buildings contain a total of approximately 3,040 square feet.

Subject tract has been zoned R-1 Low Density Residential for many years. Such zoning allows for agricultural use such as hay production.

The taxpayer, Thomas H. Moffit, Jr., purchased subject property in 2007. Mr. Moffit is the president of both Foothills Resources Group (previously known as Foothills Broadcasting, Inc.) and Tennessee Media Associates. The latter entity is an S Corporation owned by Mr. Moffit and serves as the licensee of WRJZ which leases the tower space and buildings from Tennessee Media Associates for $3,000.00 per month. The towers are utilized by both WJRZ and WETR.

At the time Mr. Moffit purchased subject property, it had been receiving preferential assessment since at least 1987 as "agricultural land" pursuant to the Agricultural, Forest and Open Space Land Act of 1976 (hereafter referred to as the "greenbelt law"). See Tenn. Code Ann. § 67-5-1001, *et seq.* As the new owner of subject property, Mr. Moffit filed an Application for Greenbelt Assessment which was approved on January 30, 2007. The application indicated that the property would be used for beekeeping and hay production. Thus, subject property continued to receive preferential assessment as "agricultural land" without interruption.

On October 22, 2013, the assessor removed 8.0 acres from the program and issued a Notice of Rollback Taxes Due ["First Notice"] pursuant to Tenn. Code Ann. § 67-5-1008(d)(3). The First Notice indicated that the reason for disqualifying the 8.0 acres was "Change of Use inconsistent with application."

Mr. Moffit summarized what then transpired in the attachment to the appeal form as follows:

> On about January 17, 2014, John Moudy, on my behalf, contacted Mr. Dean Lewis, Director of Assessments of Knox County, about the reason for the new calculations used for the Notice of Rollback Taxes Due. Mr. Lewis said he used aerial photographs of the property and a software program to calculate a more accurate square footage of the total area of the towers and buildings for inclusion in the commercial land designation. He said he included the fall radius of the towers as part of the commercial land because nothing could be farmed in the fall radius.
>
> Mr. Moudy explained that the area outside of the tower fences and the area a certain distance from each guy anchor could and had been used for growing and harvesting hay. Mr. [Lewis] said he was willing to review a drawing with Mr. Moudy's calculations and possibly reconsider the measurements and notices.
> On January 22, 2014 Mr. Moudy submitted to Mr. Lewis a drawing of the property and the following explanation:
>
> > 'The drawing indicates two buildings within one footprint and four fenced tower locations with guy anchor points (x) for towers 1-3. Tower 4 has no guy anchors.
> >
> > The square footage of the two buildings is calculated as one footprint. The square footage of each tower and small outbuilding is calculated as one footprint, and each guy anchor is calculated as a separate footprint on the drawing and shown as a total in the calculations at the top of the page. The total of the areas that are not available for growing hay is calculated at 9,174 [square feet.]'
>
> Mr. Lewis responded that based upon a personal visit to the site, none of the acreage appeared to be used for farming. . .

On January 23, 2014, the assessor issued another Notice of Rollback Taxes Due ["Second Notice"] in which the entire 33.75 acres previously receiving preferential assessment were removed from the greenbelt program.[1] The Second Notice indicated that the reason for the disqualification was once again "Change of Use inconsistent with application."

[1] Under the original greenbelt application filed by Mr. Moffit and approved by the assessor, 1.0 acre was treated as non-qualifying. Hence, 33.75 of the 34.75 acres actually received preferential assessment.

On February 27, 2014, Mr. Moffit submitted a new Application for Greenbelt Assessment which, if approved, would be effective with tax year 2014. The application was denied by the assessor on April 22, 2014.

II. Contentions of the Parties

Mr. Moffit concisely summarized his position in the attachment to the appeal form. Essentially, he stated that the entire tract is utilized to produce hay except for what he calculated as 9,174 square feet that are fenced or building sites. According to Mr. Moffit, the ground within the fall zones of each tower has and continues to produce hay.

Mr. Moffit explained in his written summary that the reason the ground in question was last harvested for hay in 2010 was due to an Act of God in 2011. According to Mr. Moffit, a storm with heavy winds caused one of the towers to collapse and scattered guy wires throughout a large portion of the tract making it impossible to harvest hay in 2011. Mr. Moffit indicated that the replacement tower was completed in the summer of 2012 and no hay was harvested that year due to the impact of the repairs on the field. He stated that at all times following the storm, it was his intent to use the land for agricultural purposes as it had been. Mr. Moffit stated that, starting in 2013 and continuing to the present, the field is once again being utilized for hay production.

Counsel for the taxpayer argued that the greenbelt law permits dual use of property. Examples cited by counsel include farms with machine shops or acreage used to park school buses. Presumably, the land used for non-agricultural purposes would not receive preferential assessment just as in this case. Counsel claimed that past determinations were correct and should not be disturbed as the use of subject tract has not changed over the years.

As previously noted, the only witness to actually testify at the hearing on behalf of the taxpayer was John H. Moudy. He stated that although he technically serves as the business

manager for both Foothills Resources Group and Tennessee Media Associates, for all practical purposes he is Mr. Moffit's personal business manager as well.

Mr. Moudy testified on direct examination that subject property was originally utilized by Mr. Moffit's lessees for both beekeeping and hay production. The beekeeping ceased a year or two after Mr. Moffit's purchase due to the large scale deaths of bees that has been well publicized in recent years. Mr. Moudy stated that hay was last cut in 2010 due to the tower collapse in 2011. He testified that hay production resumed in 2013. According to Mr. Moudy, no hay was cut in 2012 because a large portion of the field was impacted by the erection of the new tower.

Mr. Moudy also testified on direct examination that Mr. Moffit entered into a contract with Circle S. Cattle on June 4, 2014 in which the subject property is leased for hay production for a five year term at $1,500 per year plus $3.00 per bale of hay. Mr. Moudy noted that the lessee indicated it would cut hay two or three times a year and had coincidentally just cut hay the day before the hearing.

As will be discussed in greater detail below, the administrative judge finds much more significant Mr. Moudy's responses to questions posed by the administrative judge as well as his testimony on cross-examination and redirect examination. In particular, Mr. Moudy testified as follows:

1. Because FCC requirements dictate a certain distance between towers they are spread across the property;
2. He was unsure who had cut hay before the current lessee;
3. Approximately 1/3 of subject tract was actually impacted by the erection of the new tower;
4. Subject property last produced farm income in 2010;
5. He was unsure of the specific amount of farm income in 2010, but it was "probably $1,500 - $2,000";

6. For federal income tax purposes any income from farming on the subject tract is reported as ordinary income by Tennessee Media Associates;
7. Tennessee Media Associates does not file a farm schedule with its federal income tax return;
8. Although he was unsure, Mr. Moudy stated that "to my knowledge" farm income has been $1,500 per year for those years hay production occurred;
9. He believes the last lease to farm subject property was in 2010;
10. He was unsure of the duration of the lease or the identity of the lessee; and
11. The debris from the tower collapse was cleaned up and the guy wires removed by August or September of 2011.

Not surprisingly, the assessor took a very different view with respect to how subject property is being used. Counsel for the assessor moved for judgment as a matter of law arguing that the taxpayer had not carried the burden of proof. Mr. Sanders argued, in substance, that the taxpayer's own proof (or lack thereof) established that the property was purchased for the transmission towers which constitute the predominant use of subject tract. Moreover, Mr. Sanders asserted that any hay production is *de minimis* in nature, and in any event, has not occurred since 2010.

In support of the assessor's position, the affidavit of Mark Donaldson, the Executive Director of the Knoxville-Knox County Metropolitan Planning Commission was entered into evidence. The primary purpose of the affidavit was to establish that under current zoning requirements virtually the entire tract would be needed to satisfy the spacing requirements for towers like those on subject property. There is no dispute that the current zoning ordinance was enacted long after the current use of subject property began and the current locations of the towers constitute legally nonconforming uses to the extent they do not comply with present zoning requirements.

As noted above, the assessor's only witness was A. Dean Lewis, Director of Assessments. Mr. Lewis basically testified that he visited subject property in January and March of 2014. According to Mr. Lewis, he observed mowed grass and brambles and briars on the lower end of the property. In Mr. Lewis' opinion, the entire tract was being used for the radio towers and therefore did not qualify for preferential assessment under the greenbelt law.

III. Analysis

Since the taxpayer has brought this appeal, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board,* 620 S.W.2d 515 (Tenn. App. 1981).

As will be discussed below, the ultimate issue in this appeal concerns whether subject property qualifies for preferential assessment under the greenbelt law as "agricultural land." That term is defined in Tenn. Code Ann. § 67-5-1004(1) as follows:

> (A) 'Agricultural land' means land that meets the minimum size requirements specified in subdivision (1)(B) and that either:
>
> (i) *Constitutes a farm unit engaged in the production or growing of agricultural products; or*
>
> (ii) Has been farmed by the owner or the owner's parent or spouse for at least twenty-five (25) years and is used as the residence of the owner and not used for any purpose inconsistent with an agricultural use.
>
> (B) To be agricultural land, property must meet minimum size requirements as follows: it must consist either of a single tract of at least fifteen (15) acres, including woodlands and wastelands, or two (2) noncontiguous tracts within the same county, including woodlands and wastelands, one (1) of which is at least fifteen (15) acres and the other being at least ten (10) acres and together constituting a farm unit;
>
> [Emphasis supplied}

In determining whether a particular parcel constitutes "agricultural land" reference must also be made to Tenn. Code Ann. § 67-5-1005(a)(3) which provides as follows:

> In determining whether any land is agricultural land, the assessor of property shall take into account, among other things, the acreage of such land, the productivity of such land, and the portion thereof in actual use for farming or held for farming or agricultural operation. The assessor may presume that a tract of land is used as agricultural land, if the land produces gross agricultural income averaging at least one thousand five hundred dollars ($1,500) per year over any three-year period in which the land is so classified. *The presumption may be rebutted, notwithstanding the level of agricultural income by evidence indicating whether the property is used as 'agricultural land' as defined in this part.*
>
> [Emphasis supplied]

The administrative judge finds instructive a series of greenbelt appeals from Putnam County in 1997. The undersigned administrative judge heard five appeals brought by the assessor who contended the properties were not entitled to preferential assessment. The administrative judge found that four of the taxpayers should receive preferential assessment and one should not.

The administrative judge finds that the facts and issues in this appeal are quite similar to the one appeal just referred to wherein the property was removed from the greenbelt program. In *Perimeter Place Properties, Ltd.* (Putnam County, Tax Year 1997), the administrative judge ruled that the property was not entitled to preferential assessment as "agricultural land" reasoning in pertinent part as follows:

> The administrative judge finds that the evidence, viewed in its entirety, supports Putnam County's contention that subject property should not be classified as 'agricultural land' for purposes of the greenbelt law. As will be discussed immediately below, the administrative judge finds that subject property does not constitute a 'farm unit' and that any presumption in favor of an 'agricultural land' classification due to agricultural income has been rebutted.
>
> As previously indicated, the term 'agricultural land' as defined in T.C.A. § 67-5-1004(1) requires that the property constitute a 'farm unit.' The administrative judge finds that although the term 'farm unit' is not

> defined, subject property cannot reasonably be considered one based upon the testimony of the taxpayer's representatives.
> The administrative judge finds that the taxpayer constitutes a limited partnership which holds only the subject property. The administrative judge finds that although the partnership agreement was not introduced into evidence, Mr. Legge's testimony established that the taxpayer's 1998 purchase of subject property for $491,900 was unrelated to any farming purpose. The administrative judge finds it reasonable to conclude from Mr. Legge's testimony that he is a developer and subject property was purchased for and is still being held for development. . . .
>
> * * *
>
> The administrative judge finds the testimony also supports the conclusion that any income generated from the cutting of hay or sale of timber has been done primarily to retain preferential assessment under the greenbelt program and pay taxes. The administrative judge finds that such farming-related practices must be considered incidental and not representative of the primary use for which subject property is held.
>
> * * *

Initial Decision at 4-5.

The administrative judge finds that the common theme in the other Putnam County greenbelt appeals resolved in the taxpayers' favor was the fact the properties were historically farm units and not purchased for the primary purpose of development. See *Putnam Farm Supply* (Putnam County, Tax Year 1997; *Bunker Hill Road L.P.* (Putnam County, Tax Year 1997); *Johnnie Wright, Jr.* (Putnam County, Tax Year 1997); and *Joyce B. Wright* (Putnam County, Tax Year 1997). Put differently, the farming activity on those properties constituted the primary use of the properties rather than an incidental activity.

The administrative judge finds the Putnam County decisions support the assessor's position in this case. Surely, subject property was purchased by Mr. Moffit because of the radio towers necessary for his business. As previously noted, Mr. Moudy testified that FCC requirements dictate the spacing of the towers. The administrative judge finds that the proof

unquestionably supports the conclusion that any hay production on the subject property is *de minimis* and sporadic to say the least. For example, the administrative judge will assume arguendo that the proof was sufficient to establish that the entire tract was unsuitable for hay production immediately after the tower collapse.[2] Yet, no hay was cut until the day before the hearing despite Mr. Moudy's testimony that the debris and guy wires were completely removed by September of 2011 and only 1/3 of the tract was impacted by the erection of the new tower.

The administrative judge finds the fact subject property **possibly** generated $1,500 in income in 2010 or one or more prior years at most helps create a rebuttable presumption in favor of agricultural use.[3] See *Crescent Resources* (Williamson County, Tax Year 2007) wherein the administrative judge ruled in relevant part as follows:

> The administrative judge finds Mr. Nelson repeatedly stressed the income generated by growing crops. As the administrative judge noted at the hearing, the agricultural income presumption in Tenn. Code Ann. § 67-5-1005(a)(3) constitutes a *rebuttable* presumption. The administrative judge finds any presumption in favor of an 'agricultural land' classification due to agricultural income has been rebutted.
>
> [Emphasis in original]

Initial Decision and Order at 5.

The administrative judge finds that when deciding whether a parcel should be classified as a "farm unit," it must be determined whether any farming activity on the property represents the primary purpose for which the property is used or merely an incidental use. See *Crescent Resources, supra at 4* wherein the administrative judge stated in relevant part as follows:

> The administrative judge finds that the taxpayer is a developer who purchased subject property solely for development purposes. Indeed, [the assessor] testified that when the taxpayer filed its greenbelt application it sought assurances that rollback taxes would be levied as particular acreage

[2] In actuality, the administrative judge finds that no concrete proof was offered to support this assertion such as the testimony of the lessee assuming there even was a lessee at that point in time.

[3] No documents were entered into evidence to substantiate the claim that the property generated $1,500 in farm income during any particular year.

> was developed. The administrative judge finds that any income generated from growing crops has been done to retain preferential assessment under the greenbelt program. The administrative judge finds that any farming done on subject property must be considered incidental and not representative of the primary purpose for which subject property is used or held.

The administrative judge also finds instructive the ruling of the Assessment Appeals Commission in *Swanson Developments, LP* (Rutherford County, Tax Year 2009). In that case, the Commission had to determine whether a 71.4 acre tract qualified for preferential assessment as "agricultural land" by virtue of the fact that 14 acres was being farmed and much of the remaining acreage arguably constituted wasteland. The Commission denied the requested greenbelt classification stating in pertinent part as follows:

> Dr. Tritschler also contends the property should qualify on the basis that it earns the minimum $1,500 per year in farm income referenced in Tenn. Code Ann. § 67-5-1005. As pointed out by the administrative judge, however, farm income is a presumptive, not conclusive, indicator of farm use.
>
> Property used as a farm may certainly include unproductive 'wastelands,' and no farm is completely beset with plow or hoof. In this case, however, the predominant character of the tract supports further development, not farming, and the property in the aggregate does not, in our view, constitute a 'farm unit engaged in the production or growing of agricultural products.'

Final Decision and Order at 3.

Because the farm income is reported as ordinary income, the administrative judge finds the taxpayer's position that hay production constitutes the primary purpose for which the property is used strains credulity. Presumably, any farm income is so *de minimis* that it is not worth the time and effort for the taxpayer to even report it on his own tax return. Instead, the income is apparently reported as ordinary income by an entity that does not even own the property in question. Obviously, the minimal tax is simply a cost of doing business.

The administrative judge agrees with counsel for the taxpayer that portions of a tract being utilized for a dual purpose can qualify for preferential assessment. In those situations, however, the primary use of the tract is for agricultural purposes and the non-qualifying use constitutes a secondary use of a small portion of the tract. A common example is a commercial nursery located at the edge of a farm. Although the acreage associated with the nursery does not qualify for preferential assessment, the underlying farm retains preferential assessment.

The administrative judge would note that both Mr. Moffit and counsel seemingly suggested that the assessor's actions were somehow procedurally defective. However, these allegations were never actually pursued during the course of the hearing. Based upon the record, the administrative judge finds that the assessor complied with Tenn. Code Ann. §§ 67-5-1005 and 67-5-1008(d). Ironically, if there is a procedural problem, it would seemingly be the taxpayer's failure to appeal the denial of his most recent greenbelt application to the Knox County Board of Equalization. See Tenn. Code Ann. § 67-5-1005(d). For purposes of judicial economy, the administrative judge will assume, without actually deciding, that the taxpayer's challenge of the assessor's denial of the greenbelt application is properly before the State Board of Equalization in light of the appeal of the rollback assessment.

ORDER

It is therefore ORDERED that the assessor's assessment of rollback taxes for tax years 2011, 2012, and 2013 be affirmed.

It is FURTHER ORDERED that the assessor's denial of the taxpayer's greenbelt application be affirmed.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 27th day of June 2014.

MARK J. MINSKY, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Arthur G. Seymour, Jr., Esq.
Frantz, McConnell & Seymour, LLP
Post Office Box 39
Knoxville, Tennessee 37901

Daniel A. Sanders, Esq.
Deputy Law Director
Knox County Law Department
City-County Building
400 West Main Street, Suite 612
Knoxville, Tennessee 37902

Phil Ballard
Knox Co. Assessor of Property
City-County Building
400 West Main Street, Room 204
Knoxville, Tennessee 37902

This the 27th day of June 2014.

Janice Kizer
Tennessee Department of State
Administrative Procedures Division

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Paul Sorrells et al. John Sorrells, Ann Sorrells**	)	**Lincoln County**
	Property ID: 004 009.00	)	
		)	
	Tax Year 2016	)	**Appeal No. 108309**

INITIAL DECISION AND ORDER

Statement of the Case

An appeal was filed by the appellants with the State Board of Equalization ("State Board") on August 2, 2016. The undersigned administrative judge conducted a hearing of this matter on April 25, 2017, in Fayetteville.[1] The appellants, Paul, John and Ann Sorrells, were represented at the hearing by attorney Joe Lambert, Jr. Also appearing for the appellants was David Cleek, who oversees the subject property. Lincoln County Assessor of Property Paul Braden, who was in attendance, was represented at the hearing by attorney Robert Lee. Also appearing for the Assessor was Deputy Assessor Tammy Painter.

Findings of Fact and Conclusions of Law

The subject property of this appeal consists of a 266 acre farm located on Foster Hollow Road in Lincoln County. For more than thirty years the land enjoyed preferential assessment under the Agricultural, Forest and Open Space Land Act of 1976 [hereafter referred to as the "greenbelt law"] which is codified at Tenn. Code Ann. § 67-5-1001, et seq.

Prior to 1983, the subject property was owned by Mr. and Mrs. Harold Sorrells. The Sorrells died in a car accident in 1983 and the property passed to the appellants, their children. Not until 2015, however, was a deed evidencing the ownership of the appellants properly

[1] The Record in this matter remained open, at the request of the appellant, until May 19, 2017.

recorded. Upon receiving notice of this change of ownership, the Assessor began sending letters to the appellants to notify them that this change in ownership required a new application to be filed to continue the greenbelt assessment and avoid the imposition of rollback taxes pursuant to Tennessee Code Ann. § 67-5-1008(d).

Indeed, it appears that Ms. Painter, the Deputy Assessor, sent the appellants a letter on January 16, 2015, April 1, 2015 and July 1, 2015, respectfully, informing the siblings that a new greenbelt application was necessary. Finally, on March 3, 2016, a final notice was sent informing the appellants that the time for a greenbelt application had passed, but that a statutorily required thirty (30) day grace period would allow the application (with a late fee) until April 3, 2017. This notice also informed the appellants that if no application was filed, rollback taxes in the amount of $3,261.00 would be due.

Tennessee Code Ann. § 67-5-1005(a)(1) provides that once property qualifies for greenbelt status, reapplication is not required "so long as the ownership as of the assessment date remains unchanged." The statute goes on to state:

> Property that qualified as agricultural the year before under different ownership is disqualified if the new owner does not timely apply. The assessor shall send a notice of disqualification to these owners, but shall accept a late application if filed within thirty (30) days of the notice of disqualification and accompanied by a late application fee of fifty dollars ($50.00).

The appellants argued that the ownership of the property descended to them upon the death of their parents. Thus, there had been no change of ownership since 1984 and nothing to trigger the rollback taxes.

The Assessor countered that he had no knowledge of the change in ownership until the deed evidencing ownership by the appellants was recorded in 2015. Additionally, the appellants

had every opportunity to avoid the rollback taxes by simply filing a timely, new greenbelt application.

Respectfully, the administrative judge is not persuaded that the Assessor acted in error. Although the change in ownership occurred many years ago, the Assessor only became aware of the change with the filing of a new deed. The appellants would have us believe that the sheer amount of time since the change in ownership negated the requirement that a new application be filed. But the filing of the deed evidenced a change in legal ownership and the Assessor responded accordingly.

Additionally, the entire statutory scheme provides a mechanism for the seamless transfer of ownership without any interruption in the greenbelt classification. In the instant case, the Assessor's office not only sent the required notifications, but sent numerous reminders and copies to the appellants. The imposition of rollback taxes is a direct result of these notifications being ignored.

The appellants have cited no legal authority for the proposition that a new application for greenbelt was unnecessary. Even assuming that the legal transfer of ownership occurred decades ago, the Assessor's demand for a new application upon learning of the recording of the deed is appropriate. For these reasons, the assessment of the rollback taxes must be affirmed.

Order

It is, therefore, ORDERED that rollback taxes be assessed to the appellants as previously determined by the Assessor of Property.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State

Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

Entered this 24th day of August 2017.

Brook Thompson, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Joe M. Lambert, Jr., Esq.
100 Public Square North, Suite 3
Shelbyville, Tennessee 37160

Robert T. Lee, Esq.
Lee Law Firm
Post Office Box 1297
Mt. Juliet, TN 37121

Paul Braden
Lincoln Co. Assessor of Property
112 Main Ave. South, Room 105
Fayetteville, Tennessee 37334

This the 24th day of August 2017.

Janice Kizer
Department of State
Administrative Procedures Division

return to handbook

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Perimeter Place Properties, Ltd.	)
	Dist. 1, Map 66D, Group B, Control Map 53M,	) Putnam County
	Parcel 18.00, S.I. 000	)
	Residential Property	)
	Tax Year 1997	)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
MKT.	$875,500	$ -0-	$875,500	$ -
USE	$ 20,100	$ -0-	$ 20,100	$5,025

An appeal has been filed on behalf of Putnam County with the State Board of Equalization.

This matter was reviewed by the administrative judge pursuant to Tennessee Code Annotated Sections 67-5-1412, 67-5-1501 and 67-5-1505. The administrative judge conducted a hearing in this matter on December 4, 1997. Putnam County was represented by Jerry Lee Burgess, Esq. The taxpayer was represented by its general partner, Bill Legge, Jr. and its property manager, Alan Ray.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 41.2 acre unimproved tract located on Old Walton and Neal Roads in Cookeville, Tennessee. It appears from Mr. Legge's testimony that approximately 2/3 of subject tract is zoned commercially and 1/3 residentially. It also appears from Mr. Legge's testimony that subject property is located in an area with various properties being used for commercial, residential and farm purposes.[1]

Putnam County contended that the Putnam County Board of Equalization erroneously ruled that subject property was entitled to receive preferential assessment as "agricultural land" pursuant to the Agricultural, Forest and Open Space Land Act of 1976 (hereafter referred to as "greenbelt"). Putnam County's position was most clearly set

[1] The administrative judge has relied on Mr. Legge's testimony insofar as Mr. Nail testified that he had not personally seen the subject property or surrounding area. Thus, any conflicts in the testimony have been resolved in Mr. Legge's favor despite the lack of exhibits such as photographs, zoning maps, etc.

forth in the attachment to the amended appeal form which provided in pertinent part as follows:

> Tennessee Code Annotated 67-5-1005 clearly states that 'the assessor shall determine whether such land is agricultural land. . . .' In this particular case, the assessor has not classified the disputed land as agriculture/farm. Furthermore, the policy of the state of Tennessee is to appraise land at its highest and best use. The land in question is being sold as commercial lots and is zoned C-3. There is great demand for this commercial property. The county board erroneously placed the property in the greenbelt program. The subject property should be assessed at fair market value as opposed to use value.

Although both the original appeal form and amended appeal form were signed by the Putnam County assessor of property, Byron Looper, he did not testify at the hearing. The only witness to testify on Putnam County's behalf was an employee of the assessor's office, Robert Nail. Essentially, Mr. Nail testified that subject property should not qualify for greenbelt because it is zoned commercial. In addition, Putnam County asserted at the hearing that "basic equity and justice" dictates that a property such as the subject not qualify for preferential assessment under the greenbelt law.

The taxpayer maintained that the Putnam County Board of Equalization properly determined that subject property was entitled to receive preferential assessment as "agricultural land" under the greenbelt law. The taxpayer contended that subject property constitutes "agricultural land" within the meaning of T.C.A. §67-5-1004(1) insofar as it is used to produce hay and timber which generates an average gross agricultural income of over $1,500.00 per year.

The administrative judge finds that the reasons underlying passage of the greenbelt law are best summarized in the legislative findings set forth in T.C.A. §67-5-1002 which provides in relevant part as follows:

> The general assembly finds that:
>
> (1) The existence of much agricultural, forest and open space land is threatened by pressure from urbanization, scattered residential and commercial development, and the system of property taxation. This pressure is the result of urban sprawl around urban and metropolitan areas which also brings about land use conflicts, creates high costs for public services, contributes to increased energy usage, and stimulates land speculation;
>
> (2) The preservation of open space in or near urban areas contributes to:

(A) The use, enjoyment and economic value of surrounding residential, commercial, industrial or public use lands;

(B) The conservation of natural resources, water, air, and wildlife;

(C) The planning and preservation of land in an open condition for the general welfare;

(D) A relief from the monotony of continued urban sprawl; and

(E) An opportunity for the study and enjoyment of natural areas by urban and suburban residents who might not otherwise have access to such amenities;

(3) Many prime agricultural and forest lands in Tennessee, valuable for producing food and fiber for a hungry world, are being permanently lost for any agricultural purposes and that these lands constitute important economic, physical, social, and esthetic assets to the surrounding lands and to the people of Tennessee;

(4) Many landowners are being forced by economic pressures to sell such agricultural, forest, or open space land for premature development by the imposition of taxes based, not on the value of the land in its current use, but on its potential for conversion to another use; and

* * *

The administrative judge finds that the policy of this state with respect to greenbelt type property is found in T.C.A. §67-5-1003 which provides in relevant part as follows:

> The general assembly declares that it is the policy of this state that:
>
> (1) The owners of existing open space should have the opportunity for themselves, their heirs, and assigns to preserve such land in its existing open condition if it is their desire to do so, and if any or all of the benefits enumerated in § 67-5-1002 would accrue to the public thereby, and that the taxing or zoning powers of governmental entities in Tennessee should not be used to force unwise, unplanned or premature development of such land;
>
> (2) The preservation of open space is a public purpose necessary for sound, healthful, and well-planned urban development, that the economic development of urban and suburban areas can be enhanced by the preservation of such open space, and that public funds may be expended by the state or any municipality or county in the state for the purpose of preserving existing open space for one (1) or more of the reasons enumerated in this section; . . .
>
> * * *

The administrative judge finds that the first question which must be answered in this appeal concerns whether subject property qualifies for preferential assessment under the greenbelt law as "agricultural land." The term "agricultural land" is defined in T.C.A. §67-5-1004(1) as follows:

> 'Agricultural land' means a tract of land of at least fifteen (15) acres including woodlands and wastelands which form a contiguous part thereof, *constituting a farm unit engaged in the production or* growing of crops, plants, animals, nursery, or floral products. "Agricultural land" also means two (2) or more tracts of land including woodlands and wastelands, one (1) of which is greater than fifteen (15) acres and none of which is less than ten (10) acres, and such tracts need not be contiguous but shall constitute a farm unit being held and used for the production or growing of agricultural products;
>
> [Emphasis supplied]

The administrative judge finds that in deciding whether a given tract constitutes "agricultural land," reference must be made to T.C.A. §67-5-1005(a)(3) which provides as follows:

> In determining whether any land is agricultural land, the tax assessor shall take into account, among other things, the acreage of such land, the productivity of such land, and the portion thereof in actual use for farming or held for farming or agricultural operation. The assessor may presume that a tract of land is used as agricultural land if the land produces gross agricultural income averaging at least one thousand five hundred dollars ($1,500) per year over any three-year period in which the land is so classified. *The presumption may be rebutted notwithstanding the level of agricultural income by evidence indicating whether the property is used as agricultural land as defined in this part.*
>
> [Emphasis supplied]

The administrative judge finds that the evidence, viewed in its entirety, supports Putnam County's contention that subject property should not be classified as "agricultural land" for purposes of the greenbelt law. As will be discussed immediately below, the administrative judge finds that subject property does not constitute a "farm unit" and that any presumption in favor of an "agricultural land" classification due to agricultural income has been rebutted.

As previously indicated, the term "agricultural land" as defined in T.C.A. §67-5-1004(1) requires that the property constitute a "farm unit." The administrative judge finds that although the term "farm unit" is not defined, subject property cannot reasonably be considered one based upon the testimony of the taxpayer's representatives.

The administrative judge finds that the taxpayer constitutes a limited partnership which holds only the subject property. The administrative judge finds that although the partnership agreement was not introduced into evidence, Mr. Legge's testimony

established that the taxpayer's 1988 purchase of subject property for $491,900 was unrelated to any farming purpose. The administrative judge finds it reasonable to conclude from Mr. Legge's testimony that he is a developer and subject property was purchased for and is still being held for development. Indeed, the administrative judge finds that Mr. Ray's testimony indicated that subject property has been offered for sale for possibly in excess of $1,500,000. Moreover, the administrative judge finds Mr. Legge testified that the taxpayer refused an $875,500 offer to purchase subject property.

The administrative judge finds that Putnam County posed several questions concerning the method by which the taxpayer reports any farm related income for federal income tax purposes. The administrative judge finds that although no definite conclusions can be reached absent additional evidence, it appears that no separate farm schedule has been filed to reflect farm income.

The administrative judge finds the testimony also supports the conclusion that any income generated from the cutting of hay or sale of timber has been done primarily to retain preferential assessment under the greenbelt program and pay taxes. The administrative judge finds that such farming-related practices must be considered incidental and not representative of the primary use for which subject property is held. For example, the administrative judge finds that the sole income generated from subject property in 1996 was a $2,000 timber sale which was characterized by Mr. Ray as something that "will cover us for this year." Similarly, the administrative judge finds that the sole income generated in 1994 and 1995 was from a barter arrangement whereby those who cut the hay were allowed to keep it in return for their efforts and "other services rendered." The administrative judge finds that the taxpayer's representatives were not even able to quantify the value of the hay cut in 1994 and 1995.

Based upon the foregoing, the administrative judge finds that subject property does not qualify for classification as "agricultural land" under the greenbelt law. Normally, the administrative judge would simply adopt the current market value appraisal of $875,500. In this case, however, Putnam County contended that subject property should be appraised at $1,300,000.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

The administrative judge finds that subject property should be valued at a minimum of $875,500. The administrative judge finds that Mr. Legge's testimony

established that the taxpayer refused an offer from the Putnam County Board of Education to purchase subject property for $875,500. Moreover, the administrative judge finds that subject property has been offered for sale for significantly higher amounts. Absent additional evidence, however, the administrative judge cannot determine what would constitute an appropriate increase in value.

The administrative judge finds that Mr. Nail's testimony cannot support a value of $1,300,000 or any other particular value for a variety of reasons. First, the administrative judge finds that Mr. Nail has not even seen subject property. Second, the administrative judge finds that since Mr. Nail relied on a single comparable sale which has not been seen, analyzed or adjusted in accordance with generally accepted appraisal principles, he is not competent to give an opinion of value. Third, the administrative judge finds that the sale occurred some five months after the assessment date and is technically not even relevant. See *Acme Boot Company and Ashland City Industrial Corporation* (Assessment Appeals Commission, Cheatham County, Tax Year 1989). Fourth, the administrative judge finds that even if the foregoing problems did not exist, it is unclear how the sale of an 8.4 acre tract for $200,000 or $23,810 per acre supports a value of $31,553 per acre for a 41.2 acre tract.

The final issue before the administrative judge involves the proper subclassification of subject property. The administrative judge finds that T.C.A. §67-5-801 provides in relevant part as follows:

> (a) For the purposes of taxation, all real property, except vacant or unused property or property held for use, shall be classified according to use and assessed as hereinafter provided:
> (1) Public Utility Property. Public utility property shall be assessed at fifty-five percent (55%) of its value;
> (2) Industrial and Commercial Property. Industrial and commercial property shall be assessed at forty percent (40%) of its value;
> (3) Residential Property. Residential property shall be assessed at twenty-five percent (25%) of its value; and
> (4) Farm Property. Farm property shall be assessed at twenty-five percent (25%) of its value.
>
> * * *
>
> (c) (1) All real property which is vacant, or unused, or held for use, shall be classified according to its immediate most suitable economic use, which shall be determined after consideration of:
> (A) Immediate prior use, if any;
> (B) Location;
> (C) Zoning classification; provided, that vacant subdivision lots in incorporated cities, towns, or urbanized areas shall be classified as zoned, unless upon consideration of all factors, it

is determined that such zoning does not reflect the immediate most suitable economic use of the property;

(D) Other legal restrictions on use;

(E) Availability of water, electricity, gas, sewers, street lighting, and public services;

(F) Size;

(G) Access to public thoroughfares; and

(H) Any other factors relevant to a determination of the immediate most suitable economic use of the property.

(2) *If, after consideration of all such factors, any such real property does not fall within any of the foregoing definitions and classifications, such property shall be classified and assessed as farm or residential property.*

[Emphasis supplied]

The administrative judge finds that T.C.A. §67-5-501, in turn, provides in relevant part as follows:

* * *

(3) 'Farm property' includes all real property which is used, or held for use, in agriculture, including, but not limited to, growing crops, pastures, orchards, nurseries, plants, trees, timber, raising livestock or poultry, or the production of raw dairy products, and acreage used for recreational purposes by clubs, including golf course playing hole improvements;

(4) 'Industrial and commercial property' includes all property of every kind used, directly or indirectly, or held for use, for any commercial, mining, industrial, manufacturing, trade, professional, club (whether public or private), nonexempt lodge, business, or similar purpose, whether conducted for profit or not. All real property which is used, or held for use, for dwelling purposes which contains two (2) or more rental units is hereby defined and shall be classified as 'industrial and commercial property';

* * *

(10) 'Residential property' includes all real property which is used, or held for use, for dwelling purposes and which contains not more than one (1) rental unit. All real property which is used, or held for use, for dwelling purposes but which contains two (2) or more rental units is hereby defined and shall be classified as 'industrial and commercial property';

* * *

Given the limited evidence in the record, the administrative judge finds it most reasonable to adopt a residential subclassification for the entire tract.

ORDER

It is therefore ORDERED that subject property be removed from the greenbelt program and the following value and assessment be adopted for tax year 1997:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$875,500	$ -0-	$875,500	$218,875

The law gives the parties to this appeal certain additional remedies:

1. Petition for reconsideration (pursuant to Tenn. Code Ann. § 4-5-317). You may ask the administrative judge to reconsider this initial decision and order, but your request must be filed within ten (10) days from the order date stated below. The request must be in writing and state the specific grounds upon which relief is requested. You do not have to request reconsideration before seeking the other remedies stated below.
2. Appeal to the Assessment Appeals Commission (pursuant to Tenn. Code Ann. § 67-5-1501). You may appeal this initial decision and order to the Assessment Appeals Commission, which usually meets twice a year in each of the state's largest cities. *An appeal to the Commission must be filed within thirty (30) days from the order date stated below.* If no party appeals to the Commission, this initial decision and order will become final, and an official certificate will be mailed to you by the Assessment Appeals Commission in approximately seventy-five (75) days.
3. Payment of taxes (pursuant to Tenn. Code Ann. § 67-5-1512). You must pay at least the undisputed portion of your taxes before the delinquency date in order to maintain this appeal. No stay of effectiveness will be granted for this appeal.

ENTERED this 2d day of January, 1998.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

c: Perimeter Place Properties, Ltd.
Byron Looper, Assessor of Property
Jerry Lee Burgess, Esq.

return to handbook

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
October 25, 2016 Session

PINNACLE TOWERS ACQUISITION LLC ET AL.
v. BORIS PENCHION ET AL.

Appeal from the Chancery Court for Shelby County
No. CH-13-1744-2 Jim Kyle, Chancellor

No. W2016-00390-COA-R3-CV – Filed January 25, 2017

A landowner granted a perpetual easement over a portion of her real property to a telecommunications tower company. According to the contracting parties' agreement, the landowner agreed to have the property subject to the easement ("Easement Property") separately assessed for real property taxes so that the tax obligations could be paid by the company. After the landowner's real property was separately assessed as two tax parcels, the company timely paid all real property taxes due on the Easement Property, but the landowner failed to pay real property taxes on the remainder of the tract. As a result, the larger parcel was sold to the county at a tax sale and later transferred to a third-party purchaser. Said purchaser thereafter refused to allow the telecommunications company access to the Easement Property. The company filed the instant action, seeking to have its easement declared valid and requesting an injunction to prevent the third-party purchaser from interfering with the easement. The company subsequently filed a motion for summary judgment, which the trial court granted, determining that the easement was valid but declaring the third-party purchaser to be the owner of the Easement Property. The third-party purchaser timely appealed. Determining the underlying tax sale to be invalid, we vacate the trial court's grant of summary judgment to the company and remand this matter for further proceedings.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Vacated; Case Remanded

THOMAS R. FRIERSON, II, J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and BRANDON O. GIBSON, J., joined.

