

# **Manual of the State Land Evaluation Advisory Council**

Published by the State Land Evaluation Advisory Council  
Commonwealth of Virginia  
P.O. Box 565  
Richmond, Virginia 23218-0565  
May, 2013

Updated October 29, 2015

See next page for list of updates.

# Updates to the 2013 SLEAC Manual

**Manual Updated: October 29, 2015** (added Appendix B: Chapter 10.1. VA Conservation Easement Act)

**Manual updated: September 9, 2015** (58.1-3237.1. Authority of counties to enact additional provisions concerning zoning classifications. Goochland may include additional provisions specified in A 1 and 2 in any ordinance enacted under the authority of this article, but only in service districts created after July 1, 2013...).

**Manual updated: July 29, 2015** (58.1 – 3233. Determination to be made by local officers before assessment of real estate under ordinance, July 1, 2015 - N. Rush)

- Permits localities to establish minimum acreage requirements that fall below five acres in order for real estate devoted to and used for agricultural purposes to qualify for land use assessment.

**Manual updated: April 14, 2015** (Voting and Staff Members updated)

**Manual updated: October 22, 2013** (Attorney General Opinion, September 20, 2013 – Albemarle, Davis)

- Under § 10.1-1011, conservation easement land covered by the provisions of the statute must meet the minimum acreage requirement of § 58.1-3233 at the time the easement is dedicated, unless the easement was placed on the property before the local land use assessment ordinance was adopted....

**Manual Revised May 2013**

- SLEAC reviewed, revised and updated 2001 Manual

## **Acknowledgments**

This revision of the SLEAC Manual (2013) would not have been possible without the assistance of many people. Without their hard work this revision would not have occurred. These persons include, but are not limited to:

Beverly Atkins, Rappahannock County

Thomas Blackwell, Essex County

Lex Bruce, Virginia Tech

Dean Cumbia, Virginia Department of Forestry

Trey Davis, Virginia Farm Bureau Federation

Frances Dowd, Virginia Tech

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# How to Search a PDF Document<sup>1</sup>

If you are looking for a specific topic in a long PDF document, there are two utilities which can be very helpful.

## Quick “Find”

**Step 1:** Open the document in your PDF reader. In most cases, this can be done by clicking on the file or link.

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- Select Edit > Find in the main menu, or
- Press “Ctrl-f” (“Command-f” or “Apple-f” on a Mac).

*Tip:* “Ctrl-f” opens the Find function in most applications, including browsers and Microsoft Office applications.

**Step 3:** Enter the word or phrase you are looking for in the form field provided and press “Enter” or “Return”.

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<sup>1</sup>These instructions are from a website supported by Susan Combs (Texas Comptroller of Public Accounts) <http://www.window.state.tx.us/specialrpt/search.html>

## Introduction

In 1971, the Virginia General Assembly enacted a law permitting localities to adopt a program of special assessments for agricultural, horticultural, forest and open space lands (Sections 58.1-3229 through 58.1-3244 of the *Code of Virginia*). While the purpose language originally outlined in Section 58.1-3229 has since been removed, as established at that time, the purpose of the program was stated as the following:

- To encourage the preservation and proper use of such real estate in order to assure a readily available source of agricultural, horticultural and forest products and of open spaces within the reach of concentrations of population,
- To conserve natural resources in forms which will prevent erosion and to protect adequate and safe water supplies,
- To preserve scenic natural beauty and open spaces,
- To promote proper land-use planning and the orderly development of real estate for the accommodation of an expanding population, and
- To promote a balanced economy and ameliorate pressures which force conversion of such real estate to more intensive uses and which are attributable in part to the assessment of such real estate at values incompatible with its use and preservation for agricultural, horticultural, forest or open space purposes.

The Code sets out some basic prerequisites for a landowner wishing to qualify for use-value assessments. At the same time, the Code also assigns responsibility for prescribing uniform standards for qualification to the Commission of Agriculture and Consumer Services (agricultural and horticultural lands), the State Forester (forest lands), and the Director of the Department of Conservation and Recreation (open space lands). Further, to aid the localities in arriving at use-value assessments, the law has established the State Land Evaluation Advisory Council (SLEAC), composed of these three departments plus the Tax Commissioner, and the Dean of the College of Agriculture and Life Sciences of Virginia Polytechnic Institute and State University.

Each year the Council determines and publishes ranges of suggested values for several classes of agricultural, horticultural, forest and open space land in the localities having such a program. The local assessing officer uses these ranges along with his personal knowledge of use values in the area and the other available evidence of land capability in arriving at the official use-value assessment of any parcel of land.

The purpose of this manual is to bring together background information needed by local officials involved in or considering a use-value assessment program. Further information is available upon request from the SLEAC members and their staff listed on the opposite page.

