of livestock and eradicating ticks or exposure to ticks at any time during a tax year is entitled to a reappraisal of the owner's land for that year on written request delivered to the chief appraiser.

(b) As soon as practicable after receiving a request for reappraisal, the chief appraiser shall complete the reappraisal. In determining the appraised value of the land under Section 23.41, the effect on the value of the land caused by the infestation of ticks is an additional factor that must be taken into account. The appraised value of land reappraised under this section may not exceed the lesser of:

(1) the market value of the land as determined by other appraisal methods; or

(2) one-half of the original appraised value of the land for the current tax year.

(c) A property owner may not be required to pay the appraisal district for the costs of making the reappraisal. Each taxing unit that participates in the appraisal district and imposes taxes on the land shall share the costs of the reappraisal in the proportion the total dollar amount of taxes imposed by that taxing unit on that land in the preceding year bears to the total dollar amount of taxes all taxing units participating in the appraisal district imposed on the land in the preceding year.

(d) If land is reappraised as provided by this section, the governing body of each taxing unit that participates in the appraisal district and imposes taxes on the land shall provide for prorating the taxes on the land for the tax year in which the reappraisal is conducted. If the taxes are prorated, taxes due on the land are determined as follows: the taxes on the land based on its value on January 1 of that year are multiplied by a fraction, the denominator of which is 365 and the numerator of which is the number of days in that year before the date the reappraisal was conducted; the taxes on the land based on its reappraised value are multiplied by a fraction, the denominator of which is 365 and the numerator of which is the number of days, including the date the reappraisal was conducted, remaining in the year; and the total of the two amounts is the amount of taxes imposed on the land for that year. Notwithstanding Section 26.15, the assessor for each applicable taxing unit shall enter the reappraised value on the appropriate tax roll together with the original appraised value and the calculation of the taxes imposed on the land under this section. If for any tax year the reappraisal results in a decrease in the tax liability of the landowner, the assessor for the taxing unit shall prepare and mail a new tax bill in the manner provided by Chapter 31. If the owner has paid the tax, each taxing unit that imposed taxes on the land in that year shall promptly refund the difference between the tax paid and the tax due on the lower appraised value.

(e) In appraising the land for any subsequent tax year in which the Texas Animal Health Commission quarantine remains in place, the chief appraiser shall continue to take into account the effect on the value of the land caused by the infestation of ticks.

(f) If the owner of the land is informed by the Texas Animal Health Commission that the quarantine is no longer in place, not later than the 30th day after the date on which the owner received that information the owner of the land shall so notify the chief appraiser in writing. If the owner fails to notify the chief appraiser as required by this subsection, a penalty is imposed on the property equal to 10 percent of the difference between the taxes imposed on the property in each year it is erroneously allowed appraisal under this section and the taxes that would otherwise have been imposed.

(g) The chief appraiser shall make an entry in the appraisal records for the property against which the penalty is imposed indicating liability for the penalty and shall deliver a written notice of imposition of the penalty to the person who owns the property. The notice shall include a brief explanation of the procedures for protesting the imposition of the penalty. The assessor for each taxing unit that imposed taxes on the property on the basis of appraisal under this section shall add the amount of the penalty to the unit's tax bill for taxes on the property against which the penalty is imposed. The penalty shall be collected at the same time and in the same manner as the taxes on the property against which the penalty is imposed. The amount of the penalty constitutes a lien on the property against which the penalty is imposed and accrues penalty and interest in the same manner as a delinquent tax.

HISTORY: Enacted by Acts 2007, 80th Leg., ch. 1011 (H.B. 967), § 2, effective June 15, 2007.

Secs. 23.49 to 23.50. [Reserved for expansion].

Subchapter D

Appraisal of Agricultural Land

Sec. 23.51. Definitions.