Terry C. Cox, Collierville, Tennessee, for the appellant, Boris Penchion.

James L. Murphy, Peter C. Sales, and Joshua J. Phillips, Nashville, Tennessee, for the appellee, Pinnacle Towers Acquisition LLC.

John B. Turner, Jr., Memphis, Tennessee, for the appellee, Shelby County, Tennessee.

OPINION

I. Factual and Procedural Background

Shirley Kennedy acquired a 10.935-acre parcel of real property located at 1524 Texas Street in Memphis ("the Property") via an instrument of conveyance dated October 1, 1996. On December 21, 1998, Ms. Kennedy entered into a written lease agreement with Tower Ventures, LLC ("Tower"), whereby Tower agreed to lease a portion of the Property in order to place a telecommunications tower thereon. In 2000, Tower sold and assigned its interest in the lease agreement to Pinnacle Towers Inc.

Ms. Kennedy subsequently entered into an Amended and Restated Easement Purchase Agreement ("Easement Agreement") on September 22, 2004, with Pinnacle Towers Acquisition LLC ("Pinnacle"), regarding the portion of the Property known as the "communications tower site." The Easement Agreement stated that Pinnacle would have an exclusive, perpetual easement in the Easement Property for all purposes, including "installing, leasing, operating, maintaining, repairing, replacing, rebuilding, altering, inspecting, improving and removing" communications towers and related equipment. The Easement Agreement described the Easement Property as follows:

> **Easement Property**
>
> **Description of Easement Parcel being part of the Shirley S. Kennedy property recorded in Instrument No. GD-2986 in Memphis, Shelby County, Tennessee:**
>
> Commencing at a found chisel mark in the east line of Texas Street (50' R.O.W.), said point being the southwest corner of said property recorded in Instrument No. GD-2986; thence north 89 degrees 55 minutes 02 seconds east along the south line of said property recorded in Instrument No. GD-2986, 294.17 feet to a set ½" rebar with plastic cap, said point being the Point of Beginning; thence across said property recorded in Instrument No. GD-2986 the following calls; north 00 degrees 04 minutes 58 seconds west, 50.00 feet to a found cotton picker spindle; north 87 degrees 16 minutes 42 seconds east, 24.60 feet to a set ½" rebar with plastic cap; south 89 degrees 41 minutes 36 seconds east, 25.43 feet to a set ½" rebar with plastic cap;

south 00 degrees 04 minutes 58 seconds east, 50.96 feet to a found ½" rebar with plastic cap in the south line of said property recorded in Instrument No. GD-2986; thence south 89 degrees 55 minutes 02 seconds west along the south line of said property recorded in Instrument No. GD-2986, 50.00 feet to the point of beginning and containing 2,541 square feet or 0.058 acres of land.

20' Wide Access, Utility & Teleco Easement

Description of 20' Wide Access, Utility and Teleco Easement being part of the Shirley S. Kennedy property recorded in Instrument No. GD-2986 in Memphis, Shelby County, Tennessee:

Commencing at a found chisel mark in the east line of Texas Street (50' R.O.W.), said point being the southwest corner of said property recorded in Instrument No. GD-2986; thence north 00 degrees 00 minutes 00 seconds east along the east line of said Texas Street, 66.63 feet to the Point of Beginning; thence north 00 degrees 00 minutes 00 seconds east along the east line of said Texas Street, 20.00 feet to a point; thence across said property recorded in Instrument No. GD-2986 the following calls: north 89 degrees 55 minutes 02 seconds east, 166.92 feet to a point; south 68 degrees 16 minutes 41 seconds east, 136.93 feet to a point in the west line of the above described Easement Parcel; thence south 00 degrees 04 minutes 58 seconds east along the west line of said Easement Parcel, 21.54 feet to a point; thence continuing across said property recorded in Instrument No. GD-2986 the following calls: north 68 degrees 16 minutes 41 seconds west, 141.08 feet to a point; south 89 degrees 55 minutes 02 seconds west, 163.09 feet to the point of beginning and containing 6,080 square feet or 0.140 acres of land.

The Easement Agreement also provided that Pinnacle would pay all real and personal property taxes respecting the Easement Property once Ms. Kennedy had caused the Easement Property to receive a separate tax assessment. Ms. Kennedy also assigned her interest in the prior lease agreement to Pinnacle. An easement conveyance containing the same legal description was concomitantly executed, and the easement was recorded on October 13, 2004, in the Shelby County Register of Deeds office.[1]

It is undisputed that following the recordation of the easement, the Shelby County Tax Assessor began treating the Property for taxation purposes as two tax parcels,

[1] The record does not indicate that the Easement Agreement was recorded in the Shelby County Register of Deeds office.

referred to by the parties as the "C" parcel and the "L" parcel. According to a representative of the Shelby County property assessor, the C parcel constituted the original parcel of land owned by Ms. Kennedy, exclusive of the L parcel, while the L parcel contained the portion of the Property that was subject to the easement. The tax assessor concomitantly began sending two separate annual tax bills—one to "Kennedy Shirley S c/o PMB 353" at a Pennsylvania address for the L parcel, and one to Ms. Kennedy personally for the C parcel. There is no dispute that Pinnacle timely paid all real property taxes due relative to the L parcel.

Because the real property taxes on the C parcel were not paid in a timely manner, however, the Shelby County Trustee issued a notice of tax sale related to the C parcel in the latter part of 2009. The notice reflects Ms. Kennedy as the record owner of the C parcel but makes no reference to the L parcel. The notice was sent to Pinnacle as an interested party. The tax sale occurred on January 19, 2010, with Shelby County acquiring the C parcel at the sale. It is undisputed that on December 18, 2012, Shelby County quitclaimed its interest in the C parcel to Boris Penchion. Thereafter, Mr. Penchion took steps to block Pinnacle's access to the telecommunications tower by installing an electric fence and utilizing chains and locks. Consequently, Pinnacle was unable to access the tower.

Pinnacle subsequently filed this action on November 22, 2013, against Mr. Penchion and Shelby County, seeking a declaratory judgment that its easement was still valid, despite the tax sale of the C parcel, as well as injunctive relief enjoining Mr. Penchion from interfering with Pinnacle's use of the easement. Pinnacle also sought to quiet title to the L parcel in favor of Ms. Kennedy, subject to Pinnacle's easement. Pinnacle further requested damages for trespass. Following the grant of a temporary injunction allowing Pinnacle access to the tower site and the filing of answers by Mr. Penchion and Shelby County, Pinnacle filed a motion for summary judgment with a supporting statement of undisputed material facts. Mr. Penchion thereafter filed an amended answer and a cross-complaint against Shelby County. During a hearing held on May 9, 2014, the trial court ordered that Pinnacle file an amended complaint, adding Ms. Kennedy and her husband as necessary parties. Accordingly, Pinnacle filed an amended complaint accomplishing this objective on May 15, 2014.

Following pretrial discovery and numerous other court filings by the parties, including a motion to dismiss filed by Mr. Penchion, the trial court addressed the pending motions on January 9, 2015. In a subsequent order entered on January 29, 2015, the trial court granted summary judgment in favor of Pinnacle while denying Mr. Penchion's motion to dismiss. In support, the court found that (1) property interests involving easements were assigned separate tax identification numbers and (2) the easement in question survived the tax sale of the C parcel because it had been assigned a separate tax

identification number and the respective taxes had been paid. Although Mr. Penchion appealed that ruling, the matter was subsequently remanded to the trial court by this Court due to the absence of a final order.

Following the remand and additional filings by the parties, the trial court issued a final order on January 25, 2016, which stated in pertinent part:

- Judgment is entered in favor of Pinnacle as to Counts I (Quiet Title), Count III (Declaratory Judgment), and Count IV (Permanent Injunction). The Court finds that Pinnacle's easement survived the tax sale and is valid. Penchion is the owner of the subject property. Following the tax sale, the Kennedys have no interest in the property. Penchion, his agents, his attorneys, and any other persons in active concert or participation with him are hereby enjoined from interfering with Pinnacle's easement.

- Count II (Trespass) and Damages: At the December 11, 2015 [hearing], counsel for Pinnacle and Kennedys agreed to withdraw the claims for trespass, damages, and punitive damages and take a voluntary nonsuit with respect to the same. Accordingly, the Court hereby enters an order of voluntary dismissal and decrees that Pinnacle['s] and the Kennedys' claims for trespass, damages, and punitive damages are hereby dismissed without prejudice.

- The Court further finds that Penchion's amended answer and cross complaint against Shelby County was not filed within 15 days of the original answer and filed without leave of Court or agreement of the parties. Consequently, the amended answer and cross complaint was filed in violation of Tenn. R. Civ. P. 15.01, is not effective, and is hereby stricken from the record.

- Because the Court has adjudicated all pending claims in this matter, Penchion's request for leave to file an application for permission for interlocutory [appeal] is unnecessary and is denied.

- The Court further relies upon the reasons set forth at the December 11, 2015 hearing. The hearing transcript is attached and incorporated hereto.

- This is a final order pursuant to Tenn. R. Civ. P. 54.01, from which an appeal may lie.

(Paragraph numbering and footnote omitted.) Mr. Penchion timely appealed.

II. Issues Presented

Mr. Penchion presents the following issues for our review, which we have restated slightly:

1. Whether the trial court erred by finding that Pinnacle's easement had survived a valid tax sale and thereby granting summary judgment in favor of Pinnacle.

2. Whether Pinnacle is estopped from asserting an interest in the subject real property.

Pinnacle presents the following additional issues:

3. Whether the trial court erred by determining that Mr. Penchion held an ownership interest in the L Parcel.

4. In the alternative, whether the trial court erred by declining to declare the tax sale void because the notice did not comply with Tennessee Code Annotated § 67-5-2502.

Finally, Shelby County presents the following additional issue:

5. Whether the trial court erred by declining to declare that Pinnacle lacks standing to contest the validity of the tax sale of the C Parcel.

III. Standard of Review

The grant or denial of a motion for summary judgment is a matter of law; therefore, our standard of review is *de novo* with no presumption of correctness. *See Rye v. Women's Care Ctr. of Memphis, MPLLC,* 477 S.W.3d 235, 250 (Tenn. 2015); *Dick Broad. Co., Inc. of Tenn. v. Oak Ridge FM, Inc.*, 395 S.W.3d 653, 671 (Tenn. 2013) (citing *Kinsler v. Berkline, LLC*, 320 S.W.3d 796, 799 (Tenn. 2010)). As such, this Court must "make a fresh determination of whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied." *Rye*, 477 S.W.3d at 250. As our Supreme Court has explained concerning the requirements for a movant to prevail on a motion for summary judgment pursuant to Tennessee Rule of Civil Procedure 56:

> [W]hen the moving party does not bear the burden of proof at trial, the moving party may satisfy its burden of production either (1) by affirmatively negating an essential element of the nonmoving party's claim or (2) by demonstrating that the nonmoving party's evidence *at the*

> *summary judgment stage* is insufficient to establish the nonmoving party's claim or defense. We reiterate that a moving party seeking summary judgment by attacking the nonmoving party's evidence must do more than make a conclusory assertion that summary judgment is appropriate on this basis. Rather, Tennessee Rule 56.03 requires the moving party to support its motion with "a separate concise statement of material facts as to which the moving party contends there is no genuine issue for trial." Tenn. R. Civ. P. 56.03. "Each fact is to be set forth in a separate, numbered paragraph and supported by a specific citation to the record." *Id.* When such a motion is made, any party opposing summary judgment must file a response to each fact set forth by the movant in the manner provided in Tennessee Rule 56.03. "[W]hen a motion for summary judgment is made [and] . . . supported as provided in [Tennessee Rule 56]," to survive summary judgment, the nonmoving party "may not rest upon the mere allegations or denials of [its] pleading," but must respond, and by affidavits or one of the other means provided in Tennessee Rule 56, "set forth specific facts" *at the summary judgment stage* "showing that there is a genuine issue for trial." Tenn. R. Civ. P. 56.06. The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co.*, 475 U.S. [574,] 586, 106 S. Ct. 1348 [(1986)]. The nonmoving party must demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party. If a summary judgment motion is filed before adequate time for discovery has been provided, the nonmoving party may seek a continuance to engage in additional discovery as provided in Tennessee Rule 56.07. However, after adequate time for discovery has been provided, summary judgment should be granted if the nonmoving party's evidence *at the summary judgment stage* is insufficient to establish the existence of a genuine issue of material fact for trial. Tenn. R. Civ. P. 56.04, 56.06. The focus is on the evidence the nonmoving party comes forward with at the summary judgment stage, not on hypothetical evidence that theoretically could be adduced, despite the passage of discovery deadlines, at a future trial.

Rye, 477 S.W.3d at 264-65 (emphasis in original). Pursuant to Tennessee Rule of Civil Procedure 56.04, the trial court must "state the legal grounds upon which the court denies or grants the motion" for summary judgment, and our Supreme Court has instructed that the trial court must state these grounds "before it invites or requests the prevailing party to draft a proposed order." *See Smith v. UHS of Lakeside, Inc.*, 439 S.W.3d 303, 316 (Tenn. 2014).

With regard to proper construction of a statute, our Supreme Court has elucidated:

> The leading rule governing our construction of any statute is to ascertain and give effect to the legislature's intent. *Walker v. Sunrise Pontiac-GMC Truck, Inc.*, 249 S.W.3d 301, 309 (Tenn. 2008). To that end, we start with an examination of the statute's language, *Curtis v. G.E. Capital Modular Space*, 155 S.W.3d 877, 881 (Tenn. 2005), presuming that the legislature intended that each word be given full effect. *Lanier v. Rains*, 229 S.W.3d 656, 661 (Tenn. 2007). When the import of a statute is unambiguous, we discern legislative intent "from the natural and ordinary meaning of the statutory language within the context of the entire statute without any forced or subtle construction that would extend or limit the statute's meaning." *State v. Flemming*, 19 S.W.3d 195, 197 (Tenn. 2000); *see also In re Adoption of A.M.H.*, 215 S.W.3d 793, 808 (Tenn. 2007) ("Where the statutory language is not ambiguous . . . the plain and ordinary meaning of the statute must be given effect.") (citing *Calaway ex rel. Calaway v. Schucker*, 193 S.W.3d 509, 516 (Tenn. 2005)). The construction of a statute is also a question of law which we review de novo without any presumption of correctness. *Lind*, 356 S.W.3d at 895.

Myers v. AMISUB (SFH), Inc., 382 S.W.3d 300, 307-08 (Tenn. 2012).

IV. Grant of Summary Judgment

Predicated upon his assertion that Pinnacle's easement was extinguished by the valid tax sale, Mr. Penchion argues that the trial court erroneously granted summary judgment in favor of Pinnacle. Mr. Penchion relies on case law holding that a purchaser who buys land at a valid tax sale will be given complete, unencumbered title to the property because the tax sale extinguishes all prior titles and encumbrances. *See Hefner v. Nw. Mut. Life Ins. Co.*, 123 U.S. 747 (1887). *See also* Tenn. Code Ann. § 67-5-2504(b) (2013) ("A tax deed of conveyance shall be an assurance of perfect title to the purchaser of such land . . . ."). Pinnacle contends, however, that the Property was separately assessed as two distinct tax parcels following the grant of a perpetual easement to Pinnacle in 2006, pursuant to the terms of the Easement Agreement. Thereafter, Shelby County sent separate tax bills annually, with the respective tax bills for the L parcel having been received and timely paid by Pinnacle. Thus, Pinnacle argues that Mr. Penchion purchased only the C parcel following the tax sale and that Pinnacle's easement in the L parcel remains unaffected.

As Pinnacle points out, a county's authority to sell real property at a tax sale is based upon the taxes on such property being delinquent and remaining unpaid. *See* Tenn.

Code Ann. §§ 67-5-2001, -2501 (2013). Pinnacle asserts that the undisputed facts demonstrate that Pinnacle had paid all taxes due on the L parcel, such that Shelby County would have had no authority to sell the L parcel at a tax sale. Furthermore, in its appellate brief filed with this Court, Shelby County concedes that no delinquent taxes were owed on the L parcel and acknowledges that the L parcel was not sold at the tax sale. We determine, however, that such "division" of parcels for tax assessment purposes has no bearing on the ownership of the fee or the lien that attaches to the fee when real property taxes are not timely paid.

Regarding the establishment of a statutory lien for real property taxes assessed, Tennessee Code Annotated § 67-5-2101 (2013) provides the following:

> (a) The taxes assessed by the state of Tennessee, a county, or municipality, taxing district, or other local governmental entity, upon any property of whatever kind, and all penalties, interest, and costs accruing thereon, shall become and remain a first lien upon such property from January 1 of the year for which such taxes are assessed.

Furthermore, Tennessee Code Annotated § 67-5-2102(a) (2013) provides that the statutory lien for real property taxes

> shall extend to each and every part of all tracts or lots of land, and to every species of taxable property, notwithstanding any division or alienation thereof, or assessing or advertising the same in the name of persons not actually owners thereof at the time of the sale, or though the owner be unknown.

Additionally, Tennessee Code Annotated § 67-5-2102(b) provides:

> Such taxes shall be a lien upon the fee in the property, and not merely upon the interest of the person to whom the property is or ought to be assessed, but to any and all other interests in the property, whether in reversion or remainder, or of lienors, or of any nature whatever.

(Emphasis added.)

The record demonstrates that at the time of the tax sale, ownership of the fee in the C and L parcels remained in Ms. Kennedy. Pursuant to these statutory provisions, Ms. Kennedy's nonpayment of real property taxes caused a statutory lien to attach to the entire fee of the Property, notwithstanding the fact that the two parcels had been

separately assessed for tax purposes. The fee ownership of the Property never changed; ergo, the tax lien attached to the fee in its entirety.

Any taxes paid by Pinnacle for the Easement Property would simply constitute partial payment of the taxes due on the fee in its entirety. Tennessee Code Annotated § 67-5-2001(d)(1) provides:

> [T]he county trustee may accept partial payments of delinquent property taxes . . . . If the entire amount of delinquent taxes due is not paid prior to the date the trustee delivers the delinquent tax lists to the delinquent tax attorney, the entire property shall be subject to the tax lien and enforcement by a tax sale or other legally-authorized procedures.

Furthermore, Tennessee Code Annotated § 67-5-2001(d)(5) states, "If a partial payment of delinquent property taxes is accepted, the partial payment does not release the tax lien on the property upon which the taxes were assessed." Giving effect to the plain and ordinary meaning of the applicable statutory language, we conclude that despite the partial payments tendered by Pinnacle and accepted by the trustee, the delinquent taxes for the entire property were not paid in total amount, which subjected the entire fee to the tax lien and enforcement by tax sale.

In this case, Shelby County acknowledges in its appellate brief that because no delinquent taxes were purportedly owed on the L parcel, comprised of the portion of the Property subject to the easement, the L parcel was not sold at the tax sale. Because the delinquent taxes for the entire fee were not paid in their entirety, however, the entire fee was subject to the statutory tax lien and enforcement by tax sale. *See* Tenn. Code Ann. § 67-5-2001(d)(1), (5). As such, the tax sale must be invalidated for failure to comply with these statutory provisions. Inasmuch as the tax sale at issue was invalid, we conclude that the trial court's grant of summary judgment must be vacated.[2]

V. Remaining Issues

The parties have raised additional issues regarding the validity of the easement and the notice of tax sale. Based upon our conclusion that the tax sale was invalid, however, these issues are pretermitted as moot.

[2] Because the tax sale was invalid, we make no determination regarding the propriety of the trial court's ruling regarding the validity of the easement following the tax sale.

VII. Conclusion

Having determined the tax sale to be invalid, we vacate the trial court's grant of summary judgment in favor of Pinnacle. We remand this matter to the trial court for further proceedings consistent with this opinion. Costs on appeal are taxed one-third to Boris Penchion, one-third to Pinnacle Towers Acquisition LLC, and one-third to Shelby County, Tennessee.

THOMAS R. FRIERSON, II, JUDGE

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Elsie Prater, Lucinda and Natalie Fletcher**	)	**Knox County**
	Property ID: 162 056	)	
		)	
	Tax Year 2013	)	**Appeal No. 87343**

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
Market	$4,103,500	$1,048,000	$5,151,500	$1,287,875
Use	$371,300	$1,048,000	$1,419,300	$354,825

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on February 4, 2014, in Knoxville, Tennessee. In attendance at the hearing were Elsie Prater and Natalie Fletcher, the appellants, and Knox County Property Assessor's representatives Perry Sanders and Doug Russell.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a 173.15 acre tract improved with three residences and various outbuildings. Subject property is located on Fort Loudon Lake at 12124 Northshore Drive in Knoxville, Tennessee. Of the 173.15 acres, 73.89 acres consists of submerged land and has been classified and valued by the assessor as "wasteland." In conjunction with the 2013 countywide reappraisal program, that acreage has been valued at $200 per acre for use-value

purposes and $500 per acre for market value purposes. The land is used primarily for cattle, but there are also horses on the property.

The taxpayers contended that, the value of subject acreage should not have been increased in conjunction with the 2013 countywide reappraisal program. Ms. Prater testified that in her opinion the value of subject property has actually decreased because of factors such as traffic, standing water, fires built by trespassers, debris from the water and litter. Ms. Prater specifically questioned the assessor's valuation of the submerged acreage maintaining that it has no value. Ms. Prater asserted that subject land is zoned agriculturally and should not be valued like residential property.

The assessor contended that subject property should remain valued as set forth above. In support of this position, the assessor entered into evidence, among other things, copies of the property record cards, the use value schedule and documents pertaining to the sale of a 1.45 acre tract located on Fort Loudon Lake in Blount County utilized in conjunction with an existing flowage easement.

I. Use Value

The administrative judge finds that the use values utilized to appraise subject acreage were developed pursuant to the statutory formula mandated by Tenn. Code Ann. § 67-5-1008(c). The administrative judge finds that those duly adopted values must be utilized by the assessor to value subject acreage for use value purposes. The administrative judge finds that Ms. Prater and other affected taxpayers had an opportunity to challenge the proposed use values pursuant to Tenn. Code Ann. § 67-5-1008(c)(4). This statutory provision provides, in substance, that at least ten property owners of land qualifying for preferential assessment under the greenbelt law must have petitioned the State Board of Equalization to convene a hearing concerning the use value

schedule proposed for Knox County in conjunction with the 2013 reappraisal program. Since no such petition was filed, the proposed use values were adopted and used to value properties like the subject.

II. Market Value

The basis of valuation as stated in Tennessee Code Annotated § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . ."

Significantly, the taxpayers offered no proof to establish the market value of subject property such as comparable sales. Indeed, on the portion of the appeal form asking the taxpayer's opinion of market value, Ms. Prater stated as follows:

> I do not know. Since it was not for sale, I did not care.

Respectfully, Ms. Prater did little more than recite factors which she believes reduces the value of subject property. Although Ms. Prater may be correct, that does not establish that the current appraisal of $5,151,500 is in excess of market value.

The administrative judge finds the Assessment Appeals Commission has ruled on numerous occasions that one must *quantify* the loss in value one contends has not been adequately considered. See, e.g., *Fred & Ann Ruth Honeycutt* (Carter Co., Tax Year 1995) wherein the Assessment Appeals Commission ruled that the taxpayer introduced insufficient evidence to quantify the loss in value from the stigma associated with a gasoline spill. The Commission stated in pertinent part as follows:

> The assessor conceded that the gasoline spill affected the value of the property, but he asserted that his valuation already reflects a deduction of 15% for the effects of the spill. . . . The administrative judge rejected Mr. Honeycutt's claim for an additional reduction in the taxable value, noting

> that he had not produced evidence by which to quantify the effect of the "stigma." The Commission finds itself in the same position. . . . Conceding that the marketability of a property may be affected by contamination of a neighboring property, we must have proof that allows us to quantify the loss in value, such as sales of comparable properties. . . Absent this proof here we must accept as sufficient, the assessor's attempts to reflect environmental condition in the present value of the property.

Final Decision and Order at 1-2. Similarly, in *Kenneth R. and Rebecca L. Adams* (Shelby Co., Tax Year 1998) the Commission ruled in relevant part as follows:

> The taxpayer also claimed that the land value set by the assessing authorities . . . was too high. In support of that position, she claimed that . . . the use of surrounding property detracted from the value of their property. . . . As to the assertion the use of properties has a detrimental effect on the value of the subject property, that assertion, without some valid method of quantifying the same, is meaningless.

Final Decision and Order at 2.

In summary, the administrative judge finds that the taxpayer failed to carry the burden of proof. Accordingly, the administrative judge finds that the ruling of the Knox County Board of Equalization must be affirmed based upon the presumption of correctness attaching to that decision.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2013:

	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
Market	$4,103,500	$1,048,000	$5,151,500	$1,287,875
Use	$371,300	$1,048,000	$1,419,300	$354,825

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 14th day of February 2014.

MARK J. MINSKY, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Elsie Prater
Lucinda Fletcher
Natalie Fletcher
12124 Northshore Drive
Knoxville, TN 37922

Phil Ballard
Knox Co. Assessor of Property
City-County Building
400 West Main Street, Room 204
Knoxville, Tennessee 37902

This the 14th day of February 2014.

Janice Kizer
Tennessee Department of State
Administrative Procedures Division

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Putnam Farm Supply	)
	Dist. 1, Map 66, Control Map 66, Parcel 26.00,	) Putnam County
	S.I. 000	)
	Farm Property	)
	Tax Year 1997	)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
MKT.	$375,000	$ -0-	$375,000	$ -
USE	$ 11,600	$ -0-	$ 11,600	$2,900

An appeal has been filed on behalf of Putnam County with the State Board of Equalization.

This matter was reviewed by the administrative judge pursuant to Tennessee Code Annotated Sections 67-5-1412, 67-5-1501 and 67-5-1505. The administrative judge conducted a hearing in this matter on December 4, 1997. Putnam County was represented by Jerry Lee Burgess, Esq. The taxpayer was represented by Clarence Palk.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a fifteen (15) acre tract located approximately 1,200 feet from Jefferson Avenue South in Cookeville, Tennessee. Subject property is located in a largely commercial area approximately 800 feet from Ryan's Steakhouse.

Putnam County contended that the Putnam County Board of Equalization erroneously ruled that subject property was entitled to receive preferential assessment as "agricultural land" pursuant to the Agricultural, Forest and Open Space Land Act of 1976 (hereafter referred to as "greenbelt"). Putnam County's position was most clearly set forth in the attachment to the amended appeal form which provided in pertinent part as follows:

> Tennessee Code Annotated 67-5-1005 clearly states that 'the assessor shall determine whether such land is agricultural land. . . .' In this particular case, the assessor has not classified the disputed land as agriculture/farm. Furthermore, the policy of the state of Tennessee is to appraise land at its highest and best use. The land in question is being sold as commercial lots and is zoned C-3. There is great demand for

> this commercial property. The county board erroneously placed the property in the greenbelt program. The subject property should be assessed at fair market value as opposed to use value.

Although both the original appeal form and amended appeal form were signed by the Putnam County assessor of property, Byron Looper, he did not testify at the hearing. The only witness to testify on Putnam County's behalf was an employee of the assessor's office, Robert Nail. Essentially, Mr. Nail testified that subject property should not qualify for greenbelt because it is zoned commercial.

As previously indicated, the taxpayer was represented by Clarence Palk. Mr. Palk testified that subject property has always been farmed. According to Mr. Palk, subject property has been used in recent years to produce hay which is marketed through cattle.[1] Mr. Palk testified that approximately 72 rolls of hay weighing between 1,800 and 2,000 pounds each were cut in the past year. Mr. Palk also testified that the amount of hay cut varied from year to year due to factors such as the weather. Mr. Palk stated that the rolls would sell for $35.00 to $40.00 if they were not being consumed by cattle.

The administrative judge finds that the reasons underlying passage of the greenbelt law are best summarized in the legislative findings set forth in T.C.A. §67-5-1002 which provides in relevant part as follows:

> The general assembly finds that:
>
> (1) The existence of much agricultural, forest and open space land is threatened by pressure from urbanization, scattered residential and commercial development, and the system of property taxation. This pressure is the result of urban sprawl around urban and metropolitan areas which also brings about land use conflicts, creates high costs for public services, contributes to increased energy usage, and stimulates land speculation;
> (2) The preservation of open space in or near urban areas contributes to:
> (A) The use, enjoyment and economic value of surrounding residential, commercial, industrial or public use lands;
> (B) The conservation of natural resources, water, air, and wildlife;
> (C) The planning and preservation of land in an open condition for the general welfare;
> (D) A relief from the monotony of continued urban sprawl; and
> (E) An opportunity for the study and enjoyment of natural areas by urban and suburban residents who might not otherwise have access to such amenities;

[1] According to Mr. Palk, subject property had once been used to raise hogs. That use of the property ceased when the adjoining property became a mobile home park.

(3) Many prime agricultural and forest lands in Tennessee, valuable for producing food and fiber for a hungry world, are being permanently lost for any agricultural purposes and that these lands constitute important economic, physical, social, and esthetic assets to the surrounding lands and to the people of Tennessee;

(4) Many landowners are being forced by economic pressures to sell such agricultural, forest, or open space land for premature development by the imposition of taxes based, not on the value of the land in its current use, but on its potential for conversion to another use; and

* * *

The administrative judge finds that the policy of this state with respect to greenbelt type property is found in T.C.A. §67-5-1003 which provides in relevant part as follows:

> The general assembly declares that it is the policy of this state that:
>
> (1) The owners of existing open space should have the opportunity for themselves, their heirs, and assigns to preserve such land in its existing open condition if it is their desire to do so, and if any or all of the benefits enumerated in § 67-5-1002 would accrue to the public thereby, and that the taxing or zoning powers of governmental entities in Tennessee should not be used to force unwise, unplanned or premature development of such land;
>
> (2) The preservation of open space is a public purpose necessary for sound, healthful, and well-planned urban development, that the economic development of urban and suburban areas can be enhanced by the preservation of such open space, and that public funds may be expended by the state or any municipality or county in the state for the purpose of preserving existing open space for one (1) or more of the reasons enumerated in this section; . . .
>
> * * *

The administrative judge finds that the question which must be answered in this appeal is whether subject property qualifies for preferential assessment under the greenbelt law as "agricultural land." The term "agricultural land" is defined in T.C.A. §67-5-1004(1) as follows:

> 'Agricultural land' means a tract of land of at least fifteen (15) acres including woodlands and wastelands which form a contiguous part thereof, constituting a farm unit engaged in the production or growing of crops, plants, animals, nursery, or floral products. "Agricultural land" also means two (2) or more tracts of land including woodlands and wastelands, one (1) of which is greater than fifteen (15) acres and none of which is less than ten (10) acres, and such tracts need not be contiguous but shall constitute a farm unit being held and used for the production or growing of agricultural products;

The administrative judge finds that in deciding whether a given tract constitutes "agricultural land," reference must be made to T.C.A. §67-5-1005(a)(3) which provides as follows:

> In determining whether any land is agricultural land, the tax assessor shall take into account, among other things, the acreage of such land, the productivity of such land, and the portion thereof in actual use for farming or held for farming or agricultural operation. The assessor may presume that a tract of land is used as agricultural land if the land produces gross agricultural income averaging at least one thousand five hundred dollars ($1,500) per year over any three-year period in which the land is so classified. The presumption may be rebutted notwithstanding the level of agricultural income by evidence indicating whether the property is used as agricultural land as defined in this part.

The administrative judge finds that the question of whether subject property should be classified at "agricultural land" for purposes of the greenbelt law is a most difficult one. As will be discussed immediately below, the administrative judge finds that plausible arguments can be made in support of both parties' positions.

The administrative judge finds that subject tract contains fifteen (15) acres and thereby satisfies the minimum acreage requirement of T.C.A. §67-5-1004(1). The administrative judge finds that Mr. Palk's unrefuted testimony established that subject tract has been used for various farming practices since sometime prior to the taxpayer's 1978 purchase of subject tract. The administrative judge finds that hay production constitutes an agricultural practice, prevents premature development of subject property, and preserves an area of open space in a highly commercial area.

The administrative judge finds that although the above factors support a finding that subject property constitutes "agricultural land," Mr. Palk's testimony revealed two factors militating the other way. First, the administrative judge finds Mr. Palk's testimony established that subject property is being held for eventual sale as commercial property.[2] Second, the administrative judge finds that Mr. Palk was unable to testify with great certainty as to the quantity and value of hay produced in prior years.

The administrative judge finds that the factors militating against an "agricultural land" classification must be discounted for two reasons. First, the administrative judge finds that the greenbelt law does not prohibit a property owner from intending to

[2] According to Mr. Palk, commercial development of subject property will be feasible when a road runs directly to it and the long discussed bypass is constructed.

eventually convert the use of a property from agricultural to commercial.[3] The administrative judge finds that rollback taxes are designed to cover such situations. Indeed, the administrative judge would assume that many owners of greenbelt property intend to sell it for commercial development at some future time. The administrative judge finds that T.C.A. §67-5-1003(1) recognizes this by making reference to "premature development of such land." Second, the administrative judge finds that Mr. Palk's uncertainty over prior years production is not surprising since Putnam County did not subpoena this information or in any way ask Mr. Palk to be prepared to testify on this point.

The administrative judge finds that viewed in its entirety, the evidence does not warrant removing subject property from the greenbelt program. The administrative judge finds that the burden of proof in this matter falls on Putnam County. *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981). The administrative judge finds it inappropriate to remove a property from greenbelt simply because it is zoned commercially or that commercial development represents its highest and best use. Indeed, the administrative judge finds that these are typical examples of the type situations greenbelt was intended to address.

The administrative judge finds that the status quo should not be disturbed for a related reason. The administrative judge finds that the question of whether a property is being used as "agricultural land" represents the type of issue county boards of equalization are especially well suited to decide.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 1997:

	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
MKT.	$375,000	$ -0-	$375,000	$ -
USE	$ 11,600	$ -0-	$ 11,600	$2,900

The law gives the parties to this appeal certain additional remedies:

1. Petition for reconsideration (pursuant to Tenn. Code Ann. § 4-5-317). You may ask the administrative judge to reconsider this initial decision and order, but your request must be filed within ten (10) days from the order date stated below. The request must be in writing and state the specific

[3] The administrative judge finds that a taxpayer's intent is not necessarily determinative of whether a property qualifies for preferential assessment under greenbelt.

grounds upon which relief is requested. You do not have to request reconsideration before seeking the other remedies stated below.

2. Appeal to the Assessment Appeals Commission (pursuant to Tenn. Code Ann. § 67-5-1501). You may appeal this initial decision and order to the Assessment Appeals Commission, which usually meets twice a year in each of the state's largest cities. *An appeal to the Commission must be filed within thirty (30) days from the order date stated below.* If no party appeals to the Commission, this initial decision and order will become final, and an official certificate will be mailed to you by the Assessment Appeals Commission in approximately seventy-five (75) days.

3. Payment of taxes (pursuant to Tenn. Code Ann. § 67-5-1512). You must pay at least the undisputed portion of your taxes before the delinquency date in order to maintain this appeal. No stay of effectiveness will be granted for this appeal.

ENTERED this 2d day of January, 1998.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

c: Putnam Farm Supply
Byron Looper, Assessor of Property
Jerry Lee Burgess, Esq.

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Reedy, Scott M. et ux. Tracy Renee**	)	**Perry County**
	Property ID: 072 11.01 000	)	
		)	
	Tax Year 2013	)	**Appeal No. 88127**

INITIAL DECISION AND ORDER DISMISSING APPEAL

On August 14, 2013, an appeal was filed with the State Board of Equalization ("State Board") by Scott and Tracy Reedy.

The undersigned administrative judge conducted a hearing of this matter on May 13, 2014, in Linden. The appellant, Scott Reedy, represented himself at the hearing. Perry County Assessor of Property Gary Horner appeared on his own behalf. He was assisted by his deputy, Kathy Peavyhouse.

The subject property in this appeal consists of a 45.96 acre parcel of vacant land located on Beasley Hollow Road in Perry County. Prior to purchase by the appellant, the property had been valued pursuant to the Agricultural, Forest and Open Space Land Act of 1976, as amended (commonly known as the "greenbelt" law).

On February 28, 2007, the taxpayer entered into a land contract to purchase the subject property. On December 20, 2010, the appellant secured a mortgage and a deed was recorded. On December 29, 2010, the Assessor sent the appellant a letter notifying him that the subject property was on greenbelt and that Tennessee law required that the new owner file an application to remain on greenbelt. On February 8, 2011, the Assessor, having not heard from the appellant,

again sent the letter to the appellant, this time with a handwritten notation that the "Deadline to apply for Greenbelt is 3-1-11."

On October 25, 2011, the Assessor notified the County Trustee and the taxpayer that the property no longer qualified for greenbelt. Finally, on February 17, 2012, the appellant filed an application for greenbelt with the Perry County Register of Deeds. This application was ultimately approved and the subject property was again placed on the greenbelt list, effective January 1, 2012.

In the event that a parcel is removed from the greenbelt roll, Tenn. Code Ann. § 67-5-1008(d) provides for the collection of back taxes (rollback) for certain years equal to the difference between what was actually paid pursuant to the greenbelt use value and what would have been owed had the property not been on the greenbelt roll. In this case, the transfer of the property to a new owner without the statutorily required application triggered the removal of the property from greenbelt and the imposition of rollback taxes.

