

WATCHDOG FEBRUARY 18, 2016 6:41 PM

# Tax relief intended to save Kentucky farms helps pave them instead

## HIGHLIGHTS

Obscure 1969 law costs public treasuries tens of millions in lost revenue

Tax break benefits owners of 10-acre estates and developers with large land holdings

'10-acre standard' shifts greater tax burden to small homeowners

A lucrative tax break 02:01



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In Kentucky, the agricultural exemption in property taxes is given to anyone with 10 acres or more, whether they farm the land or not. [lblackford@herald-leader.com](mailto:lblackford@herald-leader.com)

BY JOHN CHEVES AND LINDA BLACKFORD  
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An upscale shopping center, The Summit at Fritz Farm, is rising at Nicholasville Road and Man o' War Boulevard. The future home of Pottery Barn and Whole Foods Market was sold last summer for \$13 million.

It's 40 acres of prime commercial land, but that's not how it's taxed.



The Summit at Fritz Farm, being built by a Birmingham, Ala., company, was announced three years ago as a shopping center with second-floor apartments and a variety of restaurants. Yet the property near Fayette Mall has kept a lucrative tax break intended for farmland preservation. Charles Bertram - [cbertram@herald-leader.com](mailto:cbertram@herald-leader.com)

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Thanks to an obscure state tax break intended to save productive farms for future generations, the muddy lot bustling with construction equipment is assessed on the tax roll as "agricultural," with a value of just \$169,800. Its 2015 tax bill was \$1,755 — roughly the same as what's owed on nearby family homes, and a tiny fraction of the tax burden on similar commercial tracts.

The Summit is only one example of valuable Lexington real estate reaping the benefits of the farmland preservation tax break, with nobody asking questions about whether the land is

being farmed or preserved.

A Herald-Leader investigation found scores of examples of the tax break benefiting suburban homes surrounded by vast lawns, qualifying as agricultural land that can knock as much as 40 percent off their tax bills, and large parcels rezoned for commercial or residential use, where plat maps have been filed with the city and concrete slabs are expected to be poured soon.

As a result, large landowners enjoy reduced overhead, while their less-fortunate neighbors — middle-class homeowners and business owners — pay higher property taxes to compensate for lost revenue to schools, the city, the health department and other local services. Kentucky's state government estimates that it will forfeit \$98 million in revenue over the next two years because of this tax break.

Nationally, farmland preservation tax breaks cost public treasuries tens of billions of dollars, said Richard England, a professor of economics and natural resources at the University of New Hampshire.

“This is a classic example of where a small minority of the electorate is getting a tremendous advantage from the law, and the majority of taxpayers simply don't know about it, so they don't protest,” said England, who has studied and written extensively about the tax break in various states.

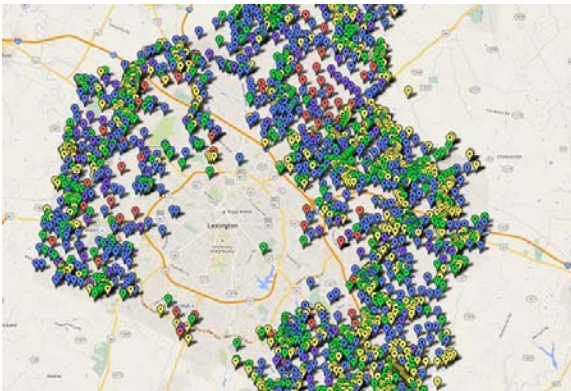
It wasn't supposed to work this way.

In 1969, Kentucky voters approved a generous tax cut on agricultural property for the specific purpose of helping farm families protect their fields from development amid the rising land values of postwar urban sprawl. To qualify, property owners were supposed to prove that they produced crops or livestock on the land. If they later developed the land, they faced a tax

penalty for renegeing on the deal.

However, those rules were loosely enforced, and in 1992, the General Assembly scrapped them altogether. In most Kentucky counties, property assessments now are automatically slashed for any 10 or more contiguous acres once used for farming, no matter how long ago, provided that something hasn't yet been built on top of them.

### **Explore a map of Lexington properties getting farmland tax breaks**



Find out which properties and owners got the farmland tax preservation break.

Using this method, Fayette County waived \$1.6 billion in taxable value last year for 2,459 properties covering 116,753 acres. That equals \$11.8 million in forfeited taxes to Fayette County schools, and several million more to the health department, Lextran and other public services.

These properties, classified on the tax roll as “agricultural,” are assessed at far less than fair cash value, the standard by which all other properties are taxed in Kentucky. Some are taxed at pennies on the dollar compared to their neighbors.

How many of these properties are working farms being preserved, as the law originally intended? No one knows.

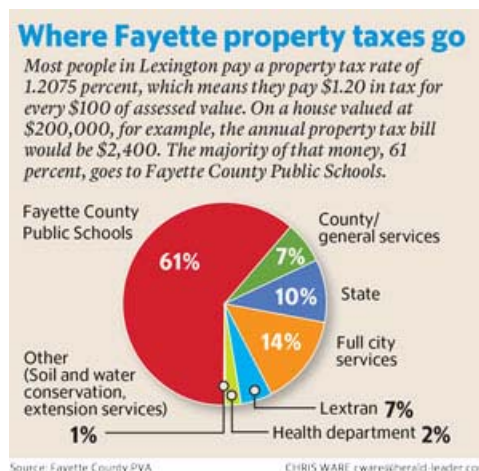


### Fayette County Property Valuation

Administrator David O'Neill, the elected official in charge of assessing local property values, said he realizes that some of the properties taxed as farms are not farms. For one thing, the U.S. Department of Agriculture found only 718 working farms in Fayette County — less than one-third of the number of properties getting the farmland preservation tax break — during its most recent census in 2012, down from 810 five years earlier.

But there is no farming requirement to get the lower assessment, so there is no legal justification for asking any questions of landowners, officials contend.

“Under the law as it now exists, if we go down Delong Road and cite everybody and ask to see proof of agricultural activity, they’re gonna tell us, ‘Hey, we have 15 acres, 20 acres, whatever, and it’s theoretically capable of producing something, and therefore, I’m entitled to the exemption.’ And they would be right,” Fayette County Attorney Larry Roberts said.



“Something in this law needs to be changed,” Roberts said.

### \$13 million sale, \$1,755 tax bill

Soybeans and vegetables once grew on the large lot at Nicholasville Road and Man o’ War Boulevard. But three years ago, Bayer

Properties of Birmingham, Ala., announced that it would use that spot to build The Summit at Fritz Farm. A detailed development plan for the shopping center, with rental apartments above stores, was filed with Lexington's planning division in April 2013. The opening is set for March 2017.

The property's tax bill has not kept up with events.

Last year, the Fayette County PVA assessed the land's fair cash value at \$5 million, as it did every year for the previous decade. However, that estimate might have been low, because the land sold in June for \$13 million to its new owners. Regardless, it wasn't taxed based on a fair cash value of either \$5 million or \$13 million. Instead, because this used to be a farm, it was taxed based on an agricultural value of \$169,800.



The Summit at Fritz Farm, soon to be an upscale shopping center at Nicholasville Road and Man o' War Boulevard. The 40-acre tract sold last year for \$13 million yet it generated just \$1,755 in taxes. Charles Bertram

So the tax bill was \$1,755. By comparison, a smaller undeveloped parcel at a far less prominent location — 27 acres on Greendale Road in north Lexington, with a fair cash value of \$1.3 million — generated \$13,827 in taxes last year, nearly eight times as much. That property didn't have the farmland preservation tax break.

In a recent interview, O'Neill said he recognizes that The Summit is going to be a shopping center and isn't preserved farmland. But he said he can't strip a property of its agricultural assessment until the year after the city approves a development plan and construction crews break ground at the site. Just knowing that a property is going to be developed isn't enough, he said.

Given the current progress at the site, the Summit's 2016 tax bill will reflect its fair cash value, he said.



David O'Neill

"No question about that," he said.