## Part 1: Law and General Synopsis

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# *Part 1*

## *Law and General Synopsis*

### CODE OF VIRGINIA

### GENERAL SYNOPSIS BY SECTIONS

Chapter 32 of Title 58.1, Article 4  
(Includes amendments by the 1998 General Assembly)

Special Assessments for Agricultural, Horticultural, Forest,  
Open Space, or Newly Annexed Real Estate

**§ 58.1-3229. Declaration of policy.**

An expanding population and reduction in the quantity and quality of real estate devoted to agricultural, horticultural, forest and open space uses make the preservation of such real estate a matter vital to the public interest. It is, therefore, in the public interest (a) to encourage the preservation and proper use of such real estate in order to assure a readily available source of agricultural, horticultural and forest products and of open spaces within reach of concentrations of population, to conserve natural resources in forms which will prevent erosion, to protect adequate and safe water supplies, to preserve scenic natural beauty and open spaces and to promote land-use planning and the orderly development of real estate for the accommodation of an expanding population, and (b) to promote a balanced economy and ameliorate pressures which force the conversion of such real estate to more intensive uses and which are attributable in part to the assessment of such real estate at values incompatible with its use and preservation for agricultural, horticultural, forest or open space purposes.

It is the intent of this article to provide for the classification, and permit the assessment and taxation, of such real estate in a manner that will promote the preservation of it ultimately for the public benefit.

**Policy:**

*A declaration that the preservation of real estate for agricultural, horticultural, forest and open space use is in the public interest and that the classification, special assessment and taxation of such property in a manner that promotes its preservation help foster long term public benefits.*

**§ 58.1-3230. Special Classifications of real estate established and defined.**

For the purposes of this article the following special classifications of real estate are established and defined:

*"Real estate devoted to agricultural use"* shall mean real estate devoted to the bona fide production for sale of plants and animals useful to man under uniform standards prescribed by the Commissioner of Agriculture and Consumer Services in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), or devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government. Prior, discontinued use of property shall not be considered in determining its current use. Real estate upon which recreational activities are conducted for a profit or otherwise shall be considered real estate devoted to agricultural use as long as the recreational activities conducted on such real estate do not change the character of the real estate so that it does not meet the uniform standards prescribed by the Commissioner. Real property that has been designated as devoted to agricultural use shall not lose such designation solely because a portion of the property is being used for a different purpose pursuant to a special use permit or otherwise allowed by zoning, provided that the property, excluding such portion, otherwise meets all the requirements for such designation. The portion of the property being used for a different purpose pursuant to a special use permit or otherwise allowed by zoning shall be deemed a separate piece of property from the remaining property for purposes of assessment. The presence of utility lines on real property shall not be considered in determining whether the property, including the portion where the utility lines are located, is devoted to agricultural use. In determining whether real property is devoted to agricultural use, zoning designations and special use permits for the property shall not be the sole considerations.

*"Real estate devoted to horticultural use"* shall mean real estate devoted to the bona fide production for sale of fruits of all kinds, including grapes, nuts, and berries; vegetables; and nursery and floral products under uniform standards prescribed by the Commissioner of Agriculture and Consumer Services in accordance with the Administrative Process Act (§2.2-4000 et seq.), or real estate devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government. Prior, discontinued use of property shall not be considered in determining its current use. Real estate upon which recreational activities are conducted for profit or otherwise; shall be considered real estate devoted to horticultural use as long as the recreational activities conducted on such real estate do not change the character of the real estate so that it does not

**Special Classifications of Real Estate Defined:**

< ***Agricultural uses:*** *Lands that meet prescribed standards for bona fide production for sale of crops and livestock or in approved soil conservation programs. Standards prescribed by the Commissioner of Agriculture & Consumer Services.*

< ***Horticultural uses:*** *Lands that meet prescribed standards for bona fide production for sale of fruits, vegetables, ornamental plants and ornamental products. Standards prescribed by the Commissioner of Agriculture & Consumer Services.*

meet the uniform standards prescribed by the Commissioner. Real property that has been designated as devoted to horticultural use shall not lose such designation solely because a portion of the property is being used for a different purpose pursuant to a special use permit or otherwise allowed by zoning, provided that the property, excluding such portion, otherwise meets all the requirements for such designation. The portion of the property being used for a different purpose pursuant to a special use permit or otherwise allowed by zoning shall be deemed a separate piece of property from the remaining property for purposes of assessment. The presence of utility lines on real property shall not be considered in determining whether the property, including the portion where the utility lines are located, is devoted to horticultural use. In determining whether real property is devoted to horticultural use, zoning designations and special use permits for the property shall not be the sole considerations.