The appeal form filed with the State Board by the appellant lists 2011 as the tax year under appeal. However, at the hearing the appellant testified that he was satisfied with the values assigned to the property, but was really contesting was the imposition of rollback taxes for tax years 2008 – 2010.

Regrettably, Tenn. Code Ann. §67-5-1008(d)(3) says, in part:

> Liability for rollback taxes, but not property values, may be appealed to the state board of equalization by March 1 of the year following the notice by the assessor.

The various notices were sent to the appellant in 2010 and 2011, meaning the deadline to appeal to the State Board would have been March 1, 2012. Although he was not sure which one, the appellant did concede that at least one of the notices sent by the Assessor had been received.

Thus, his appeal to the State Board contesting the imposition of rollback taxes did not meet the statutory deadline.

Order

It is, therefore, ORDERED that this appeal be dismissed.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

Entered this 11th day of August 2014.

Brook Thompson, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Scott and Tracy Reedy
232 Beasley Hollow Road
Linden, Tennessee 37096

Garry Horner
Perry Co. Assessor of Property
Post Office Box 68
Linden, Tennessee 37096

This the 11th day of August 2014.

Janice Kizer
Department of State
Administrative Procedures Division

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

In Re:	Richard Brown District 11, Map 131, Control Map 131, Parcel 9 Rollback Assessment Tax Years 1998 through 2000	))))	Henry County

INITIAL DECISION AND ORDER

Statement of the Case

This is an appeal from an assessment of "rollback taxes" on the subject parcel pursuant to Tenn. Code Ann. section 67-5-1008. The appeal was received by the State Board of Equalization (the "State Board") on March 4, 2002.[1] The administrative judge appointed under authority of Tenn. Code Ann. section 67-5-1505 conducted a hearing of this matter on May 7, 2002 in Paris, Tennessee. In attendance at the hearing were the appellant Richard Brown, former co-owner of the property in question, and Henry County Assessor of Property Charles Van Dyke (the "Assessor").

Findings of Fact and Conclusions of Law

Background. This appeal raises the issue of whether a seller of "greenbelt" land is liable for rollback taxes if the subsequent termination of that status is due solely to the buyer's failure to file the required application before the statutory deadline.

The parcel in question is a 66.9-acre tract located on Lakeview Manor Road. Mr. Brown, an associate professor of marketing at Freed-Hardeman University in Henderson, Tennessee, inherited his interest in this property from his grandfather. Used for raising cattle, the entire acreage was designated as "agricultural land" through tax year 2000 under the Agricultural, Forest and Open Space Land Act of 1976, as amended (the "greenbelt" law).[2]

In February of 2000, Mr. Brown and the other owners of the subject parcel at that time entered into an OPTION TO PURCHASE agreement with Larry D. and Janice T. Vick. Under the terms of this contract, the Vicks were given the right to purchase such property within a period of 60 days for $312,500. Paragraph 5 of the agreement provided as follows:

> Real estate taxes for the year in which the closing occurs shall be prorated as of the date of closing. Any back taxes shall be paid by Sellers. **Any special assessments or roll-back taxes which may be a lien against the Property at the date of closing, or which are assessed for a period prior to closing, shall be paid by Sellers.** [Emphasis added.]

[1]The mailed appeal form is deemed to have been filed on the postmark date of March 1, 2002. State Board of Equalization Rule 0600-1-.04(1)(b).

[2]The greenbelt law grants preferential tax treatment to owners of qualifying land by means of an assessment based on "present use value" rather than market value. *See* Tenn. Code Ann. sections 67-5-1001 *et seq*. On December 29, 1998, Mr. Brown signed a certification to the effect that he was using the subject property for agricultural purposes.

Mr. and Ms. Vick timely exercised the option and acquired title to the subject parcel by warranty deed dated May 9, 2000. When the Assessor learned of this transfer, he sent an application for classification of the property as "agricultural land" to the new owners along with a letter reminding them of the April 1, 2001 filing deadline for preservation of greenbelt status.[3] Though they continued to use the land for agricultural operations (the growing of corn), Mr. and Ms. Vick did not complete and return the application form. As a result, the Assessor reclassified the land as "farm property" for tax year 2001 and levied a rollback assessment against Mr. Brown and the other grantors. This appeal to the State Board ensued.

Contention of the Appellant. While conceding that he would be responsible for payment of any rollback taxes on the subject parcel, the appellant disputed the validity of such an assessment under the factual situation recited above. In an attachment to the appeal form, Mr. Brown asserted that:

> The property has not been converted to an ineligible use and it is still eligible as agricultural land. Clearly the land is not currently enrolled in the Greenbelt Program; just as clearly it qualifies to be in the program if the current owner chooses to enroll it. The phrase "or otherwise" (in Tenn. Code Ann. section 67-5-1008(f)) could be seen as a possible cause of the rollback taxes being due. However, neither I, nor anyone in Mr. Van Dyke's office, is able to ascertain a specific citation in the (Tennessee Code) that explains what the specific meaning of this "otherwise" is. We have not been able to find a place in the code that says rollback taxes are due solely because a property is sold and not enrolled in the program by the new owners.

Applicable Law. Insofar as it is relevant to this appeal, Tenn. Code Ann. section 67-5-1005(d) requires the assessor to initiate a rollback assessment if the land in question "ceases to qualify as agricultural land...as defined in section 67-5-1004." Subsection (f) of section 67-5-1008, cited by the appellant, reads as follows:

> If the sale of agricultural, forest or open space land will result in such property being disqualified as agricultural, forest or open space land due to conversion to an ineligible use or otherwise, the seller shall be liable for rollback taxes unless otherwise provided by written contract. **If the buyer declares in writing at the time of sale an intention to continue the greenbelt classification but fails to file any form necessary to continue the classification within ninety (90) days from the sale date, the rollback taxes shall become solely the responsibility of the buyer.** [Emphasis added.]

Analysis. The parties stipulated that the subject property has continuously met the definition of "agricultural land" set forth in the greenbelt law. Since it was not the *sale* of this property that caused the loss of its greenbelt status, the appellant argued, rollback taxes should not have been imposed.

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[3]The legislature has since changed the application deadline for a new owner of agricultural land to March 1 of the year following the year of transfer. Tenn. Code Ann. section 67-5-1005(a)(1).

Respectfully, the administrative judge disagrees. The subsection on which the appellant has focused his attention (Tenn. Code Ann. section 67-5-1008(f)) addresses the question of **who** is liable for rollback taxes resulting from a sale of greenbelt property. But that is not the issue in this case. It is subsection (d) of Tenn. Code Ann. section 67-5-1008 which specifies the conditions under which the assessor is obliged to make a rollback assessment.[4] One of those conditions is that the land in question "ceases to qualify as agricultural land."

Clearly, under the present greenbelt law, eligibility for a "use value" assessment is non-transferable. When agricultural or other qualifying land is sold, the filing of an application in the name(s) of the new owner(s) is a prerequisite to retention of the greenbelt classification. Tenn. Code Ann. section 67-5-1005(a)(1). If no such application is submitted, the land surely "ceases to qualify" for favorable tax treatment;[5] and the assessor must notify the trustee that rollback taxes are due and payable by the seller – unless the buyer promised in writing at the time of the transaction to file the necessary paperwork.

This interpretation is buttressed by the highlighted language in Tenn. Code Ann. section 67-5-1008(f). Implicit in that sentence is the recognition that rollback taxes *are* assessable if the buyer fails to file the application form "necessary to continue the (greenbelt) classification" – regardless of whether the actual use of the property in question changes. Further, no reason appears why the legislature would have mandated a rollback assessment against a *buyer* of greenbelt property who breaches a promise to file the necessary application form, but not against a *seller* of greenbelt property who receives no such commitment from the buyer.

Order

It is, therefore, ORDERED that the disputed assessment of rollback taxes be affirmed.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of

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[4]Thus Tenn. Code Ann. section 67-5-1008(b)(3) refers to rollback taxes "as defined in section 67-5-1004 and as provided for in **subsection (d)**." [Emphasis added.]

[5]Under prior law, a buyer of land previously approved for an "agricultural" classification was merely required to file a certification of gross agricultural income. In 1996, the Tennessee General Assembly adopted an amendment to Tenn. Code Ann. section 67-5-1005(c) which provided (in relevant part) that:

> There shall be no rollback assessment when property is disqualified for lack of a certification pursuant to this subsection, so long as the property continues to be used as agricultural land and continues to qualify under the minimum size or maximum acreage provisions of this part. Such disqualified property shall be at risk of a rollback assessment until it has been assessed at market value under part 6 of this chapter for three (3) years, and during such time a rollback assessment shall be made if the property ceases to be used as agricultural land or ceases to qualify under the minimum size or maximum acreage provisions.

Acts 1996, ch. 707, section 1. Alas, when the law was changed to require that a new owner of agricultural land file a greenbelt application with the assessor, the legislature did not enact a similar provision for the benefit of the seller. It behooves the seller of agricultural land, then, to procure the buyer's commitment in the sale contract to file the necessary application within 90 days from the sale date.

the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 24th day of May, 2002.

Pete Loesch

PETE LOESCH
ADMINISTRATIVE JUDGE

cc: Richard Brown
Charles Van Dyke, Assessor of Property
Larry Ellis, CAE, Jackson Division of Property Assessments

BROWN.DOC

return to handbook

BEFORE THE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	RICHARD STROCK ET AL.	)	
	Map 113, Parcel 080.06 & 080.20	)	Maury
	Commercial Property	)	County
	Tax Years 1999-2000	)	

FINAL DECISION AND ORDER

Statement of the case

This is an appeal by the taxpayers from the initial decision and order of the administrative judge, who recommended the assessor's revocation of greenbelt classification be affirmed. The administrative judge also recommended a reduction in the market value of the properties pursuant to an agreement between the assessor and the taxpayers, as follows:

Parcel	Land Value	Improvement	Total Value	Assessment
80.06	$500,000	$-0-	$500,000	$200,000
Parcel	Land Value	Improvement	Total Value	Assessment
80.20	$100,000	$-0-	$100,000	$40,000

The appeal was heard in Nashville on October 17, 2000 before Commission members Isenberg (presiding), Crain, Ishie, Millsaps, Rochford, and Simpson, sitting with an administrative judge[1]. The taxpayers were represented by their attorney Mr. Michael Richardson, and the assessor represented himself along with a member of his staff, Ms. Dee Napier.

Findings of fact and conclusions of law

The subject parcels are a 20.19 acre tract and 2.06 acre tract divided by a road, located on Pulaski Highway in Columbia. The road was constructed by the taxpayers in the expectation that the city of Columbia would take it over as a public road and that it would improve the development possibilities for the subject properties. The city, however, has to date not accepted the road and the road has done little for the properties according to the owners other than to improve access to back portions. The road construction cost the property owners their 1999 hay crop, but hay production had already suffered from the death of a long-time tenant two years earlier who had been responsible for planting and harvesting.

The assessor determined the use of the property had changed to a non-greenbelt use after observing the road construction, the absence of a crop, and

regrading that was occurring on parts of the parcels. The taxpayers explained this as the temporary and necessary result of the road construction rather than as indicating a commitment on their part to a change in the use of the property to a non-greenbelt use. The administrative judge affirmed the revocation of greenbelt because in addition to the construction related changes, "for sale" signs began to appear on the property. Mr. Strock testified the owners were responsible for some but not all of these signs, but that the owners resumed hay production after the road construction. Mr. Strock further testified that development was not a realistic possibility because of the absence of utilities and sewer.

Mr. Strock is correct in his assumption that a farmer may consider developing the farm even to the point of offering it for sale while still maintaining actual farm use, without jeopardizing the property's greenbelt status. Land may lie fallow, roads may be built, without giving rise to a presumption that farm use has been abandoned, if these measures are not inconsistent with continuing farm use of the property. This case presents a very close issue as to whether the farm use of these parcels has been abandoned, particularly considering the size of the parcels and the overwhelming impact of the road construction on the minimal farm use for hay production. The assessor has acted in good faith in concluding that what he observed indicated abandonment of the farm use, but considering all the circumstances we find that continuing farm use has adequately been shown for the subject parcels in the resumption of the continuing and long-term program of hay production or other farm uses, coupled with the abandonment of further physical changes to the property intended to bring about a non-greenbelt (development) use.

ORDER

It is therefore ORDERED, that the initial decision and order of the administrative judge is modified so as to restore the greenbelt classification of the property, and the market value of the subject property for tax years 1999 and 2000 is determined as follows:

Parcel	Land Value	Improvement	Total Value
80.06	$500,000	$-0-	$500,000
Parcel	Land Value	Improvement	Total Value
80.20	$100,000	$-0-	$100,000

[1] An administrative judge other than the judge who rendered the initial decision and order sits with the Commission pursuant to Tenn. Code Ann. §4-5-301 and rules of the Board.

In accordance with this order, the properties shall be assessed at use value as determined by the assessor using methods applicable to other greenbelt properties in the county. This order is subject to:

1. Reconsideration by the Commission, in the Commission's discretion. Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
3. Review by the Chancery Court of Davidson County or other venue as provided by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: Dec. 20, 2000

Presiding member

ATTEST:

Executive Secretary

cc: Mr. Michael Richardson, Esq.
Mr. Jim Dooley, Assessor

return to handbook

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Rodney Cooper**	)	**Bedford County**
	Property ID: 010 01601 000	)	**Appeal No. 107177**
	Property ID: 010 01101 000	)	**Appeal No. 107178**
	Property ID: 010 01000 000	)	**Appeal No. 107179**
	Property ID: 007 08400 000	)	**Appeal No. 107180**
	Property ID: 007 08203 000	)	**Appeal No. 107181**
	Property ID: 010 00400 000	)	**Appeal No. 107182**
	Property ID: 044 02201 000	)	**Appeal No. 107183**
	Property ID: 011 01403 000	)	**Appeal No. 107184**
	Property ID: 063 02000 000	)	**Appeal No. 107185**
	Property ID: 007 08303 000	)	**Appeal No. 107186**
	Tax Year 2016	)	

Initial Decision and Order

Statement of the Case

The Bedford County Board of Equalization ("local board") has valued the subject property for tax purposes as follows:

Parcel 16.01

	Land Value	Improvement Value	Total Value	Assessment
MKT	$51,500	$0	$51,500	N/A
USE	$6,400	$0	$6,400	$1,600

Parcel 11.01

	Land Value	Improvement Value	Total Value	Assessment
MKT	$221,600	$0	$221,600	N/A
USE	$85,900	$0	$85,900	$21,475

Parcel 10.00

	Land Value	Improvement Value	Total Value	Assessment
MKT	$264,000	$0	$264,000	N/A
USE	$99,400	$0	$99,400	$24,850

Parcel 84.00

	Land Value	Improvement Value	Total Value	Assessment
MKT	$227,900	$0	$227,900	N/A
USE	$94,300	$0	$94,300	$23,575

Parcel 82.03

	Land Value	Improvement Value	Total Value	Assessment
MKT	$484,400	$0	$484,400	N/A
USE	$198,800	$0	$198,800	$49,700

Parcel 04.00

	Land Value	Improvement Value	Total Value	Assessment
MKT	$78,300	$0	$78,300	N/A
USE	$34,500	$0	$34,500	$8,625

Parcel 22.01

	Land Value	Improvement Value	Total Value	Assessment
MKT	$227,700	$2,000	$229,700	N/A
USE	$86,400	$2,000	$88,400	$22,100

Parcel 14.03

	Land Value	Improvement Value	Total Value	Assessment
MKT	$180,300	$0	$180,300	N/A
USE	$58,800	$0	$58,800	$14,700

Parcel 20.00

	Land Value	Improvement Value	Total Value	Assessment
MKT	$176,100	$0	$176,100	N/A
USE	$73,800	$0	$73,800	$18,450

Parcel 83.03

	Land Value	Improvement Value	Total Value	Assessment
MKT	$673,900	$3,800	$677,700	N/A
USE	$260,500	$3,800	$264,300	$66,075

The appellant timely filed an appeal for each of the ten (10) parcels with the State Board of Equalization ("State Board") on July 26, 2016.

The undersigned administrative judge conducted a hearing of this matter on April 26, 2017, in Shelbyville. The appellants, Rodney and Pam Cooper, represented themselves at the hearing. Bedford County Assessor of Property Rhonda Clanton appeared on her own behalf. She was assisted by County Appraiser Mark Lamb.

Findings of Fact and Conclusions of Law

The subject property in this appeal consists of ten (10) farm parcels located in Bedford County. The property has been valued pursuant to the Agricultural, Forest and Open Space Land Act of 1976, as amended (commonly known as the "greenbelt" law).

In this State, while real property is usually taxed on what it is worth on the open market, the greenbelt law allows property owners to reduce their property tax liability by valuing the property according to its present use. Use value is based on the assumption that the property cannot be used for any purpose other than that which qualified it for valuation under the greenbelt law.

The use values utilized to appraise the subject acreage were developed pursuant to the statutory formula mandated by Tenn. Code Ann. § 67-5-1008(c). These duly adopted values must be utilized by the Assessor to value greenbelt acreage for use value purposes. Of course, Mr. and Ms. Cooper and other affected taxpayers had an opportunity to challenge the proposed use values pursuant to Tenn. Code Ann. § 67-5-1008(c)(4). Generally, this statutory provision provides that at least ten property owners of land qualifying for preferential assessment under the greenbelt law must have petitioned the State Board of Equalization to convene a hearing concerning the use value schedule proposed for Bedford County in conjunction with the most recent reappraisal program. Since no such petition was filed, the proposed use values were adopted and used to value properties like the subject.

The basis of market valuation set out in Tenn. Code Ann. § 67-5-601(a) is that [t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . ."

As the party seeking to change the current assessment of the subject property, the appellant has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(1).

Overall Proof of the Parties

Although the taxpayers offered testimony with respect to the nature of the separate parcels, they based their contention of value on several comparable sales. Regrettably, however, the comparable sales offered by the taxpayers are not adjusted in the appropriate manner. The Assessment Appeals Commission has said that for comparable sales to be relevant, they must be

properly adjusted. In E.B. Kissell, Jr. (Shelby County, Tax Years 1991 and 1992) the Commission said:

> The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. Perfect comparability is not required, but relevant differences should be explained and accounted for by reasonable adjustments. If evidence of a sale is presented without the required analysis of comparability, it is difficult or impossible for us to use the sale as an indicator of value . . . .

Final Decision and Order at 2.

Specifically, the appellant did not make adjustments for the amount of acreage involved in each transaction. While the date of the sale is also of obvious importance, the vast range in acreage involved in these comparable sales demand an adjustment. This oversight is especially important as it is a fundamental tenet of appraisal that smaller tracts of land will sale for more per acre than comparable larger tracts.

Additionally, at least one of the sales cited by the taxpayers occurred after the assessment date. Because January 1, 2016, constitutes the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a), the data would seem to be irrelevant. Indeed, the Assessment Appeals Commission has said: "[e]vents occurring after [the assessment] date are not relevant unless offered for the limited purpose of showing that assumptions reasonably made on or before the assessment date have been borne out by subsequent events." Acme Boot Company and Ashland City Industrial Corporation (Cheatham County, Tax Year 1989, Final Decision and Order) p. 3.

Conversely, the Assessor introduced properly adjusted comparable sales for each of the ten (10) parcels. These sales took into account the date of the sale, the acreage involved and other relevant factors. With one exception discussed below, the Assessor's proof supported the valuations she recommended for each parcel.

Parcels 16.01, 11.01, 10.00, 84.00, 14.03 and 20.00

For each of these parcels, the Assessor's comparable sales supported a valuation slightly in excess of that established by the local board. The Assessor, however, merely asked that the value of the local board be affirmed. Given the lack of relevant proof offered by the appellants, the administrative judge is persuaded than an affirmation of the local board is supported.

Parcel 82.03, 04.00, and 22.01

For each of these parcels, the Assessor's proof suggested a reduction in value for the respective parcels was warranted. Although the taxpayers requested a more significant reduction for each of the parcels, the lack of properly adjusted comparable sales prevents any finding that supports a reduction.

Parcel 83.03

This parcel, which the local board has valued at $677,700, consists of 173.2 acres. The taxpayers again cited an unadjusted sale. In this instance, the sale was for a tract of only 19.97 acres, nothing close to the size of the subject parcel. However, they contended that this sale supported a valuation of $2,800 per acre or $484,960 for the land.[1]

The Assessor again introduced a properly adjusted comparable sales analysis which indicated a value of $535,900 for the land. Inexplicably, however, she argued that an affirmation of the local board's value was justified. Specifically, she cited the large road frontage of the property as a justification for affirming a valuation in excess of that supported by the properly adjusted comparable sales.

Respectfully, while the large road frontage may well bring increased value to the subject parcel, this factor was not addressed in the adjustments. To seek a higher valuation than that

[1] Parcel 83.03 also contains an improvement valued by the local board at $3,800.

established in the analysis requires some justification. For this reason, the administrative judge is led to adopt the valuation found in the adjusted comparable sales.

Order

It is, therefore, ORDERED that the following values be adopted for tax year 2016:

Parcel 16.01

	Land Value	Improvement Value	Total Value	Assessment
MKT	$51,500	$0	$51,500	N/A
USE	$6,400	$0	$6,400	$1,600

Parcel 11.01

	Land Value	Improvement Value	Total Value	Assessment
MKT	$221,600	$0	$221,600	N/A
USE	$85,900	$0	$85,900	$21,475

Parcel 10.00

	Land Value	Improvement Value	Total Value	Assessment
MKT	$264,000	$0	$264,000	N/A
USE	$99,400	$0	$99,400	$24,850

Parcel 84.00

	Land Value	Improvement Value	Total Value	Assessment
MKT	$227,900	$0	$227,900	N/A
USE	$94,300	$0	$94,300	$23,575

Parcel 82.03

	Land Value	Improvement Value	Total Value	Assessment
MKT	$477,000	$0	$477,000	N/A
USE	$198,800	$0	$198,800	$49,700

Parcel 04.00

	Land Value	Improvement Value	Total Value	Assessment
MKT	$35,600	$0	$35,600	N/A
USE	$34,500	$0	$34,500	$8,625

Parcel 22.01

	Land Value	Improvement Value	Total Value	Assessment
MKT	$221,900	$2,000	$223,900	N/A
USE	$86,400	$2,000	$88,400	$22,100

Parcel 14.03

	Land Value	Improvement Value	Total Value	Assessment
MKT	$180,300	$0	$180,300	N/A
USE	$58,800	$0	$58,800	$14,700

Parcel 20.00

	Land Value	Improvement Value	Total Value	Assessment
MKT	$176,100	$0	$176,100	N/A
USE	$73,800	$0	$73,800	$18,450

Parcel 83.03

	Land Value	Improvement Value	Total Value	Assessment
MKT	$535,900	$3,800	$539,700	N/A
USE	$260,500	$3,800	$264,300	$66,075

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

Entered this 9th day of August 2017.

Brook Thompson, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Rodney Cooper
546 Coopertown Road
Unionville, TN 37180

Ronda Helton Clanton
Bedford Co. Assessor of Property
106 North Side Square
Shelbyville, Tennessee 37160

This the 9th day of August 2017.

Janice Kizer
Department of State
Administrative Procedures Division

BEFORE THE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:

BOBBY G. RUNYAN Dist. 2, Map 69, Control Map 69, Parcel 18.03 Residential Property - Rollback Assessment Tax Year 2005	))))	Hamilton County

FINAL DECISION AND ORDER

Statement of the case

This is an appeal by the taxpayer from the initial decision and order of the administrative judge who determined that greenbelt rollback taxes were properly imposed upon the taxpayer pursuant to Tennessee Code Annotated § 67-5-1001 *et seq.* The appeal was heard in Knoxville on June 27, 2007, before Commission members Stokes (presiding), Ledbetter, and Gilliam.[1] John C. Cavett, Jr., Esq., represented the taxpayer. The assessor was represented by staff members Roy Rumfelt and Alan Johnson.

Findings of fact and conclusions of law

The subject property is an 80 acre tract located at 10261 Highway 58 in Ooltewah, Tennessee. In 1992, former property owner Effie Ruth Lovell filed a greenbelt application for the subject property, which was approved by the assessor of property. On June 5, 2001, Ms. Lovell conveyed the property by warranty deed in fee simple to a group of four relatives, but she retained a life estate. The subject property continued to enjoy preferential assessment, even after Effie Ruth Lovell died on April 22, 2002 and her life estate was extinguished. No greenbelt application was filed by the four relatives.

On August 23, 2004, while the property continued to enjoy preferential assessment, Mr. Runyan purchased the property from the four relatives. After Mr. Runyan's purchase of the property, he was notified by the assessor's office that he could submit a greenbelt application. Mr. Runyan submitted a greenbelt application on November 11, 2004, which was approved by the assessor. On April 8, 2005, Mr. Runyan sold the subject property to Runser Development. In June of 2005, Mr. Runyan received a bill for rollback taxes in the amount of $13,248.77, reflective of the tax savings enjoyed for three years under the greenbelt law.

The taxpayer argued that when the life estate retained by Ms. Lovell was extinguished, the four relatives should have been required to submit an application pursuant to Tennessee Code Annotated § 67-5-1005(a)(1). The taxpayer argued that because no such application was filed, the greenbelt status of the subject property should have been extinguished. The taxpayer

[1] Mr. Gilliam sat as a designated alternate for an absent member, pursuant to Tenn. Code Ann. §4-5-302.

conceded that the sale of the property to Runser Development triggered rollback taxes and that the taxpayer should have to pay a portion of the rollback taxes attributable to the tax savings he enjoyed. However, the taxpayer argued that he should not be required to pay for any rollback taxes attributable to benefits received by the prior owners of the property. Further, the taxpayer suggested that there was insufficient notice regarding whether the property was enjoying greenbelt status at the time of purchase.

The assessor's representative countered that Ms. Lovell's 1992 greenbelt application had in fact been filed and recorded. The recordation of the 2001 deed made the assessor's office aware of potential future owners of the property, but the assessor's office was unable to ascertain when Ms. Lovell would pass away and full ownership transfer to her relatives. This was why the four relatives were never required to apply for greenbelt status and why greenbelt status continued uninterrupted, according to the assessor's representative.

The Commission finds that the taxpayer's arguments erroneously presuppose that rollback taxes are merely a personal liability arising automatically upon the occurrence of the disqualifying event. There is indeed personal liability for rollback taxes, but the liability arises when the assessor discovers the liability and notifies the tax collecting official and the liable party.[2] The rollback liability also gives rise to a lien. Tennessee Code Annotated § 67-5-1008(d)(3). That the assessor may have been unaware of circumstances that might have triggered rollback liability earlier, or to a prior owner, does not relieve the current owner of liability occasioned by the current owner's change of use or other disqualification. Purchasers are charged with knowledge of a property's current greenbelt status based on the recorded application without regard to their actual knowledge.

ORDER

By reason of the foregoing, it is ORDERED, that the initial decision and order of the administrative judge is affirmed. This order is subject to:

1. Reconsideration by the Commission, in the Commission's discretion. Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within thirty (30) days from the date of this order.

[2] "When the assessor determines there is liability for rollback taxes, the assessor shall give written notice to the tax collecting official identifying the basis of the rollback taxes and the person the assessor finds to be responsible for payment, and the assessor shall provide a copy of the notice to the responsible person." Tenn. Code Ann. §67-5-1008 (d)(3).

3. Review by the Chancery Court of Davidson County or other venue as provided by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: Oct. 31, 2007

Presiding member

ATTEST:

Executive Secretary

cc: Mr. John C. Cavett, Jr. , Esq.
Mr. Bobby G. Runyon
Mr. Bill Bennett, Assessor

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Bobby G. Runyan Dist. 2, Map 69, Control Map 69, Parcel 18.03 Residential Property Tax Year 2005	)) Hamilton County))

INITIAL DECISION AND ORDER

Statement of the Case

This appeal deals with the issue of rollback taxes under the Agricultural, Forest and Open Space Land Act of 1976, Tenn. Code Ann. § 67-5-1001, et seq. (hereafter referred to as the "greenbelt law"). The administrative judge conducted a hearing in this matter on August 10, 2006 in Chattanooga, Tennessee. The appellant, Bobby G. Runyan, was represented by John C. Cavett, Jr., Esq. The assessor of property, Bill Bennett, was represented by David Norton, Esq.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Background and Pertinent Facts

As will be discussed in greater detail below, this appeal concerns the period of time for which Mr. Runyan is liable for rollback taxes under the greenbelt law. The pertinent facts are not in dispute and are summarized immediately below.

Subject property consists of an 80 acre tract located at 10261 Highway 58 in Ooltewah, Tennessee. Subject property first began receiving preferential assessment under the greenbelt law in 1992 when the property owner at that time, Effie Ruth Lovell, filed a greenbelt application which was approved by the assessor of property. On June 5, 2001, Effie Ruth Lovell conveyed subject property by warranty deed in fee simple, reserving a life estate for herself, to a group of four owners (hereafter referred to as the "Lovell Heirs"). The Lovell Heirs did not file a greenbelt application in their own names, but the property continued to receive preferential assessment under the greenbelt law.

On April 22, 2002, Effie Ruth Lovell died thereby extinguishing her life estate. The Lovell Heirs did not file a greenbelt application in their own names, but subject property continued to receive preferential assessment under the greenbelt law.

On August 23, 2004, the Lovell Heirs sold subject property to the appellant, Bobby G. Runyan. The parties did not discuss or in any way address the fact subject property was receiving preferential assessment under the greenbelt law.

At some unknown date following his purchase, Mr. Runyan received an undated letter from Alan Johnson of the assessor's office which provided in relevant part as follows:

> The property you recently acquired has been valued under the agricultural greenbelt act for lower property taxes. You may qualify for this savings based on actual land use and other factors.
>
> If you are interested in applying for this farm use value, please complete and return the enclosed form for consideration.

* * *

On November 11, 2004, Mr. Runyan submitted a greenbelt application which was approved by the assessor of property.

On April 8, 2005, Mr. Runyan sold subject property to Runser Development. Runser intends to develop subject acreage for residential and/or commercial use. The parties effectively stipulated that this sale triggered rollback taxes under Tenn. Code Ann. §67-5-1008.

In June of 2005, Mr. Runyan received a bill for rollback taxes in the amount of $13,248.77. This amount reflects the tax savings enjoyed for three years under the greenbelt law.

II. Contentions of the Parties and Analysis

The administrative judge finds that the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

Mr. Runyan maintained that subject property lost its greenbelt status when either (1) Effie Ruth Lovell conveyed the property to the Lovell Heirs and retained a life estate on June 5, 2001; or (2) Effie Ruth Lovell died on April 22, 2002. According to Mr. Runyan, either of those events should have triggered rollback taxes and subject property should not have resumed receiving preferential assessment until his greenbelt application was approved on November 1, 2004. In support of this position, Mr. Runyan cited Tenn. Code Ann. § 67-5-1005(a)(1) which provides as follows:

> Any owner of land may apply for its classification as agricultural by filing a written application with the assessor of property by March 1 of the first year for which the classification is sought. Reapplication thereafter is not required so long as the ownership as of the assessment date remains unchanged. New owners of the land who desire to continue the previous classification must apply with the assessor by March 1 in the year following transfer of ownership. New owners may establish eligibility after March 1 only by appeal pursuant to parts 14 and 15 of this chapter, duly filed after notice of the assessment change is sent by the assessor, and reapplication must be made as a condition to the hearing of the appeal.
>
> [Emphasis supplied by appellant]

Thus, Mr. Runyan asserted that rollback taxes should only be levied for the period between November 11, 2004 and April 8, 2005. Mr. Runyan did not dispute that he was liable for rollback taxes during this period of time.

The assessor contended that since the April 8, 2005 sale of subject property constituted a change in use rollback taxes were triggered under Tenn. Code Ann. § 67-5-1008(a). The assessor maintained that because subject property had enjoyed preferential assessment since 1992 three years rollback taxes were due pursuant to Tenn. Code Ann. § 67-5-1008(d)(1). The assessor asserted that the rollback taxes were properly assessed to Mr. Runyan in accordance with Tenn. Code Ann. § 67-5-1008(f) which states in relevant part:

> If the sale of agricultural. . . land will result in such property being disqualified as agricultural. . . land due to conversion to an ineligible use or otherwise, *the seller shall be liable for rollback taxes unless otherwise provided by written contract. . . .*
>
> [Emphasis supplied]

In this case, the sales contract did not provide that the buyer would be liable for rollback taxes.

The administrative judge finds it unnecessary to determine whether subject property technically ceased to qualify for preferential assessment as contended by Mr. Runyan. The administrative judge finds Mr. Runyan's argument presupposes that greenbelt status simply ceases by operation of law. Respectfully, the administrative judge finds that no legal authority was offered in support of this contention.

The administrative judge finds that even if it is assumed arguendo that the assessor should have previously assessed rollback taxes or required a new application, the fact remains subject property continued to receive preferential assessment. The administrative judge finds such a situation no different from the myriad of situations where an erroneous assessment remains in effect because it is not appealed or corrected pursuant to Tenn. Code Ann. § 67-5-509. Indeed, in *ABG Caulking Contractors, Inc.* (Davidson Co., Tax Year 2004) (May 11, 2006), the Assessment Appeals Commission found the State Board of Equalization lacked jurisdiction to set aside a forced assessment despite the fact that "the forced assessment yields a tax bill of $22,731.46 versus a likely bill of about $9,000 had the schedule been properly filed." Final Decision and Order at 2.

The administrative judge would also note that unless Mr. Runyan can establish that the previously enjoyed greenbelt status ceased by operation of law, Tennessee law specifically imposes liability on the current owner or seller of property when the property is disqualified from greenbelt. See Tenn. Code Ann. § 67-5-1008(d)(3) which provides in relevant part as follows:

> . . . Rollback taxes shall be a first lien on the disqualified property in the same manner as other property taxes, and shall also be a personal responsibility of the current owner or seller of the land. . .

Mr. Runyan next argued that it would be inequitable to make him responsible for rollback taxes when he was not the beneficiary of any tax savings prior to his acquisition of subject property. The assessor countered that statutory construction must trump equity and Mr. Runyan is liable by statute.

Respectfully, the administrative judge finds that the State Board of Equalization lacks equitable powers. See *Trustees of Church of Christ* (Obion Co., Exemption) wherein the Assessment Appeals Commission ruled in relevant part as follows:

> There is no doubt that during the tax years at issue here, 1988 and 1989, the applicant was an exempt religious institution using its property for the religious purposes for which it exists, as required by our statute to qualify for property tax exemption. The applicant had not, however, made its application as the statute requires for tax years 1988 and 1989. The church urges the Commission to exercise equitable powers and take into consideration the unfortunate circumstances that led it to delay its application. We have no power to waive the requirements of the exemption statute, however.

Final Decision and Order at 2.

The administrative judge finds that even if the State Board of Equalization had equitable powers, it must be concluded that Mr. Runyan could have easily avoided the situation he finds himself in. The administrative judge would initially observe that the issue of rollback taxes could have been addressed in the sales contract. See Tenn. Code Ann. § 67-5-1008(f) quoted above. Moreover, the title search should have presumably made Mr. Runyan aware of the greenbelt situation. Finally, Mr. Johnson's letter to Mr. Runyan quoted above stated in the very first paragraph that subject property had been receiving preferential assessment. The administrative judge finds that Mr. Johnson's letter along with the greenbelt application and informational pamphlet entered into evidence as parts of collective exhibits #1 and #2 could have reasonably been expected to put Mr. Runyan on at least inquiry notice.

Counsel for Mr. Runyan argued that the rollback statute must be strictly construed because it involves a forfeiture of taxes. Respectfully, the administrative judge finds that no legal authority was cited in support of this proposition.

Mr. Runyan's final argument was that the rollback taxes should be prorated if, in fact, they were properly levied for the period of time prior to his purchase. This would result in the Lovell Heirs being responsible for rollback taxes during the period of time they owned subject property.

The administrative judge finds that the foregoing argument must be rejected for two reasons. First, the administrative judge finds that the greenbelt law makes no provision for prorating rollback taxes. See Tenn. Code Ann. §§ 67-5-1008(d)(3) and 67-5-1008(f) quoted above. Second, the administrative judge finds that the various property tax statutes must be read in pari materia. The administrative judge finds that it is generally the rule in Tennessee that property taxes are assessed as of January 1 of the tax year unless otherwise provided for. See Tenn. Code Ann. §67-5-504(a). The administrative judge finds that the only exceptions to this general rule are specifically provided for in Tenn. Code Ann. §§ 67-5-201, 67-5-603 and 67-5-606.

Based upon the foregoing, the administrative judge finds rollback taxes were properly assessed to Mr. Runyan for the statutory prescribed maximum of three years.

ORDER

It is therefore ORDERED that rollback taxes be assessed to the appellant as previously determined by the assessor of property.

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 24th day of August, 2006.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: John Cavett Jr., Esq.
David Norton, Esq.
Bill Bennett, Assessor of Property

2 Pack 201
Supreme Court of Tennessee.

Callon R. SHERRILL et al., Plaintiffs-in-Error,
v.
The BOARD OF EQUALIZATION for the State of Tennessee, Defendant-in-Error.

March 15, 1970.

Remaindermen appealed from dismissal by the Circuit Court, Davidson County, Roy A. Miles, J., of their petition for certiorari which prayed for an adjudication that state board of equalization acted illegally and in excess of its jurisdiction in affirming assessment which assessed remaindermen's interest in certain real estate. The Supreme Court, Erby L. Jenkins, Special Justice, held that remainder interest, constituting part of the total present ownership of land and part of the 'general freehold' and not owned separately therefrom, was not subject to separate assessment under statute allowing for assessment of real estate.

Reversed.