Bayer Properties didn't respond to requests for comment.

The current policy doesn't sit well with everyone. Land being readied for development shouldn't get a farmland preservation tax break, said Don Robinson, a horse farmer on Military Pike and former chairman of the Lexington-Fayette Urban County Planning Commission.

"I was aware of some instances of this happening, but not that it's so widespread," Robinson said. "It's probably not fair. It ought to get looked into. The agricultural exemption on land is vitally important to incentivize agriculture and for land protection, but a house on a big suburban lot in a rural area is not farming."

### **'That's due diligence'**

A few Kentucky PVAs are more assertive than O'Neill.

In urban Jefferson and Kenton counties, for instance, landowners must complete and sign a short application each year to qualify for the farmland preservation tax break. Those counties ask landowners for the acreage devoted to agricultural production and how those acres are used. Jefferson County requires proof of farming income, such as the Schedule F attachment from the landowner's federal income tax return.

Last year, Jefferson County reported only about half as many parcels with the tax break as Fayette County, covering roughly one-fourth of Fayette's discounted acreage.

Nobody should get their property taxes lowered without justification, said Jefferson County PVA Tony Lindauer.

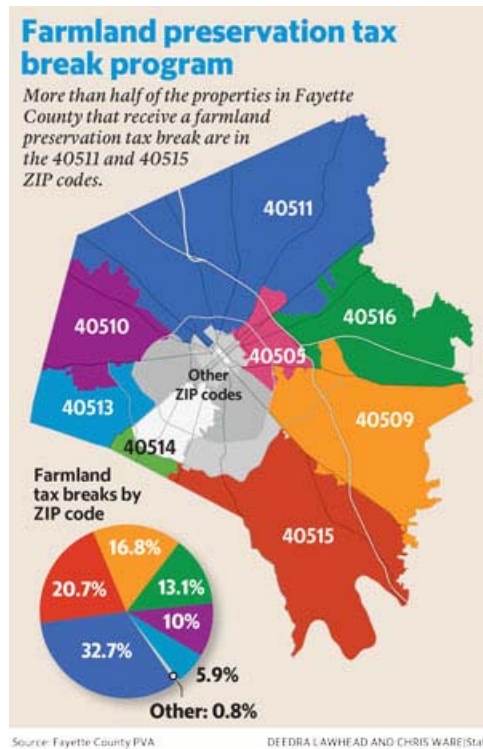
"We've got to be fair to everybody," Lindauer said. "Just because you have 10 acres doesn't mean you get the exemption for 10 acres of rocks. In my opinion, that's not farmland."

Kenton County PVA Darlene Plummer said she feels duty-bound to verify that exempted land is being farmed.

"In my opinion, that's due diligence, to make sure they are using it for agricultural purposes," Plummer said.

Such due diligence is not unprecedented. Every Kentucky PVA requires homeowners to submit an application and proof of eligibility for the homestead exemption, which reduces property assessments for people who are 65 and older or disabled. The same is true for any nonprofit, religious or educational institution that wants tax-exempt status for its property. It must fill out paperwork and show proof of eligibility.

Not so for the farmland preservation tax break. Statewide, Kentucky waived \$36.6 billion in property value last year for more than 18.2 million acres assessed as agricultural — and in most counties, nobody checked to see how the



discounted land is used.

PVAs in Fayette's neighboring counties — Scott, Bourbon, Clark, Madison, Jessamine and Woodford — said that, like O'Neill, they don't ask questions about the tax break.

"The previous PVA didn't do it for 30 years, and when I came in, I didn't see any point in stirring things up," Bourbon County PVA Wayne Turner said. Last year, Bourbon County deferred \$1 billion in property values under the farmland tax break, benefiting 175,647 acres, according to state data.

## Mixed signals

Although Kentucky's 120 PVAs are elected county officials, the state Department of Revenue has monitored their work and provided guidance since a Herald-Leader investigation in 1989 uncovered widespread corruption and incompetence on property assessments.

But the Revenue Department sends mixed signals to the PVAs about the farmland tax

break. Sometimes it says farming is necessary to qualify; other times, it doesn't.

In its 2015 land assessment manual distributed to PVAs, the Revenue Department wrote: "The purpose of the agricultural value program is to stimulate the continuation of farming operations and encourage the preservation of farmland in Kentucky by providing property tax relief." Property must be "used for the production of agricultural products" to qualify for the tax break.



David Gordon, left, is executive director of the Office of Property Valuation at the Kentucky Revenue Department. Tom Crawford is director of Revenue's Division of Local Support.

However, Revenue Department officials in Frankfort said they don't expect PVAs to verify that any crop is grown or livestock raised.

"We just don't require it. It's not a requirement we have of the PVA," said David Gordon, executive director of the Office of Property Valuation at the Revenue Department.

"Some PVAs will say, 'I want to have an application process.' We don't have any problem with that. They're going above and beyond the law," said Tom Crawford, director of Revenue's Division of Local Support. "But as to making this a statewide recommendation, maybe we need to take a look at that. I don't know."

The state officials blamed an Anderson Circuit Court ruling and opinions from the Kentucky Board of Tax Appeals for discouraging PVAs

from stripping properties of their agricultural assessment. Property owners who challenge a PVA usually prevail under the law, even if they're developing and selling the land in question, the officials said.

Cecil Dunn, chairman of the Board of Tax Appeals, said his panel hears very few farmland preservation tax break cases. In every case, "what we try to do as a board is look at each tax situation, apply the law and come to the conclusion of what we interpret it to be."

### **'They just had the law repealed'**

Prodded by the Kentucky Farm Bureau, which ran a statewide campaign urging citizens to "help preserve our open spaces and natural resources," voters in 1969 amended Kentucky's constitution to allow for much lower property assessments on agricultural land. Once land no longer was used for "agricultural production," it was supposed to be taxed at fair cash value again, according to the legislation.

"The intended beneficiaries were farmers," said John Berry, a Henry County lawyer who helped craft details of the tax break as a member of the Kentucky Senate. "I wish it had been enforced the way it was intended."

Initially, the tax break came with rules to prevent abuse. Property owners had to apply for it; they had to show proof of farm income from the land; and because the whole point was preservation, if the land was converted to any use other than agricultural, they had to pay a penalty equal to three years of back taxes at fair cash value.

That didn't last. In 1992, the Kentucky Farm Bureau persuaded the legislature to eliminate those rules by passing House Bill 585.

The Farm Bureau declined to comment for this story. But Lexington developer Tim Haymaker said the change was prompted by land-rich farm families who wanted to cash out in the

late 1980s and early 1990s by selling to developers. Among the obstacles was the tax penalty for converting their farms into something else.

“People couldn’t sell their land, not with that in place,” said Haymaker, who has built on converted farmland around Fayette County.

“The farm community is a very strong constituency in Frankfort,” Haymaker said. “So you’ve got these families that wanted to sell their land so a shopping center could be built on it, but they couldn’t afford it (the penalty). If they were sitting on a \$500,000 piece of property, it was whatever the fair cash value tax was supposed to be on that, multiplied by three. So they just had the law repealed.”

Another argument made for eliminating the rules: PVAs found the annual proof-of-farm-income process to be too bothersome, said state Rep. Jon David Reinhardt, R-Alexandria, who sponsored HB 585.

“Part of the reason we’re here is because of the PVAs,” Reinhardt told the Senate budget committee in March 1992.

“It was nearly impossible for them to administer the annual application process,” Reinhardt said. “The PVAs quite simply have a difficult, if not an impossible time, doing it. In fact, most of them don’t do it. There’s only two or three who try to do that.”

### **‘Unequal tax burden’**

Once the rules were gone, most PVAs adopted a “don’t ask” policy and settled on a 10-acre minimum for automatically awarding the tax break.

“When the statutes were changed to get rid of the income requirements, that’s when they (the PVAs) got rid of the applications,” said Crawford of the Revenue Department. “I think that whoever was in charge at that time, the



commissioner or whoever, just decided, ‘Well, if there are no income requirements, if they have 10 acres or more and they had been farming the property, let’s just go ahead and give them the agricultural value.’”