*"Real estate devoted to forest use"* shall mean land, including the standing timber and trees thereon, devoted to tree growth in such quantity and so spaced and maintained as to constitute a forest area under standards prescribed by the State Forester pursuant to the authority set out in § 58.1-3240 and in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). Prior, discontinued use of property shall not be considered in determining its current use. Real estate upon which recreational activities are conducted for profit, or otherwise, shall still be considered real estate devoted to forest use as long as the recreational activities conducted on such real estate do not change the character of the real estate so that it no longer constitutes a forest area under standards prescribed by the State Forester pursuant to the authority set out in § 58.1-3240. Real property that has been designated as devoted to forest use shall not lose such designation solely because a portion of the property is being used for a different purpose pursuant to a special use permit or is otherwise allowed by zoning, provided that the property, excluding such portion, otherwise meets all the requirements for such designation. The portion of the property being used for a different purpose pursuant to a special use permit or otherwise allowed by zoning shall be deemed a separate piece of property from the remaining property for purposes of assessment. The presence of utility lines on real property shall not be considered in determining whether the property, including the portion where the utility lines are located, is devoted to forest use. In determining whether real property is devoted to forest use, zoning designations and special use permits for the property shall not be the sole considerations.

*"Real estate devoted to open-space use"* shall mean real estate used as, or preserved for, (i) park or recreational purposes, including public or private golf courses, (ii) conservation of land or other natural resources, (iii) floodways, (iv) wetlands as defined in § 58.1-3666, (v)

< **Forest Uses:** *Productive and nonproductive forestland -see standards prescribed by the State Forester*

< **Open space uses:** *Lands other than agricultural, horticultural, or forest lands that are used or preserved for park or recreational purposes, conservation, flood ways, wetlands, riparian buffers, historic or scenic purposes, or community shaping purposes or for the*

riparian buffers as defined in § 58.1-3666, (vi) historic or scenic purposes, or (vii) assisting in the shaping of the character, direction, and timing of community development or for the public interest and consistent with the local land-use plan under uniform standards prescribed by the Director of the Department of Conservation and Recreation pursuant to the authority set out in § 58.1-3240, and in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and the local ordinance. Prior, discontinued use of property shall not be considered in determining its current use. Real property that has been designated as devoted to open-space use shall not lose such designation solely because a portion of the property is being used for a different purpose pursuant to a special use permit or is otherwise allowed by zoning; provided that the property, excluding such portion, otherwise meets all the requirements for such designation. The portion of the property being used for a different purpose pursuant to a special use permit or otherwise allowed by zoning shall be deemed a separate piece of property from the remaining property for purposes of assessment. The presence of utility lines on real property shall not be considered in determining whether the property, including the portion where the utility lines are located, is devoted to open-space use. In determining whether real property is devoted to open-space use, zoning designations and special use permits for the property shall not be the sole considerations.

**§ 58.1-3231. Authority of counties, cities and towns to adopt ordinances; general reassessment following adoption of ordinance.**

Any county, city or town which has adopted a land-use plan may adopt an ordinance to provide for the use value assessment and taxation, in accord with the provisions of this article, of real estate classified in § 58.1-3230. The local governing body pursuant to § 58.1-3237.1 may provide in the ordinance that property located in specified zoning districts shall not be eligible for special assessment as provided in this article. The provisions of this article shall not be applicable in any county, city or town for any year unless such an ordinance is adopted by the governing body thereof not later than June 30 of the year previous to the year when such taxes are first assessed and levied under this article, or December 31 of such year for localities which have adopted a fiscal year assessment date of July 1, under Chapter 30 (§ 58.1-3000 et seq.) of this Subtitle. The provisions of this article also shall not apply to the assessment of any real estate assessable pursuant to law by a central state agency.

Land used in agricultural and forestal production within an agricultural district, a forestal district or an agricultural and forestal district that has been established under § Chapter 43 (§ 15.2-4300 et seq.) of Title 15.2, shall be eligible for the use value assessment and taxation whether or not a local land-use plan or local ordinance pursuant to this section has

*public interest all as defined by standards prescribed by the Director of the Department of Conservation and Historic Resources.*

**Adopting Ordinances:**

*A land-use plan must be adopted prior to the adoption of the local ordinance (land-use regulation or zoning is not required by the Act.)*

*The local ordinance may permit special classification, assessment, and taxation of any or all of the four classes (agricultural, horticultural, forest or open space).*

< *An ordinance must be adopted by the local government before special classification, assessment and taxation can be permitted in a locality. (This is a constitutional requirement.) The ordinance must be adopted by June 30 of the year prior to the first year that use-value taxes are assessed and levied, or by December 31 prior to such year for localities with a fiscal year assessment date of July 1.*

been adopted.

Such ordinance shall provide for the assessment and taxation in accordance with the provisions of this article of any or all of the four classes of real estate set forth in §58.1-3230. If the uniform standards prescribed by the Commissioner of Agriculture and Consumer Services pursuant to § 58.1-3230 require real estate to have been used for a particular purpose for a minimum length of time before qualifying as real estate devoted to agricultural use or horticultural use, then such ordinance may waive such prior use requirement for real estate devoted to the production of agricultural and horticultural crops that require more than two years from initial planting until commercially feasible harvesting.