West Headnotes (4)

[1] Life Estates
Possession of Real Property

Life Estates
Enjoyment and Use of Real Property in General

Remainders
Rights and Liabilities of Remainderman as to Property in General

A remainder interest and a life interest in real estate are separate interests in that the holder of the vested remainder interest has privilege of possession or enjoyment postponed to some future date whereas life tenant has present right to possession or enjoyment.

Cases that cite this headnote

[2] Taxation
Real Property in General

Remainder interest, constituting part of the total present ownership of land and part of the "general freehold" and not owned separately therefrom, is not subject to separate assessment under statute allowing for assessment of real estate. T.C.A. § 67–606(5).

Cases that cite this headnote

[3] Life Estates
Taxes and Assessments

Where taxes are a lien upon the entire fee, life tenant is held to be under duty to pay taxes which accrue during period of his tenancy. T.C.A. §§ 67–606(5), 67–1803.

Cases that cite this headnote

[4] Taxation
Real Property in General

Statute allowing for assessment of real estate was not enacted so as to allow the state to prorate taxes between life tenant and a remainderman but was intended to apply to situation wherein owner of real estate leases an interest in the fee. T.C.A. § 67–606(5).

1 Cases that cite this headnote

Attorneys and Law Firms

***202 **857** Ely & Ely, Knoxville, for plaintiffs in error.

David M. Pack, Atty. Gen., Milton P. Rice, Asst. Atty. Gen., Nashville, for defendant in error.

OPINION

ERBY L. JENKINS, Special Justice.

This appeal involves the assessment of real property by the Tax Assessor of Knox County. The assessment was fixed at $17,500.00, $6,000.00 of which represented the assessment against the life estate and $11,500.00 representing the assessment against the remainder interest. The remaindermen, hereinafter referred to as petitioners,

appealed to the Knox County Board of Equalization ***203** which left the assessment undisturbed. An appeal was then taken to the respondent State Board of Equalization which affirmed the assessment as made against the petitioners. From the order of the respondent Board the petitioners filed a petition for certiorari, praying for an adjudication that the respondent acted illegally and in excess of its jurisdiction. The case was heard by the Circuit Court on bill and answer. The court dismissed the petition and an appeal was perfected to this Court.

The petitioners own the remainder interest in a piece of real estate located in ****858** Knox County. The property was formerly owned by Max R. Sherrill, who is now deceased. By Sherrill's Will, the property in question was set apart to his widow for life, with the remainder interest being devised to the petitioners.

In 1967 and thereafter, the life interest and the remainder interest were assessed separately under T.C.A. Section 67—606(5). The assessed value of the remainder interest was arrived at by taking the value of the life estate, computed according to the Actuaries Table of Mortality, and subtracting this figure from the assessed value of the entire fee. The admitted facts show that the widow received all of the rents and profits from the property; and that the remaindermen had no control over the property and did not receive any benefits therefrom. Nevertheless, it was ruled that the remaindermen had an assessable interest in the property.

The question before this Court is whether T.C.A. Section 67—606(5) requires the separate assessment of a life interest and a remainder interest in real property. The Statute which purports to authorize such a separate assessment reads as follows:

> ***204** 'All mineral and timber interests and all other interests of whatsoever character, whether for life or a term of years, in real estate, including the interest which the lessee may have in and to the improvements erected upon land where the fee, reversion, or remainder therein is exempt to the owner, and which said interest or interests is or are owned separate from the general freehold, shall be assessed to the owner thereof, separately from other interests in such real estate, which other interest shall be assessed to the owner thereof, all of which shall be assessed as real estate.'

The respondent contends that the clear import of the Statute requires that a life interest in real estate be assessed separately from a remainder interest in such realty. We cannot agree with such a proposition. The directive of T.C.A. Section 67—606(5) is not to assess separately all interests in real estate, but rather, to assess separately 'all * * * interests * * *, whether for life or a term of years, in real estate, * * * which * * * are owned separate from the general freehold'.

[1] **[2]** A remainder interest and a life interest in real estate are separate interests in that the holder of the vested remainder interest has the privilege of possession or enjoyment postponed to some future date, whereas the life tenant has the present right to possession or enjoyment. Nevertheless, a remainder interest constitutes part of the total present ownership of the land. Simes & Smith, The Law of Future Interests, Section 1, (2nd Ed. 1956). It is part of the 'general freehold' and not owned separately therefrom. Therefore, it is not subject to separate assessment under T.C.A. Section 67—606(5).

We think that justice and equity demand that the Statute be so construed. To do otherwise would be an ***205** obvious lack of justice and would cast upon the remaindermen a burden not intended by the Legislature.

[3] T.C.A. Section 67—1803 provides that taxes are a lien upon the entire fee. Where this is the rule, the life tenant is held to be under a duty to pay taxes which accrue during the period of his tenancy. Simes & Smith, supra, Chapter 1693. Tennessee follows this accepted common law rule, taxing the full value of land in the hands of the life tenant and nothing to the remainderman. Ferguson v. Quinn (1896), 97 Tenn. 46, 36 S.W. 576; 20 Tenn.Law Review 283 (1948). It is difficult to think that the Legislature, by the language used in Section 67—606(5) intended to change the above rule. However, such is the insistence of the respondent.

The power to tax carries with it the power to harass, embarrass and destroy, so that this power should be guarded very jealously. If we were to adopt the State's theory, that taxes should be prorated between the life tenant and the remaindermen, ****859** we can foresee all kinds of inequities flowing therefrom. The remainderman, in the ordinary estate, is just that,—a remainderman—in an estate he may never live to enjoy. All he can do is stand by with a watchful eye and a longing heart, and yearn for the dawning of a brighter clearer day, and wait for the remainder to pass to him. He has no

control over the estate. He receives no benefits therefrom. Are we to say that he must pay taxes on something he is deriving no benefits from and may never do so? We think not. If such were the rule, we can foresee children born into the world with a built-in tax load to carry and opening their eyes to the demands of the tax gatherer on estates, the possession of which they may never enjoy. The law is simple justice fairly and euqitably applied.

***206** In support of its position to prorate taxes between the life tenant and the remainderman, the respondent relies principally upon the case of State v. Grosvenor (1923), 149 Tenn. 158, 258 S.W. 140. Therein, a lease was entered into between a theatre company and a reversioner. The State sought to assess the property as a whole to both the lessor and the lessee. This Court held the assessment void as to the lessee because there was no attempt to value the leasehold separately. However, the Court went on to say:
'It was the clear intention of the Legislature by the act of 1907 to separately assess all interests in land, whether for life or a term of years, If such separate interests had any value of their own.' (Emphasis ours.)

We agree with the respondent that the Grosvenor case is the controlling law. However, we do not think it applicable to the instant case. Grosvenor involved a leasehold arrangement. The facts of that case brought it within the purview of T.C.A. Section 67—606(5), since a lease is a type of interest which is 'owned separate from the general freehold.' Its value can be assessed to its owner separately from other interests in the realty.

[4] T.C.A. Section 67—606(5) was not enacted so as to allow the State to prorate taxes between a life tenant and a remainderman. It was intended to apply to a situation wherein the owner of real estate leases an interest in the fee. In such a case the lessee holds an interest which is separate from the general freehold, and a prorata assessment between the owner of the leasehold interest and the lessor would be proper. In fact, the Statute specifically refers to 'the interest which the Lessee may ***207** have in * * * the improvements erected upon the land.' Clearly, the Statute contemplates a separate assessment only where there is some type of lease arrangement.

The ruling of the Circuit Court is hereby reversed; and it is decreed that the assessment not be prorated between the life tenant and the remainderman. The costs incident to this appeal are taxed against the defendant-in-error.

DYER, C.J., CRESON, J., and BOZEMAN, Special Justice, concur.

McCANLESS, J., not participating.

All Citations

2 Pack 201, 224 Tenn. 201, 452 S.W.2d 857

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

In re:	Sowell J. Yates, Jr., et al. District 15, Map 49, Control Map 49, Parcel 12.01, S.I. 000 District 15, Map 50, Control Map 50, Parcel 45.04, S.I. 001 District 15, Map 61, Control Map 61, Parcels 8.00 & 8.01, S.I. 000 District 15, Map 62, Control Map 62, Parcels 26.00, 28.00, 30,00, 30.01, and 54.00, S.I. 000 Tax Year 1997	) Robertson) County

INITIAL DECISION AND ORDER

Statement of the case

All of the above parcels involve application of the Agricultural, Forest and Open Space Land Act of 1974, colloquially known as the "greenbelt" law. The greenbelt law is codified as Tenn. Code Ann. Sec. 67-5-1001, et seq. Prior to tax year 1997 all of these parcels were assessed as agricultural land under this law. Tax year 1997 was a year of "general reappraisal" in Robertson County and therefore the greenbelt classification was automatically discontinued unless the owner furnished sufficient evidence that the property was still eligible for greenbelt classification as "agricultural land." See Tenn. Code Ann. Sec. 67-5-1005(c). The taxpayer did not file the requisite evidence and the assessor discontinued the greenbelt classification.

Notice of this change in classification was mailed on August 25, 1997. The taxpayers testified that they did not receive this notice. The taxpayers did not appeal to the State Board until February 25, 1998. Thus, one of the issues is whether or not the State Board has jurisdiction to hear this appeal. In addition to that issue, one of the parcels is not contiguous to the other parcels and therefore there is the second issue as to whether or not that parcel is eligible for greenbelt assessment. The parcel involved in this issue is identified as District 15, Map 49, Control Map 49, Parcel 12.01, Special Interest 000.

Findings of Fact and Conclusions of Law

1. Jurisdictional Issue. Ordinarily when land has been previously assessed as greenbelt the taxpayer must apply for

recertification by April 1 of the tax year or before the county board of equalization adjourns. Tenn. Code Ann. Sec. 67-5-1005(a). In 1996 the legislature amended Tenn. Code Ann. Sec. 67-5-1005(c) by enactment of Chapter 707 of the Public Acts of 1996 which included the following amendatory language to Tenn. Code Ann. Sec. 67-5-1005(c)(5):

> Notwithstanding the deadline for certifications provided in this subsection, a taxpayer may establish continued eligibility for the agricultural classification by appeal pursuant to parts 14 and 15 of this chapter, duly filed after notice of the assessment change is sent by the assessor. The certification of agricultural use shall be filed as a condition to any hearing on the appeal.

The deadline referred to in this amendment is April 1 of the year of reappraisal, in this case 1997. See Tenn. Code Ann. Sec. 67-5-1005(a)(1) and (c)(3). Tenn. Code Ann. Sec. 67-5-1412(e) requires that appeals to the State Board must be made within 45 days after notice of the change in classification sent later than 10 days before adjournment of the local board of equalization. That section of the code also provides that upon showing of reasonable cause for failure to appeal within this deadline, the taxpayer may appeal anytime up to March of the year after the year in which the assessment was made.

The proof in this appeal was that the notice of the change was sent August 25, 1997. Under the "45 day" provision the taxpayer had until October 9, 1997 to unconditionally appeal to the State Board. The record shows that the appeals were received in the State Board's office on February 25, 1998 which was well past the deadline for filing an unconditional appeal. Based on the evidence presented at the hearing, it appears to the administrative judge and the administrative judge finds that the taxpayers did not receive the notice sent by the assessor. The administrative judge further finds that failure to receive the notice of change of assessment occurred without fault of the taxpayer. The Assessment Appeals Commission has held that such circumstances create reasonable cause to accept an appeal after the 45 day period has expired. See Mary M. Headrick & Detlef R. Matt, Knox County, Tax Year 1993, Final Decision and Order, Assessment Appeals Commission, (Nov. 5, 1996). Therefore the

administrative judge finds and concludes that the State Board has jurisdiction to determine whether or not the subject parcels should be assessed under the Agricultural, Forest and Open Space Land Act of 1976.

2. Qualification Issue. The taxpayers have sought greenbelt status for eight parcels. Attached to each appeal form is a certification of agricultural land use for property previously approved. This meets the requirement set out in the last sentence of Tenn. Code Ann. Sec. 67-5-1005(c)(5) when continued eligibility is sought by appeal to the State Board. The assessor testified that based on acreage and use of the land, seven of the parcels were eligible for agricultural use classification for tax year 1997 and that these seven parcels had been approved greenbelt status for tax year 1998.

The assessor testified that one parcel had not been approved for greenbelt because it only contained 1.07 acres and was not contiguous to any parcel meeting the minimum acreage requirements set out in Tenn. Code Ann. Sec. 67-5-1004. That parcel was identified as District 15, Map 049, Control Map 49, Parcel 12.01, S.I. 000. In order to qualify for agricultural greenbelt, the tract must contain at least 15 acres consisting of one or more contiguous parcels or consist of two or more tracts which need not be contiguous if at least one is greater than fifteen acres and none of which is smaller than 10 acres. This particular tract only contains 1.07 acres and is separated from the other seven tracts by another tract of land about 100 feet wide owned by another party. Because it is not contiguous to parcels, which collectively would comprise at least 15 acres of land, this parcel is not eligible for greenbelt classification. The assessor subclassified this property as residential. The proof showed that this parcel is improved by a tobacco barn and is used in the farming operation of the owners. Tenn. Code Ann. Sec. 67-5-801(a) provides in part that all real property "...shall be classified according to use and assessed as hereinafter provided." That section sets out 4 classifications of property, one of which is as follows:

(4) Farm Property. Farm property shall be assessed at twenty-five percent (25%) of its value.

Therefore the administrative judge finds and concludes that this 1.07 acre parcel of land should be classified as "Farm Property" and assessed at 25% of its value. Because it does not qualify for assessment as "agricultural land" under the greenbelt law, the assessment should be based on market value as defined in Tenn. Code Ann. Sec. 67-5-601 and rather than "Present use value" as defined in Tenn. Code Ann. Sec. 67-5-1004(12).

ORDER

It is therefore ordered that the subject parcels, with the exception of the 1.07-acre parcel are to be classified, valued and assessed as agricultural land under the greenbelt law for tax year 1997. It is further ordered that, beginning with tax year 1997, the 1.07-acre parcel be classified and assessed as farm property and be valued pursuant to Tenn. Code Ann. Sec. 67-5-601.

Pursuant to the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated Sections 4-5-301 through 324, and the practices and procedures of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. Sec. 67-5-1501(c) within thirty (30) days of the entry of the order; or

2. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. Sec. 4-5-316 within seven (7) days of the entry of this order; or

3. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. Sec. 4-5-317 within ten (10) days of the entry of the order. The petition must include the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days

after the entry of the initial decision and order if no party has appealed.

ENTERED this the 26th day of October, 1998.

FOREST M. NORVILLE
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

c: Sowell J. Yates, Jr.
F. E. Head, Assessor of Property

return to handbook

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Stephen Badgett, et al.**	)	**Knox County**
	Property ID: 145 078	)	
		)	
	Tax Year 2013 & 2014	)	**Appeal No. 87914**

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

MARKET VALUE OF NON-GREENBELT PROPERTY

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$ 1,300,000	$259,400	$1,559,400	$539,925

USE VALUE OF GREENBELT LAND

LAND VALUE	ASSESSMENT
$261,600	$65,400

MARKET VALUE OF GREENBELT LAND

LAND VALUE	ASSESSMENT
$1,549,800	N/A

The taxpayer timely appealed the tax year 2013 Knox County Board of Equalization determination to the State Board of Equalization ("State Board"). The undersigned administrative judge conducted the hearing on April 22, 2015 in Knoxville.[1] The taxpayer was represented by Lewis S. Howard, Esq. and Steven K. Bowling, Esq. The assessor was represented by Charles Sterchi, Esq. Witnesses included assessor employee Teresa Dalton;

[1] The hearing was previously scheduled and continued several times for various reasons.

former assessor employee Eric Julian; family member Stephen Badgett, Jr.; boat club member and official James Terrell Kerr; taxpayer appraiser Thomas Graves; assessor-contracted private appraiser Creighton Cross; family member Isabella Badgett; family member Marty Chaney; and assessor employee Barry Mathis.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

As a preliminary matter, the appeal was amended to include tax year 2014 per State Board Rule 0600-01-.10. The subject property consisted of a 176 acre lakefront parcel with various scattered improvements. Much of the subject acreage was used for farm purposes and enjoyed Greenbelt status. Portions of the subject were not used for farming. In controversy were seven of such non-farm acres that had been improved and used for dwellings and a private, non-profit boat club. The parties had a number of factual and legal disputes, which are addressed by individual topic below.

The State Board lacks jurisdiction to address the subclassification or value of the subject for tax years prior to tax year 2013.

Normally, a timely appeal to the local board of equalization is a jurisdictional prerequisite to a State Board appeal of the value or assessment classification of property.[2] However, if a taxpayer can establish "reasonable cause" for a failure to timely appeal to the local board, the State Board may accept a direct appeal filed up to March 1 of the year subsequent to the year in which the time for appeal began to run.[3]

The March 1 deadline has been interpreted as absolute. In *VN Hotel Investors*, a chancellor dismissed the appeal of a taxpayer, despite lack of notice to the taxpayer, as follows:

> Applying the foregoing to the facts of this case, the Court concludes that March 1, 2006, was the last possible date on which the Board could accept appeal forms. Under the statute this is true even in cases where the taxpayer

[2] Tenn. Code Ann. §§ 67-5-1401 & 67-5-1412(b).
[3] Tenn. Code Ann. § 67-5-1412(e).

> claims that it was not notified of the assessment in time to appeal to either the local board or the state board. Under the statute, although the Board has been given authority to accept appeal forms from taxpayers up to March 1 of the following year in certain cases, *no statutory authority exists for the Board to accept appeal forms after March 1 for any reason.* The Court concludes, then, that the Board in this case properly declined to hear the plaintiff's appeal of the 2005 tax assessment, which was not submitted until August 2006.

VN Hotel Investors, LLC v. Tennessee State Board of Equalization, et al. (Davidson County Chancery Court, No. 06-2664-III, September 4, 2007) (emphasis added). Likewise, the Tennessee Attorney General has opined that even in cases of illegal or duplicative assessments, the statutory deadlines are absolute as follows:

> These statutes impose specific and absolute time limitations on the State Board's authority to hear challenges to actions of the local assessor, and these deadlines apply even in cases where the taxpayer claims that the assessment is illegal or duplicative. Thus, while the courts of this State have the authority to enjoin the collection of void assessments, the State Board does not have the authority to consider the legality of such assessments beyond the time constraints specified in Tenn. Code Ann. §§ 67-5-509 and 67-5-1412...

Tenn. Op. Att'y Gen. No. 09-162 (Oct. 1, 2009).

The appeal deadlines for State Board hearings to determine whether the taxpayer had "reasonable cause" for failing to properly appeal assessments for tax year 2012 and earlier extended no later than March 1, 2013. Because the taxpayer's appeal was filed after March 1, 2013, the State Board lacks jurisdiction with respect to the value or subclassification of the subject for any tax year prior to tax year 2013.

The State Board lacks jurisdiction to address the taxpayer's challenge of the assessor's imposition of rollback taxes and removal of Greenbelt status for a three acre portion of the subject in 2011.

The deadlines for the taxpayer to directly challenge the assessor's 2011 Greenbelt-related actions extended no later than March 1, 2012.[4] Because the taxpayer's appeal was untimely with

[4] Tenn. Code Ann. § 67-5-1008(d). *See also Dwin C. and Emily T. Dodson* (Initial Decision & Order, Rutherford County, Tax Year 2012, issued January 8, 2015).

respect to the assessor's actions in 2011, the State Board lacks jurisdiction with respect to the assessor's actions in 2011.

At the hearing, Ms. Chaney testified that the family did not recall ever being informed that it could file another Greenbelt application or that it would need to file another Greenbelt application if it wished to attempt to re-establish Greenbelt qualification for the three acre area the assessor associated with the boat club. Unfortunately, the administrative judge finds no authority for ignoring or disregarding the already generous statutory deadline.

The taxpayer failed to carry the burden to affirmatively establish fair market values for the entire subject property, or for the contested portions of the subject property, lower than the assessor's corresponding recommended reduced values.

The taxpayer has the burden of proof in this proceeding. *See* State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981). Tenn. Code Ann. § 67-5-601(a) provides, "The value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values..."

The administrative judge finds the taxpayer failed to carry the burden with respect to the total value of the subject or the value of any specific contested portion of the subject property. The administrative judge so finds primarily because the taxpayer's position erroneously hinged on the notion that potential purchasers would have considered development of the subject economically unfeasible.

The administrative judge finds that Mr. Cross' report and testimony on behalf of the assessor's office convincingly established that residential development would have been the most profitable and probable use for which prospective purchasers would have considered the subject on the assessment dates. Mr. Graves' testimony on behalf of the taxpayer pointed out that

development would have required significant potential costs. Although Mr. Graves characterized the potential costs as prohibitive, he did not convincingly establish the extent of the potential costs.[5] Mr. Cross' report and testimony, on the other hand, demonstrated specific knowledge regarding likely potential development costs for the subject and set forth a convincing argument that a prospective purchaser would have viewed residential development as viable and profitable.

The boat club portion of the subject property was industrial and commercial property in tax years 2013 and 2014.

For tax years 2013 and 2014, the assessor recommended industrial and commercial subclassification of a three acre portion of the subject and various improvements the assessor associated with the boat club based on Tenn. Code Ann. §§ 67-5-501(3)-(4). The private boat club area, accessed via a private driveway through the taxpayer's property, included docks, a pavilion, a clubhouse, and restroom facilities.

The taxpayer argued that the boat club land and improvements should be subclassified as "farm property" under Tenn. Code Ann. § 67-5-501(3). By pointing out the recreational nature of the private boat club and the boat club property, as well as the boat club property's lack of amenities and services, the taxpayer successfully distinguished the boat club area from full service commercial marina facilities. The taxpayer also pointed out that for similar reasons, the subject would not be considered a "boat livery" or a full service "marina" under local zoning ordinances.[6] Furthermore, neither party's outside expert deemed the boat club to be a "commercial" property as the term is understood in appraisal parlance.

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[5] The taxpayer also suggested there could be possible contamination of subject property due to prior landfill use of a portion of the subject north of Badgett Road. No evidence was presented to confirm that land outside of the landfill area was contaminated or to quantify any impact contamination of land outside of the landfill area might have had on value. The assessed value of the landfill area itself was nominal and uncontested.

[6] The zoning ordinances defined a "boat livery" as "an establishment, which can include docking facilities, at which boats are rented for recreational purposes" and a "marina" as "a facility for storing, servicing, fueling, boating and storage of pleasure boats" which "may include eating, sleeping and retail facilities for owners, crews and guests."

Tenn. Code Ann. §§ 67-5-501(3)-(4) read as follows:

> (3) "Farm property" includes all real property that is used, or held for use, in agriculture, including, but not limited to, growing crops, pastures, orchards, nurseries, plants, trees, timber, raising livestock or poultry, or the production of raw dairy products, and acreage used for recreational purposes by clubs, including golf course playing hole improvements;
>
> (4) "Industrial and commercial property" includes all property of every kind used, directly or indirectly, or held for use, for any commercial, mining, industrial, manufacturing, trade, professional, club whether public or private, nonexempt lodge, business, or similar purpose, whether conducted for profit or not....

In *East Tennessee Pilots Club, Inc.* (Initial Decision & Order, Knox County, Tax Years 2010 & 2011, issued November 4, 2011), an administrative judge found that an aircraft landing strip used by recreational pilot club exclusively for non-commercial, recreational piloting purposes qualified for "farm property" subclassification under Tenn. Code Ann. § 67-5-501(3). In the undersigned administrative judge's opinion, *East Tennessee Pilots Club, Inc.* simply stands for the proposition that "farm property" can include acreage used by recreational clubs for recreational purposes including, but not limited to, golf. Although it appears that a 25% assessment level was ordered for the entire landing strip property in that case, including the hangar improvements, it does not appear that the parties or the administrative judge in that case addressed or analyzed the specific issue of the subclassification of the hangar improvements.

Although Tenn. Code Ann. § 67-5-501(3) makes no distinction between land and structural improvements with respect to "farm property" subclassification of real property actually used for agricultural purposes, the statute does make such a distinction with respect to eligibility for non-agricultural, recreational use "farm property" subclassification. For better or for worse, the legislature chose to specifically extend non-agricultural, recreational use "farm property" subclassification only to recreational "acreage" and land modifications akin to "golf course playing hole improvements."

Regrettably, the subject structural improvements and land supporting the structural improvements cannot be fairly likened to "golf course playing hole improvements" on golf course "acreage" within the meaning of Tenn. Code Ann. § 67-5-501(3) because "golf course playing hole improvements" are modifications of land that is itself used for recreational club purposes. Here, the primary role of the boat club area land was to support the docks, pavilion, clubhouse, and restroom facility improvements – structural improvements that were themselves used for the recreational purposes of the recreational club. The administrative judge finds that the boat club acreage and structural improvements were unlike actual golf course acreage; rather, they were akin to structurally improved country club areas. Despite their typical proximity and relationship to actual golf course acreage, structurally improved country club areas have been routinely treated as industrial and commercial property in Tennessee without controversy. The administrative judge sees no reason to treat the structurally improved boat club area in the present case differently.

The assessor's recommended value for the boat club portion of the subject property, which was industrial and commercial property in tax years 2013 and 2014, is adopted.

Much effort was expended during the hearing in an attempt to establish the land area occupied by the boat club. The taxpayer argued that the boat club area was 1.82 acres, and the assessor argued three acres could be attributed to the boat club area and related commercial use. The primary differences in the parties' positions involved whether underwater portions of the subject and/or some land to the west of a boat club fence and primarily, if not exclusively, rented to boat club members individually for boat storage purposes during boating season should be included in the calculations.

Excluding the underwater portions of the subject and including a reasonable amount of land to the west of the boat club fence that was seasonally rented to boat club members for boat

storage purposes, the administrative judge finds that the land area appropriately ascribed material value and attributed to industrial and commercial use likely fell somewhere between the contentions of the parties.[7] In the administrative judge's opinion, however, a reasonable estimate of the likely number and configuration of potential lakefront development lots, rather than the precise acreage, provides the most realistic means of determining the appropriate boat club value to be assessed as industrial and commercial property.

The administrative judge finds the boat club area could have supported roughly two out of the estimated twelve potential lakefront development lots Mr. Cross hypothesized in his report and testimony. The administrative judge finds the record plausibly supports an as-complete value of $750,000 or more for the boat club area.[8]

The taxpayer pointed out that Mr. Cross' estimates of estimated lakefront development costs did not include natural gas service, sewer and wastewater disposal service, or the cost of obtaining regulatory approvals. The administrative judge assumes that Mr. Cross deemed the extant electrical service a sufficient substitute for natural gas service. The administrative judge agrees with the taxpayer that Mr. Cross' estimate did not appear to address sewer service. Nonetheless, the fact remains that the subject has been historically capable of supporting the waste needs of the boat club and nearby residences via septic systems.

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[7] Although the three acre boat club area claimed by the assessor appears to have included a significant amount of underwater area, Exhibit 19, page 26, each party's outside expert analyzed value in the context of above-water land.

[8] See Exhibit 18, pages 58 and 78, indicating an average value – under the extraordinary assumption that the infrastructure necessary to potential residential development had been installed - of $275,000 per potential lakefront development lot on the subject. Mr. Cross' testimony characterized the boat club area as having the most desirable potential lakefront development area on the subject due to its relative location. Mr. Cross' testimony and report suggested that, upon completion of the infrastructure installation necessary to the development, the potential lakefront development lot on the very southeastern portion of the boat club area would be worth $400,000 to $500,000 and that the potential lakefront development lot just to its west would also be worth more than the average potential lakefront development lot on the subject.

The $750,000 as-complete value estimate less a proportionate amount of Mr. Cross' estimated lakefront development costs [9] generates a figure of $565,000. In absence of better proof, the administrative judge does not find it unreasonable to assume that the difference between $565,000 and the assessor's $529,500 value recommendation would have provided sufficient coverage of the potential cost of obtaining regulatory approvals. Further, the administrative judge observes that $750,000 is near the low end of the range of as-complete values supported by Mr. Cross' analysis.

In any event, the administrative judge must again emphasize that the taxpayer failed to carry the taxpayer's burden to establish a total value lower than the assessor's *reduced* value recommendations. Accordingly, the administrative judge adopts the assessor's recommended land and improvement values for boat club, which was industrial and commercial property in tax years 2013 and 2014.

The two rented mobile home sites are to remain assessed at a 25% assessment level for tax years 2013 and 2014.

For tax years 2013 and 2014, the assessor recommended industrial and commercial subclassification of two one-acre sites occupied by rented mobile homes. Tenn. Code Ann. §§ 67-5-501(4) and (10) provide that real property with two or more rental units constitutes industrial and commercial property. On the other hand, Tenn. Code Ann. § 67-5-801 allows for apportionment of a single parcel among different subclasses. Prior precedent suggests that rental units do not necessarily have to be physically conjoined in order to merit industrial and commercial subclassification, but nearby, physically separate rental units under common ownership are not always appropriately subclassified as industrial and commercial.[10]

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[9] $1,110,000 estimated development costs * 2 / 12 potential lakefront development lots = $185,000 share of development costs.

[10] *Carl H. Pool* (Initial Decision & Order, Sumner County, Tax Years 2012 & 2013, issued March 21, 2014) ("...[A] parcel containing a rented house and an adjacent parcel containing a rented mobile home that happen to

In the present case, the tax year 2013 and 2014 status quo for subject property land not falling within the boat club area is a 25% assessment level (e.g., farm or residential subclassification).[11] The rented mobile home sites were not particularly close to each other and were separated by what the parties seem to agree was farm or residential property.[12] Additionally, the mobile home rentals on this 176 acre parcel appear to have occurred by chance over the years and do not appear to have been part of any sort of an organized business endeavor. Under these circumstances, and in absence of better evidence, the administrative judge respectfully declines to disturb the status quo by ordering industrial and commercial subclassification for isolated portions of the subject outside of the boat club area at this time. Accordingly, the value associated with the two one-acre sites occupied by rented mobile homes is to remain assessed at a 25% assessment level for tax years 2013 and 2014.[13]

The assessor's recommended identifications of and values for the four acres that were denied Greenbelt status in 1983 are adopted.

The records provided by the assessor's office indicate that all but four acres of the subject were approved for Greenbelt status in 1983. The records do not precisely delineate the denied acreage, but the records do suggest that, at least as early as tax year 2004, the assessor categorized the four unapproved acres as improvement site acreage for four dwellings.

The records provided by the assessor's office indicate that for tax year 2005 through at least 2011, the assessor treated only two acres associated with the four dwellings as non-qualifying improvement site acreage and treated the remaining 174 acres as Greenbelt acreage.

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share common ownership" subclassified as residential; distinguishing dwelling unit developments functioning as integrated economic entities and held to constitute industrial and commercial property in *Castlewood, Inc. v. Anderson County*, 969 S.W.2d 908 (Tenn. 1988), and *Spring Hill, L.P. v. Tennessee State Bd. of Equalization*, No. M200102683COAR3CV, 2003 WL 23099679 (Tenn. Ct. App. Dec. 31, 2003)).

[11] See Exhibit 19, pages 17-18.

[12] See Exhibit 19, page 26.

[13] As discussed below, the taxpayer failed to establish values lower than the assessor's reduced value recommendations, which were lot values of $50,000 and $140,000 and total improvement values of $9,700.

One could speculate that the assessor's office decided to do this on the basis that one of the dwellings was "unsound" while two of the dwellings were in very poor condition.[14] However, the record provides no basis for the administrative judge to assume that any more than 172 acres were ever actually approved as Greenbelt acreage.

In 1983, Greenbelt status was denied to four of the 176 acres. There was no subsequent Greenbelt application. For tax years 2013 and 2014, the assessor's office recommended that four one-acre home/mobile home sites be deemed the four acres that were denied Greenbelt status. Particularly given that the areas identified by the assessor were not used for agricultural purposes, the assessor's recommended identification of the denied four acres appears fair as well as consistent with the most reasonable interpretation of the uncertain history of the subject's Greenbelt status. The administrative judge cannot agree with the notion that the assessor is barred from assessing four clearly non-qualifying acres in accordance with law on account of imprecise delineation of the denied acreage in the assessor's or the taxpayer's records. And since the assessor selected the most conspicuous non-qualifying portions of the subject, the administrative judge disagrees with the taxpayer's assertion that the assessor's recommended identification of the denied acreage was speculative.

The administrative judge should also point out that the taxpayer presented no viable alternative interpretation of the identity of the four acres that were never legally approved for Greenbelt status.[15] The administrative judge finds that the four one-acre home sites identified by

[14] Exhibit 5, page 8.

[15] The taxpayer contended that the contrast between the assessor's recommendation of 35 acres of non-productive/dump land for tax year 2013 and the original 1983 Greenbelt application approval that included only 31.5 acres of non-productive land provided an explanation of "the acreage imbalance of the Assessor's records." Respectfully, the administrative judge does not find this theory to be a particularly plausible explanation of why the assessor's office treated two out of four unapproved acres as Greenbelt property for tax years 2005 through 2011 without a valid application in violation of Tenn. Code Ann. §§ 67-5-1005(a), 67-5-1006(a), and 67-5-1007(b).

the assessor's office did not enjoy Greenbelt status because they were never approved for Greenbelt status.[16]

The assessor recommended that the value of the four acres be lowered to a total of $299,600 (not including improvements, to which Greenbelt status can never be legally applied).[17] The taxpayer presented nothing to establish that the assessor's reduced value recommendations were excessive.[18] Accordingly, the administrative judge adopts the assessor's recommended values for the four one-acre home sites and improvements for tax years 2013 and 2014.

Conclusion

In conclusion, the administrative judge adopts the assessor's recommendations in all respects save the subclassification of the two one-acre rented mobile home sites and mobile home improvements.[19] As stated above, the two one-acre rented mobile home sites and mobile home improvements are to remain at a 25% assessment level for tax years 2013 and 2014.

ORDER

It is therefore ORDERED that the following values and assessments be adopted for tax years 2013 and 2014:

MARKET VALUE OF NON-GREENBELT PROPERTY

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$ 719,600	$245,000	$964,600	$320,575

[16] The administrative judge also observes that to hold otherwise would expose the taxpayer to potential future *rollback tax liability* for some of the relatively more valuable acreage. Obviously, the assessor's authority to assess rollback taxes depends on actual prior Greenbelt approval of the acreage in question, and the amount of rollback taxes is determined by the amounts of tax savings in prior years.

[17] Specifically, the assessor recommended the following market values for land that had never been approved for Greenbelt status in the past: $59,600 for one acre associated with a doublewide mobile home site; $50,000 for one acre associated with a home site; $50,000 for one acre associated with a mobile home site; and $140,000 for one acre associated with another mobile home.

[18] The recommended improvement value of the two mobile homes was $9,700; the value recommendation for the residential improvements associated with the two family member occupied dwellings was $125,800.

[19] For more detail on the assessor's recommendations, see Exhibit 19, pages 26 and 55-57.

USE VALUE OF GREENBELT LAND

LAND VALUE	ASSESSMENT
$112,023	$28,006

MARKET VALUE OF GREENBELT LAND

LAND VALUE	ASSESSMENT
$1,405,400	N/A

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 28th day of May 2015.

Mark Aaron, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Isabella Badgett
4519 Hinton Road
Knoxville, TN 37921

Lewis S. Howard, Esq.
Steven K. Bowling, Esq.
4820 Old Kingston Pike
Knoxville, TN 37919

Phil Ballard
Knox Co. Assessor of Property
City-County Building
400 West Main Street, Room 204
Knoxville, Tennessee 37902

Charles F. Sterchi, III, Esq.
Deputy Law Director
City-County Building
400 West Main Street, Suite 612
Knoxville, Tennessee 37902

This the 28th day of May 2015.

Janice Kizer
Tennessee Department of State
Administrative Procedures Division

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Stephen Badgett, et al.**	)	**Knox County**
	Property ID: 080 OA 005	)	
		)	
	Tax Years 2013 & 2014	)	**Appeal No. 87913**
	Greenbelt Removal & Rollback Taxes	)	**Appeal No. 97598**

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

TAX YR	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
2014	$302,400	$147,300	$449,700	$179,880

A prior Knox County Property Assessor approved the subject property for Greenbelt status in 1983. On March 7, 2014, the current Knox County Property Assessor removed the subject's Greenbelt status, effective January 1, 2014, and sent the taxpayer a notice of a rollback tax assessment.

The taxpayer timely appealed the tax year 2013 Knox County Board of Equalization determination and timely appealed the assessor's 2014 removal of the subject's Greenbelt status and rollback tax assessment to the State Board of Equalization ("State Board"). The undersigned administrative judge conducted the hearing on April 22, 2015 in Knoxville.[1] The taxpayer was represented by Lewis S. Howard, Esq. and Steven K. Bowling, Esq. The assessor was represented by Charles Sterchi, Esq.

[1] The hearing was previously scheduled and continued several times for various reasons.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

As a preliminary matter, the appeal was amended to include tax year 2014 per State Board Rule 0600-01-.10. The subject property consisted of a 25.2 acre parcel with various scattered improvements related to its usage for ball field purposes. The subject was leased to the City of Knoxville since 1965.

Mr. Badgett's notarized statement on one of the appeal forms succinctly summarized the controversy as follows:

> The lease of this property by the City of Knoxville was started as a hand shake deal with R N Badgett in 1965. The agreement was that the Badgett family would not owe any city or county taxes on any of their property inside the City of Knoxville for the use of the ballfield property (25.2 acres). In 1983 the Knox County Property Assessor called Mr. Steve Badgett to sign the Ballfield into greenbelt. 2005 the City of Knoxville lawyers said they had to give money to and attach a lease between the City of Knoxville and the Badgetts for the lease (use) of the ballfield instead of just paying the taxes (city + county). 2013 Knox Co Reappraised and we questioned the market value. March 12, 2014 the land changed from agricultural to commercial. March 25, 2014 we received a bill for the rollback taxes for 3 years. No changes have been done to this property. These ballfields are open space to be used by the public. Always open to the general public.