Having opened a gaping loophole in the law 24 years ago, the General Assembly shows no interest in closing it this winter.

“I guess it couldn’t hurt to look at it,” said House budget chairman Rick Rand, D-Bedford.



Rick Rand

“But I do know the agricultural community

is always

suspicious about changes to anything in regards to their tax liabilities. So I just don’t think this is anything that’s likely to happen.

It’s true that farmers might not respond well to anyone touching the tax break, not even to reinstate the original rules, said Bob Barton, whose family grows corn, soybeans and tobacco along the Fayette-Scott county line.

“Farmers are totally independent. They all think the next Summit is going to be built on their property, even if they’re 20 miles outside of town, and they don’t like being told what to do with their property,” Barton said.

That said, many Lexington farmers have agreed to permanently preserve their land by joining the city’s Purchase of Development Rights program, which pays farmers for conservation easements. About 250 farms covering nearly 29,000 acres are in the PDR program.





Travis Fritz worked at the Fritz Farm, at Nicholasville Road and Man o' War Boulevard, in April 2001. Charles Bertram

“Strengthening the law would probably work in the farmers’ favor, to be honest with you, because we’re interested in productive land, and there’s nothing less productive than a 10-acre lawn,” Barton said. “Even if a developer just agrees to let someone farm his land for a few years while he’s waiting to start construction, a lot of young farmers would jump at the chance.”

If lawmakers won’t act, reform could be forced by a lawsuit alleging that property assessments are unfair, said Kathryn Moore, who teaches property and tax law at the University of Kentucky. A 1984 Kentucky Supreme Court decision involving the Fayette County PVA, *Dolan vs. Land*, held that all property must be assessed fairly so “the tax burden will be equally shared.”

Under this approach, a vacant commercial lot awaiting development on Nicholasville Road should not get a break that’s withheld from an identical lot on Greendale Road. A small cottage with a tiny yard on Woodland Avenue and a grand house with a 10-acre lawn on Delong Road should be valued using the same method.

“It seems to me that if two people have exactly the same property used exactly the same way and you give one the exemption and not the other, that’s not a uniform standard,” Moore said. “I think there’s a good argument to be

made there.”

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## PART 1 OF 3

**Sunday:** Why a \$13 million development property was taxed only \$1,755

**Monday:** Low taxes on 10-acre lawns means others pay more for schools

**Tuesday:** Dozens of Lexington development properties get farmland tax break

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Taxes are assessed to the owner of the property on Jan 1 at the value of the property on Jan 1. The 2015 taxes would have been paid by the guy who owned the land and farmed it up until mid summer.

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I think the Fayette Mall used to be in Fayette County and now is Lexington, still Fayette County but has become part of the City of Lexington. Back in the sixties, there was no mall there, that I can remember, so I would think that all the land around Fayette County has that option. Until that happens, I'm not sure how you could tax a property based on potential worth. The point is this, is it now a farm land or City, part of the City or the County, what benefits does being a landowner there now include or receive. I think that has a lot to do with the value of the property. Does not Lexington Kentucky have zoning or is the land grandfather as before and ongoing. I do not know and I'm only asking the questions for information, as I would think the same questions are being asked across the State of Kentucky, because property taxes are high for all of us residential people.

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**WATCHDOG** FEBRUARY 21, 2016 4:49 PM

# 10-acre lawns get benefit meant for working Fayette County farms

## HIGHLIGHTS

718 working farms in Fayette; 2,459 properties get farm tax break

Large estates get discount; suburban homeowners pay full tax

10-acre lots 'too big to mow, too small to grow'



1 of 15



Brookmonte Lane in southern Fayette County is lined

with large houses on 10-acre lots that qualify for the farmland-preservation tax break. **Faron Collins** - Herald-Leader

BY LINDA BLACKFORD  
[lblackford@herald-leader.com](mailto:lblackford@herald-leader.com)

Ed Hastie grew up on a farm in Montgomery County and always wanted to live in the country. But he became a lawyer, not a farmer, so in 1978, he and his wife bought a 10-acre lot in southern Fayette County.

“My purpose was to be able to build a home in the country,” he said. “I have no interest whatsoever in raising a crop.”



Fayette County Schools' Superintendent Manny Caulk  
Pablo Alcala - [palcala@herald-leader.com](mailto:palcala@herald-leader.com)

Nonetheless, Hastie's \$466,000 property on Ashley Woods Road gets a tax exemption designed to preserve working farms, cutting the taxable value of his land by \$194,500 last year and his tax bill to \$2,425.06. Hastie gets the tax break because any property of 10 acres or more in Fayette County that is capable of being farmed automatically qualifies, regardless of how the land is used.

That means millions of tax dollars that could be used for schools and libraries are being forfeited to preserve land that might never be farmed again.

Part I: Tax relief intended to save Kentucky farms helps pave them instead

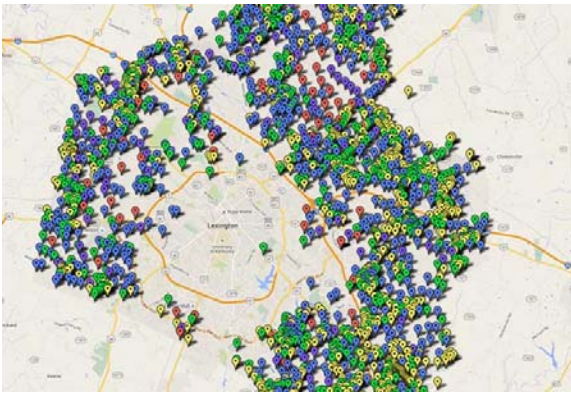




Although horses roam, cattle graze and soybeans grow on much of the 116,753 acres in Fayette County that are classified as “agricultural” and taxed at a lower rate, plenty more have nothing to do with what state law says comprises agriculture — the production of livestock and crops.

In 2012, the U.S. Department of Agriculture recognized 718 working farms in Fayette County, but 2,459 properties get the farmland preservation tax break. Of those, 841 parcels are between 10 and 11 acres. Thanks to previous zoning rules that allowed 10-acre lot subdividing of formerly rural land, the county is honeycombed with such properties, many of which feature large houses and pools. Some have a few horses or a cornfield, but many have 10 acres of lawn.

### Explore a map of Lexington properties getting farmland tax breaks



Find out which properties and owners got the farmland tax preservation break.

The houses on those properties are fully taxed at fair cash value, but the surrounding acreage is considered farmland, saving homeowners between 10 percent and 40 percent off their total property tax bills.

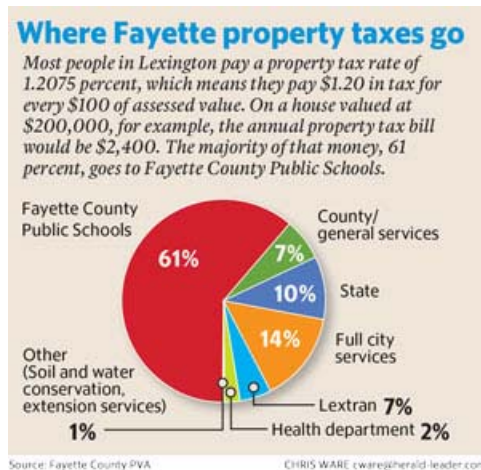
According to a Herald-Leader analysis of Fayette PVA data, the farmland preservation tax



break reduces the taxable value of parcels of 10 to 11 acres by a cumulative \$183 million. If that property were taxed at its full cash value, Fayette County Public Schools would get about \$1.4 million more each year.

Such an influx in new property taxes might trigger a state law that prevents a school district's property tax revenue from increasing by more than 4 percent each year. If that happened, tax rates might be lowered for everyone, including suburban homeowners who pay full freight.