In this subchapter:

(1) **[Effective until January 1, 2021]** "Qualified open-space land" means land that is currently devoted principally to agricultural use to the degree of intensity generally accepted in the area and that has been devoted principally to agricultural use or to production of timber or forest products for five of the preceding seven years or land that is used principally as an ecological laboratory by a public or private college or university. Qualified open-space land includes all appurtenances to the land. For the purposes of this subdivision, appurtenances to the land means private roads, dams, reservoirs, water wells, canals, ditches, terraces, and other reshapings of the soil, fences, and riparian water rights. Notwithstanding the other provisions of this subdivision, land that is currently devoted principally to wildlife management as defined by Subdivision (7)(B) or (C) to the degree of intensity generally accepted

in the area qualifies for appraisal as qualified open-space land under this subchapter regardless of the manner in which the land was used in any preceding year.

(1) **[Effective January 1, 2021]** "Qualified open-space land" means land that is currently devoted principally to agricultural use to the degree of intensity generally accepted in the area and that has been devoted principally to agricultural use or to production of timber or forest products for five of the preceding seven years or land that is used principally as an ecological laboratory by a public or private college or university and that has been used principally in that manner by a college or university for five of the preceding seven years. Qualified open-space land includes all appurtenances to the land. For the purposes of this subdivision, appurtenances to the land means private roads, dams, reservoirs, water wells, canals, ditches, terraces, and other reshapings of the soil, fences, and riparian water rights. Notwithstanding the other provisions of this subdivision, land that is currently devoted principally to wildlife management as defined by Subdivision (7)(B) or (C) to the degree of intensity generally accepted in the area qualifies for appraisal as qualified open-space land under this subchapter regardless of the manner in which the land was used in any preceding year.

(2) "Agricultural use" includes but is not limited to the following activities: cultivating the soil, producing crops for human food, animal feed, or planting seed or for the production of fibers; floriculture, viticulture, and horticulture; raising or keeping livestock; raising or keeping exotic animals for the production of human food or of fiber, leather, pelts, or other tangible products having a commercial value; planting cover crops or leaving land idle for the purpose of participating in a governmental program, provided the land is not used for residential purposes or a purpose inconsistent with agricultural use; and planting cover crops or leaving land idle in conjunction with normal crop or livestock rotation procedure. The term also includes the use of land to produce or harvest logs and posts for the use in constructing or repairing fences, pens, barns, or other agricultural improvements on adjacent qualified open-space land having the same owner and devoted to a different agricultural use. The term also includes the use of land for wildlife management. The term also includes the use of land to raise or keep bees for pollination or for the production of human food or other tangible products having a commercial value, provided that the land used is not less than 5 or more than 20 acres.

(3) "Category" means the value classification of land considering the agricultural use to which the land is principally devoted. The chief appraiser shall determine the categories into which land in the appraisal district is classified. In classifying land according to categories, the chief appraiser shall distinguish between irrigated cropland, dry cropland, improved pasture, native pasture, orchard, and waste. The chief appraiser may establish additional categories. The chief appraiser shall further divide each category according to soil type, soil capability, irrigation, general topography, geographical factors, and other factors that influence the productive capacity of the category. The chief appraiser shall obtain information from the Texas Agricultural Extension Service, the Natural Resources Conservation Service of the United States Department of Agriculture, and other recognized agricultural sources for the purposes of determining the categories of land existing in the appraisal district.

(4) "Net to land" means the average annual net income derived from the use of open-space land that would have been earned from the land during the five-year period preceding the year before the appraisal by an owner using ordinary prudence in the management of the land and the farm crops or livestock produced or supported on the land and, in addition, any income received from hunting or recreational leases. The chief appraiser shall calculate net to land by considering the income that would be due to the owner of the land under cash lease, share lease, or whatever lease arrangement is typical in that area for that category of land, and all expenses directly attributable to the agricultural use of the land by the owner shall be subtracted from this owner income and the results shall be used in income capitalization. In calculating net to land, a reasonable deduction shall be made for any depletion that occurs of underground water used in the agricultural operation. For land that qualifies under Subdivision (7) for appraisal under this subchapter, the chief appraiser may not consider in the calculation of net to land the income that would be due to the owner under a hunting or recreational lease of the land.