The parties' factual and legal disputes are addressed by topic below.

The removal of Greenbelt status is upheld effective January 1, 2014.

The taxpayer contended that the subject ball field property qualified as "open space land" within the meaning of the Greenbelt law. Tenn. Code Ann. § 67-5-1007(a)(1) allows the local planning commission to designate areas that it recommends for "preservation" as areas of open space land. Tenn. Code Ann. § 67-5-1007 allows such land to be classified as open space land for purposes of property taxation if there has been no change in the use of area that has adversely "affected its essential character as an area of open space land." A land owner must apply to the assessor of property for open space classification. Tenn. Code Ann. § 67-5-1007(b)(1). The assessor then determines whether there has been any change in the area designated by the local

planning commission as open space. Tenn. Code Ann. § 67-5-1007(b)(2). The application is to include "such other information as the assessor may require to aid the assessor in determining whether such land qualifies for such classification." Tenn. Code Ann. § 67-5-1007(b)(3). Tenn. Code Ann. § 67-5-1004(7) defines open space land as follows:

> "Open space land" means any area of land other than agricultural and forest land, of not less than three (3) acres, characterized principally by open or natural condition, and whose preservation would tend to provide the public with one (1) or more of the benefits enumerated in § 67-5-1002, and that is not currently in agricultural land or forest land use. "Open space land" includes greenbelt lands or lands primarily devoted to recreational use.

Tenn. Code Ann. § 67-5-1002 enumerates the following benefits: prevention of urban sprawl, increased use, enjoyment, and value of surrounding land; conservation of natural resources; planning and preservation of land in an open condition for the general welfare; opportunity for study and enjoyment of natural areas; and prevention of premature development. Tenn. Code Ann. § 67-5-1003(1) declares that the policy of the state is to allow owners of existing open space "to preserve such land in its existing open condition" and that they should not be forced to prematurely develop such land. Tenn. Code Ann. § 67-5-1003(2) declares that the preservation of open space is a public purpose.

On April 28, 1983, the Tennessee Attorney General opined that golf courses do not qualify for open space classification.[2] The basis of the opinion is that golf courses are developed to such an extent that they have lost the rustic character the Greenbelt law was intended to preserve. On March 26, 1984, the Tennessee Attorney General reaffirmed his earlier opinion.[3]

As exceptions from taxation, the statutes conferring Greenbelt classification are properly construed as tax exemptions. The Tennessee Supreme Court has stated that "exemptions are

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[2] Informal advisory opinion letter from William M. Leach, Jr., Tennessee Attorney General, et al., to the Honorable Loy L. Smith, State Representative (April 28, 1983) (copy attached).

[3] Informal advisory opinion letter from William M. Leach, Jr., Tennessee Attorney General, to the Honorable Jerry C. Shelton, Executive Secretary, State Board of Equalization (March 26, 1984) (copy attached).

strictly construed against the taxpayer, who has the burden of proving entitlement to the exemption."[4]

In *Cherokee Country Club & Holston Hills Country Club, Inc.* (Initial Decision & Order, Knox County, issued October 8, 2013), the undersigned administrative judge found that golf courses do not qualify for Greenbelt status. By the same reasoning, the undersigned finds that the subject ball fields and accompanying improvements (bleachers, lights, concessions, restrooms, backstops, fences, baseball diamond preparations, treatments of access and parking areas, etc.) did not qualify for Greenbelt status.

The rollback taxes are abated.

In *Cherokee Country Club & Holston Hills Country Club, Inc.*, the undersigned abated the rollback tax assessments against the taxpayers, despite the non-qualifying use of the golf courses, as follows:

> The record demonstrates that the taxpayers clearly designated the properties as golf courses in their open space land classification applications to the assessor. The record reflects no changes in the use or ownership of the properties that triggered a duty for the taxpayers to report to the assessor. The administrative judge finds that the assessor's erroneous open space land classifications, as well as the taxpayers' continued reliance on those classifications, were based on a long-standing local administrative construction rooted in a not unreasonable mistake of law. Under these circumstances, the administrative judge finds that the impositions of rollback taxes should be reversed.

There are compelling similarities between the present case and the *Cherokee Country Club & Holston Hills Country Club, Inc.* case. But there are also two obvious distinctions that must be addressed. First, the Greenbelt application for the subject property was not an open space land classification application; rather, the Greenbelt application for the subject property was an

[4] *Steele v. Indus. Dev. Bd. of the Metro. Gov't of Nashville & Davidson County*, 950 S.W.2d 345, 348 (Tenn. 1997).

agricultural land classification application.[5] Second, the Greenbelt application in the present case made no mention of the use of the subject for ball fields.

Ms. Badgett's uncontradicted testimony and Mr. Badgett's notarized statement on the appeal form were that in 1983, the assessor's office contacted the family in order to encourage the family to apply for Greenbelt status. Under the circumstances presented, the administrative judge can only conclude that the assessor's office was, and has remained, fully aware the subject property was being used for ball field purposes and that the assessor's office furnished the agricultural land classification application rather than an open space land classification application for Mr. Badgett to complete. Finally, the administrative judge observes that the agricultural land classification application form had no logical place for the applicant to clarify the specific uses of the subject property.

The administrative judge finds that there were no changes in the use or ownership of the properties triggering a duty for the taxpayer to report to the assessor; further, the assessor's erroneous Greenbelt classification of the subject property, as well as the taxpayer's continued reliance on the assessor's approval, appear to have been based on a local administrative construction of the statutes rooted in a not unreasonable mistake of law. Accordingly, the rollback taxes are abated.

Excluding the improvements and a reasonable amount of land value deemed to support the improvements, the subject land qualified as "farm property" for tax year 2014.

Tenn. Code Ann. §§ 67-5-501(3)-(4) provide as follows:

> (3) "Farm property" includes all real property that is used, or held for use, in agriculture, including, but not limited to, growing crops, pastures, orchards, nurseries, plants, trees, timber, raising livestock or poultry, or the production of raw dairy products, and acreage used for recreational purposes by clubs, including golf course playing hole improvements;

[5] On the 1983 Greenbelt application, Mr. Badgett averred that there was agricultural use of the subject. Testimony during the hearing suggested this was not false in the eyes of the assessor's office or Mr. Badgett when the application was completed because the subject generated hay needed for cattle production elsewhere.

> (4) "Industrial and commercial property" includes all property of every kind used, directly or indirectly, or held for use, for any commercial, mining, industrial, manufacturing, trade, professional, club whether public or private, nonexempt lodge, business, or similar purpose, whether conducted for profit or not....

For tax year 2014, the assessor assessed the subject as industrial and commercial property. The assessor pointed out that the taxpayer leased the subject to the City of Knoxville. The assessor argued that the City of Knoxville did not constitute a recreational "club" within the meaning of Tenn. Code Ann. § 67-5-501(3). The administrative judge respectfully disagrees and finds that the actual physical users of the subject (school groups, leagues, private groups, etc.) fell within the intended scope of the term "club" for the purposes of Tenn. Code Ann. § 67-5-501(3) or (4). The assessor's position also suggested that the use of the subject was inherently commercial within the meaning of Tenn. Code Ann. § 67-5-501(4) by virtue of the fact that the subject generated income to the taxpayer through the lease. The administrative judge respectfully disagrees and finds that the statute does not categorically exclude all leased property from "farm property" subclassification.

The taxpayer argued that the subject should be subclassified as "farm property." First, the taxpayer pointed out that the subject was incorporated in a Tri-party Overlay Agreement as a recreational park lying within the City of Knoxville in an area zoned entirely as OS-2 (open space, recreational) and that the use of the subject was consistent with OS-2 zoning.[6] Respectfully, the administrative judge finds Tenn. Code Ann. §§ 67-5-501(3)-(4) trump the local zoning ordinances to the extent they might have otherwise been relevant to this analysis.[7]

Second, the taxpayer claimed the taxpayer "has no control over or participation in the installation of improvements by the lessee municipality." The testimony reflected that the City of Knoxville erected all improvements on the subject at its own expense. Additionally, it is

[6] The applicable zoning ordinances provide that OS-2 zoned areas include "landscaping, specialized structures and other features that promote passive or active recreational activities" and are not to be commercially developed.
[7] Zoning is one of many factors to consider with respect to the subclassification of real property that is vacant, or unused, or held for use. *See* Tenn. Code Ann. § 67-5-801(c).

probable the taxpayer's assertion that the taxpayer did not in fact exercise any control over the erection of the improvements in the past is true. On the other hand, the written lease did not state or imply that the City of Knoxville acquired any ownership interest in the improvements following construction.[8] Nor did the lease state or imply that the City of Knoxville had unilateral authority to erect, modify, or remove improvements during the term of the lease or that the City of Knoxville had the right or responsibility to remove improvements upon termination of the lease. To the contrary, the lease indicated that the taxpayer had unencumbered fee simple title to the subject. The administrative judge can only conclude that the taxpayer owned both the subject land and the subject improvements. And while the taxpayer may have historically chosen not to participate in or control erection, modification, or removal of improvements by the City of Knoxville, the record does not support the notion that taxpayer lacked the right to participate in or control erection, modification, or removal of improvements by the City of Knoxville during the term of the lease or to enjoy, install, modify, or remove improvements upon termination of the lease.

Third, the taxpayer relied on *East Tennessee Pilots Club, Inc.* (Initial Decision & Order, Knox County, Tax Years 2010 & 2011, issued November 4, 2011) (aircraft landing strip used by recreational pilot club exclusively for non-commercial, recreational piloting purposes found to qualify for "farm property" subclassification). In the administrative judge's opinion, *East Tennessee Pilots Club, Inc.* stands for nothing more than the proposition that "farm property" can include "acreage" used by recreational clubs for recreational purposes including, but not limited to, golf. Although it appears that a 25% assessment level was ordered for the entire landing strip property in that case, including the hangar improvements, it does not appear that the parties or

[8] The written lease became effective on July 1, 2005. There was no prior written lease.

the administrative judge in that case addressed or analyzed the specific issue of the subclassification of the hangar improvements.

Fourth, the taxpayer pointed out that reason and common sense promote a construction of the statute yielding subclassification of structurally improved portions of the subject consistent with their surroundings, particularly here where the use of the structural improvements was directly incidental to the recreational use of the surrounding land. Although the administrative judge shares the taxpayer's enthusiasm for reason and common sense, the statute is unambiguous. For better or for worse, the legislature chose to specifically extend non-agricultural, recreational use "farm property" subclassification only to "acreage" put to recreational use and land modifications akin to "golf course playing hole improvements." Because Tenn. Code Ann. § 67-5-501(3) makes no distinction between land and improvements with respect to real property actually used for agricultural purposes, the administrative judge likewise rejects the taxpayer's attempt to liken the subject's structural improvements to barns and other actual agricultural use improvements that qualify for "farm property" subclassification.[9]

In the administrative judge's opinion, much of the subject land qualified as "farm property." Regrettably, the subject structural improvements and land supporting the structural improvements cannot be fairly likened to "golf course playing hole improvements" on golf course "acreage" within the meaning of Tenn. Code Ann. § 67-5-501(3) because "golf course playing hole improvements" are modifications of land that is itself used for recreational club purposes. Although the non-structural modifications of the subject raw land were analogous to "golf course playing hole improvements" on golf course "acreage," the administrative judge

[9] The taxpayer's claim that a residence on a farm should be subclassified as "farm property" is incorrect. *See Amended E. John Lopez Trust # 1* (Final Decision & Order, Greene County, Tax Year 2002, issued June 17, 2005) (Assessment Appeals Commission refusing to subclassify home site and residence portion of a farm as "farm property" rather than residential). Since the same assessment level applies to "farm property" and residential property, this is an extremely rare State Board appeal issue.

finds the subject bleachers, lights, concessions, restrooms, backstops, fences, and a reasonable amount of land supporting the same cannot be fairly likened to "golf course playing hole improvements" on golf course "acreage" within the meaning of Tenn. Code Ann. § 67-5-501(3).

Accordingly, the administrative judge finds that 100% of the improvement value and 10% of the land value was industrial and commercial property for tax year 2014. The remaining 90% of the land value constituted farm property for tax year 2014.

The County Board determination for tax year 2013 is upheld, and the total of the land and improvement values for tax year 2014 was $302,400.

The taxpayer did not present proof to support a lower value for either tax year. The evidence provided by the assessor supported that the $302,400 determination of the total market value of the subject for tax year 2013 by the County Board was correct. For tax year 2014, the assessor recommended that the total value of the subject be increased due to the improvements on the subject. When asked by the administrative judge, however, Mr. Mathis indicated prospective purchasers would have likely considered the subject for potential development purposes that would have entailed removal of the existing ball field improvements.[10] For these reasons, the administrative judge finds the record supports the conclusion that the total market value of the subject did not exceed $302,400 for tax year 2013 or tax year 2014.

With respect to the improvement value for tax year 2014, the administrative judge finds an amount equal to or less than the assessor's recommended $147,300 value would be a reasonable and supported [11] representation of the improvements' contributory value towards the total $302,400 market value of the subject for assessment purposes. For tax year 2014, the improvements are deemed to constitute up to $147,300 of the subject's $302,400 total value for

[10] In this particular case, the assessor contended it would be speculative and inconsistent with the mandates of Tenn. Code Ann. §§ 67-5-601(a) and 67-5-602(b) to recognize that prospective purchasers would have no interest in the improvements. Respectfully, the administrative judge finds it far more problematic to disregard highest and best use.
[11] The assessor's improvement value calculations were derived from Marshall & Swift cost data.

assessment purposes. For assessment purposes, the assessor may in his discretion assign less of the $302,400 total value to the improvements and more of that total value to the land for tax year 2014. If the assessor in his discretion assigns less than $147,300 of the $302,400 total value to improvements for tax year 2014, the assessor will decrease the tax year 2014 assessment appropriately by applying farm subclassification to 90% of the land value and applying industrial and commercial subclassification to 10% of the land value and 100% of the improvement value.

ORDER

It is therefore ORDERED:

(1) The assessor's removal of Greenbelt status is affirmed as of January 1, 2014.

(2) The rollback tax assessment is abated.

(3) The tax year 2013 County Board determination is upheld.

(4) The tax year 2014 total value was $302,400, and the improvement value and assessment did not exceed the following figures:

TAX YR	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
2014	$155,100	$147,300	$302,400	$100,022

(5) If the assessor in his discretion assigns less than $147,300 of the $302,400 total value to improvements for tax year 2014, the assessor will modify the above tax year 2014 assessment figures appropriately. The assessor will apply farm subclassification to 90% of the land value and will apply industrial and commercial subclassification to 10% of the land value and 100% of the improvement value.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of

the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 27th day of May 2015.

Mark Aaron, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Isabella Badgett
4519 Hinton Road
Knoxville, TN 37921

Lewis S. Howard, Esq.
Steven K. Bowling, Esq.
4820 Old Kingston Pike
Knoxville, TN 37919

Charles F. Sterchi, III, Esq.
Deputy Law Director
City-County Building
400 West Main Street, Suite 612
Knoxville, Tennessee 37902

Phil Ballard
Knox Co. Assessor of Property
City-County Building
400 West Main Street, Room 204
Knoxville, Tennessee 37902

This the 27th day of May 2015.

Janice Kizer
Tennessee Department of State
Administrative Procedures Division

State of Tennessee

EXHIBIT A

WILLIAM M. LEECH, JR.
ATTORNEY GENERAL & REPORTER

WILLIAM B. HUBBARD
CHIEF DEPUTY ATTORNEY GENERAL

ROBERT B. LITTLETON
SPECIAL DEPUTY FOR LITIGATION

OFFICE OF THE ATTORNEY GENERAL
450 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37219

DEPUTY ATTORNEYS GENERAL
DONALD L. CORLEW
JIMMY G. CREECY
ROBERT A. GRUNOW
WILLIAM J. HAYNES, JR.
ROBERT E. KENDRICK
MICHAEL E. TERRY

April 28, 1983

The Honorable Loy L. Smith
State Representative
115 War Memorial Building
Nashville, Tennessee 37219

Dear Representative Smith:

In your letter of April 25, 1983, you requested the opinion of this office with respect to the following matter:

QUESTION

Should golf courses be classified as open space under T.C.A. § 67-653 for purposes of property taxation?

OPINION

No. It is the opinion of this office that golf courses do not qualify as open space under present law.

ANALYSIS

The Agricultural, Forest, and Open Space Land Act of 1976, codified as T.C.A. § 67-650 et seq., was enacted to encourage the preservation of greenbelts around urban areas. It is designed to help control urban sprawl by eliminating the incentive for development that might otherwise result from the property tax structure. The act provides that the designated areas will be assessed according to their current use

rather than the higher value that the potential for development would cause the land to bring.

The instant question is the application of this act to golf courses. While golf courses are not agricultural or forest land, a closer question arises concerning whether they qualify as "open space." T.C.A. § 67-653(c) gives the following definition:

> "Open space land" means any area of land other than agricultural and forest land, of not less than three (3) acres, characterized principally by open or natural condition, and whose preservation would tend to provide the public with one or more of the benefits enumerated in § 67-651 and which is not currently in agricultural land or forest land use. This term includes greenbelt lands or lands primarily devoted to recreational use.

Application of this definition thus hinges on the purposes of the act, as expressed in certain benefits enumerated in § 67-651. These include, inter alia, enhancement of the use of surrounding lands, conservation of natural resources, prevention of urban sprawl, and enjoyment of natural areas by urban residents.

While certainly not devoid of public benefits, golf courses do not very well fit within the intent of this act. The benefits enumerated contemplate the preservation of undeveloped green areas around cities, not the high degree of development and preparation inherent with a golf course. Though golf courses may be esthetically pleasing, they are not the sort of nature preserves contemplated by the framers of the act.

Section 67-653(c) requires that open space land be "characterized principally by open or natural condition." Golf courses certainly are not in natural condition. Moreover, it is doubtful that they are open in the sense intended by the legislature. While "open" must mean something other than "natural,"

it does not include land that is carefully manicured and highly developed for a specific use. Property that has undergone the extensive site improvements necessary for a golf course is no longer open or natural. It has been transformed to suit the needs of urban civilization, just as if homes and factories had been built on it. The act in question is directed at the preservation of natural and undeveloped land, not the rendering of a tax benefit to golf clubs.1/

Some ecological advantage attaches to golf courses just as to a home or business with a large and manicured lawn. Open space, however, as used in the act, carries a different connotation; while it does not require land to be in a strictly natural state, it does mean that the land must have a rustic character that is not totally overwhelmed by the landscapping of man. A golf course is too developed to come within its purview.

Therefore, it is the opinion of this office that golf courses should not be classified as "open space land" under § 67-653 for purposes of property taxation.

Sincerely,

WILLIAM M. LEECH, JR.
Attorney General

William B Hubbard

WILLIAM B. HUBBARD
Chief Deputy Attorney General

Charles L. Lewis by gpc

CHARLES L. LEWIS
Assistant Attorney General

1/ The act refers to and permits recreational use. This does not obviate the necessity of complying strictly with its other provisions.

EXHIBIT
B

State of Tennessee

WILLIAM M. LEECH, JR
ATTORNEY GENERAL & REPORTER

WILLIAM B. HUBBARD
CHIEF DEPUTY ATTORNEY GENERAL

ROBERT B. LITTLETON
SPECIAL DEPUTY FOR LITIGATION

OFFICE OF THE ATTORNEY GENERAL
450 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37219

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JIMMY G. CREECY
ROBERT A. GRUNOW
WILLIAM J. HAYNES, JR.
ROBERT E. KENDRICK
MICHAEL E. TERRY

March 26, 1984

RECEIVED
MAR 27 1984
STATE BOARD OF EQUALIZATION

Honorable Jerry C. Shelton
Executive Secretary
State Board of Equalization
1400 James K. Polk State Office Building
Nashville, Tennessee 37219

Dear Mr. Shelton:

In your letter of March 7, 1984, you requested the opinion of this office on the following topic:

> May land in excess of three acres used as a golf course qualify as "open space land" under the Agriculture, Forest, and Open Space Land Act, T.C.A. § 67-5-1001, et seq?

On April 28, 1983, this office previously opined that "golf courses do not qualify as open space under present law." Please find a copy of that opinion attached to this letter. This office has reviewed the Report to the State Board of Equalization on Status of Golf Courses as Open Space Land under T.C.A. § 67-5-1001, et seq. dated February 16, 1984. Based upon the information presented in this report, it is still the opinion of this office that golf courses do not qualify as open space land within the meaning of T.C.A. § 67-5-1001 et seq.

If you have any questions regarding this matter, please feel free to contact this office.

Sincerely,

WILLIAM M. LEECH, JR.
Attorney General and Reporter

WML/cjm

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

In re:

SWANSON DEVELOPMENTS, LP

Map 100, Parcel 013.01

Tax Year 2009

Rutherford County

SBOE Appeal No. 52286

FINAL DECISION AND ORDER

Statement of the Case

Taxpayer appeals the initial decision and order of the administrative judge, who affirmed the assessor's denial of 'greenbelt' agricultural status for the property and affirmed the original value and assessment as follows:

Land Value	Improvement Value	Total Value	Assessment
$512,700	$-0-	$512,700	$ 128,175

The appeal was heard in Nashville on June 9, 2011 before Commission members Wills (presiding), Dooley and Wade.[1] Swanson Developments was represented by Dr. Thomas Tritschler, OD, and the assessor was represented by state Division of Property Assessments staff attorney John C. E. Allen. Mr. Allen was accompanied by an assessor's staff appraiser, Mr. William Gibbs and also

[1] An administrative judge assigned by the Board sat with the Commission pursuant to Tenn. Code Ann. §4-5-301.

by the assessor, Mr. Bill Boner. Based on the submitted proof and argument the Commission finds the initial decision and order should be affirmed.

Findings of Fact and Conclusions of Law

The Agricultural, Forest, and Open Space Land Act of 1976, or greenbelt law, allows qualifying land to be assessed for property taxes on the basis of its current use value rather than its market value in some more intensive use. The subject property is 71.4 acres on Rucker Lane in or near Murfreesboro. It was part of a 395 acre dairy farm taxpayers purchased and began to develop as a residential subdivision, Kingdom Ridge.

Taxpayers have completed development on four recorded plats, but the subject tract is not presently being developed.[2] All of the subject tract is leased to an area farmer, but only 14 acres is presently farmed. The balance is what might be considered 'wastelands' as the term is used in the definition of greenbelt "agricultural land." Dr. Tritschler contends the entire tract should qualify for greenbelt because the favorable tax treatment would further the legislative intent of greenbelt not to force premature development of farm land. The fact is, however, this property, apart from the fourteen acres under till, is not being farmed and never has been farmed by this owner.

Photos of the property indicate most of this tract serves the residual development that has taken place on the platted portions of the original

[2] The evidence is conflicting as to whether the subject property is part of an unrecorded plat. Although some of the road coves or turnarounds from the developed portions intrude into the subject property, we will assume the subject property was not rendered ineligible for 'greenbelt' solely as the result of being platted under Tenn. Code Ann. §67-5-1008 (d)(1)(C). Nevertheless, the property must still be shown to constitute a 'farm unit engaged in the production or growing of agricultural products.' Tenn. Code Ann. §67-5-1004 (1).

purchase. Coves or turnarounds for roads in the developed tracts encroach into the subject property, and piles of dirt and construction waste cover portions of the subject. A construction access road traverses the eastern one-third of the property. Apart from these portions, and the fourteen acres being farmed, the subject tract is used for nothing. Much of it, according to the witnesses, is 'wet,' situated along a creek running the (west) boundary opposite the farmed portion.

Dr. Tritschler also contends the property should qualify on the basis that it earns at least the minimum $1,500 per year in farm income referenced in Tenn. Code Ann. §67-5-1005. As pointed out by the administrative judge, however, farm income is a presumptive, not conclusive, indicator of farm use.

Property used as a farm may certainly include unproductive 'wastelands,' and no farm is completely beset with plow or hoof. In this case, however, the predominant character of the tract supports further development, not farming, and the property in the aggregate does not, in our view, constitute a 'farm unit engaged in the production or growing of agricultural products.'

ORDER

By reason of the foregoing, it is ORDERED that the initial decision and order is affirmed, greenbelt classification is denied, and the following value and assessment is adopted for tax year 2009:

Land Value	Improvement Value	Total Value	Assessment
$512,700	$-0-	$512,700	$ 128,175

This Order is subject to:

1. **Reconsideration by the Commission**, in the Commission's discretion.

Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board of Equalization with fifteen (15) days from the date of this order.

2. **Review by the State Board of Equalization**, in the Board's discretion. This review must be requested in writing, state specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.

3. **Review by the Chancery Court** of Davidson County or other venue as provided by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: 9-15-11

Mike Wills by proxy.
Presiding Member

ATTEST:

Kelsey James
Executive Secretary

cc: Dr. Thomas Tritschler
Mr. Bill Boner, Assessor
Mr. John C. E. Allen, Esq.

return to handbook

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Swanson Developments, L.P.**	)	**Rutherford County**
	Map 100, Parcel 01301	)	
		)	
	Tax Year 2009	)	**Appeal No. 52286**

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$512,700	$0	$512,700	$128,175

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on January 13, 2011, in Murfreesboro, Tennessee. The taxpayer was represented by Joe Swanson and Thomas H. Tritschler, III., O.D. The assessor of property, Bill D. Boner, represented himself. The intervenor, Division of Property Assessments, was represented by John C. E. Allen, Esq.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a tract of land containing approximately 71.4 acres located on Rucker Lane in Rutherford County, Tennessee.[1] With the exception of a construction road built by the taxpayer, subject land is unimproved.

[1] The testimony indicated subject tract contains between 71 and 74 acres. The administrative judge has given greatest weight to the testimony of staff appraiser Marty Francis who indicated the tract had 71.4 acres as of the relevant assessment date of January 1, 2009.

This appeal concerns the denial of a greenbelt application. The sole issue before the administrative judge pertains to whether subject property qualifies for preferential assessment as "agricultural land" under what is commonly referred to as the greenbelt law.[2]

The pertinent facts are not in dispute. Subject tract was originally part of a 395 acre parcel historically utilized as a dairy farm. The taxpayer purchased the 395 acres between 2001 and 2003 and began developing a residential subdivision known as Kingdom Ridge. Plats have been recorded for much of the 395 acres and four (4) phases have been completed. The taxpayer has an unrecorded plat for the next phase which includes subject tract. Presently, 49 of the 58 lots in Phase 4 have not been sold.

The taxpayer leases what was estimated to be anywhere from 10.83 to 14.63 acres of the subject tract, along with acreage on other parcels totaling approximately 124 acres, to a farmer.[3] There is no dispute that the acreage being leased is, in fact, farmed.

As noted above, subject tract has a construction road traversing the subject parcel. The road enables the taxpayer to access parts of the subdivision. The reason for the road was explained in a letter dated April 23, 2010 from the City of Murfreesboro Environmental Engineer, Sam A. Huddleston, to Dr. Tritschler which provided in relevant part as follows:

> The City of Murfreesboro Engineering Department agreed to the installation of a construction entrance off Rucker Lane to allow construction traffic an alternate entrance into Kingdom Ridge during infrastructure and home construction. The benefit of this entrance was to reduce construction traffic impacts within the subdivision and on the public streets. It additionally reduced the incidence of mud in the street from construction vehicles. According to Dr. Tritschler, the road was not required by the City of Murfreesboro, but Mr. Huddleston thought it was a "good idea."

---

[2] Tennessee Code Annotated § 67-5-1001 provides that "this part shall be known and may be cited as the 'Agricultural, Forest and Open Space Land Act of 1976."

[3] The lease in exhibit #1 indicates 13.0 acres of the subject tract has been leased. The GIS Planner for the Rutherford County Regional Planning Commission estimated the acreage on subject tract being leased totals 10.83 acres. The 14.63 acres testified to by Dr. Tritschler was taken from a 2010 lease found at page 29 of exhibit #1.

In order to understand the parties' contentions concerning whether or not subject property should receive preferential assessment, the administrative judge will first briefly summarize the pertinent statutes.

As will be discussed below, the ultimate issue in this appeal concerns whether subject property qualifies for preferential assessment under the greenbelt law as "agricultural land." That term is defined in Tenn. Code Ann. § 67-5-1004(1) as follows:

> (A) 'Agricultural land' means land that meets the minimum size requirements specified in subdivision (1)(B) and that either:
>
> (i) *Constitutes a farm unit engaged in the production or growing of agricultural products; or*
>
> (ii) Has been farmed by the owner or the owner's parent or spouse for at least twenty-five (25) years and is used as the residence of the owner and not used for any purpose inconsistent with an agricultural use.
>
> (B) To be agricultural land, property must meet minimum size requirements as follows: it must consist either of a single tract of at least fifteen (15) acres, including woodlands and wastelands, or two (2) noncontiguous tracts within the same county, including woodlands and wastelands, one (1) of which is at least fifteen (15) acres and the other being at least ten (10) acres and together constituting a farm unit;
>
> [Emphasis supplied]

In determining whether a particular parcel constitutes "agricultural land" reference must also be made to Tenn. Code Ann. § 67-5-1005(a)(3) which provides as follows:

> In determining whether any land is agricultural land, the assessor of property shall take into account, among other things, the acreage of such land, the productivity of such land, and the portion thereof in actual use for farming or held for farming or agricultural operation. The assessor may presume that a tract of land is used as agricultural land, if the land produces gross agricultural income averaging at least one thousand five hundred dollars ($1,500) per year over any three-year period in which the land is so classified. *The presumption may be rebutted, notwithstanding the level of agricultural income by evidence indicating whether the property is used as 'agricultural land' as defined in this part.*
>
> [Emphasis supplied]

The taxpayer essentially argued that subject property qualifies as "agricultural land" for two reasons. First, a significant portion of the acreage constitutes woodlands and/or wastelands. Thus, the minimum size requirement of fifteen (15) acres has been satisfied. Second, the property has consistently generated over $1,500 in agricultural income on an annual basis. In addition, Dr. Tritschler asserted that although subject property could possibly be developed in the future that is not the taxpayer's desire. At page 4 of exhibit #1, Dr. Tritschler explained his goal when acquiring property for the taxpayer as follows:

> As I head up the acquisitions searches for Swanson Developments, my main goal is to find the best quality farm land I can, get as much of it in crop production as possible and develop only what is necessary to cover our costs plus some profit, get our basis down to 'farm valued land basis' and then retain as much as possible for our family's and friend's long term enjoyment. . . .

The assessor of property and Division of Property Assessments had identical positions with respect to why they maintained subject property should not be classified as "agricultural land." For ease of reference, the administrative judge will refer to those parties collectively as the "assessing authorities."

The assessing authorities claimed that subject property does not satisfy the definition of "agricultural land" because it is not a single tract of land constituting a farm unit. According to the assessing authorities, only a small percentage of the parcel is actually farmed and the farming activity must be considered incidental to the primary purpose for which the tract is used or held for use – development. The assessing authorities noted (1) Dr. Tritschler's goal for acquiring the property quoted above; (2) the construction road used in conjunction with portions of the development; and (3) the fact development plans exist for subject parcel as evidenced by the unrecorded plat for the undeveloped portions of the 395 acre development. Moreover, the assessing authorities argued that the presumption of agricultural use by virtue of generating average annual agricultural income of $1,500 has been rebutted.

The administrative judge finds instructive a series of greenbelt appeals from Putnam County in 1997. The undersigned administrative judge heard five appeals brought by the assessor who contended the properties were not entitled to preferential assessment. The administrative judge found that four of the taxpayers should receive preferential assessment and one should not.

The administrative judge finds that the facts and issues in this appeal are quite similar to the one appeal just referred to wherein the property was removed from the greenbelt program. In *Perimeter Place Properties, Ltd.* (Putnam County, Tax Year 1997), the administrative judge ruled that the property was not entitled to preferential assessment as "agricultural land" reasoning in pertinent part as follows:

> The administrative judge finds that the evidence, viewed in its entirety, supports Putnam County's contention that subject property should not be classified as 'agricultural land' for purposes of the greenbelt law. As will be discussed immediately below, the administrative judge finds that subject property does not constitute a 'farm unit' and that any presumption in favor of an 'agricultural land' classification due to agricultural income has been rebutted.
>
> As previously indicated, the term 'agricultural land' as defined in T.C.A. § 67-5-1004(1) requires that the property constitute a 'farm unit.' The administrative judge finds that although the term 'farm unit' is not defined, subject property cannot reasonably be considered one based upon the testimony of the taxpayer's representatives.
>
> The administrative judge finds that the taxpayer constitutes a limited partnership which holds only the subject property. The administrative judge finds that although the partnership agreement was not introduced into evidence, Mr. Legge's testimony established that the taxpayer's 1998 purchase of subject property for $491,900 was unrelated to any farming purpose. The administrative judge finds it reasonable to conclude from Mr. Legge's testimony that he is a developer and subject property was purchased for and is still being held for development. . . .
>
> * * *
>
> The administrative judge finds the testimony also supports the conclusion that any income generated from the cutting of hay or sale of timber has been done primarily to retain preferential assessment under the greenbelt program and pay taxes. The administrative judge finds that such farming-

> related practices must be considered incidental and not representative of the primary use for which subject property is held.
>
> * * *

Initial Decision at 4-5.

The administrative judge finds that the common theme in the other Putnam County greenbelt appeals resolved in the taxpayers' favor was the fact the properties were historically farm units and not purchased for the primary purpose of development. See *Putnam Farm Supply* (Putnam County, Tax Year 1997; *Bunker Hill Road L.P.*(Putnam County, Tax Year 1997); *Johnnie Wright, Jr.* (Putnam County, Tax Year 1997); and *Joyce B. Wright* (Putnam County, Tax Year 1997). Put differently, the farming activity on those properties was the primary use of the properties rather than an incidental activity.

The administrative judge wants to stress that a taxpayer does not necessarily lose the right to preferential assessment simply because he or she intends to develop the property in the future. In the *Bunker Hill* appeal cited immediately above, the administrative judge addressed this issue as follows:

> The administrative judge finds there is no dispute between the parties concerning the fact subject property is used for agricultural purposes which would normally satisfy the definition of 'agricultural land' found in T.C.A. § 67-5-1004(1). The administrative judge finds the sole difference between the parties involves the fact that the taxpayer candidly admits that subject property is being held for eventual sale for commercial development. The administrative judge finds that Putnam County essentially maintained that basic principles of equity and fairness dictate that the greenbelt law be more strictly construed than has historically been the case.
>
> Although the administrative judge sympathizes with Putnam County, the administrative judge finds that the greenbelt law does not prohibit a property owner from selling off lots or intending to eventually convert the use of a property from agricultural to commercial [footnote omitted]. The administrative judge finds that rollback taxes are designed to cover such situations. Indeed, the administrative judge would assume that many owners of greenbelt property intend to sell it for commercial development at some future time. The administrative judge finds that T.C.A. § 67-5-

> 1003(1) recognizes this by making reference to 'premature development of such land.'

Initial Decision and Order at 4.

The administrative judge finds the Putnam County decisions support the assessing authorities position in this case. See also *Crescent Resources* (Williamson County, Tax Year 2007) wherein the administrative judge ruled in relevant part as follows:

> The administrative judge finds Mr. Nelson repeatedly stressed the income generated by growing crops. As the administrative judge noted at the hearing, the agricultural income presumption in Tenn. Code Ann. § 67-5-1005(a)(3) constitutes a *rebuttable* presumption. The administrative judge finds any presumption in favor of an 'agricultural land' classification due to agricultural income has been rebutted.
>
> [Emphasis in original]

In summary, the administrative judge finds that subject property does not qualify for preferential assessment as "agricultural land" for the reasons argued by the assessing authorities. Accordingly, the administrative judge affirms the decision of the Rutherford County Board of Equalization to deny the taxpayer's greenbelt application.

The administrative judge would note for the benefit of all the parties that there is nothing in the record concerning whether the taxpayer files a farm schedule in conjunction with its federal income tax return. Although the filing of such a schedule is not dispositive of the issue at hand, it stands to reason that the operator of a farm unit would routinely file such a schedule.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2009:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$512,700	$0	$512,700	$128,175

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 20th day of January 2010

MARK J. MINSKY, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
James K. Polk Building
505 Deaderick Street, Suite 1700
Nashville, Tennessee 37243-1402

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Thomas H. Tritschler III, O.D.
1188 Park Avenue
Murfreesboro, Tennessee 37128

Bill D. Boner
Rutherford Co. Assessor of Property
319 North Maple Street, Suite 200
Murfreesboro, Tennessee 37130

John C. E. Allen, Esq.
Comptroller of the Treasury
Division of Property Assessments
James K. Polk Building
505 Deaderick Street, 14th Floor
Nashville, Tennessee 37243

This the 20th day of January 2010

Janice Kizer
Tennessee Department of State
Administrative Procedures Division

return to handbook

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of:	Sweetland Family Limited Partnership	)	
	Map 531, Group E, Parcels 7-20 & Parcels 22-33	)	Putnam County
	Tax Years 1999 and 2000	)	

FINAL DECISION AND ORDER

Statement of the case

The parties have stipulated to fair market value of the subject property as set forth in Exhibit A. The only question to be decided is whether the property should be assessed as "Agricultural Land" under the Agricultural, Forest and Open Space Land Act of 1976, colloquially referred to as the "greenbelt law," and codified as Tenn. Code Ann. Sec. 67-5-1001, et seq. Prior to tax year 1999, the property had been assessed pursuant to the provisions of that act. For tax year 1999, the assessor discontinued that type of assessment because, in her opinion, the property no longer qualified for greenbelt status. The taxpayer appealed her action and the appeal was heard by an administrative judge who upheld the assessor's action.