“We



appreciate the Lexington Herald-Leader looking into the way that the agricultural property tax exemption has been implemented in Fayette County,” Fayette County Schools Superintendent Mannny Caulk said. “It is always advisable to revisit current practice from time to time to check for fairness and consistency. As we consider the process being followed now in our community, the central question should be whether this exemption is being applied in a way that is fair to all property owners. We would be very interested in exploring whether a change in the process would allow for a reduction in property tax rates across the board for all taxpayers in our community.”

Brad Hughes of the Kentucky School Boards Association said many school board members



across the state also would be interested in knowing whether the tax exemption is properly applied.

“Right now, school boards across the state are being put in the position of either having to raise local taxes or chip away at some part of the educational foundation,” he said. “I could see a lot of boards being interested in how they don’t tax these folks. School boards want to tax everyone equally.”

### ‘What does it mean?’

Many taxpayers know nothing of the farmland preservation tax break, including the people who receive it.

Take the palatial 8,000-square-foot mansion on Delong Road owned by Elizabeth and David Duzyk, a New York financier and former J. P. Morgan executive. The property, nestled in a sweeping lawn, has a fair cash value of \$3.5 million, but about 10 percent of that value — \$342,600 — is erased by the agriculture tax break, reducing the property’s annual tax bill to \$31,985.



Fayette County is filled with 10-acre residential lots, such as this one on Delong Road, that get the agriculture exemption on property taxes regardless of whether they have any agricultural use. Charles Bertram

Elizabeth Duzyk said that in eight years of living there, she didn’t realize that the couple received a tax break meant to preserve working farms.



“No, because we’re not really agricultural,” she said. “Because we’ve never lived on 10 acres before, we didn’t have anything to compare it to. I think if we were truly in the farming business, we’d be more knowledgeable.”

Property valuation administrators in some counties require landowners to file paperwork proving their land is used to produce agriculture. But Fayette County PVA David O’Neill said his office automatically provides the tax break to properties of 10 acres or more, on the advice of Fayette County Attorney Larry Roberts. Roberts said it’s clear that the exemption is being abused, but tax appeals boards and courts have interpreted the loosely written law in such a way that having 10 acres or more of land capable of agricultural production is the only requirement for receiving the tax break.

In addition, O’Neill said, it would be difficult to define and monitor agriculture production across the county. Before 1992, landowners



David O’Neill

were required by law to prove that their land produced income from farming before receiving the tax break, but that part of the law was removed by the General Assembly.

“What does it mean?” O’Neill asked, referring to the definition of agriculture. “How many tomato plants does it take? How many times do I have to set up a booth at Farmers Market before I qualify for producing agriculture? So those are the types of questions that I think have gotten us to where we are today.”



## Lure of a lower tax

O'Neill contends that the tax break also supports Fayette County's reverence for green space.

"I think that one of the things that goes directly to the nature of what makes Central Kentucky special, the Bluegrass, is farmland. We value keeping large tracts of land together," he said in a recent interview. "Through zoning, and urban service boundaries, we landed at 10 acres, and that seems to me to be reasonable — that anything of 10 acres or more we're going to offer incentives to keep whole."

That argument, however, was upended in 1999, when Fayette County's elected officials decided that 10-acre lots destroyed too much farmland. The planning commission, and then the city council, voted to change the minimum for subdivided plots from 10 acres to 40 in rural portions of the county. In 2000, Lexington enacted the Purchase of Development Rights program, which is designed to preserve farmland by paying landowners for easements that prohibit development.

"The agricultural community decided you really needed to have 40 acres to have viable agricultural operations," said Knox Von Nagell, former director of the Fayette Alliance, which promotes sustainable growth to protect green space. "They decided the 10-acre lots were 'too big to mow, too small to grow,' so there was a policy decision that we protect the factory floor for active agriculture."

Von Nagell added: "The 10-acre estate lots were eating up a lot of prime, finite Bluegrass farmland to accommodate low-density residential development."



A lucrative tax break 02:01



In Kentucky, the agricultural exemption in property taxes is given to anyone with 10 acres or more, whether they farm the land or not.

Lexington's move to larger rural lots pushed a lot of low-density residential development to neighboring counties, where PVAs also give automatic agriculture tax breaks to lots of 10 acres or more.

Jessamine County PVA Brad Freeman said changing the rules for farmland preservation tax breaks might bring political difficulties for PVAs.

"If you took someone's ag exemption away, I'd expect you'd see a lot of people in the PVA's office," Freeman said.

Keith Yarber, for example, said the agriculture tax break on his 10-acre lot on Clear Lake Drive is deserved because he allows a farmer to harvest six acres of hay around his house a couple times a year. The farmer gets the hay in exchange for cutting it, and the taxable value of Yarber's property is reduced by \$152,500 a year to \$502,500. His property tax bill last year was \$5,090.45.

"I certainly don't want them taking it (the tax



break) away,” said Yarber, CEO of the publication *Tops in Lex*.

O’Neill also said homebuyers are lured by the lower tax bills that come with agriculture tax exemptions, and that boosts overall property values. However, Whitney Pannell, a realtor with Keller Williams in Lexington, said no one has ever mentioned the agricultural exemption in her 22 years of selling million-dollar properties, many of which automatically receive the exemption.

“I’ve never had one client mention it,” she said. “I would venture to say it doesn’t make a hill of beans difference to people.”

Charles Sachatello, a retired University of Kentucky physician, has lived on Brookmonte Lane for 16 years.



The entrance to Brookmonte Estates. All the houses in this subdivision sit on 10-acre lots. Charles Bertram

“I did not know about the exemption,” Sachatello said. “I only learned about it the past few years.”

Since then, he has planted a grove of walnut trees as an investment on his 10-acre property, which is valued at \$1.4 million.

Nearly all the lots on Brookmonte feature million-dollar mansions, pools and lawns. Four of them have small horse stables. The homeowners, who include former UK and NFL quarterback Tim Couch, get a cumulative tax exemption of \$2.5 million, including \$214,500 for Sachatello. His property tax bill last year was \$11,350.





This house on Brookmonte Lane in Brookmonte Estates, owned by former University of Kentucky and NFL quarterback Tim Couch, is listed for sale at \$4.75 million. It's on a 10-acre lot that qualifies for the farmland-preservation tax break. Charles Bertram

### **'More work'**

Not everyone in the state thinks taxpayers on big lots should get an automatic pass.

Kenton County PVA Darlene Plummer said she treats the agriculture tax exemption the same as a Homestead exemption, which lowers property taxes for those who submit documents showing they are at least 65 years old or disabled.

"We require proof" of agricultural production, Plummer said. "It's another way in my opinion to do due diligence and make sure land is being used for agricultural purposes."

Other PVAs, including Jason Scriber of Henry County, would like to see more precise rules.

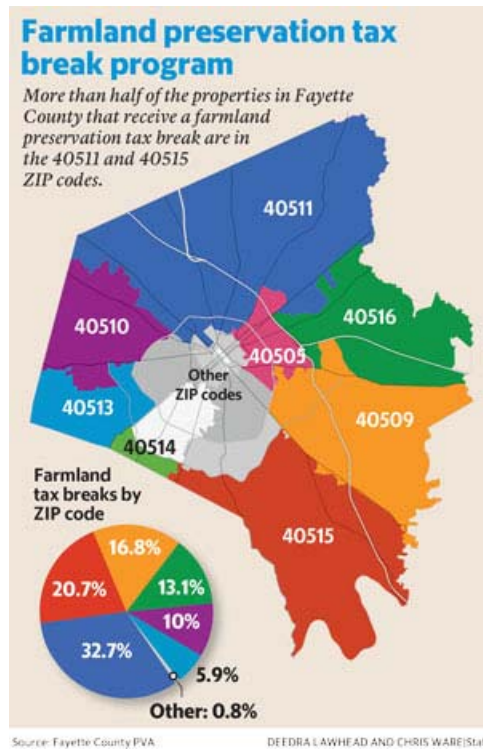
"Do I agree with it now?" he said. "It's not the essence of what the ag exemption was intended to be."