In addition to but not to replace any other requirements of a land-use plan such ordinance may provide that the special assessment and taxation be established on a sliding scale which establishes a lower assessment for property held for longer periods of time within the classes of real estate set forth in § 58.1-3230. Any such sliding scale shall be set forth in the ordinance.

Notwithstanding any other provision of law, the governing body of any county, city or town shall be authorized to direct a general reassessment of real estate in the year following adoption of an ordinance pursuant to this article.

< *General reassessment is authorized (but not required) in the year following adoption of the local ordinance.*

**§ 58.1-3232. Authority of city to provide for assessment and taxation of real estate in newly annexed area.**

The council of any city may adopt an ordinance to provide for the assessment and taxation of only the real estate in an area newly annexed to such city in accordance with the provisions of this article. All of the provisions of this article shall be applicable to such ordinance, except that if the county from which such area was annexed has in operation an ordinance hereunder, the ordinance of such city may be adopted at any time prior to April 1 of the year for which such ordinance will be effective, and applications from landowners may be received at any time within thirty days of the adoption of the ordinance in such year. If such ordinance is adopted after the date specified in Section § 58.1-3231, the ranges of suggested values made by the State Land Evaluation Advisory Council for the county from which such area was annexed are to be considered the value recommendations for such city. An ordinance adopted under the authority of this section shall be effective only for the tax year immediately following annexation.

**Providing assessment and taxation:**

< *A city may provide for special assessment and taxation in an area newly annexed by the city but the ordinance adopted shall be effective only for the tax year immediately following annexation.*

**§ 58.1-3233. Determinations to be made by local officers before assessment of real estate under ordinance.**

Prior to the assessment of any parcel of real estate under any ordinance adopted pursuant to this article, the local assessing officer shall:

1. Determine that the real estate meets the criteria set forth in § 58.1-3230 and the standards prescribed thereunder to qualify for one of the classifications set forth therein, and he may request an opinion from the Director of the Department of Conservation and Recreation, the State Forester or the Commissioner of Agriculture and Consumer Services.
2. Determine further that real estate devoted solely to
  - (i) agricultural or horticultural use consists of a minimum of five acres except that for real estate used for agricultural purposes, for purposes of engaging in aquaculture as defined in § 3.2-2600 , or for the purposes of raising specialty crops as defined by local ordinance, the governing body may by ordinance prescribe that these uses consist of a minimum acreage of less than five acres,
  - (ii) forest use consists of a minimum of twenty acres and
  - (iii) open space use consists of a minimum of five acres or such greater minimum acreage as may be prescribed by a local ordinance, except that for real estate adjacent to a scenic river, a scenic highway, a Virginia Byway or public property in the Virginia Outdoors Plan or for any real estate in any city, county or town having a density of population greater than 5,000 per square mile, for any real estate in any county operating under the urban county executive form of government, or the unincorporated Town of Yorktown chartered in 1691, the governing body may by ordinance prescribe that land devoted to open space uses consist of a minimum of one quarter of an acre.

The minimum acreage requirements for special classifications of real estate shall be determined by adding together the total area of contiguous real estate excluding recorded subdivision lots recorded after July 1, 1983, titled in the same ownership. However, for purposes of adding together such total area of contiguous real estate, any noncontiguous parcel of real property included in an agricultural, forestal, or an agricultural and forestal district of local significance pursuant to subsection B § 15.2-4405 shall be deemed to be contiguous to any other real property that is located in such district.

For purposes of this section, properties separated only

**Additional information for § 58.1-3233:**

*Eligibility requirements include:*

- **Agricultural or horticultural lands:** 5 acres minimum (except for land used for aquaculture as defined in § 3.2-2600 or for specialty crops as defined by local ordinance) and must meet standards established by the Commissioner of Agriculture & Consumer Services.
- **Forest use:** 20 acres minimum and must meet standards established by the State Forester.
- **Open space use:** 5 acres minimum; except that cities, counties or towns with a population density of greater than 5,000 per square mile may at local option set a minimum two acres, and must meet standards established by the Director of the Department of Conservation and Recreation.

**Qualifications for special classification to be verified:**

- < Counties may adopt a local ordinance to prescribe use value for agricultural purposes and/or specialty crops with a minimum acreage of less than five acres.