An appeal was duly perfected to the Assessment Appeals Commission and it was heard in Nashville, Tennessee on April 17, 2001 before Commission members Isenberg (presiding), Brooks, Ishie, Millsaps, Rochford and Simpson sitting with an administrative judge.[1] The taxpayer was represented by Attorney Michael O'Mara. Attorney Jeffrey G. Jones represented the assessor and Putnam County.

Findings of fact and conclusions of law

The subject property consists of two tracts each containing numerous lots which constitute part of a subdivision. The larger tract consists of 19.171 acres and the smaller tract consists of 6.178 acres. Both tracts came from a farm of about 200 acres. There is a total of 26 individual lots in the two tracts. The lots were created by subdivision of part of the farm and was approved by local authorities on January 24, 1994. The two tracts are separated by a public road named West Jackson Street which was created when the subdivision was platted in 1994. The subdivision was named Colonial Park West II and was recorded in the Putnam County Register's office on March 1, 1994. It originally contained 37 lots or parcels. Eleven lots have been sold and the remaining 26 lots are the subject of this appeal.

[1] An administrative judge other than the judge who rendered the initial decision and order sits with the Commission pursuant to Tenn. Code Ann. Sec. 4-5-301 and rules of the Board.

The taxpayer claims that the property should retain its greenbelt status because (1) the property has historically been used as a farm; (2) income from hay production on the property is in excess of $1,500 per year; and (3) the property produces income from the sale or lease of a tobacco allotment. The assessor contends the property no longer meets the requirement for greenbelt status because (1) the taxpayer's primary use of the property is to hold it for commercial development; (2) any income from farming activity is incidental to and not representative of the primary use of the subject property; (3) the taxpayer reports the income from the property as miscellanous income and does not file a separate farm income schedule; (4) the property is subdivided as a commercial subdivision; (5) it is actively marketed as commercial property; and (6) topsoil has been removed from two of the lots.

In order to qualify for assessment as "agricultural land" under the greenbelt law the property must meet certain size requirements and meet the definition set out in Tenn. Code Ann. Sec. 67-5-1004(1) which partially provides that the land must constitute ". . . a farm unit engaged in the production or growing of agricultural products" or "[H]as been farmed by the owner or the owner's spouse for at least twenty-five (25) years and is used as the residence of the owner and not used for any purpose inconsistent with an agricultural use." There was no proof that the latter requirement has been met. Thus, the question is whether the property is a farm unit is controlling in this appeal. Like the administrative judge found, we find that. based upon the proof before this Commission, the subject property cannot reasonably be considered a farm unit. Although hay is produced on the premises, we find that the amount of production is minimal and incidental to the owner's primary interest and efforts with regard to the subject property, i.e., holding the subject property for commercial development. The owner has actively marketed the property as commercial property, and has sought zoning favorable to commercial development and resisted zoning changes which would have limited development. We therefore find and conclude that the subject property does not qualify for greenbelt status and the decision of the administrative judge should be affirmed.

ORDER

It is therefore ORDERED that the initial decision and order of the administrative judge is affirmed and the property is valued for tax year 1999 and 2000 as set out in Exhibit A.

This order is subject to:

1. Reconsideration by the Commission, in the Commission's discretion. Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, stating specific grounds for relief, and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
3. Review by the Chancery Court of Cheatham County or another venue as provided by law. A petition must be filed within sixty (60) days from the date of the official assessment certificate which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: Sept. 13, 2001

Presiding member

ATTEST:

Kelsie Jones, Executive Secretary
State Board of Equalization

cc: T. Michael O'Mara, Esq.
Jeffrey G. Jones, Esq.
Rhonda Chaffin, Assessor of Property

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

In Re:	Raymond F. Tapp District 4, Map 46, Control Map 46, Parcel 25, Special Interest 000 Farm Property Tax Years 1997 through 1999	)))))	Fayette County

INITIAL DECISION AND ORDER

Statement of the Case

This is an appeal from an assessment of "rollback taxes" pursuant to Tenn. Code Ann. section 67-5-1008(d) on a portion of the subject parcel. The appeal was received by the State Board of Equalization (the "State Board") on July 26, 2001. The administrative judge appointed under authority of Tenn. Code Ann. section 67-5-1505 conducted a hearing of this matter on October 11, 2001 in Brownsville, Tennessee. In attendance at the hearing were Raymond F. Tapp and his wife Patrice, the appellants and current owners of the property in question; and Fayette County Assessor of Property Mark Ward. By leave of the administrative judge, the appellants were permitted to file an ARGUMENT which had been prepared on their behalf by their attorney, John S. Wilder, Sr.[1]

Findings of Fact and Conclusions of Law

The parcel in question is part of an approximately 140-acre farm that was conveyed to Raymond F. Tapp by warranty deed in 1981. On April 12, 1999, Mr. Tapp quitclaimed to himself and his wife Patrice as tenants by the entirety an 11.90-acre portion of this parcel on which they had built a home. According to the appellants' testimony, that transfer occurred at the behest of their mortgage company. At the time of the conveyance, the whole 64.34-acre parcel was classified as "agricultural land" under the Agricultural, Forest and Open Space Land Act of 1976, as amended (the "greenbelt" law). Tenn. Code Ann. sections 67-5-1001 *et seq*.

In tax year 2000, the Assessor created a separate parcel (identified as 4-46-25.02) for the quitclaimed acreage and assessed it as "residential" (non-greenbelt) property in the names of Mr. and Ms. Tapp. They did not appeal that assessment to the Fayette County Board of Equalization (the "county board").[2] Meanwhile, the remaining 51.44 acres retained by Mr. Tapp (identified as 4-46-25.00) continued to enjoy greenbelt status.

In October of 2000, the appellants received tax bills on the assessments of Parcel Nos. 25.00 and 25.02. The bill for Parcel No. 25.00 included rollback taxes for 1997 through 1999 in the amount of $1.031.49. As explained by the Assessor at the hearing, that amount represented Mr. Tapp's tax savings over the three-year period attributable to the disqualified 11.90-acre portion of the parcel.

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[1]Mr. Wilder was unable to attend the hearing.

[2]The record does not include a copy of the assessment change notice that the Assessor presumably sent to Mr. and Ms. Tapp at least ten days before the end of the county board's annual session. *See* Tenn. Code Ann. section 67-5-508.

On December 31, 2000, Mr. Tapp quitclaimed to himself and Patrice as tenants by the entirety the remainder of his 140-acre farm. That transaction ultimately led to restoration of greenbelt status for Parcel No. 25.02 for tax year *2001* – as indicated in a letter issued by the county board on June 5, 2001 upon consideration of the taxpayers' complaint. Not until they received that decision did Mr. and Ms. Tapp lodge an appeal with the State Board.[3]

It is undisputed that, at all times relevant to this appeal, the land encompassed by Parcel 25.02 has been devoted to agricultural use as part of a "farm unit." Thus the appellants contended that the Assessor wrongfully terminated the classification of such land as "agricultural land" under the greenbelt law. On the appeal form, Mr. Tapp asserted that "there was no change in ownership" of the property in question.

Respectfully, even assuming (without deciding) that this appeal is timely and otherwise properly before the State Board[4], the administrative judge disagrees. When Mr. Tapp quitclaimed his interest in the 11.90 acres in controversy to himself and his wife as tenants by the entirety, he relinquished one of the "bundle of rights" inherent in the fee simple ownership of property: namely, the exclusive right to sell it.[5] Neither party to a tenancy by the entirety may "alienate or encumber the property without the consent of the other." Black's Law Dictionary (6th ed. 1990), p. 1465. *See*, e.g., Robinson v. Trousdale County, 516 S.W.2d 626 (Tenn. 1974). Clearly, then, in the eyes of the law, a transfer of property from an individual to a tenancy by the entirety amounts to a change of ownership.

For greenbelt purposes, the significance of this change of ownership was twofold. First, it necessitated reapplication for classification of the quitclaimed acreage as "agricultural land" (in the names of the new owners, Mr. and Ms. Tapp). *See* Tenn. Code Ann. section 67-5-1005(a). Second, even if such an application for tax year 2000 had been filed, it would undoubtedly have been denied because of the size of the parcel in question (i.e., the newly-created Parcel No. 25.02). Under the definition in Tenn. Code Ann. section 67-5-1004(1), a single tract for which a classification as "agricultural land" is sought must contain at least 15 acres. It is true that a 10+-acre tract is eligible for that designation if, along with a noncontiguous 15+-acre tract, it constitutes a farm unit. Tenn. Code Ann. section 67-5-1004(1)(B). But as acknowledged by counsel for the appellants, this exception presupposes that the noncontiguous tracts are "under the same owner." ARGUMENT, p. 1. On January 1, 2000, Parcels 25.00 and 25.02 were not owned by the same person(s).[6]

That Mr. and Ms. Tapp obviously misapprehended the greenbelt-related ramifications of the 1999 quitclaim deed is, of course, regrettable. As an administrative agency, however, the State Board cannot modify or waive the terms of the statute imposing rollback tax liability for the benefit of any person who may have been unaware of it.

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[3]The appellants may have mistakenly believed that the county board could address the issue of their liability for 1997-1999 rollback taxes during its 2001 session.

[4]Effective May 3, 2001, the General Assembly amended Tenn. Code Ann. section 67-5-1008(d)(2) to provide that "[l]iability for rollback taxes, but not the property values, may be appealed to the state board of equalization by March 1 of the year following the notice by the assessor." Acts 2001, ch. 152, section 7.

[5]Ms. Tapp's right to an "elective share" of this land (and the rest of the farm) upon her husband's death did not rise to the level of *ownership* of such property.

[6]The mortgage company that instigated Mr. Tapp's execution of a quitclaim deed in 1999 was surely cognizant of the legal distinction between sole ownership of the property and a joint tenancy with his wife.

Order

It is, therefore, ORDERED that the disputed assessment of rollback taxes be affirmed.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 21st day of November, 2001.

Pete Loesch

PETE LOESCH
ADMINISTRATIVE JUDGE

cc: Raymond F. & Patrice Tapp
John S. Wilder, Sr., Esq.
Larry Ellis, CAE , Region I Supervisor, Jackson Division of Property Assessments
Mark Ward, Assessor of Property

TAPP DOC

return to handbook

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Thomas Wilson Lockett**	)	**Knox County**
	Property ID: 132 102.02	)	
		)	
	Tax Years 2012-2015	)	
	Greenbelt Removal and Rollback	)	**Appeal No. 102732**

INITIAL DECISION AND ORDER

Statement of the Case

The Knox County Property Assessor's office removed a portion of the subject property from the Greenbelt program and imposed rollback taxes per Tenn. Code Ann. § 67-5-1008(d). On June 17, 2015, the taxpayer appealed to the State Board of Equalization ("State Board"). The undersigned administrative judge conducted the hearing on June 14, 2016 in Knoxville. Thomas Lockett and Barry Mathis participated.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The agricultural use Greenbelt application stated that the subject property yielded $1,500 or more in income from "produce." After a routine field review of the subject property, the assessor removed the subject property from the Greenbelt program and imposed rollback taxes on the grounds that the use of the subject property was "inconsistent with the application."

At the hearing, the taxpayer described the use of the subject property as follows. The subject property was the "Maple Grove Inn," a bed and breakfast situated on 15.56 acres. Of the 15.56 acres, approximately 1.5 acres were planted with produce, such as corn, tomatoes, fruit, and sweet potatoes, and herbs. The items grown were used for food served at the bed and breakfast and various events held on the subject property. According to the taxpayer's

uncontroverted testimony, the use of the subject property had not changed since his acquisition of the subject property in 1992.

Tenn. Code Ann. §§ 67-5-1004(4) and 67-5-1005(a)(3) allow the assessor to presume that land producing at least $1,500 per year over any three-year period qualifies as agricultural land. However, the presumption may be rebutted "by evidence indicating whether the property is used as 'agricultural land'..."

Because the agricultural activity on the subject property appears to be merely an incident to the bed and breakfast and event use of the subject property, the administrative judge finds that the subject property did not qualify as agricultural land.[1] Thus, the administrative judge finds that the subject property was correctly removed from the Greenbelt program.

With respect to the rollback tax assessment, the uncontroverted testimony showed that the taxpayer fully explained to the assessor's office the use of the property at the time of application in 2009. Although the application itself did not detail (or have a place to include such detail) the primary use of the subject property for bed and breakfast and event uses of the subject property, the application did not contain any false statements regarding the use of the property. Because the assessor's office presumed that the subject property qualified as agricultural at the time of application approval despite being fully informed of the actual use of the subject property and because there was no change in the use of the subject property subsequent to the application, the administrative judge finds it appropriate to abate the rollback tax assessment.[2]

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[1] *Thomas H. Moffit, Jr.* (Initial Decision & Order, Knox County, Tax Years 2011-2014, issued June 28, 2014) (property disqualified where hay production use was incidental to primary use of property to support broadcasting towers and buildings).

[2] See *Cherokee Country Club & Holston Hills Country Club, Inc.* (Initial Decision & Order, Knox County, Tax Years 2009-2012, issued October 8, 2013).

ORDER

It is therefore ORDERED that the removal of the subject property from the Greenbelt program is upheld. It is further ORDERED that the rollback tax assessment is abated.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 21st day of June 2016.

Mark Aaron, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Thomas Wilson Lockett
8800 Westland Drive
Knoxville, TN 37923

Phil Ballard
Knox Co. Assessor of Property
City-County Building
400 Main Street, Room 204
Knoxville, Tennessee 37902

This the 21st day of June 2016.

Janice Kizer
Tennessee Department of State
Administrative Procedures Division

37 S.W. 1105
Court of Chancery Appeals of Tennessee.

TINDELL
v.
TINDELL et al.

April 22, 1896.

Appeal from chancery court, Knox county; H. B. Lindsay, Chancellor.

Action between O. T. Tindell, administrator of George F. Tindell, deceased, and Sophia Tindell and others. From the decree, an appeal is taken. Affirmed.

West Headnotes (1)

[1] **Husband and Wife**
Tenancy in Common or Entirety
Tenancy in Common
Creation of Cotenancy

A woman who receives a deed to a half interest in land owned by her husband and the grantor in common by inheritance becomes a tenant in common with her husband, and they do not hold by the entirety.

4 Cases that cite this headnote

Attorneys and Law Firms

***1105** Webb & McClung, for complainant.

Green & Shields, for Demarcus and wife.

Opinion

NEIL, J.

There is only one question for decision in this case. It arises on the following state of facts: Abner Tindell died leaving two children, viz. complainant's intestate, George F. Tindell, and a daughter, Charlotte Price, and these two inherited the land now in controversy. They agreed upon a partition, and George F. Tindell and wife conveyed to said Charlotte Price and her husband the portion allotted to them; and Charlotte Price and her husband conveyed to Sophia Tindell, wife of George F. ***1106** Tindell, the remaining portion of the land,-a tract of 101 acres and a tract of five acres. George F. Tindell did not unite in the deed to his wife. The situation, therefore, is this: At the time Mrs. Sophia Tindell received her conveyance, her husband already owned an undivided one-half interest in the two tracts mentioned, as tenant in common with his sister, Mrs. Price. Mrs. Price, joined by her husband, conveyed her own half interest to Mrs. Tindell. Mrs. Tindell's contention is that her husband's title by inheritance, and her own by deed, immediately coalesced, and they became tenants by the entireties of the two tracts. The opposing contention is that they were but tenants in common. It is urged by Mrs. Tindell's counsel that the estate or interest known as "tenancy by entireties" does not depend upon the form or terms of the conveyance, "but upon the legal fact that the husband and wife are one, and cannot own separate interests in the same property." On the other side it is insisted that the estate is substantially an estate in join tendency, or rather a species of joint tenancy.

We shall first consider the nature of the estate. This has already been done for us in an admirable decision of the supreme court of judicature of the state of New Jersey, rendered in the year 1828, in the case of Den v. Hardenbergh, 10 N. J. Law, 42. We cannot do better than to quote liberally from that case. It is there said: "A conveyance of lands to a man and his wife, made after their intermarriage, creates and vests in them an estate of a very peculiar nature, resulting from that intimate union, by which, as Blackstone says, 'the very being or legal existence of the woman is suspended during the marriage, or, at least, is incorporated and consolidated into that of the husband.' The estate, correctly speaking, is not what is known in the law by the 'name of joint tenancy.' The husband and wife are not joint tenants. I am aware that sometimes, and by high authority, too, but currente calamo and improperly, as will, I think, be presently seen, the estate has been thus denominated. In respect, however, to the name only, not to the nature of the estate, is any diversity to be found. The latter has been viewed in the same light as far back as our books yield us the means of research. The very name 'joint tenants' implies a plurality of persons. It cannot, then, aptly describe husband and wife, nor correctly apply to the estate vested in them; for in contemplation of law, they are but one person. Co. Litt. §

291 (665). Of an estate in joint tenancy, each of the owners has an undivided moiety, or other proportional part, of the whole premises,-each a moiety if there are only two owners, and, if more than two, each his relative proportion. They take and hold by moieties, or other proportional parts. In technical language, they are seised per my et per tout. Of husband and wife, both have not an undivided moiety, but the entirety. *** Each is not seised of an undivided moiety, but both are, and each is, seised of the whole. They are seised, not per my et per tout, but solely and simply per tout. The same words of conveyance which make two other persons joint tenants will make husband and wife tenants of the entirety. Co. Litt. § 665; 2 Lev. 107; Amb. 649; Moore, 210; 2 W. Bl. 1214; 5 Term. R. 564, 568; 1 Ves. Jr. 199; [Rogers v. Henderson] 5 Johns. Ch. 437; 2 Kent, Comm. 112. In a grant by way of joint tenancy to three persons, each takes one third part. In a grant to a husband and wife and a third person, the husband and wife take one half, and the other person takes the other half; and, if there be two other persons, the husband and wife take one third, and each of the others one third. Co. Litt. § 291. In joint tenancy, either of the owners may, at his pleasure, dispose of his share, and convey it to a stranger, who will hold undivided, and in common with the other owner. Not so with husband and wife. Neither of them can separately, or without the assent of the other, dispose of or convey away any part. It has even been held, where the estate was granted to a man and his wife, and to the heirs of the body of the husband, that he could not, during the life of the wife, dispose of the premises by a common recovery, so as to destroy the entail. Nor did his surviving his wife give force or efficacy to the recovery. 3 Coke, 5; Moore, 210; 9 Coke, 140; 2 Vern. 120; Prec. Ch. 1; 2 W. Bl. 1214; Rop. Husb. & Wife, 51. A severance of a joint tenancy may be made, and the estate thereby turned into a tenancy in common, by any one of the joint owners, at his will. Of the estate of husband and wife, there can be no severance. 3 Coke, 5; 2 W. Bl. 1213. It has been held that a fine or common recovery by the husband, during the marriage, will work a severance, if the estate was granted to him and her before marriage, but, if granted after marriage, no severance will thereby be wrought. Amb. 649. Joint tenants may make partition among them of their lands, after which each will hold in severalty. Of the estate of husband and wife, partition cannot be made. The treason of a husband does not destroy the estate of a wife. In an estate held in joint tenancy, the peculiar and distinguishing characteristic is the right of survivorship, whereby, on the decease of one tenant, his companion becomes entitled to the whole estate. Between husband and wife, the jus accrescendi does not exist. The surviving joint tenant takes something by way of accretion or addition to his interest; gains something he previously had not,-the undivided moiety which belonged to the deceased. The survivor of husband and wife has no increase of estate or interest by the deceased having, before the entirety, been previously seised of the whole. The survivor, it is true, enjoys the whole, but not because any new or further estate or interest becomes vested, but because of the original conveyance, and of the same estate and same quantity of estate as at the time the conveyance was perfected. In the remarks I have made, it will have been observed that the estate granted to husband and wife during marriage has been the subject of examination. If lands be granted to a man and ***1107** woman and their heirs, and afterwards they marry, they remain, as they previously were, joint tenants. They have moieties between them. As they originally took by moieties, they will continue to hold by moieties after the marriage, and the doctrine of alienation, severance, partition, and of the jus accrescendi may apply. Co. Litt. 187b; 2 Lev. 107; Amb. 649." And see Thornton v. Thornton, 3 Rand. 179. Taul v. Campbell, 7 Yerg. 319. Mr. Preston defines "tenancy by entireties" as follows: "Tenancy by entireties is when husband and wife take an estate to themselves jointly, by grant or devise, or limitation of use, made to them during coverture, or by grant, etc., to them, which is in fieri at the time of their marriage, and completed by livery of seisin or allotment during the coverture." 1 Prest. Est. 131. Again, it is said in a note to Den. v. Hardenbergh, supra: "A tenancy by entireties arises whenever an estate vests in two persons; they being, when it so vests, husband and wife. In this description of tenancy by entirety, we have excluded the idea that the tenancy must be created by gift or purchase. Though not ordinarily acquired by descent, this is so only because husband and wife rarely succeed to property as heirs of the same person. But, on so acquiring it, they are tenants of entireties." For this proposition, Gillan v. Dixon, 65 Pa. St. 395, is cited. In that case the husband and wife took the property as heirs of one of their children.

In the last analysis, therefore, it seems that a tenancy by entireties is when husband and wife take an estate to themselves jointly, by grant or devise, or limitation of use, made to them during coverture, or by descent to them from the same source during coverture, or by grant, etc., to them which is in fieri at the time of their marriage, but which completely vests during coverture. The essential thing is that the title or interest is devolved upon the husband and wife at the same time, and during coverture. But it is said that this view is in opposition to McRoberts v. Copeland, 85 Tenn. 211, 2 S. W. 33. We do not think so. That case was as follows: Andrew McRoberts owned four tracts of land in McMinn county. One of them he and his wife, Susannah, conveyed to two

of their daughters, for "love and affection." The habendum of the deed was in these words: "To have and to hold the above-described property, to the said Didama and Victoria McRoberts, their heirs and assigns, forever, subject alone to our life estate; and, at our death, title to vest in fee simple in the said Didama and Victoria, their heirs and assigns." The court said: "The exception or reservation of the life estate was expressly for the benefit of both McRoberts and his wife, and upon his death it inured to her, in her own right, as survivor, by operation of law." Here the life estate was created at the same time in the husband and wife, and the case is in accord with the view we have advanced. It is immaterial that the husband had previously owned the land. When the new estate was carved out, it vested in both at the same time. Again, we are referred to the following passage appearing in Taul v. Campbell, 7 Yerg., occurring at page 336, wherein it is said, "The unity of person subsisting between man and wife, in legal contemplation, prevents their receiving separate interests." This passage is found in a quotation in that case from Rogers v. Grider (a Kentucky case) 1 Dana, 242. This language must be confined to the particular connection in which it was used, where the court was speaking of a deed made to the husband and wife during coverture. Its authority cannot be strained into a universal proposition, or insisted upon by Mrs. Tindell's counsel. It was not so used or intended by the court. So used, it would be manifestly incorrect. This would go to the extent of maintaining that there was, at common law, an absolute incapacity in the husband and wife to hold real estate otherwise than by entireties. This we know to be untrue as shown by the references to Co. Litt. 187b; 2 Lev. 107; Amb. 649, contained in the closing paragraph of our quotation from Den. v. Hardenbergh, supra. And in our own case of Ames v. Norman, 4 Sneed, 683 (syl. 4), while recognizing the doctrine of tenancy by the entireties very fully, it is stated "that in a conveyance of land to a man and woman while single, if they afterwards intermarry, as they took originally by moieties, they will continue to hold by moieties after the marriage." To same effect, Wood v. Warner, 15 N. J. Eq. 81,-thus showing there is no incapacity to hold by moieties after marriage.

We know it is said in numerous cases, in general terms, that the husband and wife cannot take by moieties. But this must be understood of a conveyance made to them of the same property at the same time, and during coverture. The point is thus stated in Green v. King, 2 W. Bl. 1211: "Husband and wife being one person in law, they cannot, during the coverture, take separate estates; and therefore, upon a purchase by both, they cannot be seized by moieties, but both and each has the entirety." And some cases go to the extent of holding that they cannot be tenants in common, even where the deed expressly so undertakes to vest the title. Dias v. Glover, Hoff. Ch. 71, and cases cited. A contrary view, however, is maintained in Hicks v. Cochran, 4 Ed. Ch. 107, and Stewart v. Patrick, 68 N. Y. 450. And Mr. Preston says: "In point of fact, and agreeable to natural reason, free from artificial deductions, the husband and wife are distinct and individual persons; and accordingly, when lands are granted to them as tenants in common, thereby by treating them without any respect to the social union, they will hold by moieties, as other distinct and individual persons would do." 1 Prest. Est. 132. And again: "Even a husband and wife may, by express words (at least, so the law is understood), be made tenants in common by a gift to them during coverture." 2 Prest. Abst. 41. Chancellor Kent ***1108** followed the view of this eminent authority. 4 Kent, Comm. 363. But we need not pursue this subject further. These authorities show that there is no inherent incapacity in the husband and wife to hold by moieties, even when the conveyance is made to both during coverture, and by the same instrument. It is thus shown that there is no inevitable legal force which operates at once to cause to coalesce into a single estate by the entireties the separate interests which husband and wife may acquire in the same property during coverture, but by different instruments and at different times. Therefore we are of opinion that Mrs. Tindell's contention is not well taken. Her husband owned a half interest in the land here in question, by inheritance. She subsequently received a deed to another half interest from her husband's sister, who was the owner of that other half. This made the husband and wife tenants in common. The chancellor so held, and we affirm his decree. We think the costs accrued in settling this controversy should be paid out of the estate of George F. Tindell, in course of administration herein, and it is so ordered. Let the cause be remanded to the chancery court of Knox county for the payment of said costs, and for the execution of the chancellor's decree.

BARTON, J., concurs.

Affirmed orally by supreme court, October 10, 1896.

All Citations

37 S.W. 1105

Tenn. Op. Atty. Gen. No. 10-71 (Tenn.A.G.), 2010 WL 2127607

Office of the Attorney General

State of Tennessee
Opinion No. 10-71
May 21, 2010

Greenbelt Rollback Tax Liability on Land Converted to Exempt Status

***1** The Honorable James H. Fyke.
Commissioner of Environment and Conservation
401 Church Street, L&C Annex, 1st Floor
Nashville, Tennessee 37243-0435

QUESTIONS

1. Tenn. Code Ann. § 67-5-1008(d)(1)(F) requires rollback taxes to be paid if "land is conveyed or transferred and the conveyance or transfer would render the status of the land exempt." Does that law cause all acquisitions of open, forest or agricultural land by government agencies to result in the assessment of rollback taxes even if the land is to be left as open or forest land?

2. Tenn. Code Ann. § 67-5-1008(e)(1) requires the government to pay rollback taxes when property is taken by eminent domain or other involuntary proceeding. This section goes on to provide that "[p]roperty transferred and converted to an exempt or nonqualifying use shall be considered to have been converted involuntarily if the transferee or an agent for the transferee sought the transfer and had power of eminent domain." Does this section apply when a state agency purchases land using funds such as the State Land Acquisition Fund (T.C.A. Section 67-4-409(j)) that specifically bars the use of condemnation or the power of eminent domain? In that case, who would be obligated to pay the rollback taxes?

OPINIONS

1. Yes. As a matter of general application, when greenbelt land is acquired by the government and converted to tax-exempt status, rollback taxes should be assessed even if the greenbelt use is continued. However, greenbelt land purchased by the government through the State Lands Acquisition Fund is not subject to rollback taxes.

2. No. The requirement that the government pay rollback taxes on greenbelt land it acquires through eminent domain and converts to exempt status does not apply when the land is purchased through the State Land Acquisition Fund, which cannot be used for takings through eminent domain. In such a case, no "rollback taxes" are incurred, but rather the local government is to be reimbursed for the amount of the lost property tax revenue through annual disbursements from the Compensation Fund created under Tenn. Code Ann. § 11-14-406.

ANALYSIS

1. The Agricultural, Forest, and Open Space Land Act, codified in Tenn. Code Ann. §§ 67-5-1001 *et seq.*, was adopted in 1976 for the purpose of encouraging owners of such land in areas pressured by growing urbanization and development to continue to maintain the land in its present undeveloped use. *See* Tenn. Code Ann. § 67-5-1003. This Act, commonly referred to as the "Greenbelt Law," incentivizes the non-development of qualifying land by providing the owners with a property tax benefit if they apply for classification as greenbelt property and maintain the particular conforming use outlined in the Greenbelt Law.

Under this law, when a parcel of land qualifies for greenbelt status and is so classified by the jurisdiction's tax assessor, the tax assessment for the greenbelt parcel is then calculated upon the premise that its current undeveloped use is its "best" use, and the property's potentially higher value for any other use or purpose is not considered. Tenn. Code Ann. § 67-5-1008(a)(1). As explained by the Tennessee Court of Appeals, "in enacting this legislation, the legislature has issued an invitation to property owners to voluntarily restrict the use of their property for agricultural, forest, or open space purposes." *Marion Co. v. State Bd. of Equalization*, 710 S.W.2d 521, 523 (Tenn. Ct. App. 1986).

***2** To prevent landowners from taking advantage of the Greenbelt Law to capture temporary property tax savings without truly committing their property to the long-term greenbelt use envisioned by the Act, the legislature provided for the levying of rollback taxes under certain circumstances. As explained by this Office in an earlier opinion on a similar issue, when land for which greenbelt status had previously been obtained ceases to meet the requirements of the Greenbelt Law,

> the relevant tax assessor is instructed by the statute to compute the difference between the present use value assessment and the standard method of value assessment as described in Tenn. Code Ann. § 67-5-601 et seq. for each of the preceding three years (or five years if the land was classified as open space). Tenn. Code Ann. § 67-5-1008(d)(1). The value of this difference is then to be assessed as the rollback tax on that greenbelt property.

Op. Tenn. Att'y Gen. 05-046 (Apr. 12, 2005).

There are currently six enumerated circumstances that trigger rollback taxes. Pursuant to the Greenbelt Law, rollback taxes are to be calculated and the local property tax assessor is required to

notify the trustee that such amount is payable, if:
(A) Such land ceases to qualify as agricultural land, forest land, or open space land as defined in § 67-5-1004;

(B) The owner of such land requests in writing that the classification as agricultural land, forest land, or open space land be withdrawn;

(C) The land is covered by a duly recorded subdivision plat or an unrecorded plan of development and any portion is being developed; except that, where a recorded plat or an unrecorded plan of development contains phases or sections, only the phases or sections being developed are disqualified;

(D) An owner fails to file an application as required by this part;

(E) The land exceeds the acreage limitations of § 67-5-1003(3); or

(F) The land is conveyed or transferred and the conveyance or transfer would render the status of the land exempt.

Tenn. Code Ann. § 67-5-1008(d)(1)(A) through (F).

Prior to June 13, 2008, the Greenbelt Law contained only the first three of the above-listed triggers for assessment of rollback taxes. Accordingly, in a 2005 opinion, this Office concluded that absent a written request for withdrawal or a duly recorded subdivision plat, no rollback taxes are due when greenbelt property is conveyed to a government entity that maintains the property's greenbelt use; rather, only a conversion to a non-greenbelt use would trigger a rollback tax assessment. Op. Tenn. Att'y Gen. 05-046 (Apr. 12, 2005).

Chapter No. 1161, § 5, of the 2008 Public Acts amended Tenn. Code Ann. § 67-5-1008(d)(1) in relevant part by providing three additional triggers for rollback taxes, now codified as subsections (D), (E), and (F). These amendments became effective on June 13, 2008. Of particular relevance to this Opinion is subsection (F), which requires that rollback taxes be assessed when any greenbelt property "is conveyed or transferred and the conveyance or transfer would render the status of the land exempt." Tenn. Code Ann. § 67-5-1008(d)(1)(F). This new rollback tax trigger is not tied to the use of the land, but rather requires rollback taxes to be assessed if the greenbelt property is rendered "exempt" from taxes. Thus, pursuant to the 2008 amendment, greenbelt property conveyed to a government entity that maintains the property's greenbelt use would be subject to rollback taxes simply if the conveyance results in the property becoming exempt from property taxes.

***3** As a general rule, property owned by a government entity and used exclusively for government purposes is exempt from property taxes. Tenn. Code Ann. § 67-5-203. Thus, in most circumstances when greenbelt property is conveyed to a government entity it becomes exempt and therefore triggers the assessment of rollback taxes. In short, absent statutory authorization to the contrary, all greenbelt property conveyed to the government that takes on exempt status is subject to assessment of rollback taxes regardless of whether the greenbelt use of that property is continued by the government after the conveyance.

Tenn. Code Ann. § 67-5-1008, as discussed above, sets forth the basic requirements for the assessment of rollback taxes on greenbelt property under the Greenbelt Law. However, other portions of the Tennessee Code provide for limited exceptions to certain provisions of the Greenbelt Law. One such exception is provided in the statutes controlling property purchased through the State Lands Acquisition Fund. It is a well established principle of construction that "[t]ax statutes are to be construed *in pari materia.*" *Tennessee Farmer's Co-op v. State*, 736 S.W.2d 87, 91 (Tenn. 1987). Accordingly, upon examination of all of the relevant tax statutes, it becomes apparent that when a government entity purchases greenbelt property through the State Lands Acquisition Fund, no rollback taxes are due; rather, the local government is to be remunerated by the State through a special compensation fund for its loss of property tax revenue resulting from the now exempt status of the government-owned property.

Tenn. Code Ann. § 67-4-409 sets forth collection requirements for the real estate transfer privilege tax and mandates the disbursement of the revenues collected from this tax. The revenues from this tax are disbursed through multiple funds, including the State Lands Acquisition Fund, as outlined in Tenn. Code Ann. § 67-4-409(j). The Commissioner of Environment and Conservation is authorized to use funds from the State Lands Acquisition Fund to acquire land for certain prescribed uses, such as historic sites, state parks, state forests, trails and protective easements. Tenn. Code Ann. § 67-4-409(j)(2)(A). However, the code prohibits the use of any funds from the State Lands Acquisition Fund for the acquisition of "any interest in real property through condemnation or the power of eminent domain." Tenn. Code Ann. § 67-4-409(2)(B). Additionally, the controlling statutes provide that

> [t]he first three hundred thousand dollars ($300,000) deposited in the state lands acquisition fund shall be transferred and credited to the compensation fund created under § 11-14-406. *Following the procedure set forth in that section*, the commissioner of finance and administration shall annually reimburse each city and county the amount of lost property tax revenue resulting from any purchase of land by the department of environment and conservation which renders such land tax exempt.

***4** Tenn. Code Ann. § 67-4-409(j)(3) (emphasis added). Accordingly, local governments which have greenbelt property removed from their property tax rolls because the property became exempt upon conveyance to the State through the State Lands Acquisition Fund are reimbursed for this lost revenue pursuant to the procedures set forth in the statutes pertaining to the State Compensation Fund created under Tenn. Code Ann. § 11-14-406.

The State Compensation Fund is a "special agency account in the state general fund" used to "reimburse each affected city and county" for property tax revenue lost to government acquisition of land. [1] Tenn. Code Ann. § 11-14-406(a). The statute expressly states that "[a]cquisition pursuant to this part of property classified under title 67, chapter 5, part 10 [the Greenbelt Law], shall not constitute a change in the use of the property, *and no rollback taxes shall become due solely as a result of such acquisition*." Tenn. Code Ann. § 11-14-406(b) (emphasis added). Thus, conveyance of greenbelt property to the government

through purchase with funds from the State Lands Acquisition Fund does not trigger rollback taxes even though the greenbelt property is converted to tax-exempt status. However, the local government should receive compensation directly from the State Compensation Fund as outlined in Tenn. Code Ann. § 67-4-409(j)(3) and § 11-14-406(b).

2. The Greenbelt law outlines who is responsible for payment of rollback taxes when a conveyance of greenbelt property results in the assessment of such taxes. Generally, "if the sale of agricultural, forest or open space land will result in such property being disqualified as agricultural, forest or open space land due to conversion to an ineligible use or otherwise, the seller shall be liable for rollback taxes, unless otherwise provided by written contract." Tenn. Code Ann. § 67-5-1008(f). However, the Greenbelt law also states:

> [i]n the event that any land classified under this part as agricultural, forest, or open space land or any portion thereof is converted to a use other than those stipulated herein by virtue of a taking by eminent domain or other involuntary proceeding, except a tax sale, such land or any portion thereof involuntarily converted to such other use shall not be subject to rollback taxes by the landowner, and the agency or body doing the taking shall be liable for the rollback taxes. Property transferred and converted to an exempt or non-qualifying use shall be considered to have been converted involuntarily if the transferee or an agent for the transferee sought the transfer and had power of eminent domain.

Tenn. Code Ann. § 67-5-1008(e)(1). Accordingly, rollback taxes on greenbelt property transferred and converted to exempt status or nonconforming use are to be assessed against the seller, unless the government "sought" the transfer and "had the power of eminent domain."

***5** The right of eminent domain, by which the State is authorized to take private property for public use, is "an inherent governmental right." *Metropolitan Development and Housing Agency v. Eaton*, 216 S.W.3d 327, 336 (Tenn. Ct. App. 2006). The State may also delegate this power to other specified entities. *American Tel. & Tel. Co. v. Proffitt*, 903 S.W.2d 309, 314 (Tenn. Ct. App. 1995). *See generally* Tenn. Code Ann. title 29, chapter 17.

The first sentence of Tenn. Code Ann. § 67-5-1008(e)(1) states that the government (not the selling landowner) is to pay rollback taxes on greenbelt property transferred and converted to exempt status or a nonconforming use only if the government acquired the property "by virtue of a taking" through eminent domain or "other involuntary proceeding." The second sentence clarifies that any such transfer and conversion of greenbelt property is considered "involuntary" if the government agency: 1) "sought" the transfer, and 2) "had the power of eminent domain." Thus, the mere fact that the acquiring government agency possesses the power of eminent domain is insufficient to shift the rollback tax burden from the selling landowner to the government. Rather, the government must have also "sought" the transfer, thus making the sale "involuntary" as defined in Tenn. Code Ann. § 67-5-108(e)(1).[2] Conversely, as a matter of general application, when a landowner voluntarily sells greenbelt property to a government agency resulting in the property being converted to exempt status or a nonconforming use, that landowner is responsible for the rollback taxes.