O'Neill said that whether he and Fayette County Attorney Larry Roberts are wrongly interpreting state law and various court decisions dealing with the agriculture exemption, they would like to know.

But verifying that landowners produce agriculture would create more work for his







22-person office.

“It would certainly require more work, and we would do it,” he said.

Some landowners said they would be willing to prove they deserve the exemption.

Greg Harkenrider, a state employee who lives on 10 acres off Military Pike, leases his land to a cattle farmer for grazing. He said he would have no trouble filling out paperwork to prove this agricultural use of his land.

“I think it behooves a normal citizen to make sure their property is properly assessed,” Harkenrider said. “You need to make sure the agricultural exemption goes where it needs to go and does not pull value away from schools. The paperwork requirement makes sense, for government to get the proper revenue and for citizens to get the proper rate.”

Legislative action is needed, said Jason Bailey, executive director of the Kentucky Center for Economic Policy.

“The agricultural exemption is there to protect



farmland, not wealthy homeowners,” Bailey said. “These are the kinds of holes in the tax code that we need to be cleaning up. They’re bleeding revenue to our schools and our localities and our states. The legislature should go in and make sure loopholes for wealthy people are closed.”

Linda Blackford: 859-231-1359, @lbblackford

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## PART 2 OF 3

**Sunday:** Why a \$13 million development property was taxed only \$1,755

**Monday:** Low taxes on 10-acre lawns means others pay more for schools

**Tuesday:** Dozens of Lexington development properties get farmland tax break



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## COMMENTS

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WATCHDOG FEBRUARY 22, 2016 1:08 PM

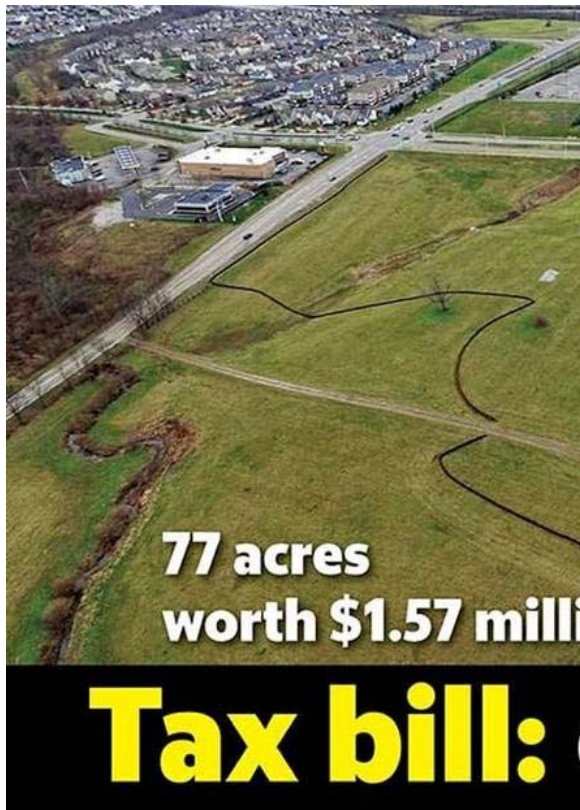
# Developers get farmland tax break as bulldozers approach

## HIGHLIGHTS

At least 43 Lexington properties pegged for development are classified as farms

Taxes are cut to pennies on the dollar for land worth millions

Neighboring single-family homes pay many times more



< 1 of 8 >

A 77-acre field at Polo Club and Man o' War boulevards is being developed as an apartment complex. Brian Simms, Faron Collins

BY JOHN CHEVES

[jcheves@herald-leader.com](mailto:jcheves@herald-leader.com)

To protect farms from the bulldozer, Kentuckians long ago agreed to keep property taxes low on land that produces crops and livestock. But the bulldozer often comes anyway.

Take the 77-acre grassy lot at Polo Club and Man o' War boulevards. It's the last open space on a busy suburban crossroads with a Costco Wholesale, a Rite Aid and dense rows of homes. Work is underway to turn it into an apartment complex called WaterStone at Hamburg. It's no longer farmed. However, the lot's tax was slashed in 2015 to \$644 under the state's farmland-preservation tax break.

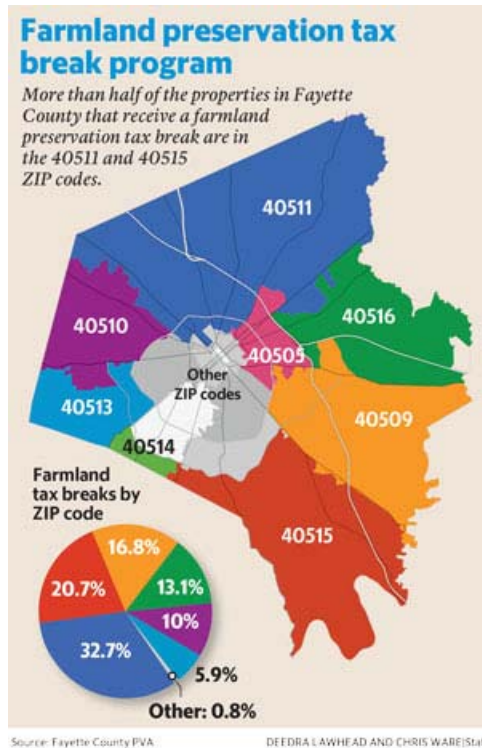


The last open field at Polo Club and Man o' War boulevards kept its farmland preservation tax break even as the city approved plans for an apartment complex. Pablo Alcala - [palcala@herald-leader.com](mailto:palcala@herald-leader.com)

Using public records, the Herald-Leader found at least 43 large vacant properties around Lexington that have been rezoned for commercial or residential use and are owned by developers who expect to build shopping centers, homes or apartments on them. Most have a planning map on file with the city to show where buildings and streets will go.

All of these properties were classified on the tax roll as agricultural, so their assessments — and their taxes — were reduced by the farmland preservation tax break. Fayette County officials did not require any of them to be actively

farmed or to be saved as green space for the future. It was enough that in the previous year, they contained at least 10 contiguous acres that once were used for agriculture.



Collectively, these 1,997 acres were assessed at a total agricultural value of \$1.7 million. That was just 2 percent of their fair cash value of \$96.2 million, which is the usual basis for taxation. Their average tax bill was \$410, substantially lowering overhead for the developers who own them.

In effect, a tax break originally meant to prevent the destruction of farms has come to subsidize it.

“It makes a massive difference,” said Lexington developer Patrick Madden, whose family helped build the sprawling Hamburg Place retail, dining and residential community out of its Winchester Road horse farm of the same name. “This real-estate development game is tough, I’m telling you. You couldn’t afford to pay those kinds of taxes and hold onto a property for very long.”

Madden owns the 77 acres on Polo Club Boulevard where WaterStone at Hamburg soon will stand. The lot used to be farmed, but not anymore, he said.

“We’ve had cows on it at different times,” Madden said. “I couldn’t swear as to when. Maybe two years ago, around then.”

The lot’s fair cash value is \$1.57 million, according to Fayette County Property Valuation



Patrick Madden

Administrator David O’Neill. But O’Neill put its agricultural value at just \$63,600. That’s what matters under the farmland preservation tax break. So the 2015 tax bill was just \$644.

By comparison, a two-bedroom rental house across the street, assessed at \$145,000, had a \$1,715 tax bill.

Some neighbors say they don’t understand why a farmland preservation tax break is given to land that is neither farmed nor being preserved.

“I am surprised at how low the taxes really are on it,” said Steve Ricker, a member of the nearby Greenbrier Residents Association. “I knew that farms pay at a lower tax rate, but I had no idea it was that low. (And) I do feel there should be farming, there should be actual agriculture going on if you’re going to get this tax break.”