**Contiguous parcels:**

- < Contiguous parcels, excluding recorded subdivision lots, in the same ownership, may be added together to meet the minimum acreage requirement.

by a public right of way are considered contiguous;  
and

3. Determine further that real estate devoted to open space use is (i) within an agricultural, a forestal, or an agricultural and forestal district entered into pursuant to Chapter 43 (§ 15.2-4300 et seq.) of Title 15.2 or (ii) subject to a recorded perpetual easement that is held by a public body, and promotes the open space use classification, as defined in § 58.1-3230, or (iii) subject to a recorded commitment entered into by the landowners with the local governing body, or its authorized designee, not to change the use to a non-qualifying use for a time period stated in the commitment of not less than four years nor more than ten years. Such commitment shall be subject to uniform standards prescribed by the Director of the Department of Conservation and Recreation pursuant to the authority set out in § 58.1-3240. Such commitment shall run with the land for the applicable period, and may be terminated in the manner provided in § 15.2-4314 for withdrawal of land from an agricultural, a forestal or an agricultural and forestal district.

**§ 58.1-3234. Application by property owners for assessment, etc., under ordinance; continuation of assessment, etc.**

Property owners must submit an application for taxation on the basis of a use assessment to the local assessing officer;

1. At least sixty days preceding the tax year for which such taxation is sought; or
2. In any year in which a general reassessment is being made, the property owner may submit such application until thirty days have elapsed after his notice of increase in assessment is mailed in accordance with § 58.1-3330, or sixty days preceding the tax year, whichever is later; or
3. In any locality which has adopted a fiscal tax year under Chapter 30 (§ 58.1-3000) of this Subtitle III, but continues to assess as of January 1, such application must be submitted for any year at least sixty days preceding the effective date of the assessment for such year.

The governing body, by ordinance, may permit applications to be filed within no more than sixty days after the filing deadline specified herein, upon the payment of a late filing fee to be established by the governing body. In addition, a locality may, by ordinance, permit a further extension of the filing

**Applications for special assessment required:**

*Classification and special assessment may continue with a change in ownership unless there is a change in use or a separation or split as described under § 58.1-3241.*

*Use valuation taxation may continue without the imposition of the roll-back tax when the use of a parcel shifts to another qualifying use.*

- < *Must be received initially by the local assessing officer at least 60 days preceding the tax year (November 2 or May 2, as the case may be). In any year of a general reassessment, the application may be received 30 days after the taxpayer's notice of increase is mailed, or 60 days preceding the tax year, whichever is later.*
- < *The local government may provide for late filing within no more than 60 days after the normal filing deadline, upon payment of a late filing fee.*

deadline specified herein, upon payment of an extension fee to be established by the governing body in an amount not to exceed the late filing fee, to a date not later than thirty days after notices of assessments are mailed. An individual who is owner of an undivided interest in a parcel may apply on behalf of himself and the other owners of such parcel upon submitting an affidavit that such other owners are minors or cannot be located. An application shall be submitted whenever the use or acreage of such land previously approved changes; however, no application fee maybe required when a change in acreage occurs solely as a result of a conveyance necessitated by governmental action or condemnation of a portion of any land previously approved for taxation on the basis of use assessment. The governing body of any county, city or town may, however, require any such property owner to revalidate annually with such locality, on or before the date on which the last installment of property tax prior to the effective date of the assessment is due, on forms prepared by the locality, any applications previously approved. Each locality which has adopted an ordinance hereunder may provide for the imposition of a revalidation fee every sixth year. Such revalidation fee shall not, however, exceed the application fee currently charged by the locality. The governing body may also provide for late filing of revalidation forms on or before the effective date of the assessment, on payment of a late filing fee. Forms shall be prepared by the State Tax Commissioner and supplied to the locality for use of the applicants and applications shall be submitted on such forms. An application fee may be required to accompany all such applications.

In the event of a material misstatements of facts in the application or a material change in such facts prior to the date of assessment, such application for taxation based on use assessment granted there under shall be void and the tax for such year extended on the basis of value determined under § 58.1-3236 D. Except as provided by local ordinance, no application for assessment based on use shall be accepted or approved if, at the time the application is filed, the tax on the land affected is delinquent. Upon the payment of all delinquent taxes, including penalties and interest, the application shall be treated in accordance with the provisions of this section.

Continuation of valuation, assessment and taxation under an ordinance adopted pursuant to this article shall depend on continuance of the real estate in a qualifying use, continued payment of taxes as referred to in § 58.1-3235, and compliance with the other requirements of this article and the ordinance and not upon continuance in the same owner of title to the

< *Application must be submitted whenever the use or acreage of the land previously approved changes.*

**Revalidation:**

< *The local governing body may require annual revalidation, on forms prepared by the locality.*

< *Localities may (by ordinance) require a revalidation fee every 6 years.*

< *Localities may (by ordinance) allow late filing for revalidations*

< *An application fee may be required.*

**Misstatements:**

< *Misstatements of fact or changes of use classification prior to the date of assessment will void the special assessment authorization.*



land.

In the event that the locality provides for a sliding scale under an ordinance, the property owner and the locality shall execute a written agreement which sets forth the period of time that the property shall remain within the classes of real estate set forth in § 58.1-3230. The term of the written agreement shall be for a period not exceeding twenty years, and the instrument shall be recorded in the office of the clerk of the circuit court for the locality in which the subject property is located.