(5) "Income capitalization" means the process of dividing net to land by the capitalization rate to determine the appraised value.

(6) "Exotic animal" means a species of game not indigenous to this state, including axis deer, nilga antelope, red sheep, other cloven-hoofed ruminant mammals, or exotic fowl as defined by Section 142.001, Agriculture Code.

(7) "Wildlife management" means:

(A) actively using land that at the time the wildlife-management use began was appraised as qualified open-space land under this subchapter or as qualified timber land under Subchapter E in at least three of the following ways to propagate a sustaining breeding, migrating, or wintering population of indigenous wild animals for human use, including food, medicine, or recreation:

(i) habitat control;

(ii) erosion control;

(iii) predator control;

(iv) providing supplemental supplies of water;

(v) providing supplemental supplies of food;

(vi) providing shelters; and

(vii) making of census counts to determine population;

(B) actively using land to protect federally listed endangered species under a federal permit if the land is:

(i) included in a habitat preserve and is subject to a conservation easement created under Chapter 183, Natural Resources Code; or

(ii) part of a conservation development under a federally approved habitat conservation plan that restricts the use of the land to protect federally listed endangered species; or

(C) actively using land for a conservation or restoration project to provide compensation for natural resource damages pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), the Oil Pollution Act of 1990 (33 U.S.C. Section 2701 et seq.), the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), or Chapter 40, Natural Resources Code.

(8) "Endangered species," "federal permit," and "habitat preserve" have the meanings assigned by Section 83.011, Parks and Wildlife Code.

HISTORY: Enacted by Acts 1979, 66th Leg., ch. 841 (S.B. 621), § 1, effective January 1, 1982; am. Acts 1981, 67th Leg., 1st C.S., ch. 13 (H.B. 30), § 67, effective January 1, 1982; am. Acts 1985, 69th Leg., ch. 207 (H.B. 2045), § 1, effective September 1, 1985; am. Acts 1987, 70th Leg., ch. 773 (H.B. 1440), § 1, effective January 1, 1988; am. Acts 1987, 70th Leg., ch. 780 (H.B. 1867), §§ 1, 2, effective January 1, 1988; am. Acts 1989, 71st Leg., ch. 796 (H.B. 432), § 19, effective January 1, 1990; am. Acts 1991, 72nd Leg., ch. 560 (H.B. 1298), §§ 1—3, effective January 1, 1992; am. Acts 1993, 73rd Leg., ch. 203 (H.B. 608), § 6, effective September 1, 1993; am. Acts 1995, 74th Leg., ch. 911 (H.B. 1358), § 1, effective January 1, 1996; am. Acts 2003, 78th Leg., ch. 775 (H.B. 3607), § 1, effective January 1, 2004; am. Acts 2005, 79th Leg., ch. 817 (S.B. 760), § 1, effective January 1, 2006; am. Acts 2005, 79th Leg., ch. 1126 (H.B. 2491), § 6, effective September 1, 2005; am. Acts 2007, 80th Leg., ch. 454 (H.B. 604), § 1, effective January 1, 2008; am. Acts 2007, 80th Leg., ch. 1112 (H.B. 3630), § 3, effective January 1, 2008; am. Acts 2009, 81st Leg., ch. 495 (S.B. 801), § 1, effective January 1, 2010; am. Acts 2011, 82nd Leg., 1st C.S., ch. 4 (S.B. 1), § 46.01, effective September 28, 2011; am. Acts 2019, 86th Leg., ch. 360 (H.B. 639), § 1, effective January 1, 2021.

NOTES TO DECISIONS

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CONSTITUTIONAL LAW
Equal Protection

Scope of Protection. — Tex. Tax Code Ann. § 23.51 is constitutional and does not violate equal protection simply because it requires that, in order to be a "qualified open-space land" for tax purposes, the land must have been devoted principally to agricultural use for five to seven preceding years. The purpose of the open-space exemption in § 23.51 is to preserve and benefit the family farm and the requirement that the land must have been principally devoted to agricultural use for five to seven preceding years is to ensure that the tax benefit is received only by those for whom it was intended, as opposed to someone who has just purchased the property and wants to make it temporarily agricultural so as to obtain the benefit. McCormick v. Attorney Gen. of Texas, 822 S.W.2d 814, 1992 Tex. App. LEXIS 307 (Tex. App. Fort Worth Jan. 29, 1992, no writ).

