

## 'Fake farmers' grow tax breaks in Morris County, NJ

### Wealthy can exploit woodland management program

By COLLEEN O'DEA • STAFF WRITER • December 10, 2010

One of Morris County's biggest farmers is the former Roxbury munitions giant, Hercules.

The site of the worst explosives plant disaster in the nation's history, the Hercules site at one point included dozens of buildings making munitions on more than 1,000 acres. Today, it's been closed for 14 years and more than half the property — 557 acres, according to tax records — are categorized as farmland. The company paid less than \$2,900 in property taxes on those parcels last year.

"They have a woodland management program," said Joseph McKeon, Roxbury's tax assessor. "It's pretty common for any property owner with more than five acres to do. It's a significant tax savings."

That program is under fire. Critics say spotty enforcement and an outdated state law allow thousands of landowners to pay pennies on the dollar in property taxes.

The Farmland Assessment Act of 1964, intended to preserve agriculture in New Jersey, is being used by millionaires, developers and anyone with at least 5 acres to slash their farmland tax bills by 98 percent, they charge.

Farmers counter that the assessment is one of the key programs that keep farming alive in New Jersey, where farmers pay more than three times the national average in property taxes and some of the country's largest property tax bills, second only to Rhode Island.

"Next only to the state's right to farm act, this is the most important piece of legislation that helps to maintain agricultural viability in New Jersey," said Kurt Alstede, a Chester Township farmer who works farmland-assessed land owned by himself and others.

A New Jersey Press Media investigation into farmland assessment records found that hundreds of landowners, deemed "fake farmers" by those calling for reform, are producing little more than the bare minimum — \$500 — in goods to qualify for the tax breaks.

One landowner tried to declare weeds as a farm product, and another forged a signature on a government document in attempts for the tax break, the news organizations, including the Daily Record, found.

"It was never the intent of the law that fake farmers would benefit," said state Sen. Jennifer Beck, R-Monmouth, who has proposed changes to the law. "If it's not fulfilling the intent of the law, it is a violation of the public trust."

Peter Furey, head of the New Jersey Farm Bureau, said there is nothing wrong with celebrities or corporations owning farmland, and it is often their land that traditional, full-time farmers work because they can't afford to own all the land they need to remain viable.

That has in part led to most of the largest farmland-assessed tracts in Morris County being owned by companies like Hercules, as well as developers like Ilac in Rockaway Township and Baker-Firestone in Jefferson.

Richard Motyka, a tax assessor in seven towns in Warren and Passaic counties, criticizes those taking advantage of the law.

"Farmland assessment was intended for farmers to get a tax break, but what's happened is the homeowner wants a tax break so he pretends he's a farmer," Motyka said. "If you have 300 people get farmland assessment (in a town), that means everyone else, including the farmers, has to pay taxes on their land to make up for that."

New Jersey Press Media found weaknesses in the oversight of farmland assessment and its sister program for woodlands that allow those whose primary income does not come from farming to exploit the tax law. In a review of thousands of farmland assessment records and in interviews with tax assessors, state and local officials, the news organizations found:

- A lack of inspections. Only 10 percent of the required inspections of farm-assessed woodlands were done this year by the state Department of Environmental Protection. DEP foresters are required to inspect such woodland properties every three years. DEP officials say they can't ensure that owners of uninspected properties are meeting the requirements for a tax break.
- DEP Commissioner Bob Martin said officials next year will consider whether the agency should be involved in farmland assessment and what improvements are needed.
- A lack of proof and verification. The news organizations found inconsistencies in record-keeping and inspection practices. Numerous applications lacked such required information as signature of the property owner or an accounting of goods sold.
- Reduced oversight. The state Division of Taxation, which oversees the farmland assessment program, has not conducted a town-by-town review to assess the program since 1985. Since then, the number of state workers who monitor farmland assessment has dropped about 50 percent to five, division officials said.
- Cat-and-mouse games. Some property owners tried to claim a farmland deduction when they didn't either farm or sell anything. In Frelinghuysen in Warren County, one property owner claimed \$650 in woodland income but instead harvested six cords of wood for personal use, according to the tax assessor and records. The owner's application for 2010 was approved; the assessor said income information will be required for 2011.
- Minimal penalties. When land is taken out of farming or woodlands, the property's owner must pay two-plus years of taxes at the regular, nonfarmland rate to the municipality.