**§ 58.1-3235. Removal of parcels from program if taxes delinquent.**

If on April 1 of any year the taxes for any prior year on any parcel of real property which has a special assessment as provided for in this article are delinquent, the appropriate county, city or town treasurer shall forthwith send notice of that fact and the general provisions of this section to the property owner by first-class mail. If, after the notice has been sent, such notice, such delinquent taxes remain unpaid on June 1, the treasurer shall notify the appropriate commissioner of the revenue who shall remove such parcel from the land use program. Such removal shall become effective for the current tax year.

**§ 58.1-3236. Valuation of real estate under ordinance.**

- A. In valuing real estate for purposes of taxation by any county, city or town which has adopted an ordinance pursuant to this article, the commissioner of the revenue or duly appointed assessor shall consider only those indicia of value which such real estate has for agricultural, horticultural, forest or open space use, and real estate taxes for such jurisdiction shall be extended upon the value so determined. In addition to use of his personal knowledge, judgment and experience as to the value of real estate in agricultural, horticultural, forest or open space use, he shall, in arriving at the value of such land, consider available evidence of agricultural, horticultural, forest or open space capability, and the recommendations of value of such real estate as made by the State Land Evaluation Advisory Council.
- B. In determining the total area of real estate actively devoted to agricultural, horticultural, forest or open space use there shall be included the area of all real estate under barns, sheds, silos, cribs, greenhouses, public recreation facilities and like structures, lakes, dams, ponds, streams, irrigation ditches and like facilities; but real estate under, and such additional real estate as may be actually used in connection with, the farmhouse or home or any other structure not related to such special use shall be excluded in determining such total area.

**Removal of parcels:**

*Parcels of land shall be removed from the land use program if delinquent taxes are not paid by June 1 of the year following the year in which due.*

**Land use assessment:**

*Special assessments to be based on value for uses as agricultural, horticultural, forest and open space lands.*

< *Assessment to be made by assessing officer(s) and recommendations on values provided by State Land Evaluation Advisory Council must be considered before assessment decisions are made (Right of judgment is left with the assessing officer).*

< *All lands included in special use classification will receive special assessment except lands (yards, etc.) used in connection with, or under the farmhouse or home, or any other structure not related to the special use.*

- C. All structures which are located on real estate in agricultural, horticultural, forest or open space use and the farmhouse or home or any other structure not related to such special use and the real estate on which the farmhouse or home or such other structure is located, together with the additional real estate used in connection therewith, shall be valued, assessed and taxed by the same standards, methods and procedures as other taxable structures and other real estate in the locality
  - < *Special assessment applies to land only (not buildings or other improvements).*
  
- D. In addition, such real estate in agricultural, horticultural, forest or open space use shall be evaluated on the basis of fair market value as applied to other real estate in the taxing jurisdiction, and land book records shall be maintained to show both the use value and the fair market value of such real estate.
  - < *All lands receiving special assessment to be assessed also on fair market value and both values to be recorded in land books.*

**§ 58.1-3237. Change in use or zoning of real estate assessed under ordinance; roll-back taxes.**

- A. When real estate qualifies for assessment and taxation on the basis of use under an ordinance adopted pursuant to this article, and the use by which it qualified changes to a nonqualifying use, or, *except as provided by ordinance enacted pursuant to subsection G*, the zoning of the real estate is changed to a more intensive use at the request of the owner or his agent, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes. Such additional taxes shall only be assessed against that portion of such real estate which no longer qualifies for assessment and taxation on the basis of use or zoning. Liability for roll-back taxes shall attach and be paid to the treasurer only if the amount of tax due exceeds ten dollars.
  - < *Roll-back tax:*  
*Roll-back tax is not due when a qualifying property has a change in ownership unless the use of the property changes to a no-qualifying use.*
  
  - < *When real estate that has been taxed according to special assessment changes to a non-qualifying use or zoning changes it to a more intensive use at the request of the owner or his agent, it shall be subject to additional tax referred to as a roll-back tax.*
  
- B. In localities which have not adopted a sliding scale ordinance, the roll-back tax shall be equal to the sum of the deferred tax for each of the five most recent complete tax years including simple interest on such roll-back taxes at a rate set by the governing body, no greater than the rate applicable to delinquent taxes in such locality pursuant to § 58.1-3916 for each of the tax years. The deferred tax for each year shall be equal to the difference between the tax levied and the tax that would have been levied based on the fair market value assessment of the real estate for that year. In addition the taxes for the current year shall be extended on the basis of fair market value which may be accomplished by means of a supplemental assessment based upon the difference between the use value and the fair market value.
  - < *Roll-back tax is the difference between the tax levied and the tax that would have been levied based on the fair market value assessment of the real estate for that year.*
  - < *The roll-back tax shall be equal to the sum of the deferred tax for each of the five most recent complete tax years plus simple interest.*
  - < *In addition, taxes for the current year shall be extended on the basis of fair market value, by means of a supplemental.*
  - < *The interest rate cannot be greater than the rate applicable to delinquent taxes in the locality for each of the delinquent tax years.*
  