CONTRACTS LAW
Third Parties

Subrogation. — Because a debtor's land was designated for agricultural use as provided by the Tax Code, Tex. Const. art. XVI, § 50(a)(6)(I), prohibited it from being used as security for a home equity loan, but the bank was entitled to equitable subrogation for the amount paid to a third party and for taxes from the home equity loan proceeds. LaSalle Bank Nat'l Ass'n v. White, No. 04-05-00548-CV, 2006 Tex. App. LEXIS 3698 (Tex. App. San Antonio May 3, 2006), op. withdrawn, sub. op., 217 S.W.3d 573, 2006 Tex. App. LEXIS 8747 (Tex. App. San Antonio Oct. 11, 2006).

GOVERNMENTS
Legislation

Interpretation. — Tex. Tax Code Ann. § 23.51(7) requires each owner-applicant, including members of a wildlife co-op, to perform "three of the seven qualifying activities" on his land in order to have his land designated as open-space land through the wildlife management classification. Cordillera Ranch, Ltd. v. Kendall County Appraisal Dist., 136 S.W.3d 249, 2004 Tex. App. LEXIS 1998 (Tex. App. San Antonio Mar. 3, 2004, no pet.).

REAL PROPERTY LAW
Financing

General Overview. — Plaintiff mortgagor's property, if later re-designated as agricultural, was protected from forced sale under Tex. Const. art. XVI, § 50(a)(6)(I), regardless of its designation when the debt was incurred, but issues of fact existed on whether the land qualified as agricultural under Tex. Tax Code Ann. subchs. C, D, when defendant bank sought to foreclose. Marketic v. U. S. Bank Nat'l Ass'n, 436 F. Supp. 2d 842, 2006 U.S. Dist. LEXIS 43038 (N.D. Tex. 2006).

HOMESTEAD EXEMPTIONS. — Tex. Const. art. XVI, § 50(a)(6)(I)'s use of the phrase "designated for agricultural use as provided by statutes governing property tax" referred to land put to an agricultural use as defined by, and assessed for tax purposes under, both Tex. Tax Code Ann. § 23.42 and Tex. Tax Code Ann. § 23.51; because the homeowner's land was designated for agricultural use, the Texas Constitution prohibited it from being used as security for a home equity loan. LaSalle Bank Nat'l Ass'n v. White, 217 S.W.3d 573, 2006 Tex. App. LEXIS 8747 (Tex. App. San Antonio), reh'g denied, No. 04-05-00548-CV, 2006 Tex. App. LEXIS 11288 (Tex. App. San Antonio Oct. 11, 2006).

Plaintiff mortgagor's property, if later re-designated as agricultural, was protected from forced sale under Tex. Const. art. XVI, § 50(a)(6)(I), regardless of its designation when the debt was incurred, but issues of fact existed on whether the land qualified as agricultural under Tex. Tax Code Ann. subchs. C, D, when defendant bank sought to foreclose. Marketic v. U. S. Bank Nat'l Ass'n, 436 F. Supp. 2d 842, 2006 U.S. Dist. LEXIS 43038 (N.D. Tex. 2006).

PROPERTY VALUATION. — Based on the appraisal procedure of Tex. Tax Code Ann. §§ 23.54(a) and 23.57(a) for open-space exemption of a property owner's land under Tex. Const. art. VIII, § 1-d-1, wherein independent applications based on ownership were required, a wildlife co-op could not seek a collective assessment of its eligibility for exemption under Tex. Tax Code Ann. § 23.51(7), as each owner had to meet the requirements independently; Cordillera Ranch, Ltd. v. Kendall County Appraisal Dist., 136 S.W.3d 249, 2004 Tex. App. LEXIS 1998 (Tex. App. San Antonio Mar. 3, 2004, no pet.).