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Part I: Tax relief intended to save Kentucky farms helps pave them instead

Part II: 10-acre lawns get benefit meant for working Fayette County farms

Part III: How other states guard against 'fake farmers' | Developers get tax break as bulldozers approach

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### **'Let's not pretend'**

Giving a farmland preservation tax break to a property planned for development “makes no sense,” said Richard England, professor of economics and natural resources at the University of New Hampshire.

England has studied the tax breaks for many years. Every state has its own version, to shield farmers from the rising land values of urban sprawl. But some states end the break and levy financial penalties once landowners move to develop their land, he said. Nebraska won't allow properties inside a city limits or sanitary sewer district to even get the tax break unless owners accept permanent conservation restrictions on the land.

“If you're talking about 40 acres of barren land rezoned for commercial use next to a new interstate off-ramp, then let's face it, that's going to be developed,”



Richard England

England said. “So go ahead and develop it as the best use of the land. But don't give it an agricultural tax exemption. Let's not pretend this is going to be a farm in 10 years.”

However, a property can be farmed while it awaits construction, said Lexington developer Tim Haymaker. When circumstances permit, Haymaker said, he leases his development land



to a local farmer on a year-to-year basis. Having someone grow corn and tobacco on the land keeps it cleared for when he's ready to build on it, he said.

"Otherwise, you finally get out there and it's a forest. It basically costs us nothing this way to keep the land cleared," Haymaker said.

The Kentucky Department of Revenue does not provide uniform guidance to county PVAs on when they should disqualify land from the farmland preservation tax break. In Fayette County, O'Neill said he doesn't strip a land of the tax break until the year after the lots are platted by a developer — that is, divided into smaller parcels — and work crews break ground at the site.

It isn't fair to tax a developer's property at fair cash value until after construction starts, O'Neill said. Even partway into development planning, unexpected delays can keep the land vacant for another year or more. Until something is built on it, it's still capable of being used for farming, which is all the law requires, he said.

"In 2008, when every developer in town was sitting on large tracts of land and the economy tanked and nobody was buying a house, nobody



David O'Neill

was building a house, nobody knew if anyone would build a house again, the idea that someday this land might have to be converted back to another use was a real possibility," O'Neill said.

## Keeping overhead low

Lexington developers say it's common for them to hang onto empty land until the economy is strong enough to support a project and they can complete the cumbersome process — permits, hearings, plan reviews, bonds — necessary to build inside the city. The farmland preservation tax break keeps their costs down during these long periods.

“If I had to pay full taxes on all of this land, I wouldn't buy any of it in the first place. I couldn't afford to sit on it,” said C.M. “Bill” Gatton, a development landowner and past chairman of the University of Kentucky Board of Trustees. “You would just kill any development on land around Lexington. You wouldn't have but about two percent of it.”

Developer James D. Baker of Baker-Haydon Properties made a different prediction.

“If they pass some sort of ruling saying ‘You've got to pay higher taxes,’ we'll just pass it on to the consumer,” Baker said. “So instead of paying \$40,000 for a lot, you'll pay \$45,000. Instead of paying \$120,000 for a house, you'll pay \$130,000. So the question becomes, who really winds up paying this?”

Baker-Haydon Properties owns 72 acres on Spurr Road just south of Interstate 64 that it plans to turn into Unit 1 of the Masterson Hills subdivision. The fair cash value is \$3.51 million. But with the farmland preservation tax break, the agricultural value is \$27,600, so last year's tax bill was \$279.



Baker-Haydon Properties owns 72 acres on Spurr Road in north Lexington that is planned as a subdivision. Its fair cash value is \$3.51 million, but last year's property tax bill was \$279, based on a farmland value of \$27,600. Faron Collins

Baker acknowledges that's cheap. A relatively small house neighboring his land is taxed more than seven times as much. But unlike that house, he said, his vacant land doesn't require any public services.

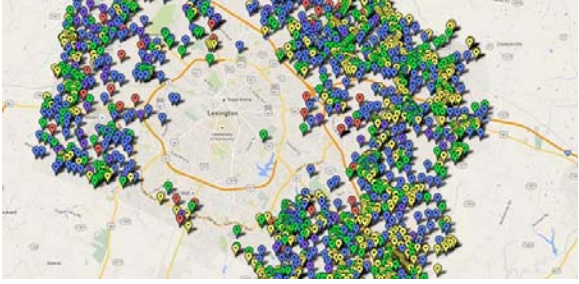
"We get nothing for our taxes there," Baker said. "Nothing. We've owned that land for 15 years, 20 years, and I can't think of any government services we've gotten for that land. No garbage collection, no street lamps, no real need for police or fire protection. My argument would be, I shouldn't be paying anything!"

Emma Tibbs, an activist with the Fayette County Neighborhood Council, said that argument misses the point. Taxes on a property's real value are part of how a community equitably collects money to support schools and local and state governments, Tibbs said. People who can afford to spend more on property are supposed to contribute more in taxes, she said.

"If you want to talk about fairness, when your typical homeowner is paying more taxes on their property than someone with this huge acreage worth millions that he's working to develop, then that's not fair," Tibbs said. "It's not fair that they get to pay the lesser ag(riculture) value, as if it were a farm, right up until they've actually built this massive development."

### **Explore a map of Lexington properties getting farmland tax breaks**





Find out which properties and owners got the farmland tax preservation break.

## **A tree farmer appeals**

State officials at the Revenue Department, who provide guidance to county PVAs, say the law behind Kentucky's farmland preservation tax break is so loosely written that property owners prevail on appeal if their tax breaks are challenged.

The officials cite an Anderson Circuit Court decision in 2009. In that case, Anderson County's PVA stripped 87 acres of its agricultural assessment because the owner was developing his land into a housing subdivision. A plat map had been approved, there were paved roads with street signs, and two lots had been sold, with a real estate agent soliciting offers for others.

Clearly, this land was not a preserved farm anymore, the PVA said. So the taxable value of the property jumped from \$225,000 to \$885,000.

The landowner, in his appeal, said he was "currently growing timber" on the property and therefore was entitled to the farmland preservation tax break. The Kentucky Board of Tax Appeals sided with him. Those trees qualified as "the minimum requirements for agricultural property" because they could be cut and sold as an "agricultural product," the board said. The tax break could stay while he developed the rest of the property.

Upholding the Kentucky Board of Tax Appeals' ruling, Anderson Circuit Judge Charles Hickman wrote: "While the court believes that the evidence could have equally supported a decision in favor of the PVA ... it is not the role of this reviewing court to supplant the findings and determinations of the KTBA."



A lucrative tax break 02:01



In Kentucky, the agricultural exemption in property taxes is given to anyone with 10 acres or more, whether they farm the land or not.

Most PVAs have concluded that any parcel of 10 acres or more that is capable of agricultural production should be assumed to qualify for the tax break, said David Gordon, executive director of the Office of Property Valuation at the Revenue Department.

"You say they (the landowners) are obviously cheating. Well, in this case, we thought this gentleman was obviously — well, it was even platted. And the courts ruled against us," Gordon said.

O'Neill, the Fayette County PVA, said that even if his office required active farming for property to qualify for the tax break, developers could just periodically bale the grass as hay. That wouldn't really create more farming, he said.

“They are extremely competent business people, and if the requirement changed that there has to be something growing on that land, I assure you the developers will plant something on that land,” O’Neill said.

John Cheves: 859-231-3266, @BGPolitics

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### PART 3 OF 3

**Sunday:** Why a \$13 million development property was taxed only \$1,755

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**Tuesday:** Dozens of Lexington development properties get farmland tax break



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### COMMENTS

5 Comments

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Add a comment...



**Jen Warner** ·

Goshen High School

would be interesting to see how much each of these developers donate to politicians to keep paying next to no taxes on property they will sell for billions....

Like · Reply · 1 · Feb 24, 2016 8:39am



**Wayne Stacy** ·

Photographer/Owner at Www.photographic-magic.com

Taxing land that has not been developed commercially because it "will be" developed commercially is the same as taxing college graduates income based on what "they will" earn once they have secured a high wage position.