- C. In localities which have adopted a sliding scale ordinance, the roll-back tax shall be equal to the sum of the deferred tax from the effective date of the

written agreement including simple interest on such roll-back taxes at a rate set by the governing body, which shall not be greater than the rate applicable to delinquent taxes in such locality pursuant to § 58.1-3916, for each of the tax years. The deferred tax for each year shall be equal to the difference between the tax levied and the tax that would have been levied based on the fair market value assessment of the real estate for that year and based on the highest tax rate applicable to the real estate for that year, had it not been subject to special assessment. In addition the taxes for the current year shall be extended on the basis of fair market value which may be accomplished by means of a supplemental assessment based upon the difference between the use value and the fair market value and based on the highest tax rate applicable to the real estate for that year.

- D. Liability to the roll-back taxes shall attach when a change in use occurs, or, *except as provided by ordinance enacted pursuant to subsection G*, a change in zoning of the real estate to a more intensive use at the request of the owner or his agent occurs. Liability to the roll-back taxes shall not attach when a change in ownership of the title takes place if the new owner does not rezone the real estate to a more intensive use, *unless otherwise provided by ordinance enacted pursuant to subsection G*, and continues the real estate in the use for which it is classified under the conditions prescribed in this article and in the ordinance. The owner of any real estate which has been zoned to more intensive use at the request of the owner or his agent as provided in subsection E, or otherwise subject to or liable for roll-back taxes, shall, within sixty days following such change in use or zoning, report such change to the commissioner of the revenue or other assessing officer on such forms as may be prescribed. The commissioner shall forthwith determine and assess the roll-back tax, which shall be assessed against and paid by the owner of the property at the time the change in use which no longer qualifies occurs, or at the time of the zoning of the real estate to a more intensive use at the request of the owner or his agent occurs, and shall be paid to the treasurer within thirty days of the assessment. If the amount due is not paid by the due date, the treasurer shall impose a penalty and interest on the amount of the roll-back tax, including interest for prior years. Such penalty and interest shall be imposed in accordance with §§ 58.1-3915 and 58.1-3916.

- E. Real property zoned to a more intensive use, at the request of the owner or his agent, shall be subject to and liable for the roll-back tax at the time such zoning is changed. The roll-back tax shall be levied and collected from the owner of the real estate in

**Reporting change in use:**

- < *The owner must report a change in use or zoning within sixty days to the commissioner of the revenue or assessing officer who will determine and assess the roll-back tax and certify the amount to be paid to the treasurer.*
  
- < *The amount must be paid within thirty days thereafter.*

**Property zoned to more intensive use:**

- < *Real property zoned after June 30, 1988 to a more intensive use, at the request of the owner or his agent, shall be subject to the roll-back tax at the time zoning is changed. The roll-back tax is levied and collected at*

accordance with subsection D. Real property zoned to a more intensive use before July 1, 1988, at the request of the owner or his agent, shall be subject to and liable for the roll-back tax at the time the qualifying use is changed to a nonqualifying use. Real property zoned to a more intensive use at the request of the owner or his agent after July 1, 1988, shall be subject to and liable for the roll-back tax at the time of such zoning. Said roll-back tax, plus interest calculated in accordance with subsection B, shall be levied and collected at the time such property was rezoned. For property rezoned after July 1, 1988, but before July 1, 1992, no penalties or interest, except as provided in subsection B, shall be assessed, provided the said roll-back tax is paid on or before October 1, 1992. No real property rezoned to a more intensive use at the request of the owner or his agent shall be eligible for taxation and assessment under this article, provided that these provisions shall not be applicable to any rezoning which is required for the establishment, continuation, or expansion of a qualifying use. If the property is subsequently rezoned to agricultural, horticultural, or open space, it shall be eligible for consideration for assessment and taxation under this article only after three years have passed since the rezoning was effective.

However, the owner of any real property that qualified for assessment and taxation on the basis of use, and whose real property was rezoned to a more intensive use at the owner's request prior to 1980, may be eligible for taxation and assessment under this article provided the owner applies for rezoning to agricultural, horticultural, open-space or forest use. The real property shall be eligible for assessment and taxation on the basis of the qualifying use for the tax year following the effective date of the rezoning. If any such real property is subsequently rezoned to a more intensive use at the owner's request, within five years from the date the property was initially rezoned to a qualifying use under this section, the owner shall be liable for roll-back taxes when the property is rezoned to a more intensive use. Additionally, the owner shall be subject to a penalty equal to fifty percent of the roll-back taxes due as determined under subsection B of this section.