TAX LAW
State & Local Taxes
Personal Property Tax
Exempt Property

General Overview. — Pursuant to Tex. Tax Code Ann. § 23.51(1), taxpayers were entitled to an open-space land designation for certain property because there was sufficient evidence to conclude that the property was devoted principally to agricultural use for the requisite period of time. Dallas Cent. Appraisal Dist. v. Seven Inv. Co., 813 S.W.2d 197, 1991 Tex. App. LEXIS 2130 (Tex. App. Dallas July 2, 1991), writ granted No. D-1594 (Tex. 1991), rev'd, 835 S.W.2d 75, 1992 Tex. LEXIS 67 (Tex. 1992).

There was sufficient evidence that property was being principally used for agricultural purposes, as defined by Tex. Tax Code Ann. § 23.51(2), where the landowners planted wheat and oats and used tractors to plow the fields, although the remainder of the tract was wasteland. Hays County Appraisal Dist. v. Robinson, 809 S.W.2d 328, 1991 Tex. App. LEXIS 1248 (Tex. App. Austin May 8, 1991, no writ).

To be designated as open-space land, a property must be devoted to an agricultural use, thus, fact that bees foraged on property was not enough to meet the requirements for open-space land designation, and only the area immediately surrounding bee hives should have been designated as open-air. Pizzitola v. Galveston County Cent. Appraisal Dist., 808 S.W.2d 244, 1991 Tex. App. LEXIS 898 (Tex. App. Houston 1st Dist. Apr. 11, 1991, no writ).

REAL PROPERTY TAX
General Overview. — Plaintiff mortgagor's property, if later re-designated as agricultural, was protected from forced sale under Tex. Const. art. XVI, § 50(a)(6)(I), regardless of its designation when the debt was incurred, but issues of fact existed on whether the land qualified as agricultural under Tex. Tax Code Ann. subchs. C, D, when defendant bank sought to foreclose. Marketic v. U. S. Bank Nat'l Ass'n, 436 F. Supp. 2d 842, 2006 U.S. Dist. LEXIS 43038 (N.D. Tex. 2006).

In a dispute regarding open-space valuation of real property, the evidence of the use of the property for keeping goats and other animals was legally and factually sufficient to support the trial court's judgment for the taxpayers, which turned largely on its determinations of witness credibility. Calhoun County Appraisal Review Bd. v. Stofer L.P., No. 13-04-00029-CV, 2005 Tex. App. LEXIS 6629 (Tex. App. Corpus Christi Aug. 18, 2005).

Rules of the Texas State Property Tax Board that indicate that land that is principally used for recreation does not qualify for the open space designation under Tex. Const. art. VIII, § 1-d-1(a) are consistent with the requirement of Tex. Tax Code Ann. § 23.51 that land must be devoted principally to agricultural use in order to qualify as open space land. Tarrant Appraisal Dist. v. Moore, 845 S.W.2d 820, 1993 Tex. LEXIS 6 (Tex. 1993).

Taxpayers were entitled to a lower property valuation for agricultural use of land where a portion of the land was used to grow animal feed, and the fact that taxpayers owned horses for recreation did not mean that all of taxpayers' land was used for recreational purposes. Kerr Cent. Appraisal Dist. v. Stacy, 775 S.W.2d 739, 1989 Tex. App. LEXIS 2442 (Tex. App. San Antonio July 12, 1989, writ denied).

An agricultural use exemption under Tex. Tax Code Ann. § 23.51 to be applied against the amount of ad valorem taxes assessed by the county was not applicable to a landowner because he only hunted deer on his property and did not use it for any agricultural purposes. Bower v. Edwards County Appraisal Dist., 752 S.W.2d 629, 1988 Tex. App. LEXIS 1655 (Tex. App. San Antonio May 25, 1988, writ denied).