However, the statute governing the State Lands Acquisition Fund expressly prohibits the expenditure of Fund resources for acquisition of land "through condemnation or the power of eminent domain." Tenn. Code Ann. § 67-4-409(j)(2)(B). Accordingly, the government could never seek to acquire land through the State Lands Acquisition Fund through its power of eminent domain. As noted in the answer to question one above, pursuant to Tenn. Code Ann. §§ 67-4-409(j)(3) and 11-14-406(b), greenbelt property acquired by the government through the State Lands Acquisition Fund is not subject to rollback taxes. Therefore, the answer to the question of who would be obligated to pay the rollback taxes under such a scenario is neither the seller nor the government. Rather, the local government is compensated for the lost revenue through the Compensation Fund created under Tenn. Code Ann. § 11-14-406.

Robert E. Cooper, Jr.

Attorney General and Reporter
Barry Turner
Deputy Attorney General
Gregory O. Nies
Assistant Attorney General

Footnotes

1 While Tenn. Code Ann. § 11-14-406, the Compensation Fund statute, was written in a manner directly addressing local government compensation for the Wetland Acquisition Fund, the State Lands Acquisition Fund statute expressly states that its compensation program is to follow the same procedures outlined in this statute. *See* Tenn. Code Ann. § 67-4-409(j)(3).

2 We note that this is also the position held by the State Board of Equalization in its published materials. "If the government is buying greenbelt property, and the land is converted to another uses, the rollback assessment is against the government unless the land is voluntarily sold." *Greenbelt: A Taxpayer's Guide*, available at http:// www.tn.gov/comptroler/sb/pdf/GreenbeltBrochure1-25-06.pdf.

Tenn. Op. Atty. Gen. No. 10-71 (Tenn.A.G.), 2010 WL 2127607

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STATE OF TENNESSEE
STATE BOARD OF EQUALIZATION
SUITE 1600
JAMES K. POLK STATE OFFICE BUILDING
505 DEADERICK STREET
NASHVILLE, TENNESSEE 37219-5054
PHONE (615) 741-4883

December 7, 1989

Mr. Albert Wade
Assessor of Property
Courthouse Annex
213 West Washington
Paris, TN 38242

Re: Greenbelt questions

Dear Albert:

This is in response to your letter regarding application of the maximum acreage limitations under the greenbelt law. For ease of reference your questions are summarized below followed by our response.

Company A owns 1,500 acres of land in Henry County which has received preferential assessment under the greenbelt law since 1988. Company A recently purchased an additional 1,160 acres of land in Henry County from Company B which has received preferential assessment under the greenbelt law since 1985.

1. Does the greenbelt law impose a maximum acreage cap of 1,500 acres for any one owner within a taxing jurisdiction?

   Yes. T.C.A. § 67-5-1003(3) provides that "[n]o single owner within any one (1) taxing jurisdiction shall be permitted to place more than one thousand five hundred (1,500) acres of land under the provisions of this part." Accordingly, it is our opinion that Company A can qualify a maximum of 1,500 acres for preferential assessment in Henry County.

2. How should the assessor determine which 1,500 acres continue to qualify for preferential assessment?

The property owner should be encouraged to file a new application in order to enable the assessor to specifically identify the acreage remaining under greenbelt. However, Tennessee law does not require a new application to be filed in this situation. In the event that the assessor cannot identify which 1,500 acres the property owner wishes to receive preferential assessment, the assessor has discretion to select the 1,500 acres if the property owner does not sufficiently identify the acreage.

3. Should roll-back taxes be assessed when acreage that once qualified for preferential assessment no longer qualifies?

Yes. According to an opinion of the Attorney General dated January 23, 1986, (Number 86-15), when land receiving preferential assessment under the greenbelt law ceases to qualify for such assessment, this constitutes a change of use and roll-back taxes must be levied and collected on the first assessment roll subsequent to such conversion. Although the Attorney General's opinion addresses minimum acreage requirements, it is our opinion that the same analysis applies to maximum acreage limitations. A copy of the opinion is enclosed for your convenience.

Please let me know if you have further questions in these areas.

Sincerely,

Kelsie Jones

Kelsie Jones
Executive Secretary

KJ/clh
S1B028

Enclosure

State of Tennessee

W. J. MICHAEL CODY
ATTORNEY GENERAL & REPORTER

JOHN KNOX WALKUP
CHIEF DEPUTY ATTORNEY GENERAL

WILLIAM H. FARMER
ADVOCATE GENERAL

JIMMY G. CREECY
ASSOCIATE CHIEF DEPUTY

ROBERT A. GRUNOW
ASSOCIATE CHIEF DEPUTY

OFFICE OF THE ATTORNEY GENERAL
450 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37219-5025

DEPUTY ATTORNEYS GENERAL
DOUGLAS BERRY
DONALD L. CORLEW
PATRICIA J. COTTRELL
R. STEPHEN DOUGHTY
KATE EYLER
ROBERT E. KENDRICK
CHARLES L. LEWIS
FRANK J. SCANLON
JENNIFER H. SMALL
JERRY L. SMITH
JOHN F. SOUTHWORTH, JR.

January 23, 1986

86-15

Mr. Geoffrey P. Emery
Knox County Deputy Law Director
Room 615, City-County Bldg.
400 Main Ave.
Knoxville, Tennessee 37902

Dear Mr. Emery:

You have requested an opinion of this office regarding the application of the Agricultural, Forest, and Open Space Land Act of 1976 (T.C.A. §§ 67-5-1001 et seq.) to the following factual situation:

An owner of a parcel of approximately 74 acres of property classified as agricultural or forest land under the Act conveyed to a second party a 21-acre portion of that land. Later the same day the second party conveyed to a third party a 13-acre portion of the 21-acre parcel, and retained ownership of the remaining 8-acres.

QUESTION PRESENTED

Which of the parties to these transactions, if any, are liable for "roll back taxes" under T.C.A. § 67-5-1008?

OPINION

Only the second transaction resulted in the creation of tracts of land of insufficient acreage to qualify under the Act. Therefore, the second party, the seller in the second transaction, shall be liable for roll back taxes on the 21-acre parcel, unless otherwise provided by written contract.

ANALYSIS

The Agricultural, Forest, and Open Space Land Act of 1976 (the "Act") was designed to encourage the preservation of agricultural, forest, and open space lands. Toward that end, the Act provides that the basis of assessment of such lands for property tax purposes shall be the "present use value" of such property,

rather than the value of its potential uses. T.C.A. §§ 67-5-1008(a)(1); 67-5-1004(11).

To benefit from "present use valuation" under the Act, land must qualify for classification as "agricultural land," "forest land," or "open space land" as defined in T.C.A. § 67-5-1004. So long as land continues to qualify as "agricultural land," "forest land," or "open space land," it shall continue to be taxed according to "present use valuation," regardless of changes in ownership. See Attorney General opinion to Mr. Jerry C. Shelton, December 7, 1979 (copy enclosed).

When land qualified under the Act is converted to uses other than agricultural, forestry, or open space uses, or otherwise ceases to qualify under the Act, "roll back taxes" are payable by virtue of the change of use. T.C.A. § 67-5-1008(c). Roll back taxes are to be levied and collected on the first assessment roll subsequent to such conversion. T.C.A. § 67-5-1008(c)(2).

In the above-cited opinion letter of this office dated December 7, 1979, it was opined that, where roll back taxes are triggered by a transfer of the land, such taxes are to be assessed not to the transferor, but to the owner of the property appearing on the first assessment roll prepared subsequent to such conversion. That opinion was based upon the provisions of T.C.A. § 67-657(c), now codified as T.C.A. § 67-5-1008(c)(2). Subsequent to that opinion, the Act was amended by 1983 Tenn. Pub. Acts, Ch. 267, §1, to provide as follows:

> If the sale of agricultural, forest or open space land will result in such property being converted to a use other than those stipulated herein, the seller shall be liable for roll back taxes, if roll back taxes are due pursuant to subsection (c) of this section unless otherwise provided for by written contract.

T.C.A. § 67-5-1008(e).

In view of the 1983 amendment, it appears that, where roll back taxes are triggered by a transfer of property, T.C.A. § 67-5-1008(c)(2) controls the timing of the levy and collection of such taxes (i.e., on the first assessment roll after the conversion), while T.C.A. § 67-5-1008(e) provides which party to the transfer shall be liable (i.e., the seller, absent contrary contractual provision).

Although T.C.A. § 67-5-1008(c) speaks in terms of "conversion of use" as triggering roll back tax liability, it is the opinion of this office that roll back taxes are payable in any instance in which property ceases to qualify as "agricultural land," "forest land," or "open space land" under the Act. Minimum acreage is an integral element of the definitions of "agricultural land," "forest land," and "open space land" set forth in T.C.A. § 67-5-1004. For property to qualify as "agricultural land," it must be a tract of at least 15 acres, or two or more tracts, one of which is larger than 15 acres and none of which is less than 10 acres. T.C.A. § 67-5-1004(1). Similarly, "forest land" must be land constituting an actively managed forest unit or any tract of 15 or more acres with sufficient tree growth to constitute a forest. T.C.A. § 67-5-1004(4). These specific acreage requirements evince a legislative intent to afford the benefits of present use valuation only to relatively large tracts of land.

When qualified property is divided and conveyed as smaller parcels which do not satisfy the acreage requirements defining "agricultural land" or "forest land," such parcels cease to qualify under the Act regardless of their actual uses. When a 21-acre tract of qualified "agricultural land" is divided and conveyed as tracts of 13 acres and 8 acres, the resulting tracts no longer qualify as "agricultural land," even though they may continue to be used for agriculture. In such a case, roll back taxes are payable.

Addressing the specific facts recited in your opinion request, it is clear that when the first party conveyed 21 acres of a qualified 74-acre tract, each resulting tract continued to qualify under the Act, and no roll back tax liability occurred. When the second party conveyed 13 acres of his qualified 21-acre tract to a third party, there resulted two tracts, neither of which was of sufficient acreage to qualify as "agricultural land" or "forest land." At that time, roll back tax liability occurred as to the 13-acre and the 8-acre tracts. Therefore, under T.C.A. § 67-5-1008(e), the second party, the seller in the second transaction, is liable for all roll back taxes, unless otherwise provided by written contract.

Sincerely,

W. J. Michael Cody
Attorney General

John Knox Walkup
Chief Deputy Attorney General

Daryl J. Brand
Assistant Attorney General

DJB:jt
enc.
cc: Kelsie Jones, Exec. Secty.
State Board of Equalization

State of Tennessee

PUBLIC CHAPTER NO. 685

SENATE BILL NO. 1642

By Southerland

Substituted for: House Bill No. 1685

By Halford, Keisling, Kevin Brooks, Howell, Littleton, Jenkins, Todd, Moody

AN ACT to amend Tennessee Code Annotated, Section 67-5-1008, relative to rollback tax liability for agricultural, forest, or open space land.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-5-1008(e), is amended by adding the following language as a new subdivision:

(4)(A) If any property or any portion of the property classified under this part as agricultural, forest, or open space land is disqualified by a change in the law or as a result of an assessor's correction of a prior error of law or fact, then the property or any portion of the property that is disqualified shall not be assessable for rollback taxes. The property owner shall be liable for rollback taxes under these circumstances if the erroneous classification resulted from any fraud, deception, or intentional misrepresentation, misstatement, or omission of full statement by the property owner or the property owner's designee.

(B) Nothing in this subdivision (e)(4) shall relieve a property owner of liability for rollback taxes if other disqualifying circumstances occur before the property has been assessed at market value for three (3) years.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

SENATE BILL NO. 1642

PASSED: March 14, 2016

RON RAMSEY
SPEAKER OF THE SENATE

BETH HARWELL, *SPEAKER*
HOUSE OF REPRESENTATIVES

APPROVED this 24th **day of** March **2016**

BILL HASLAM, *GOVERNOR*

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	**Ursula Perry**	)	**Hawkins County**
	Property ID: 128 030.00	)	
		)	
	Tax Year 2016	)	**Appeal No. 106709**

INITIAL DECISION AND ORDER

Statement of the Case

The Hawkins County Board of Equalization ("County Board") valued the subject property for tax year 2016 as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$166,800	$	$166,800 [1]	$14,625

The taxpayer timely appealed to the State Board of Equalization ("State Board"). The undersigned administrative judge conducted the hearing on November 16, 2016 in Rogersville. Ursula Perry and Hawkins County Property Assessor Jeff Thacker, and Hawkins County Property Assessor employee David Pearson participated.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The subject property consisted of a large forest tract that enjoyed Greenbelt status. The taxpayer did not have a specific contention of value. The taxpayer's appeal form succinctly summarized the testimony and photographs the taxpayer presented during the hearing:

> Power lines for the community goes through. Long strip – right and left footage as access to powerline. The power company opened a dirt road.
> I must now buy a gate and have it installed and pay for labor. Since this prop. is dead land. Try to prevent stranger from hunting. Cannot sell it for appraised value....

[1] Because the subject property enjoyed Greenbelt status, the total assessable value was only $58,500.

As the party challenging the status quo, the taxpayer has the burden of proof to establish a more credible value.[2] "Value" is ascertained from evidence of the property's "sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values..."[3]

Upon review of the record, the administrative judge finds that the taxpayer failed to carry the burden of proof to establish a market value lower than the County Board determination. It is well-established that a value reduction predicated on problems with a property must be supported by evidence sufficient to quantify such a reduction.[4] In this case, the record lacks any means of quantifying the impact, if any, that the perceived problems have on the subject property's market value, and the taxpayer did not even have a specific contention of value.

With respect to the Greenbelt land value, which is what determined the total assessable value, the assessment, and the resulting property taxes, the administrative judge finds that the use value schedule utilized by the assessor was not properly petitioned by at least ten property owners within 20 days after publication of notice of the availability of the proposed use value schedule as is required for such an appeal under Tenn. Code Ann. § 67-5-1008(c)(4). Accordingly, the administrative judge has no choice but to affirm the County Board determination.

---

[2] *See* State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. Ct. App. 1981). Disproving assumptions underlying the current valuation or pointing out "the likelihood that a more accurate value is possible" - without more – neither invalidates the levy or judgment under appeal nor constitutes a prima facie case for a change. *Coal Creek Company* (Final Decision & Order; Anderson, Campbell, and Morgan counties; Tax Years 2009-2013; issued June 25, 2015).

[3] Tenn. Code Ann. § 67-5-601(a).

[4] *Fred and Ruth Ann Honeycutt* (Final Decision & Order, Carter County, Tax Year 1995, issued January 8, 1998).

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2016:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$166,800	$	$166,800 [5]	$14,625

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

[5] Because the subject property enjoys Greenbelt status, the total assessable value is only $58,500.

The result of this appeal is final only after the time expires for further administrative review, usually seventy-five (75) days after entry of the Initial Decision and Order if no party has appealed.

ENTERED this 28th day of November 2016.

Mark Aaron, Administrative Judge
Tennessee Department of State
Administrative Procedures Division
William R. Snodgrass, TN Tower
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

Ursula Perry
540 Browns Mountain Road
Greeneville, Tennessee 37745

Jeff S. Thacker
Hawkins Co. Assessor of Property
Courthouse Annex
110 E. Main Street, Room 201
Rogersville, Tennessee 37857

This the 28th day of November 2016.

Janice Kizer
Tennessee Department of State
Administrative Procedures Division

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TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

In Re:	Vernon H. Johnson District 8, Map 56, Control Map 56, Parcels 18.02 and 18.08 Tax year 2002	))))	Robertson County

INITIAL DECISION AND ORDER

Statement of the Case

The subject parcels are presently classified and valued for tax purposes as follows:

ID	LAND VALUE	IMPRVMT. VALUE	TOTAL VALUE	ASSESSMENT
18.02	$53,900	$139,200	$193,100	$48,275
18.08	$60,000	$0	$ 60,000	$24,000

On October 24, 2002, the State Board of Equalization (the "State Board") received an appeal by the property owner. As indicated on the appeal form, the parcels in question were not appealed to the Robertson County Board of Equalization (the "county board").

The administrative judge appointed under authority of Tenn. Code Ann. section 67-5-1505 conducted a hearing of this matter on January 7, 2003 in Springfield. In attendance at the hearing were the appellant Vernon Johnson; Robertson County Assessor of Property F.E. Head (the "Assessor"); and Deputy Assessor Chris Traughber. After addressing the preliminary issue of whether the State Board has jurisdiction, the administrative judge took that question under advisement and considered the merits of the case.

Findings of Fact and Conclusions of Law

This appeal raises an apparently novel question under the Agricultural, Forest and Open Space Land Act of 1976, as amended (popularly known as the "greenbelt" law).

The parcels under appeal compose a 17.37-acre tract on Highway 41N in Cedar Hill. Heretofore identified as Parcel No. 08-056-056-18.02, this land was formerly classified as "agricultural land" under the greenbelt law. As such, the land was assessed on the basis of its "use value" – not its estimated *market value*.

On March 26, 1999, the property owner leased a 2.6-acre portion of the subject land to Sprint Spectrum, L.P. ("Sprint") for the erection of a cellular telephone tower. The tower is actually located within a fenced area of just 10,000 square feet; however, under the terms of the agreement, Sprint "is entitled to access to...and to the quiet possession of" the entire 2.6-acre site.[1] The rent payable during the initial five-year term is $416.67 per month.

In May of 2002, a year of reappraisal in Robertson County, the Assessor's office sent the attached assessment change notices to the property owner. These notices were intended to notify the taxpayer that the Assessor had: (a) disqualified the entire 17.37-acre tract from the

[1]The agreement also provides that Sprint will pay any additional real estate taxes on the subject property which are attributable to the construction of the contemplated improvements on the leased premises.

greenbelt program; (b) subclassified and valued the leased acreage as "commercial" property (re-designated as Parcel No. 08-056-056-18.08); and (c) subclassified and valued the remainder of the tract as "residential" property. In the Assessor's judgment, the aforementioned lease had left the property owner with less than the minimum number of acres (15) required for classification of a tract as "agricultural land" under the greenbelt law.[2]

According to his testimony, Mr. Johnson did not immediately comprehend the import of the assessment change notices upon receiving them. Not until he contacted the Assessor's office weeks later did the taxpayer realize that the "agricultural" (greenbelt) classification of the subject land had been terminated.[3] By that time, the county board had completed its regular session for tax year 2002 and adjourned. Having no other possible recourse, Mr. Johnson filed an appeal with the State Board.

While not contesting the valuation of the subject property, the appellant seeks restoration of its greenbelt status in this proceeding. "All the land except the 100' by 100' fenced compound," he asserted in a letter accompanying the appeal form, "is available for agricultural purposes." Mr. Johnson likened his arrangement with Sprint to a right-of-way easement in favor of the Tennessee Valley Authority (TVA). Had he known that execution of the lease would lead to this result, Mr. Johnson lamented, he would have handled the negotiations differently.

Ordinarily, unless a taxpayer is not timely notified of a change of classification or assessment, the making of an appearance before the local board of equalization is a jurisdictional prerequisite for an appeal to the State Board. *See* Tenn. Code Ann. sections 67-5-1401 and 67-5-1412(b); Tenn. Atty. Gen. Op. 92-62 (October 8, 1992). In 1991, however, the Tennessee General Assembly enacted an amendment which affords a taxpayer the opportunity to demonstrate "reasonable cause" for failure to meet this requirement. Tenn. Code Ann. section 67-5-1412(e). As historically construed by the Assessment Appeals Commission, the quoted phrase means some circumstance beyond the taxpayer's control (such as disability or illness). *See*, e.g., Appeal of Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992); Appeal of John Orovets (Cheatham County, Tax Year 1991). In the Appeal of Transit Plastic Extrusions, Inc. (Lewis County, Tax Years 1990 & 1991), the Commission declared that:

> A taxpayer cannot prevent the imposition of reasonable deadlines for appeal by pleading the press of other business or lack of awareness of the manner or necessity of appeal.

State Board Rule 0600-1-.11(1) provides that:

> In the hearing of an appeal before an administrative judge concerning the classification and/or assessment of a property, the party seeking to change the current classification and/or assessment shall have the burden of proof.

Respectfully, even assuming (without deciding) that this direct appeal is properly before the State Board, the administrative judge is not persuaded that the subject land has been

[2] *See* Tenn. Code Ann. section 67-5-1004(1)(B).

[3] Subsequently, the property owner's plight was compounded by the arrival of a bill for "rollback taxes" on the disqualified acreage. *See* Tenn. Code Ann. section 67-5-1008(d).

incorrectly classified. The greenbelt law, it should be emphasized, was enacted largely because of a legislative finding that "[t]he existence of much agricultural, forest and open space land is threatened by pressure from urbanization, **scattered** residential and **commercial development**, and the system of property taxation." Tenn. Code Ann. section 67-5-1002(1). [Emphasis added.] Given this perceived threat, it is highly doubtful that the legislature ever intended to extend the law's benefits to a person who profits from new commercial construction on the property in question.

If the leased portion of the subject land had been **involuntarily** converted to a non-agricultural use (such as by eminent domain), then the remainder of the tract would presumably have retained its greenbelt status despite its size. *See* Tenn. Code Ann. section 67-5-1008(e)(2). But the appellant's lease constitutes a purely **voluntary** transaction which grants to Sprint a possessory interest in 2.6 of his 17.37 acres. For the duration of the agreement, the lessee has an exclusive right to occupy and use that section of the property for non-agricultural purposes. A right-of-way easement, on the other hand, merely conveys a right to pass over land. Such an encumbrance would not ordinarily restrict the owner of such land from farming it. In the opinion of the administrative judge, the minimum acreage requirement in Tenn. Code Ann. section 67-5-1004(1)(B) would be undermined if the owner of the supposed "farm unit" were permitted to rent part of it to a business enterprise for high-tech use.

Of course, as defined in Tenn. Code Ann. section 67-5-1004(1), "agricultural land" may include some excess and/or unproductive acreage (e.g., woodlands and wastelands). But in the determination of eligibility for greenbelt status, there is a crucial distinction between idle land and land which is put to a use inconsistent with farming operations.

Order

It is, therefore, ORDERED that the present classification and valuation of the subject parcels be affirmed.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is

requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 17th day of January, 2003.

Pete Loesch

PETE LOESCH
ADMINISTRATIVE JUDGE

cc: Vernon H. Johnson
F.E. Head, Assessor of Property

JOHNSON2.DOC

FROM
ROBERTSON CO REAPPRAISAL
521 SOUTH BROWN ST
SPRINGFIELD TN 37172

ASSESSMENT CHANGE NOTICE

2264

FIRST-CLASS MAIL
U.S. POSTAGE PAID
NASHVILLE TN
PERMIT NO. 2681

MAP AND PARCEL

DIST.	MAP NO.	GP	CTL. MAP	PARCEL	S. INT.	CITY
08	056		056	01802	000	000

PROPERTY ADDRESS
41 HWY N 5652

SUBDIVISION NAME

BLOCK	LOT NO.	DEED ACRES	CALC. ACRES
			14.8

YOUR APPRAISED VALUE FOR PROPERTY TAX PURPOSES HAS CHANGED. IF YOU WISH TO DISCUSS THIS VALUE, CALL (615)384-4311 BETWEEN MAY 13 AND MAY 24. THE ASSESSOR'S REAPPRAISAL STAFF WILL BE AVAILABLE TO ANSWER QUESTIONS.

APPRAISAL AS OF JANUARY 1, 2002

ROBERTSON CO
TENNESSEE

APPRAISED VALUE $188,900

ASSESSED VALUE AT 25 % $47,225

RESIDENTIAL

PREVIOUS ASSESSMENT & CLASS
$28,425
AGRICULTURAL
SEE REVERSE SIDE

TO
JOHNSON VERNON H ETUX
JOHNSON SUE D
5652 HWY 41N
CEDAR HILL TN 37032

no right to fixed assessment indefinitely

ROBERTSON CO REAPPRAISAL
21 SOUTH BROWN ST
SPRINGFIELD TN 37172

ASSESSMENT CHANGE NOTICE

2265

FIRST-CLASS MAIL
U.S. POSTAGE PAID
NASHVILLE TN
PERMIT NO. 2681

AND PARCEL

MAP NO.	GP	CTL. MAP	PARCEL	S. INT.	CITY
08 056		056	01808	000	000

PROPERTY ADDRESS
41 HWY N

SUBDIVISION NAME

BLOCK	LOT NO.	DEED ACRES	CALC. ACRES
			2.6

YOUR APPRAISED VALUE FOR PROPERTY TAX PURPOSES HAS CHANGED. IF YOU WISH TO DISCUSS THIS VALUE, CALL (615)384-4311 BETWEEN MAY 13 AND MAY 24. THE ASSESSOR'S REAPPRAISAL STAFF WILL BE AVAILABLE TO ANSWER QUESTIONS.

APPRAISAL AS OF JANUARY 1, 2002

ROBERTSON CO
TENNESSEE

APPRAISED VALUE $60,000

ASSESSED VALUE AT 40 % $24,000

COMMERCIAL

PREVIOUS ASSESSMENT & CLASS [illegible]

JOHNSON VERNON H ETUX
JOHNSON SUE D
05652 HWY 41N
CEDAR HILL TN 37032

Cell Tower

SEE REVERSE SIDE

return to handbook

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

In Re:	White Bros., LLC District 1, Map 27, Control Map 27, Parcel 9 District 2, Map 38, Control Map 38, Parcel 5 District 2, Map 55, Control Map 55, Parcels 3, 18.01 & 18.02 District 2, Map 56, Control Map 56, Parcel 7 & Parcel 7-Special Interest 001 District 2, Map 57, Control Map 57, Parcel 6 District 2, Map 62, Control Map 62, Parcel 2.01 District 3, Map 60, Control Map 60, Parcel 5 District 5, Map 108, Control Map 108, Parcel 48T District 5, Map 138, Control Map 138, Parcel 53 District 6, Map 161, Control Map 161, Parcel 1 District 9, Map 147, Control Map 147, Parcel 30 Farm Property Tax Year 2000	)	Hardin County

INITIAL DECISION AND ORDER

Statement of the Case

The Hardin County Board of Equalization has subclassified the parcels in question for ad valorem tax purposes as follows:

Parcel No.	Acreage	Subclassification
27-9	479	Forest (greenbelt)
38-5	73.1	Forest (greenbelt
55-3	30	Forest (greenbelt)
55-18.01	147	Forest (greenbelt)
55-18.02	73	Farm
56-7	509.9	Forest (greenbelt)
56-7 (001)	512.1	Farm
57-6	185.5	Forest (greenbelt)
60-5	1039.5	Farm
62-2.01	100	Farm
108-48T	75.5	Forest (greenbelt)
138-53	35	Farm
147-30	140	Farm
161-1	53	Farm

On September 11, 2000, the State Board of Equalization received appeals in the name of White Bros., LLC.

The administrative judge appointed under authority of Tenn. Code Ann. section 67-5-1505 conducted a hearing of this matter on December 7, 2000 in Savannah, Tennessee. The taxpayer was represented at the hearing by John H. White, III and Simon White, now doing business as "White Bros." W. Lee Lackey, Esq. appeared on behalf of Hardin County Assessor of Property Calvin Hinton.

Findings of Fact and Conclusions of Law

The "greenbelt" law (Tenn. Code Ann. sections 67-5-1001 *et seq.*, hereinafter referred to as the "Act") provides for favorable tax treatment of land that qualifies as "agricultural," "forest," or "open space land" under the terms of the Act. The sole issue in this proceeding is whether the appellant is entitled to a greenbelt classification of any of the above parcels that are currently assessed on the basis of their undisputed market values as "farm" land.

This land was formerly owned by brothers John H. and Simon White equally as tenants in common. In In re John H. White, III and Simon White (Hardin County, Initial Decision and Order, Tax Year 1995), the undersigned administrative judge held that the tenancy in common was not itself a "person" as defined in section 67-5-1004(10) of the greenbelt law.[1] Consequently, without running afoul of the 1,500-acre-per-person limitation prescribed in section 67-5-1003(3) of the Act, the White brothers could obtain greenbelt status for 3,000 acres of land as independent co-owners.

On or about December 30, 1998, ownership of the subject property was transferred to a newly-created entity known as White Bros., LLC. This transfer apparently did not result in any disqualification of land from the program in tax year 1999.[2] But on July 19, 2000, the Assessor's office sent notice to White Bros., LLC of a change in the classification of 1,500 acres of land from "forest" (greenbelt) to "farm" (non-greenbelt). After unsuccessfully contesting the change before the county board of equalization, the White brothers – the organizers of the limited liability company – initiated this appeal.

Documentation produced at the hearing confirmed the Whites' testimony that their limited liability company was dissolved, effective December 31, 1999. However, ownership of the subject property did not revert to the two brothers as tenants in common; rather, White Bros., LLC was merged into a *general partnership* (White Bros.) in which John and Simon White hold identical (50%) interests.[3]

As indicated in John H. White, III and Simon White, *supra*, section 67-5-1003(3) of the Act provides (in relevant part) that:

> No **person** may place more than one thousand five hundred (1,500) acres of land within any one (1) taxing jurisdiction under the provisions of this part. [Emphasis added.]

The word "person" is defined in section 67-5-1004(10) of the Act as "any individual, **partnership**, corporation, organization, association, or other legal entity." [Emphasis added.]

---

[1]Parcel No. 147-30 was not involved in the cited case.

[2]Effective May 12, 1999, the legislature amended section 67-5-1008(a) of the Act to provide that:

> It is the responsibility of the applicant to promptly notify the assessor of any change in the use **or ownership** of the property which might affect its eligibility under this part. [Emphasis added.]

Acts 1999, ch. 141, §6. The Hardin County Assessor of Property was never formally notified of the transfer of the subject property to White Bros., LLC.

[3]This merger was consummated in accordance with a plan that had been adopted by John and Simon White on December 1, 1999.

Clearly, then, as separate legal entities, neither White Bros., LLC nor White Bros. was or is entitled to the classification of more than 1,500 acres as greenbelt land under the Act.

Order

It is, therefore, ORDERED that the decision of the Hardin County Board of Equalization be affirmed.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 18th day of December, 2000.

Pete Loesch

PETE LOESCH
ADMINISTRATIVE JUDGE

cc: John H. White, III & Simon H. White
Dean Lewis, CAE, State Valuation Coordinator
Calvin Hinton, Assessor of Property

WHITE.DOC

return to handbook

BEFORE THE ADMINISTRATIVE JUDGE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re:	John J. White, III & Simon White	)	
	Dist. 1, Map 27, Ctrl. Map 27, Parcels 9 & 9, S.I. 001	)	
	Dist. 2, Map 38, Ctrl. Map 38, Parcel 5	)	
	Dist. 2, Map 55, Ctrl. Map 55, Parcels 3, 18.01 & 18.02	)	
	Dist. 2, Map 56, Ctrl. Map 56, Parcel 7	)	
	Dist. 2, Map 57, Ctrl. Map 57, Parcel 6	)	
	Dist. 2, Map 62, Ctrl. Map 62, Parcel 2.01	)	Hardin County
	Dist. 3, Map 60, Ctrl. Map 60, Parcel 5	)	
	Dist. 5, Map 108, Ctrl. Map 108, Parcel 48	)	
	Dist. 5, Map 138, Ctrl. Map 138, Parcels 42 & 53	)	
	Dist. 6, Map 161, Ctrl. Map 161, Parcel 1	)	
	Dist. 9, Map 147, Ctrl. Map 147, Parcel 30	)	
	Farm Property	)	
	Tax Year 1995	)	

INITIAL DECISION AND ORDER

Statement of the Case

The subject parcels are presently subclassified as follows:

ID	Acres	Subclassification
27-9 (000)	371	Forest (greenbelt)
27-9 (001)	108	Farm
38-5	85.5	Farm
55-3	30	Farm
55-18.01	208	Farm
55-18.02	73	Farm
56-7	1053.5	Forest (greenbelt)
57-6	185.5	Farm
60-5	1025.5	Farm
62-2.01	100	Farm
108-48	75.5	Forest (greenbelt)
138-42	10	Residential
138-53	35	Farm
147-30	140	Farm
161-1	53	Farm

An appeal has been filed by the property owners with the State Board of Equalization.

This matter was reviewed by the administrative judge pursuant to Tenn. Code Ann. sections 67-5-1412, 67-5-1501, and 67-5-1505. The administrative judge conducted a hearing of this matter on February 8, 1996 in Savannah, Tennessee. The co-owners of the subject property appeared on their own behalf at the hearing. Hardin County was represented by Savannah attorney W. Lee Lackey.

Findings of Fact and Conclusions of Law

This is an appeal from the refusal of the Hardin County Assessor of Property and Board of Equalization to designate more than 1,500 of the 3,553.5 acres in question as "forest land"

under the Agricultural, Forest and Open Space Land Act of 1976 (the "greenbelt law"), as amended.[1]

For over 30 years, the subject parcels have been owned equally by brothers John H. White, III and Simon H. White as tenants in common. They report income from this timberland individually to the United States Internal Revenue Service on the prescribed form.

From 1988 to 1994, 3,000 of these acres were classified as forest land under the greenbelt program. But in tax year 1995 -- a year of reappraisal in Hardin County -- the Assessor "declassified" half of the previously approved acres. Her action was predicated on a letter of July 24, 1995 written by Division of Property Assessments Staff Attorney Robert T. Lee. Construing Tenn. Code Ann. section 67-5-1003(3)[2], Mr. Lee opined that:

> ...In cases where property is owned by more than one owner or a corporation, the law considers such owners as a unit in applying the maximum acreage limit. Therefore, the term owner includes multiple owners, trust [sic] and corporations in determining the maximum acreage.
>
> Previously an owner was "credited" with ownership for the purpose of applying the maximum limit only if she owned more than fifty percent (50%) of the property. However, under the current statute an owner is "credited" with a share of the total acreage proportionate to that owner's interest. Each individual owner is only allowed a maximum 1,500 acres including property owned as an individual and property owned with others or a corporation.

After unsuccessfully appealing to the county board of equalization, the property owners sought relief from this agency. They claim that the greenbelt status of the disqualified parcels should be restored because each owner is entitled to place 1,500 acres of land in the program.

---

[1]Tenn. Code Ann. sections 67-5-1001 et seq.

[2]Tenn. Code Ann. section 67-5-1003(3) provides (in relevant part) as follows:

> No person may place more than one thousand five hundred (1,500) acres of land within any one (1) taxing jurisdiction under the provisions of this part. For purposes of this maximum limit, ownership shall be attributed among multiple owners as follows: a person shall be deemed to have placed under the provisions of this part that percentage of the total acreage of any parcel classified under this part which equals the percentage of such person's ownership interest in such parcel. If a parcel classified under this part is owned by a corporation or other artificial entity, a person shall be deemed to have placed under the provisions of this part that percentage of the total acreage of such parcel which equals such person's percentage interest in the ownership or net earnings of such entity. To the extent that a parcel of property is owned by a person who is disqualified under this subsection, such property or portion thereof in which such person owns an interest shall be ineligible for classification under this part....

Implicitly, under their view, the two brothers would not together constitute a "person" subject to the 1,500-acre limitation established in the greenbelt law.[3]

.....

Until 1984, there was no statutory limit on the amount of land for which its owner(s) could receive favorable tax treatment under the greenbelt law. At that point in time, the Tennessee General Assembly recognized that:

> ...in rural counties an over abundance of land held by a single landowner which is classified on the tax rolls by the (greenbelt law) could have an adverse effect upon the ad valorem tax base of the county, and thereby disrupt needed services provided by the county....

Acts 1984, chapter 685, section 1. Consistent with this finding, the legislature declared that "no single owner within any one (1) taxing jurisdiction shall be permitted to place more than fifteen hundred (1500) acres of land under the (greenbelt law)." Acts 1984, chapter 685, section 2. Further, the following proviso was added to the definition of "owner" in the greenbelt law:

> ..in determining the maximum limit of fifteen hundred (1500) acres available for any one (1) owner to place under the (greenbelt law) all affiliated ownership shall be taken into consideration regardless of how same is held if the owner has legal title or equitable title to more than fifty percent (50%) of the ownership interest therein.[4]

Acts 1984, chapter 685, section 3.

As eventually became apparent, the wording of the proviso left a sizable loophole: namely, that any person holding a one-half (or less) interest in a parcel was not "credited" with ownership thereof for greenbelt purposes. Thus, in 1992, the General Assembly deleted this language and adopted the new "attribution of ownership" rule referred to in Staff Attorney Lee's letter.[5]

.....

The administrative judge would readily accept Mr. Lee's position in this matter if the quoted proviso were still in effect. Otherwise, after all, any number of co-tenants could amass an unlimited expanse of greenbelt land -- with none of it counting against their individual 1,500-acre allotments!

Respectfully, however, the administrative judge does not believe that the Staff Attorney's opinion comports with the present greenbelt law. The definitions set forth therein make clear that: (a) an "owner" must be a "person"; and (b) a "person" must be a legal entity. Tenn. Code Ann. section 67-5-1004(9), (10). To be sure, tenants in common may be characterized as a "unit" in a general sense; but, under state law:

---

[3]"Person" is defined in the greenbelt law as "any individual, partnership, corporation, organization, association, or other legal entity." Tenn. Code Ann. section 67-5-1004(10).

[4]Before the enactment of this amendment, "owner" was simply defined as it is now: *i.e.*, "the person holding title to the land." Tenn. Code Ann. section 67-5-1004(9).

[5]See n. 2, supra.

> Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property.

Tenn. Code Ann. section 61-1-106(2). Nor, in the opinion of the administrative judge, do tenants in common compose any other type of "entity" in the legal sense. A "legal entity" is "an organization or association recognized in law as an entity apart from the individual members." Ballentine's Law Dictionary, p. 719 (Third Edition, 1969). A tenancy in common, whose "members" are united only by a right of possession, does not meet this description.

