



Open Space Category of Greenbelt Policy Development 2013

Issue:

The Tennessee General Assembly established the “Agricultural, Forest, and Open Space Land Act of 1976,” commonly referred to as Greenbelt, out of concern of the threat they urbanization and high land taxes have on agricultural and open lands. Throughout the history of the program, lands have been eligible for property tax benefits as one of three Greenbelt classifications: farm, forestry and open space land. Now in its thirty-seventh year of existence, 93 percent of Greenbelt property is enrolled as agriculture land, 7 percent as forest land and 1/50th of 1 percent as open space land. (50 parcels out of almost 209,000 parcels statewide)

Why have landowners not used the “open space” category? Are some “open space” lands actually being classified as agriculture or forestry?

Questions:

1. If “open space” land is classified as agriculture or forestry land does it damage the integrity of the Greenbelt program when the general public sees no agricultural or forestry activity occurring on the property?
2. Should the “open space” land category be addressed by TFBF policy?
3. Should “open space” land owners be required to demonstrate measurable environmental benefits resulting from the land in order to qualify for Greenbelt?

Background:

The Greenbelt law provides property tax benefits for three types of qualifying land: farm, forestry and open space land. Most are aware of the category for agriculture and forestry but many are not aware of the third category for open space land.

OPEN SPACE LAND

Open space lands, not being used for agricultural or forestry purposes, are lands of three acres or more “characterized principally by open or natural condition”. Preservation of such land benefits the public by conserving natural resources and by providing a natural setting for people who might not otherwise have access to such a place. The property may be used for recreation by the public. However, land that has been significantly developed for recreation, such as golf courses, does not qualify.

Unlike the agriculture or forestry classification, in order for property to qualify as open space land, action is required by the county or municipal planning commission. The planning commission must designate the area as open space and include it within a plan for preservation. Or, the owner may execute a perpetual open space easement, which requires the owner of the land to maintain the property's open and natural character on terms approved by the state commissioner of environment. The municipal or county planning commission may designate within their comprehensive plan areas recommended for preservation as areas of open space land.

Owners of open space land are allowed a home site just as owners of agricultural land are allowed. However, in both cases the actual home site land is appraised and assessed at its fair market value. Owners of open space land are to file an application with the assessor of property by March 1. Reapplication is not required as long as the ownership remains unchanged. New owners must timely apply. The open space land application is prescribed by the state board of equalization and landowners have appeal rights in the general statutes for taxpayers.

Rollback taxes are due when open space land changes use. Rollback is designed to prevent landowners from taking advantage of the Greenbelt law to capture temporary property tax savings without committing their property to the long-term Greenbelt use. Rollback is applied to each of the preceding five years for land classified as open space. (Three years for agricultural land).

OPEN SPACE EASEMENTS

Land must be “open space land” in order to qualify as an open space easement. An open space easement must contain at least fifteen contiguous acres and if executed for the benefit of a local government must be preceded by a consultation with a local planning commission. This category is actually designed to cover conservation easements. Without this language, many easements would not qualify for Greenbelt because of the restrictions the owner accepted in the conservation easement such as preventing farming or cutting timber. Qualifying easements must be donated to the local or state government or offered to and accepted by a qualified conservation organization. If an easement is donated to the state, the easement must be recorded and the assessor notified by the Commissioner of Environment & Conservation. An application must be filed with the assessor in order for land to be qualified and assessed as an open space easement.

A “qualified conservation organization” is a nonprofit organization approved by the Tennessee Heritage Conservation Trust Fund Board of Trustees and meeting the eligibility criteria established by the trustees. The Land Trust for Tennessee is a well known qualified conservation organization.

An open space easement is a perpetual right in land of less than fee simple that:

- 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;
- Is restricted to the area defined in the easement deed; and
- Grants no right of physical access to the public, except as provided for in the easement.

A conservation easement allowing the property to be used for farming purposes would not qualify as an open space easement but might be eligible for the agricultural classification. If the easement prohibits farming, then the property would not qualify as agricultural land but may qualify for an open space easement.

Open Space Easement Assessment

The assessor of property is to value land within an open space easement on the basis of farm classification and the existing use taking into consideration the limitation on future use within the easement. The property taxes are assessed and paid on this basis. The assessor also values the property as if the easement did not exist. This value is used to determine the rollback tax due in the event such tax is triggered.

An open space easement can be cancelled by a local government if ALL the following apply. The easement has been in effect for at least ten years. Either the local governing body or the local planning commission determines the open space location is not needed and that the public interest would be better served without it. The owner of the open space easement pays the county and municipality ten years of rollback taxes.

Rollback on Open Space Easements

If property within an open space easement for the benefit of a local government or a qualified conservation organization becomes no longer eligible, a rollback for the previous ten years will be assessed. Just as rollback is assessed for agricultural land, the rollback taxes will be based on the difference between the taxes actually paid and the taxes that would have been due if the easement had not existed. However, for open space easements, the rollback taxes apply to the previous ten years plus an additional amount equal to ten percent of the taxes saved. The longer rollback and 10% recapture for this category is to prevent it from being a tax avoidance mechanism that is easily extinguished.

Farm Bureau Policy:

Only bona fide farmers and landowners of forestry and open space land should qualify under the provisions of the act. Adequate regulations should ensure the integrity of the act is preserved in this regard. However, no regulation should prevent even one legitimate agricultural landowner or forest owner from qualifying for the program.