Another hit piece by the socialist driven Liberal-Loser; still pissed off because their candidates didn't win elections.

Like · Reply · 2 · Feb 23, 2016 4:37am



**Bob Rabit** ·

Bunnythorpe, New Zealand

I grow tomato's in my backyard so in essence it's a farm. I'll be filing my appeal tomorrow.

Like · Reply · 4 · Feb 22, 2016 4:18pm



**Maria Stanley**

hmm, \$644? that's probably only double what a

WATCHDOG FEBRUARY 22, 2016 1:10 PM

# How other states guard against 'fake farmers'

## HIGHLIGHTS

Some states require landowners to show proof of farming

Owners face penalties once they move to develop properties

Kentucky falls short of 'commonsense approach,' experts say



This 20-acre lot on Leestown Road has a fair cash value of \$2.59 million. The owner, Whitesburg Re-Development Co., has plans filed with the city to build a large retail complex on the site called Masterson Station Center. Under the farmland preservation tax break, the land is assessed at an agricultural value of



just \$8,300 and produced \$84 in tax last year. **Faron Collins** - Herald-Leader

BY JOHN CHEVES

[jcheves@herald-leader.com](mailto:jcheves@herald-leader.com)

One by one, all 50 states established a farmland preservation tax break in the 1960s and '70s to protect farm families from rising property values.

But some states did a better job than Kentucky of narrowly tailoring their tax breaks to save farms, Richard England, a professor of economics and natural resources at the University of New Hampshire, said in a recent interview.

Richard England is a professor of economics and natural resources at the University of New Hampshire. Photo provided

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England has studied farmland preservation tax breaks for decades. He said they're often abused by large landowners — “fake farmers,” he calls them — who either don't really farm the land or don't plan to preserve it.

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Part I: Tax relief intended to save Kentucky farms helps pave them instead

Part II: 10-acre lawns get benefit meant for working Fayette County farms

Part III: How other states guard against 'fake farmers' | Developers get tax break as bulldozers approach

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Land-use data cast doubt on whether the tax breaks succeeded in their stated purpose. Cities and suburbs displaced more than 40 million acres of rural land over the past 50 years, even as rural landowners were heavily subsidized to keep their properties undeveloped, England

said.

In a report published last year, England identified states' farmland preservation tax break policies that he admires. They include:

- **Proof of farming:** In Texas, South Dakota, Montana and Alaska, landowners must show that a substantive part of their income is from agriculture. They have to submit income tax documents as proof. Other states, including Ohio and Rhode Island, set a smaller threshold of \$2,500 in farm income.

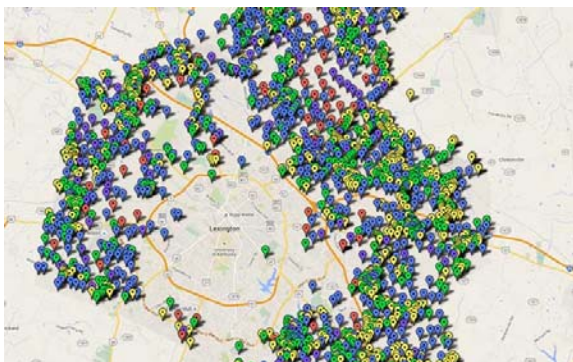
Kentucky does not require proof of farming.

- **Hefty penalties:** Delaware, Idaho and Indiana collect as much as 10 years of deferred property taxes at market value when farmland is converted to other uses, such as a shopping center. In Vermont, land getting the tax break faces a penalty of as much as 20 percent of its market value if it's developed. These penalties are often referred to as "clawbacks."

Kentucky does not impose penalties.

- **Swift disqualification:** Arizona strips agricultural land of the tax break if the owner requests a rezoning for some other use; if he files a development plat map or plants survey stakes; or if he brings in a utility service not required for farming. Nebraska forbids land inside a city limits from getting the tax break unless it has a conservation easement that permanently prohibits development.

### **Explore a map of Lexington properties getting farmland tax breaks**





Find out which properties and owners got the farmland tax preservation break.

Kentucky does not provide uniform guidance to county officials on when to disqualify land. In Fayette County, officials say they don't end the tax break until the Jan. 1 after a development plan is filed for a parcel and workers break ground for construction.

- **Large tracts:** Nevada, South Dakota and Washington state require a minimum of 20 acres to grant the tax break. It's 25 acres in Vermont and 160 acres in Montana.

According to the U.S. Department of Agriculture, the average size of an active farm in Fayette County is 160 acres. Yet in Lexington, and most of the rest of Kentucky, the tax break goes to any tract with at least 10 contiguous acres once classified as agricultural.

"Ten acres is awfully small to automatically give this exemption," England said. "How many 10-acre farms are there, really, that you're not even going to ask any questions? That seems a little ridiculous."

In Kentucky, the agricultural exemption in property

taxes is given to anyone with 10 acres or more, whether they farm the land or not.

The American Farmland Trust, a nonprofit in Northampton, Mass., that advocates for productive green space, is less critical than England about the overall usefulness of farmland preservation tax breaks. But the Trust agrees with him that tax breaks make sense only “as long as the land is being used for agriculture and is truly being farmed,” said Jennifer Dempsey, who manages the Trust’s Farmland Information Center.

“The commonsense approach would be to have people apply for the exemption and show that they’re farming,” Dempsey said. “The idea of any state automatically enrolling land because of its history as a farm, without any idea what its current use is — that doesn’t make sense. It’s not accomplishing what the state wanted. It just shifts the tax burden to everyone else without protecting the land.”

John Cheves: 859-231-3266, @BGPPolitics



## MORE WATCHDOG

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## COMMENTS

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OP-ED

FEBRUARY 25, 2016 1:43 PM

# Changes coming in agricultural property assessments in Fayette

## HIGHLIGHTS

Herald-Leader reports spur local, state officials to review tax exemption

Fayette PVA phasing in change from automatic tax break for large lots

General Assembly, Revenue Department must clarify what qualifies as agriculture



1 of 2



Fayette County homes on 10 acres or more have automatically qualified for a tax break originally intended for working farms. **Charles Bertram** - [cbertram@herald-leader.com](mailto:cbertram@herald-leader.com)

**BY DAVID O'NEILL**

The Herald-Leader and reporters John Cheves and Linda Blackford have done an excellent job identifying an area of tax law long overdue for modernization.

In doing so, they caused what otherwise may not have happened — the various levels of government, including property valuation administrators, the Department of Revenue and the legislature each making this a priority at the same moment, which is critically important for change to be effected.

Up to this point, I have administered agricultural assessments in a manner ensuring all property owners of 10 acres or more (other than commercial property) are treated exactly the same.

Over time, the legal requirements for qualifying as agricultural land have devolved to the point that the only remaining quantifiable requirement is acreage. All other factors are ambiguous at best and other seemingly obvious requirements, including agriculturally derived income, have been deliberately removed from the statutes.

Therefore, nearly every PVA and the Department of Revenue now operate under a requirement of agricultural “capability” rather than actual agriculture “use.”

Obviously, the current policies draw into question whether all other property owners are treated fairly and equitably relative to those who own the larger tracts — an intolerable situation no one desires.

Without state legislation that clarifies these complex issues, unilateral changes by my office



could create additional levels of inequity that could not be sustained over time. However, now that some of the necessary parties are at the table, under the public spotlight and discussing solutions, I will take the following steps immediately:

1. Ten-plus acre residential estates will no longer qualify for agriculture values unless the parcel retains a total land area of 10 acres, excluding land used in connection with the house, lawns, driveways, flower gardens, swimming pools and other areas devoted to family recreation (per KRS 132.450 (2.a.)). The implementation will follow a modified grandfathering approach (per KRS 132.450 (3)):

- Land that has been assessed as agriculture and owned by the same person for five or more years will retain the agricultural classification until it changes ownership.
- Properties that change ownership on or after Jan. 1, 2016 will be assessed and taxed at 100 percent fair cash value going forward.
- Properties that changed classification or ownership between Jan. 1, 2012 and Dec. 31, 2015 will be assessed at fair cash value as of Jan. 1, 2016.