As explained in 20 Am Jur 2d section 35:

> Tenants in common have several and distinct titles and estates, independent of each other, so as to render the freehold several also. They are separately seised, and there is no privity of estate between them. While their possession is by a moiety and not by all, each tenant, as to his share, is to be deemed the owner of an entire and separate estate.

Further, the same source advises:

> Since tenants in common are not privies, it is clear that a judgment rendered in a suit affecting the common property, brought by only one of the co-owners, is not binding upon his co-tenants, nor can it be invoked by them.

Id. at section 132.

The subject parcels, then, are not held by a single landowner; rather, they are owned equally by two separate persons -- each of whom may place up to 1,500 acres of land in the county under the greenbelt program. Applying the multiple ownership rule in Tenn. Code Ann. section 67-5-1003(3), the administrative judge concludes that the appellants are entitled to the classification of 1,500 additional acres as greenbelt land. This outcome seems entirely appropriate; for no reason appears why A and B individually should be permitted to effect a "present use" valuation of 3,000 acres, yet prohibited from achieving the same result as independent co-owners.

As stipulated by the parties, allocation of the additional greenbelt acreage among the affected parcels will be left to the Assessor's discretion.

Order

It is, therefore, ORDERED that a total of 3,000 of the 3,553.5 acres encompassed by the subject parcels be designated as "forest land" under the provisions of Tenn. Code Ann. sections 67-5-1001 et seq. Not later than seven (7) days after the date of entry of this order, the Assessor shall submit for the record revised subclassifications of these parcels in conformity with the above findings and conclusions.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. Sections 4-5-301--324, and the practices and procedures of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. Section 67-5-1501(c) within fifteen (15) days of the entry of the order; or

2. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. Section 4-5-316 within seven (7) days of the entry of the order; or

3. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. Section 4-5-317 within ten (10) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued sixty (60) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 1st day of March, 1996.

Pete Loesch

PETE LOESCH
ADMINISTRATIVE JUDGE

cc: John H. White, III
Simon White
W. Lee Lackey, Esq., Hardin County
Roena Gray, Assessor of Property
Robert T. Lee, Esq., Division of Property Assessments

return to handbok

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Roger Witherow, et al Dist. 9, Map 89, Control Map 89, Parcel 41.00, S.I. 000 & 001 Tax Year 2006	)) Maury County))

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

S.I. 000

	Acres	Land Value	Improvement Value	Total Value	Assessment
MKT.	54.28	$294,000	$5,300	$299,300	---
USE	54.28	$ 33,600	$5,300	$ 38,900	$9,725

S.I. 001

Acres	Land Value	Improvement Value	Total Value	Assessment
10.0	$1,000,000	$ -0-	$1,000,000	$400,000

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on May 15, 2007 in Columbia, Tennessee. In attendance at the hearing were Roger Witherow and Fred White, the appellants, Jimmy Dooley, Maury County Property Assessor, and Bobby Daniels, Deputy Assessor of Property.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Background and Contentions

Subject property consists of a 64.28 acre tract of land located on James Campbell Blvd. North in Columbia, Tennessee. The only improvements on subject property are a barn and attached shed.

Subject property historically received preferential assessment as "agricultural land" pursuant to the Agricultural, Forest and Open Space Land Act of 1976 (hereafter referred to as the "greenbelt law"). See Tenn. Code Ann. § 67-5-1001, et seq.

On April 6, 2006, the assessor of property issued assessment change notices reclassifying 10.0 acres as commercial property effective January 1, 2006 and assessing rollback taxes on those 10.0 acres for tax years 2003, 2004 and 2005. See Tenn. Code Ann. § 67-5-1008. The assessor's treatment of the 10.0 acres, now identified as special interest 001 is at issue. The taxpayers do not contest the assessor's treatment of the remaining 54.28 acres now identified as special interest 000.

The events leading up to the assessor's actions are not in dispute. On December 1, 2003, the taxpayers entered into a contract with Floyd and Floyd Contractors to move approximately 175,000 cubic yards of dirt and rock across James Campbell Blvd. to be used by another property owner to raise his property to road level. The cost for the excavation project was $520,000. The work began in early 2004 and was completed in either late 2005 or early 2006 according to the conflicting testimony. The project lowered the front of subject property 10-15 feet, but it still remains approximately 10-15 feet above road level.

The 10.0 acres in question was historically used to cut hay or sow winter wheat. The acreage was not used for those purposes or any other agricultural purposes during 2004 and 2005. At some point in 2006 the taxpayers resumed utilizing the 10.0 acres to sow winter wheat.

The assessor essentially maintained that the 10.0 acres ceased to qualify for preferential assessment once the taxpayers began to use it for excavation purposes and ceased using it for agricultural purposes. Mr. Daniels stressed that subject property as a whole is presently listed for sale at $7,250,000 and the excavation work enhanced its commercial viability while providing no corresponding agricultural benefit.

The taxpayers, in contrast, stressed that nothing has changed on subject property since their 1994 purchase except the hillside is no longer as steep. According to Mr. Witherow, the taxpayers simply took advantage of their neighbor's need for fill, but subject property still constitutes a single tract of land and continues to be offered for sale as such. Both Mr. White and Mr. Witherow testified that subject acreage will not truly be marketable until it is at road level which will require a significant expenditure.

II. Jurisdiction

Tennessee Code Annotated Section 67-5-1008(d)(3) provides that "[l]iability for rollback taxes, but not property values, may be appealed to the State board of Equalization by March 1 of the year following the notice by the assessor. The administrative judge finds that the taxpayers are properly before the State Board of Equalization on this issue because the assessor gave notice on April 6, 2006 and the appeal was filed on January 26, 2007.

The administrative judge finds that a jurisdictional issue does exist, however, with respect to the taxpayers' ability to contest the commercial reclassification of the 10.0 acres. This issue arises from the fact that no appeal was made to the Maury County Board of Equalization.

The administrative judge finds that Tennessee law requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. Tenn. Code Ann. §§ 67-5-1401 & 67-5-1412(b). A direct appeal to the State Board is permitted only if the assessor does not timely notify the taxpayer of a change of

assessment prior to the meeting of the County Board. Tenn. Code Ann. §§ 67-5-508(a)(3) & 67-5-903(c). Nevertheless, the legislature has also provided that:

> The taxpayer shall have right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.

Tenn. Code Ann. § 67-5-1412(e).

The administrative judge finds Mr. Witherow testified that after receiving the assessment change notice he promptly contacted the assessor's office and was advised to "let us check into it." The administrative judge finds the testimony of both Mr. Witherow and Mr. Dooley established that the taxpayers reasonably believed they were pursuing their administrative remedy locally, but a miscommunication resulted in their failure to formally appeal to the local board. Indeed, Mr. Dooley stated that he had no objection to the State Board of Equalization hearing the taxpayers' appeal.

Based upon the foregoing, the administrative judge finds that the testimony of both parties supports a finding of reasonable cause. Accordingly, the administrative judge finds that the State Board of Equalization also has jurisdiction over the classification issue.

III. Rollback and Classification

The administrative judge finds that the question which must be answered concerns whether subject property continued to qualify for preferential assessment as "agricultural land" once the excavation project began. The term "agricultural land" is defined in Tenn. Code Ann. § 67-5-1004(1)(A)(i) as land which "[c]onstitutes a farm unit engaged in the production or growing of agricultural products. . ." The administrative judge finds that in deciding whether a given tract constitutes "agricultural land" reference must be made to Tenn. Code Ann. § 67-5-1005(a)(3) which provides in pertinent part as follows:

> In determining whether any land is agricultural land, the tax assessor shall take into account, among other things, the acreage of such land, the productivity of such land, and the portion thereof *in actual use for farming* or held for farming or agricultural operation.

[Emphasis Supplied]

The administrative judge finds that the evidence, viewed in its entirety, supports the assessor's contention that the 10.0 acres in dispute should not be classified as "agricultural land" for purposes of the greenbelt law. The administrative judge finds that once subject acreage began being utilized exclusively for excavation purposes it was no longer capable of being used for farming purposes. Indeed, the administrative judge finds that excavating dirt and rock for fill squarely constitutes a commercial use within the meaning of Tenn. Code

Ann. § 67-5-501(4). The administrative judge finds that the 10.0 acres in question was no longer part of a farm unit engaged in the production or growing of agricultural products. Hence, the administrative judge finds that the assessor properly assessed rollback taxes and reclassified the 10.0 acres commercially.

ORDER

It is therefore ORDERED that the following assessment of subject property remain in effect for tax year 2006:

S.I. 000

	Acres	Land Value	Improvement Value	Total Value	Assessment
MKT.	54.28	$294,000	$5,300	$299,300	---
USE	54.28	$ 33,600	$5,300	$ 38,900	$9,725

S.I. 001

Acres	Land Value	Improvement Value	Total Value	Assessment
10.0	$1,000,000	$ -0-	$1,000,000	$400,000

It is FURTHER ORDERED that the rollback taxes levied for tax years 2003, 2004 and 2005 are hereby affirmed.

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 17th day of May, 2007.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Roger Witherow
Jimmy R. Dooley, Assessor of Property

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION
ASSESSMENT APPEALS COMMISSION

Appeal of	James O. B. Wright., et al.	)	
	District 3, Map 60, Control Map 60, Parcel 22, S.I. 000	)	
	and 001	)	Marion
	Farm Property	)	County
	Tax Year – 1998	)	

FINAL DECISION AND ORDER

Statement of the case

This is an appeal by the taxpayer from the initial decision and order of the administrative judge who recommended that the subject property be valued for tax year 1998 as follows:

S.I. 000

	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSED VALUE
Market	$255,800	$ -0-	$255,800	$ -0-
Use	$154,400	$ -0-	$154,400	$38,600

S.I. 001

	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSED VALUE
Market	$53,600	$ -0-	$53,600	$ 13,400

The taxpayer claims that the total market value for both parcels should not exceed $120,000. Although neither the assessor nor the Division of Property Assessments appealed the action of the county board, the Division orally stated that the County Board had lowered the use or greenbelt value on Parcel S.I. 000 by applying a condition factor to the land schedules prepared by the Division of Property Assessments. Mr. Spencer of the Division stated that he did not believe the county board had the authority to change the land schedules by application of a negative condition factor.

The appeal was heard in Nashville, Tennessee on October 13, 1999 before an administrative judge[1] and Commission members Isenberg (presiding), Crain, Ishie, Millsaps, Rochford and Simpson. The property owner represented himself. Carl Blevins, the Marion County Property Assessor, represented his office. Representing the Division of Property Assessments were Robert Spencer and Danny Taylor.

[1] An administrative judge other than the judge who rendered the initial decision and order sits with the Commission pursuant to Tenn. Code Ann. Sec. 4-5-301 and rules of the Board.

Findings of fact and conclusions of law

The first issue to be decided by the Commission concerns the action of the county board in lowering the use value of the subject property by applying a negative condition factor to the unit values established by the Division of Property Assessments. Parcel S.I. 000 contains 1,240 acres and has been accorded "greenbelt" status as "agricultural land" under the "Agricultural, Forest and Open Space Land Act of 1976" codified as Tenn. Code Ann. Sec. 67-5-1001 et seq., hereinafter referred to as the "Greenbelt Law." As indicated on the tax record card, it is entitled to that status because of its use as forest land. Under the Greenbelt Law, qualified property is assessed according to its use value as opposed to its market value. The value of such property is based upon land schedules developed by the Division of Property Assessments pursuant to Tenn. Code Ann. Sec. 67-5-1008(c). The Greenbelt Law does not allow any adjustments to the land schedules by either the local assessor or the local county boards of equalization. Any change to the rural land schedules promulgated by the Division of Property Assessments can only be made by the State Board of Equalization. See Tenn. Code Ann. Sec. 67-5-1008(4). Despite the lack of authority of the Marion County Board of Equalization to make a change in the rural land schedule, they attempted to do so in this instance by placing a 75% condition factor on the use value of $166 per acre for woodlands. If the condition factor had not been applied the use value would have been $205,840. By applying a 75% condition factor to the value calculated under the approved rural land schedule, the county board reduced the use value to $154,380. The Commission finds and concludes that nether the county assessor nor the county board of equalization had the authority to make that adjustment and their actions in that regard are void for lack of jurisdiction. The Commission therefore finds the use value under the Greenbelt Law should be set at $205,840.

Parcel S.I. 001 consists of 260 acres. For market value this parcel and parcel S.I. 000 were both valued at $206.25 per acre. This resulted in a market value of $255,800 for S.I. 000 and $53,600 for S.I. 001 for a total of both parcels of $309,400. As indicted earlier the taxpayer contended the market value for both parcels should not exceed $120,000. Both parcels are subject to a standing timber deed owned by the Mead Corporation.

The taxpayer based his opinion of value on what he paid for the property in 1992 ($100,000) adjusted by a 20% inflation factor ($20,000). He contended that the 1992 purchase price represented fair market value at that time. He claimed that almost all of his land was on a

steep slope and was difficult to access. He also noted that this was "left over" property from numerous sales from a 12,000 acre tract.

The assessor's proof consisted of three sales of woodland ranging in size from 722 acres to 1,180 acres. The adjusted sales prices ranged from $175 per acre to $200 per acre.

The Commission notes that the subject property is considerably larger than each of the three comparables. We find and conclude that as a general principle of real estate appraisal, property that is much larger than that to which it is compared deserves a downward adjustment in value. In this instance, the comparison of the sales relied on by the county is like comparing apples to oranges. We also find that there is a lack of sales from this area of comparable property which is, in itself, an indicator of low value. Based on all of the evidence before the Commission we find and conclude that the best indicator of value in this case is the original sales price adjusted upwardly by an inflation factor. Therefore, the market value for both parcels should be set at $100 per acre resulting in a market value for parcel S.I. 000 of $124,000 and a market value of $26,000 for parcel S.I. 001.

The Commission acknowledges the anomalous result of its findings in this matter, to wit, that use value from the approved schedule exceeds market value as we have determined it based on the evidence. It is possible the property has been incorrectly graded for purpose of calculating use value. In any event, an assessment for property taxes in Tennessee cannot intentionally exceed fair market value and we therefore direct that the assessment of S.I. 000 be based on a value of $124,000 notwithstanding the classification of the property as greenbelt forest land.

ORDER

It is therefore ORDERED that the subject property is valued and assessed for tax year 1998 as follows:

S.I. 000

	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSED VALUE
Market	$124,000	$ -0-	$124,000	$31,000-
Use	$205,840	$ -0-	$205,840	$-0-

S.I. 001

	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSED VALUE
Market	$26,000	$ -0-	$53,600	$ 13,400

This order is subject to:

1. Reconsideration by the Commission, in the Commission's discretion. Reconsideration must be requested in writing, stating specific grounds for relief and the request must be filed with the Executive Secretary of the State Board within ten (10) days from the date of this order.
2. Review by the State Board of Equalization, in the Board's discretion. This review must be requested in writing, state specific grounds for relief and be filed with the Executive Secretary of the State Board within fifteen (15) days from the date of this order.
3. Review by the Chancery Court of the county where the property is located or such other county as provided in Tenn. Code Ann. Sec. 67-5-1511. A petition must be filed within sixty (60) days from the date of the official assessment certificate, which will be issued when this matter has become final.

Requests for stay of effectiveness will not be accepted.

DATED: Sept. 8, 2020

Presiding Member

ATTEST:

Kelsie Jones, Executive Secretary
State Board of Equalization

c: Carl Blevins, Assessor of Property
James O.B. Wright, Jr.
Robert Spencer
Dean Lewis

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Johnnie Wright, Jr.	)
	Dist. 1, Map 66, Control Map 66, Parcel 13	) Putnam County
	Farm Property	)
	Tax Year 1997	)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
MKT.	$492,000	$ -0-	$492,000	$ -
USE	$ 14,000	$ -0-	$ 14,000	$3,500

An appeal has been filed on behalf of Putnam County with the State Board of Equalization.

This matter was reviewed by the administrative judge pursuant to Tennessee Code Annotated Sections 67-5-1412, 67-5-1501 and 67-5-1505. The administrative judge conducted a hearing in this matter on December 5, 1997. Putnam County was represented by Jerry L. Burgess, Esq. The taxpayer, Wilma Wright Diemer, represented herself.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of an unimproved 41 acre parcel which borders both Bunker Hill Road and Fairground Lane in Cookeville, Tennessee.

Putnam County contended that the Putnam County Board of Equalization erroneously ruled that subject property was entitled to receive preferential assessment as "agricultural land" pursuant to the Agricultural, Forest and Open Space Land Act of 1976 (hereafter referred to as "greenbelt"). Putnam County's position was most clearly set forth in the attachment to the amended appeal form which provided in pertinent part as follows:

> Tennessee Code Annotated 67-5-1005 clearly states that 'the assessor shall determine whether such land is agricultural land. . . .' In this particular case, the assessor has not classified the disputed land as agriculture/farm. Furthermore, the policy of the state of Tennessee is to appraise land at its highest and best use. The land in question is being sold as commercial lots and is zoned C-3. There is great demand for this commercial property. The county board erroneously

> placed the property in the greenbelt program. The subject property should be assessed at fair market value as opposed to use value.

Although both the original appeal form and amended appeal form were signed by the Putnam County assessor of property, Byron Looper, he did not testify at the hearing. The only witness to testify on Putnam County's behalf was an employee of the assessor's office, Robert Nail. Essentially, Mr. Nail testified that subject property should not qualify for greenbelt because his inspection of the property indicated that subject property was not being actively used to produce timber as indicated on the greenbelt certification form (exhibit 2). In addition, Mr. Nail noted that subject property does not qualify for preferential assessment as a "family farm" under T.C.A. §67-5-1007(c)(4) since there is no residence on the property.

As previously indicated, the taxpayer, Wilma W. Diemer, represented herself. Ms. Diemer testified that the reason why the greenbelt certification form lists timber as the sole agricultural product is that a former employee of Mr. Looper's completed that portion of the form. Ms. Diemer stated that although a portion of the property is, in fact, used for timber, other agricultural activities take place as well. Ms. Diemer tested that 35 bales of hay were cut in 1997 and that this constituted a bad year. Ms. Diemer further testified that no hay was cut in 1995 or 1996 because the property was leased for the purpose of allowing horses to run.

The administrative judge finds that the reasons underlying passage of the greenbelt law are best summarized in the legislative findings set forth in T.C.A. §67-5-1002 which provides in relevant part as follows:

> The general assembly finds that:
>
> (1) The existence of much agricultural, forest and open space land is threatened by pressure from urbanization, scattered residential and commercial development, and the system of property taxation. This pressure is the result of urban sprawl around urban and metropolitan areas which also brings about land use conflicts, creates high costs for public services, contributes to increased energy usage, and stimulates land speculation;
>
> (2) The preservation of open space in or near urban areas contributes to:
>
> (A) The use, enjoyment and economic value of surrounding residential, commercial, industrial or public use lands;
>
> (B) The conservation of natural resources, water, air, and wildlife;
>
> (C) The planning and preservation of land in an open condition for the general welfare;

(D) A relief from the monotony of continued urban sprawl; and

(E) An opportunity for the study and enjoyment of natural areas by urban and suburban residents who might not otherwise have access to such amenities;

(3) Many prime agricultural and forest lands in Tennessee, valuable for producing food and fiber for a hungry world, are being permanently lost for any agricultural purposes and that these lands constitute important economic, physical, social, and esthetic assets to the surrounding lands and to the people of Tennessee;

(4) Many landowners are being forced by economic pressures to sell such agricultural, forest, or open space land for premature development by the imposition of taxes based, not on the value of the land in its current use, but on its potential for conversion to another use; and

* * *

The administrative judge finds that the policy of this state with respect to greenbelt type property is found in T.C.A. §67-5-1003 which provides in relevant part as follows:

> The general assembly declares that it is the policy of this state that:
>
> (1) The owners of existing open space should have the opportunity for themselves, their heirs, and assigns to preserve such land in its existing open condition if it is their desire to do so, and if any or all of the benefits enumerated in § 67-5-1002 would accrue to the public thereby, and that the taxing or zoning powers of governmental entities in Tennessee should not be used to force unwise, unplanned or premature development of such land;
>
> (2) The preservation of open space is a public purpose necessary for sound, healthful, and well-planned urban development, that the economic development of urban and suburban areas can be enhanced by the preservation of such open space, and that public funds may be expended by the state or any municipality or county in the state for the purpose of preserving existing open space for one (1) or more of the reasons enumerated in this section; . . .
>
> * * *

The administrative judge finds that the question which must be answered in this appeal is whether subject property qualifies for preferential assessment under the greenbelt law as "agricultural land." The term "agricultural land" is defined in T.C.A. §67-5-1004(1) as follows:

> 'Agricultural land' means a tract of land of at least fifteen (15) acres *including woodlands and wastelands* which form a contiguous part thereof, constituting a farm unit engaged in the production or growing of crops, plants, animals, nursery, or floral products. "Agricultural land" also means two (2) or

> more tracts of land including woodlands and wastelands, one (1) of which is greater than fifteen (15) acres and none of which is less than ten (10) acres, and such tracts need not be contiguous but shall constitute a farm unit being held and used for the production or growing of agricultural products;
>
> [Emphasis supplied]

The administrative judge finds that in deciding whether a given tract constitutes "agricultural land," reference must be made to T.C.A. §67-5-1005(a)(3) which provides as follows:

> In determining whether any land is agricultural land, the tax assessor shall take into account, among other things, the acreage of such land, the productivity of such land, and the portion thereof in actual use for farming or held for farming or agricultural operation. The assessor may presume that a tract of land is used as agricultural land if the land produces gross agricultural income averaging at least one thousand five hundred dollars ($1,500) per year over any three-year period in which the land is so classified. The presumption may be rebutted notwithstanding the level of agricultural income by evidence indicating whether the property is used as agricultural land as defined in this part.

The administrative judge finds that the question of whether subject property should be classified at "agricultural land" for purposes of the greenbelt law is a most difficult one. Nonetheless, the administrative judge finds that viewed in its entirety, the evidence does not warrant removing subject property from the greenbelt program. The administrative judge finds that the burden of proof in this matter falls on Putnam County. *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981). Absent additional evidence, the administrative judge must affirm the decision of the Putnam County Board of Equalization based upon a presumption of correctness.

The administrative judge finds that Ms. Diemer's unrefuted testimony established that the attachment to the amended appeal form executed by Mr. Looper erroneously indicated that "[t]he land in question is being sold as commercial lots . . ." Presumably, Mr. Looper placed great significance on this assumption in deciding to appeal the local board's decision.

The administrative judge finds that Mr. Nail's testimony does not constitute sufficient evidence to establish whether or not subject property constitutes "agricultural land." The administrative judge finds that Mr. Nail's testimony basically established three points: (1) hay could be seen on the property; (2) approximately 15 acres had trees; and (3) he saw no evidence of any timber having been recently cut. The administrative

judge finds that these points do not establish that subject property was erroneously classified as "agricultural land" by the Putnam County Board of Equalization. The administrative judge finds that Mr. Nail's testimony is also consistent with the assumption that subject property consists of a 41 acre farm unit, 15 acres of which represent woodlands and wastelands.

The administrative judge finds that Ms. Diemer's testimony established that subject property has been in her late husband's family since the 1800's and used for farming. The administrative judge finds that Ms. Diemer's testimony also established that subject property has been used for agricultural practices such as horses and producing hay.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 1997:

	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
MKT.	$492,000	$ -0-	$492,000	$ -
USE	$ 14,000	$ -0-	$ 14,000	$3,500

The law gives the parties to this appeal certain additional remedies:

1. Petition for reconsideration (pursuant to Tenn. Code Ann. § 4-5-317). You may ask the administrative judge to reconsider this initial decision and order, but your request must be filed within ten (10) days from the order date stated below. The request must be in writing and state the specific grounds upon which relief is requested. You do not have to request reconsideration before seeking the other remedies stated below.
2. Appeal to the Assessment Appeals Commission (pursuant to Tenn. Code Ann. § 67-5-1501). You may appeal this initial decision and order to the Assessment Appeals Commission, which usually meets twice a year in each of the state's largest cities. *An appeal to the Commission must be filed within thirty (30) days from the order date stated below.* If no party appeals to the Commission, this initial decision and order will become final, and an official certificate will be mailed to you by the Assessment Appeals Commission in approximately seventy-five (75) days.
3. Payment of taxes (pursuant to Tenn. Code Ann. § 67-5-1512). You must pay at least the undisputed portion of your taxes before the delinquency date in order to maintain this appeal. No stay of effectiveness will be granted for this appeal.

ENTERED this 2d day of January, 1998.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

c: Ms. Wilma Wright Diemer
Byron Looper, Assessor of Property
Jerry Lee Burgess, Esq.

TENNESSEE STATE BOARD OF EQUALIZATION
BEFORE THE ADMINISTRATIVE JUDGE

IN RE:	Joyce B. Wright Dist. 1, Map 66, Control Map 66, Parcels 58 & 58.02 Farm Property Tax Year 1997	)) Putnam County)))

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

Parcel 58

	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
MKT.	$1,872,000	$ -0-	$1,872,000	$ -
USE	$ 7,600	$ -0-	$ 7,600	$1,900

Parcel 58.02

	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
MKT.	$525,000	$ -0-	$525,000	$ -
USE	$ 2,100	$ -0-	$ 2,100	$525

An appeal has been filed on behalf of Putnam County with the State Board of Equalization.

This matter was reviewed by the administrative judge pursuant to Tennessee Code Annotated Sections 67-5-1412, 67-5-1501 and 67-5-1505. The administrative judge conducted a hearing in this matter on December 5, 1997. Putnam County and the taxpayer were represented by Jerry Lee Burgess, Esq. and Jerry C. Shelton, Esq., respectively.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of an unimproved 12.48 acre parcel (58) and an unimproved 3.50 acre parcel (58.02). The parcels are located on either side of Interstate Drive in Cookeville, Tennessee.

Subject parcels were originally part of a larger farm which has been in the taxpayer's family since the 1800's. The farm was originally divided in the 1960's when a portion was taken for the purpose of constructing Interstate 40. This resulted in Putnam County separately mapping 68.3 acres as parcel 74 which is not under appeal. Parcels 58 and 58.02 were previously mapped as a single parcel until sometime near 1990 when

approximately 3.5 acres was taken for the purpose of constructing Interstate Drive. This resulted in 3.5 acres being located immediately north of Interstate Drive and 12.48 acres being located immediately south of Interstate Drive.

Putnam County contended that the Putnam County Board of Equalization erroneously ruled that subject property was entitled to receive preferential assessment as "agricultural land" pursuant to the Agricultural, Forest and Open Space Land Act of 1976 (hereafter referred to as "greenbelt"). Putnam County's position was most clearly set forth in the attachment to the amended appeal form which provided in pertinent part as follows:

> Tennessee Code Annotated 67-5-1005 clearly states that 'the assessor shall determine whether such land is agricultural land. . . .' In this particular case, the assessor has not classified the disputed land as agriculture/farm. Furthermore, the policy of the state of Tennessee is to appraise land at its highest and best use. The land in question is being sold as commercial lots and is zoned C-3. There is great demand for this commercial property. The county board erroneously placed the property in the greenbelt program. The subject property should be assessed at fair market value as opposed to use value.

Although both the original appeal form and amended appeal form were signed by the Putnam County assessor of property, Byron Looper, he did not testify at the hearing. The only witness to testify on Putnam County's behalf was an employee of the assessor's office, Robert Nail. Essentially, Mr. Nail testified that neither parcel should qualify for preferential assessment because they are zoned commercially. In addition, Mr. Nail testified that his visual inspections of the parcels indicated that neither parcel was being used for timber production or cattle as indicated on the greenbelt certification form (exhibit 4). Finally, Mr. Nail asserted that parcel 58.02 lacks the minimum acreage necessary to qualify for greenbelt.

The taxpayer contended that subject parcels should be treated as a single tract for purposes of the greenbelt law. The taxpayer asserted that this results in a 15.98 acre tract which would qualify for greenbelt either by itself or as part of a "farm unit" in conjunction with parcel 74. Alternatively, the taxpayer maintained that subject parcels qualify for preferential assessment under T.C.A. §67-5-1008(e) since the previously described takings caused them to become separately assessed and too small to qualify for greenbelt by themselves.

In support of its contentions, the taxpayer relied primarily upon the testimony of the property owner's husband, Jimmy Wright. In addition to providing the previously

summarized history of subject property, Mr. Wright testified with respect to how subject parcels are used. Essentially, Mr. Wright testified that subject parcels are used mainly to produce hay for the cattle on parcel 74.[1] Mr. Wright stated that the taxpayer has an informal agreement with Junior Logan and James Horner who actually farm parcels 58, 58.02 and 74.

The administrative judge finds that the reasons underlying passage of the greenbelt law are best summarized in the legislative findings set forth in T.C.A. §67-5-1002 which provides in relevant part as follows:

> The general assembly finds that:
>
> (1) The existence of much agricultural, forest and open space land is threatened by pressure from urbanization, scattered residential and commercial development, and the system of property taxation. This pressure is the result of urban sprawl around urban and metropolitan areas which also brings about land use conflicts, creates high costs for public services, contributes to increased energy usage, and stimulates land speculation;
> (2) The preservation of open space in or near urban areas contributes to:
> (A) The use, enjoyment and economic value of surrounding residential, commercial, industrial or public use lands;
> (B) The conservation of natural resources, water, air, and wildlife;
> (C) The planning and preservation of land in an open condition for the general welfare;
> (D) A relief from the monotony of continued urban sprawl; and
> (E) An opportunity for the study and enjoyment of natural areas by urban and suburban residents who might not otherwise have access to such amenities;
> (3) Many prime agricultural and forest lands in Tennessee, valuable for producing food and fiber for a hungry world, are being permanently lost for any agricultural purposes and that these lands constitute important economic, physical, social, and esthetic assets to the surrounding lands and to the people of Tennessee;
> (4) Many landowners are being forced by economic pressures to sell such agricultural, forest, or open space land for premature development by the imposition of taxes based, not on the value of the land in its current use, but on its potential for conversion to another use; and
>
> * * *

[1] In addition, Mr. Wright made reference to the sale of timber from a 4 acre stand of pine trees and the fact that Mr. Horner has prepared the "leveled" soil for planting wheat and fescue.

The administrative judge finds that the policy of this state with respect to greenbelt type property is found in T.C.A. §67-5-1003 which provides in relevant part as follows:

> The general assembly declares that it is the policy of this state that:
>
> (1) The owners of existing open space should have the opportunity for themselves, their heirs, and assigns to preserve such land in its existing open condition if it is their desire to do so, and if any or all of the benefits enumerated in § 67-5-1002 would accrue to the public thereby, and that the taxing or zoning powers of governmental entities in Tennessee should not be used to force unwise, unplanned or premature development of such land;
>
> (2) The preservation of open space is a public purpose necessary for sound, healthful, and well-planned urban development, that the economic development of urban and suburban areas can be enhanced by the preservation of such open space, and that public funds may be expended by the state or any municipality or county in the state for the purpose of preserving existing open space for one (1) or more of the reasons enumerated in this section; . . .
>
> * * *

The administrative judge finds that the question which must be answered in this appeal is whether subject property qualifies for preferential assessment under the greenbelt law as "agricultural land." The term "agricultural land" is defined in T.C.A. §67-5-1004(1) as follows:

> 'Agricultural land' means a tract of land of at least fifteen (15) acres including woodlands and wastelands which form a contiguous part thereof, constituting a farm unit engaged in the production or growing of crops, plants, animals, nursery, or floral products. "Agricultural land" also means two (2) or more tracts of land including woodlands and wastelands, one (1) of which is greater than fifteen (15) acres and none of which is less than ten (10) acres, and such tracts need not be contiguous but shall constitute a farm unit being held and used for the production or growing of agricultural products;

The administrative judge finds that in deciding whether a given tract constitutes "agricultural land," reference must be made to T.C.A. §67-5-1005(a)(3) which provides as follows:

> In determining whether any land is agricultural land, the tax assessor shall take into account, among other things, the acreage of such land, the productivity of such land, and the portion thereof in actual use for farming or held for farming or agricultural operation. The assessor may presume that a tract of land is used as agricultural land if the land produces gross agricultural income averaging at least one thousand five hundred dollars ($1,500) per year over any three-year period

> in which the land is so classified. The presumption may be rebutted notwithstanding the level of agricultural income by evidence indicating whether the property is used as agricultural land as defined in this part.

The administrative judge finds that subject parcels are being used primarily to produce hay which is, in turn, used to feed the cattle on parcel 74. The administrative judge finds that such a use of subject parcels constitutes a recognized agricultural practice regardless of whether the taxpayer or another actually owns the cattle.

The administrative judge would normally decide an appeal such as this by relying on T.C.A. §67-5-1008(e) which provides in pertinent part as follows:

* * *

> (e) (1) In the event that any land classified under this part as agricultural, forest, or open space land or any portion thereof is converted to a use other than those stipulated herein by virtue of a taking by eminent domain or other involuntary proceeding, except a tax sale, such land or any portion thereof involuntarily converted to such other use shall not be subject to rollback taxes by the landowner, and the agency or body doing the taking shall be liable for the rollback taxes.
>
> (2) In the event the land involuntarily converted to such other use constitutes only a portion of a parcel so classified on the assessment rolls, the assessor shall apportion the assessment and enter the portion involuntarily converted as a separately assessed parcel on the appropriate portion of the assessment roll. For as long as the landowner continues to own the remaining portion of such parcel and for as long as the landowner's lineal descendants collectively own at least fifty percent (50%) of the remaining portion of such parcel, the remaining portion so owned shall not be disqualified from use value classification under this part solely because it is made too small to qualify as the result of the involuntary proceeding.

* * *

In this case, however, the administrative judge finds that Mr. Wright's testimony by itself does not constitute sufficient evidence to establish that involuntary takings occurred within the meaning of T.C.A. §67-5-1008(e). Presumably, additional evidence could very well cure this deficiency in the proof. For the reasons discussed immediately below, the administrative judge finds it unnecessary to reopen the record for additional evidence on this issue.

The administrative judge finds that parcels 58 and 58.02 have been separately assessed because they no longer physically touch due to the construction of Interstate Drive. The administrative judge finds it appropriate to take official notice of the fact that

the State Board of Equalization and Division of Property Assessments routinely advise assessors that landhooks can be used to show contiguous ownership of parcels separated by roads that do not prevent access from one parcel to the other. The administrative judge finds that no rules have been promulgated to supplement the broadly written mapping statutes such as T.C.A. §§67-5-804 and 805.[2] The administrative judge finds nothing in the law to prohibit treating subject parcels for greenbelt purposes as a single parcel containing 15.98 acres. The administrative judge finds that subject parcels therefore qualify for preferential assessment as a 15.98 acre "farm unit" independent of parcel 74.

The administrative judge would also note that parcel 58 could also qualify for preferential assessment pursuant to T.C.A. §67-5-1004(1). The administrative judge finds that parcels 58 and 74 constitute a farm unit satisfying the acreage requirements for non-contiguous parcels. The administrative judge finds that parcel 58.02 by itself cannot qualify as a non-contiguous "farm unit" since it contains less than 10 acres.

In concluding that subject parcels should remain on greenbelt, the administrative judge has rejected Putnam County's contention that commercial zoning somehow disqualifies the parcels from receiving preferential assessment. The administrative judge finds it inappropriate to remove a property from greenbelt simply because it is zoned commercially or that commercial development represents its highest and best use. Indeed, the administrative judge finds that these are typical examples of the type situations greenbelt was intended to address.

The administrative judge finds that the status quo should not be disturbed for a related reason. The administrative judge finds that the question of whether a property is being used as "agricultural land" represents the type of issue county boards of equalization are especially well suited to decide.

Although the administrative judge finds in the taxpayer's favor, the administrative judge would observe that some of Mr. Wright's testimony seemingly raised more questions than it answered. Similarly, the administrative judge finds the discrepancies between what appears on the taxpayer's greenbelt certification form (exhibit 4) and Mr. Wright's testimony most puzzling.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 1997:

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[2] The administrative judge would note that the Division of Property Assessments has prepared a mapping manual for its own internal purposes. Said manual, however, has never been promulgated as a rule.

Parcel 58

	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
MKT.	$1,872,000	$ -0-	$1,872,000	$ -
USE	$ 7,600$	$ -0-	$ 7,600	$1,900

Parcel 58.02

	LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
MKT.	$525,000	$ -0-	$525,000	$ -
USE	$ 2,100	$ -0-	$ 2,100	$525

The law gives the parties to this appeal certain additional remedies:

1. Petition for reconsideration (pursuant to Tenn. Code Ann. § 4-5-317). You may ask the administrative judge to reconsider this initial decision and order, but your request must be filed within ten (10) days from the order date stated below. The request must be in writing and state the specific grounds upon which relief is requested. You do not have to request reconsideration before seeking the other remedies stated below.

2. Appeal to the Assessment Appeals Commission (pursuant to Tenn. Code Ann. § 67-5-1501). You may appeal this initial decision and order to the Assessment Appeals Commission, which usually meets twice a year in each of the state's largest cities. *An appeal to the Commission must be filed within thirty (30) days from the order date stated below.* If no party appeals to the Commission, this initial decision and order will become final, and an official certificate will be mailed to you by the Assessment Appeals Commission in approximately seventy-five (75) days.

3. Payment of taxes (pursuant to Tenn. Code Ann. § 67-5-1512). You must pay at least the undisputed portion of your taxes before the delinquency date in order to maintain this appeal. No stay of effectiveness will be granted for this appeal.

ENTERED this 5th day of January, 1998.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
STATE BOARD OF EQUALIZATION

c: Jerry C. Shelton, Esq.
Byron Looper, Assessor of Property
Jerry Lee Burgess, Esq.