Compared with the rest of country, New Jersey is on the low end of the payback scale. Other states require up to a 10-year payback to deter land speculation. Attempts by legislators to increase payback have stalled.

Several legislators are working to increase the amount of goods a farmer would have to sell to be eligible.

Furey, of the state Farm Bureau, said farmers support such efforts but caution that growers of lower value crops as wheat, corn and hay may not meet a higher income threshold for small parcels they might farm.

"There is consensus the threshold should be increased," he said.

"Today, \$500 is a joke," said Motyka, the assessor. "You do the math. It grosses \$9 a week. . . . It's insane."

The tax savings for those whose primary income is not in agriculture can be substantial.

For instance, Ilac Realty of Cranford, which is a sister company of Mack Cali, owns 664 farmland-assessed pristine wooded acres in Rockaway Township. Assessed at \$87,000, the property's tax bill totals \$2,923.

By comparison, the average assessed value of five one-acre, vacant plots in the township this year is \$44,000 with a \$1,448 tax bill on just one acre.

Mark Burek, the Rockaway Township assessor, said Ilac sells wood, and it doesn't take much for it to meet the threshold.

"For \$500, that's about two or three cords of wood, or about 10 or 12 trees," he said.

Ilac is a good example of a developer reducing its tax bill while it waits to build on the land. The company had at one point proposed a huge complex of more than 1,000 homes in the area.

"They are still trying to develop and trying to get approvals, but I don't think that's going to happen because of the Highlands Act and because they would have to build their own sewage treatment plant," he said.

The 2004 Highlands law that imposed strict development controls over much of Morris County has left many developers holding land they can't build on right now, hoping some day they may be able to.

"The problem is the land speculators, the landed gentry, the fake farmers, who are just dodging the property taxes everyone else has to pay," said Jeff Tittel, head of the New Jersey chapter of the Sierra Club. "We are subsidizing their taxes until they are ready to develop their land, and then they'll make a huge profit."

He said Sierra Club supports changing the law to increase the tax rollback to 10 years, so when land is no longer farmed, an owner would have to pay back the difference between the lower taxes he paid under farmland assessment and what the full tax bill would have been for the prior decade.

Byram Land Development, with a Millington mailing address, owns 615 acres in Byram, and all but 25 of those are assessed as farmland. Byram Councilman Scott Olson said the property that is market-value assessed is leased to Tilcon for a quarrying operation.

"The town grows up around them, and they get the full benefit of the infrastructure that everyone else paid for but they don't pay the full taxes," he complained. "Personally, I think if you want to be farmland-assessed or woodland-assessed, you should have to preserve your property."

**While farmland assessments may not pay the same tax bill, Elliot Ruga of the New Jersey Highlands Coalition said they provide other benefits by keeping land open.**

**"Whatever can be done to encourage stewardship on a property if you have forest land should be done," he said. "If those trees are not cut down and made into lawns, there's less irrigation, less nitrates. That's a benefit for those of us who are neighbors. Wildlife habitats thrive in the neighborhood. There's a value in that for the community."**

But Beck said that the law intended to protect and preserve the industry of agriculture "is also protecting people who are not farming, who are using it as a tax shelter."

In 2007, Beck defeated an incumbent who qualified for farmland assessment by growing Christmas trees on her property. Since taking office, she has pressed for reforms to the 1964 law, including raising the income threshold. But her efforts have stalled.

Gov. Chris Christie said he'd be willing to consider raising the income requirement as well as a host of other reforms "as long as we do so in the context of fairness and shared sacrifice."