2. I will request an official legal opinion from the Department of Revenue on the precise definitions of “agriculture land” or “agriculture use.”

In the event that the department reverses its previous opinions and advises me to reclassify properties based on a requirement of use, I will implement necessary reclassifications based on a grandfathered approach similar to that outlined above, beginning Jan. 1, 2017.

Many citizens have asked why I do not require an application, as is the case in Jefferson County. Simply put, there is no need for an application if there is no requirement for actual



agriculture use. Jefferson's application process creates nothing more than an honor system, which would be no fairer than our current policy.

With 1,263 total parcels receiving agriculture values versus 382 actual working farms per the U.S. Department of Agriculture, Jefferson has achieved no discernible difference than Fayette in the ratio of working farms to agriculturally assessed parcels.

3. I will publicize on FayettePVA.com the precise criteria used on Jan. 1 of each year when I reassess potential development land for reclassification from agriculture to commercial or residential use. I will also keep an up-to-date list on the same web page of all such properties.

4. I will continue to deploy the allowable resources of my office, and whatever political capital I may have accumulated, to bring the various parties together to develop immediate and permanent legislative and administrative solutions.

5. I will make myself available to answer any and all questions Fayette citizens have on this issue in order to build public confidence that our property-tax laws are administered fairly within the limits of the law and to gather input on the process of implementing solutions.

The public is invited to a question-and-answer session in the Farish Theater at the Main Branch of the Lexington Public Library, 140 E. Main St, Thursday, March 3 at 5:30 pm.

I regret I was unable to make this issue a higher priority before now. As a responsible public official, I must make a budget, make decisions on priorities, then develop a plan and execute it. I typically prioritize areas where we will reap the greatest benefit to the tax roll for each man-hour expended by my office. Even though there is no direct correlation between





the size of the tax roll and the money appropriated to run my office, I still must justify my appropriations request each year. Return on taxpayer investment is the most obvious way to do that.

However, basing priorities so heavily on revenue potential has resulted in a bit of tone deafness on my part. The agricultural assessment issue actually speaks more directly to fairness than it does to revenue, and that is a distinction and a mistake I will not be making again any time soon.

The delicate balance between the striking beauty of our rural character and the vibrancy of our urban and commercial core is a significant factor in the economic success Lexington has enjoyed, even during times of recession. I support the progressive and nationally recognized policies Fayette County pioneered for generations that protect us from uncontrolled sprawl, including the Urban Service Area, Purchase of Development Rights Program, zoning, and an active and empowered planning commission.

For this reason, I have been reluctant to step too far away from my strict non-policymaking role. I pledge to work with stakeholders with caution to ensure that I do not inadvertently interfere with their missions, or the best interests of our farmers.

David O'Neill is the Fayette County property valuation administrator.

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### **Public session on how property tax laws are administered**

**When:** Thursday, March 3 at 5:30 p.m.

**Where:** Farish Theater, Lexington Public Library  
Main branch, 140 E. Main St.



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## COMMENTS



5 Comments

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**Danny Mayer** ·

Lexington, Kentucky

Does this do anything to address the most egregious cases--the large commercial areas valued at several million dollars that are taxed at levels that allow developers to pay several hundred dollars a year in property taxes? I don't see it addressed in here, yet this was the main "lost revenue" that Cheves and Blackford noted.

Like · Reply · Feb 25, 2016 5:24pm

**David Rust** ·

University of Kentucky

I agree with you Danny. I fall in the category of buying 10 acres (because that's all I could afford) to set up a small family farm. I just purchased the property in the fall, and my house is currently under construction. I plan was to raise cattle and chickens. According to O'Neill's 10 acre UNDEVELOPED stipulation, my gravel driveway alone pulls the rug out from under me. I don't know how to interpret, "Properties that changed classification or ownership between Jan. 1, 2012 and Dec. 31, 2015 will be assessed at fair cash value as of Jan. 1, 2016." Is that a one-time thing or from now-on moving forward?

I probably won't be able to sell enough each year to pay off the property tax (that was not in place at the time I purchased my property). I would be more than happy to prove each year that I am farming my land. Trust me, I'm not trying to take advantage of any loopholes...just trying to live a sustainable and healthy life

Like · Reply ·  1 · Feb 26, 2016 8:03am**Danny Mayer** ·

Lexington, Kentucky

David Rust When I ran for Mayor in 2014, one of the areas of economic development I tried to push for was that sort of small-scale ag you're hoping to do. From 20 acres on down to .2 of an acre, the city should provide small-scale farmers ag-based tax breaks. This break is community-enhancing in several ways. For one, it allows many factors more people to share in the benefits of tax





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By vroll.tv

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WATCHDOG MAY 12, 2016 2:53 PM

# Kentucky lawmakers to examine possible abuse of farmland tax break

## HIGHLIGHTS

Staff investigators to issue a report on \$36 billion tax break for 2017 General Assembly

Herald-Leader published stories in February about non-farms that get their taxes slashed

'I believe our schools are being shortchanged,' says Rep. Ruth Ann Palumbo

A lucrative tax break 02:01



1 of 2



In Kentucky, the agricultural exemption in property taxes is given to anyone with 10 acres or more, whether they farm the land or not. [lblackford@herald-leader.com](mailto:lblackford@herald-leader.com)

BY JOHN CHEVES

[jcheves@herald-leader.com](mailto:jcheves@herald-leader.com)

Investigators for the state legislature will examine how Kentucky officials annually forfeit taxes on \$36.6 billion in property values under the farmland preservation tax break, a subject highlighted in February by a series of stories in the Herald-Leader.

The Program Review and Investigations Committee selected the farmland preservation tax break and three other issues Thursday for in-depth examinations out of about 50 subjects proposed by lawmakers. Reports are expected to be published on each issue by the time the 2017 General Assembly begins in January, with an eye toward legislation that could address problems uncovered in the reports.

Rep. Ruth Ann Palumbo, D-Lexington, who sits on the committee, proposed a statewide study of the tax break because she suspects that it's being misused in some cases to the benefit of property owners who aren't really farmers.

"I believe our schools are being shortchanged. And it's a matter of fairness and equity to the taxpayers," Palumbo said.

The tax break, approved by voters in 1969, was meant to protect family farms from encroaching development and rising land values. It keeps property assessments far lower than fair cash value on "agricultural land." However, the legislature later stripped the tax break of restrictions, such as an annual application process that required proof of farming income and a three-year tax penalty imposed if farmland was developed.

As a result, the Herald-Leader found scores of examples around Lexington of development

properties that enjoy the farming tax break although they are about to become a shopping center or a subdivision, and suburban homes surrounded by vast lawns that count as agricultural land, knocking as much as 40 percent off their tax bills.

In one notable example, The Summit at Fritz Farm, an upscale shopping center under construction on Nicholasville Road, was assessed with an agricultural value of just \$169,800, although the property sold last summer for \$13 million. Its 2015 tax bill was \$1,755, roughly the same as what's owed on nearby family homes. The Summit property once was a farm, and even with bulldozers tearing up its soil, it had not yet lost its preservation tax break.

Because of the tax break, Fayette County alone waived \$1.6 billion in taxable value last year for 2,459 properties covering 116,753 acres. That equals \$11.8 million in forfeited taxes to Fayette County schools, and several million more to the health department, Lextran and other public services.

Locally elected property assessment administrators are responsible for deciding what land is worth for tax purposes. However, several PVAs told the Herald-Leader that they would welcome stricter guidance from the state Revenue Department on how to define farmland under the tax break. That is the primary focus of the legislative investigation Palumbo proposed.

Palumbo filed a bill during the 2016 General Assembly that would have limited the tax break to property "currently" used for farming, excluding houses and lawns as well as properties rezoned for commercial or residential use, sitting vacant as they await planned development. The bill was assigned to the House budget committee March 2 but saw no further action.

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