ASSESSMENT & VALUATION
General Overview. — Rollback taxes under Tex. Tax Code Ann. § 23.55 were not the responsibility of a property seller under a sales contract because while the purchasers claimed that a change in use from qualified open-space land under Tex. Tax Code Ann. § 23.51(1) triggered the assessment, testimony by a county appraisal district employee indicated that the transfer in ownership triggered the assessment. Rizzo v. Ancira, No. 03-09-00424-CV, 2010 Tex. App. LEXIS 6173 (Tex. App. Austin July 29, 2010).

In a dispute regarding open-space valuation of real property, the evidence of the use of the property for keeping goats and other animals was legally and factually sufficient to support the trial court's judgment for the taxpayers, which turned largely on its determinations of witness credibility. Calhoun County Appraisal Review Bd. v. Stofer L.P., No. 13-04-00029-CV, 2005 Tex. App. LEXIS 6629 (Tex. App. Corpus Christi Aug. 18, 2005).

Land used for agricultural purposes is appraised for tax purposes as "qualified open-space land" pursuant to Tex. Const. art. VIII, § 1-d-1, Tex. Tax Code Ann. § 23.46, and Tex. Tax Code Ann. § 23.51. Compass Bank v. Bent Creek Invs., Inc., 52 S.W.3d 419, 2001 Tex. App. LEXIS 4832 (Tex. App. Fort Worth July 19, 2001, no pet.).

Where a landowner brought suit against an appraisal board upon the appraisal board's denial of the landowner's application to classify his property as qualified open-space pursuant to Tex. Tax. Code Ann. § 23.51(1), a trial court judgment in favor of the landowner upon a finding of § 23.51(1) constitution was reversed because only agricultural and timber lands were excluded from market-value appraisal; § 23.51(1) was unconstitutional under Tex. Const. art. VIII, § 2 to the extent that it purported to remove from market-value appraisal open-space land used as an ecological laboratory, the precise purpose for which the landowner's property was used. Williamson County Appraisal Dist. v. Nootsie, Ltd., 905 S.W.2d 289, 1995 Tex. App. LEXIS 1250 (Tex. App. Austin June 7, 1995), writ granted No. 95-1041 (Tex. 1996), rev'd, 925 S.W.2d 659, 1996 Tex. LEXIS 102 (Tex. 1996).

To establish that land was incorrectly denied appraisal as open-space land, a landowner must prove the property is: (1) currently devoted principally to agricultural use; (2) to the degree of intensity generally accepted in the area; and (3) has been devoted principally to agricultural use for five of the preceding seven years. Oyster Creek Assoc. Joint Venture v. Ft. Bend Cent. Appraisal Dist., No. 01-90-00903-CV, 1991 Tex. App. LEXIS 1617 (Tex. App. Houston 1st Dist. June 27, 1991).

Landowner's use of small tract of land for agricultural purposes for the required number of years as required by Tex. Tax Code. Ann. § 23.51, entitled the land to be declared open-space agricultural land for taxation purposes. Riess v. Appraisal Dist. of Williamson County, 735 S.W.2d 633, 1987 Tex. App. LEXIS 8300 (Tex. App. Austin Aug. 12, 1987, writ denied).

ASSESSMENT METHODS & TIMING. — Tex. Const. art. XVI, § 50(a)(6)(I)'s use of the phrase "designated for agricultural use as provided by statutes governing property tax" referred to land put to an agricultural use as defined by, and assessed for tax purposes under, both Tex. Tax Code Ann. § 23.42 and Tex. Tax Code Ann. § 23.51; because the homeowner's land was designated for agricultural use, the Texas Constitution prohibited it from being used as security for a home equity loan. LaSalle Bank Nat'l Ass'n v. White, 217 S.W.3d 573, 2006 Tex. App. LEXIS 8747 (Tex. App. San Antonio), reh'g denied, No. 04-05-00548-CV, 2006 Tex. App. LEXIS 11288 (Tex. App. San Antonio Oct. 11, 2006).

ATTORNEY GENERAL OPINIONS

Net to Land Valuation.

The valuation methods for calculating "net to land" in determining the appraised value of open-space land set forth in sections 23.51 through 23.57 of the Tax Code does not conflict