State Secretary of Agriculture Douglas H. Fisher also thinks the \$500 income threshold set in 1964 could be increased. If adjusted for inflation, that sum today would be \$3,500. But, Fisher stated, those who don't consider five or more acres of land with two horses, two alpacas or two emus a farm may have a "bias as to what somebody thinks a farm should look like."

In fact, said Patricia Wright, who oversees farmland assessment in the state Division of Taxation, "The law does not say you cannot be a gentleman farmer or you have to have farming as your main livelihood."

Property tax records show Morris and Sussex counties have a number of such gentleman farmers. These include former Rep. Peter H.B. Frelinghuysen, who has 127 farmland-assessed acres in Harding that had a 2009 tax bill of \$1,048. He also owned 65 acres that include homes that are not farm-assessed that had a \$178,000 tax bill.

McKeon said Frelinghuysen has a wood-management plan, as well as a professional consulting firm that does the farming and fills out the forms required to qualify for the assessment.

"It's a lot of paperwork, but it's a huge amount of savings," said McKeon. "It's well worth it if you can qualify."

Fisher said farmers, who pay regular-rate property taxes on their homes and other structures not directly associated with farming, "accept their plight."

"What they really want to do is just be able to farm," he said, noting that from 1950 to 1960, the decade leading up to enactment of the law, some 10,000 farms were lost in the Garden State, roughly 30,000 acres each year.

The law stemmed the tide, reducing the loss to about 8,000 acres annually, he said.

Some tax assessors, as well as many in the farming community, said changes to the law could prompt sell-offs of farm-assessed lands to those who will build houses, which in turn would require more police, roads and schools and likely higher taxes.

Undeveloped land doesn't demand much in the way of municipal services, said Chris Sturm, senior director of policy for New Jersey Future, a nonprofit smart-growth group.

"This is not a wealth issue," said Alstede. "Is the farmer meeting the production requirements? The issue shouldn't be who qualified. The issue should be are they qualifying properly."

## **2006 FARMLAND ASSESSMENT RECOMMENDATIONS**

In 2006, the Joint Legislative Committee on Constitutional Reform and Citizens Property Tax Constitutional Convention in New Jersey issued the following findings and recommendations on farmland assessment:

- 1) While the farmland assessment program has helped preserve invaluable farmland and improved the quality of life, the two-plus-year rollback tax period appears to favor land speculation and should be modified.
- 2) The current method for determining whether landowners qualify for farmland assessment is outdated and should be overhauled. Some property owners take advantage by qualifying for farmland assessment even though they're not actually farming. A specific amount of income from farming the land should be required to qualify.
- 3) The farmland assessment program was never intended to serve as a property tax break for land speculators to the financial detriment of other property taxpayers in a community, as is often the case now.

*Source: N.J. Joint Legislative Committee on Constitutional Reform and Citizens Property Tax Constitutional Convention*

## **FARMLAND-ASSESSED LAND IN NEW JERSEY**

New Jersey land with farmland assessment continues to drop but still covers about one-fifth of the state. Here are the latest figures:

### **Total acreage:**

2009 ... 998,899 acres

2010 ... 985,798 acres

### **Cropland harvested:**

2009 ... 466,785

2010 ... 488,643

### **Cropland pastured:**

2009 ... 34,516

2010 ... 34,715

### **Permanent pasture:**

2009 ... 95,681

2010 ... 94,813

### **Woodland:**

2009 ... 388,816

2010 ... 380,728

*Source: N.J. Department of Agriculture*

## **FARMLAND TAXES**

Land with farmland assessment gets a large tax break. Here are some facts regarding all farmland in 2009, minus preserved or government-owned parcels:

- 1) Total farmland-assessed acres: 994,258
- 2) Estimated tax without farmland assessment: \$562.7 million
- 3) Tax with farmland assessment: \$11.2 million
- 4) Median tax per acre: \$10.39 ... a 98 percent tax reduction

*Source: N.J. Department of Agriculture*

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