*The roll-back taxes and penalty that otherwise would be imposed under this subsection shall not become due at the time the zoning is changed if the locality has enacted an ordinance pursuant to subsection G.*

- F. If real estate annexed by a city and granted use value assessment and taxation becomes subject to roll-back taxes, and such real estate likewise has been granted use value assessment and taxation by the county prior to annexation, the city shall collect roll-

*the time such property was rezoned, not at the time the property's use is changed.*

- < *Property zoned before July 1, 1988 shall be subject to the roll-back tax at the time the use is changed to a non-qualifying use.*

- < *Real Property that has been down zoned enabling the property to qualify for land use taxation and then rezoned at the request of the owner may be subject to a penalty equal to 50% of the roll-back taxes.*

- < *Requires city to return to a county a proportionate share of roll-back tax and interest to county when property is annexed.*

back taxes and interest for the maximum period allowed under this section and shall return to the county a share of such taxes and interest proportionate to the amount of such period, if any, for which the real estate was situated in the county.

- G. *A locality may enact an ordinance providing that (i) when a change in zoning of real estate to a more intensive use at the request of the owner or his agent occurs, roll-back taxes shall not become due solely because the change in zoning is for specific more intensive uses set forth in the ordinance, (ii) such real estate may remain eligible for use value assessment and taxation, in accordance with the provisions of this article, as long as the use by which it qualified does not change to a nonqualifying use, and (iii) no roll-back tax shall become due with respect to the real estate until such time as the use by which it qualified changes to a nonqualifying use.*

< *Section 58.1-3237 amended March 13, 2013, effective July 1, 2013.*

**§ 58.1-3237.1. Authority of counties to enact additional provisions concerning zoning classifications.**

A. Albemarle County, Arlington County, Augusta County, James City County, Loudoun County, and Rockingham County may include the following additional provisions in any ordinance enacted under the authority of this article:

1. The governing body may exclude land lying in planned development, industrial or commercial zoning districts from assessment under the provisions of this article. As applied to zoning districts, this provision applies only to zoning districts established prior to January 1, 1981.

2. The governing body may provide that when the zoning of the property taxed under the provisions of this article is changed to allow a more intensive nonagricultural use at the request of the owner or his agent, such property shall not be eligible for assessment and taxation under this article. This shall not apply, however, to property that is zoned agricultural and is subsequently rezoned to a more intensive use that is complementary to agricultural use provided such property continues to be owned by the same owner who owned the property prior to rezoning and continues to operate the agricultural activity on the property. Notwithstanding any other provision of law, such property shall be subject to and liable for roll-back taxes at the time the zoning is changed to allow any use more intensive than the use for which it qualifies for special assessment. The roll-back tax, plus interest, shall be calculated, levied and collected from the owner of the real estate in accordance with § 58.1-3237 at the time the property is rezoned.

B. Goochland County may include additional provisions specified in subdivisions A 1 and 2 in any ordinance

enacted under the authority of this article, but only in service districts created after July 1, 2013, pursuant to Article 1( § 15.2-2400 et seq.) of Chapter 24 Title 15.2.

**§ 58.1-3238. Failure to report change in use; misstatements in applications.**

Any person failing to report properly any change in use of property for which an application for use value taxation had been filed shall be liable for all such taxes, in such amounts and at such times as if he had complied herewith and assessments had been properly made, and he shall be liable for such penalties and interest thereon as may be provided by ordinance. Any person making a material misstatement of fact in any such application shall be liable for all such taxes, in such amounts and at such times as if such property had been assessed on the basis of fair market value as applied to other real estate in the taxing jurisdiction, together with interest and penalties thereon. If such material misstatement was made with the intent to defraud the locality, he shall be further assessed with an additional penalty of 100 percent of such unpaid taxes.

For purposes of this section and § 58.1-3234, incorrect information on the following subjects will be considered material misstatements of fact:

1. The number and identities of the known owners of the property at the time of application;
2. The actual use of the property.

The intentional misrepresentation of the number of acres in the parcel or the number of acres to be taxed according to use shall also be considered a material misstatement of fact for the purpose of this section and § 58.1-3234.

**§ 58.1-3239. State Land Evaluation Advisory Committee continued as State Land Evaluation Advisory Council; membership; duties; ordinances to be filed with Council.**

The State Land Evaluation Advisory Committee is continued and shall hereafter be known as the State Land Evaluation Advisory Council. The Advisory Council shall be composed of the Tax Commissioner, the dean of the College of Agriculture of Virginia Polytechnic Institute and State University, the State Forester, the Commissioner of Agriculture and Consumer Services and the Director of the Department of Conservation and Recreation.

The Advisory Council shall determine and publish a range of suggested values for each of the several soil conservation service land capability classifications for agricultural, horticultural, forest and open space uses in the various areas of the Commonwealth as needed to carry out the provisions of this article.

**Penalties:**

*Action if changes in use are not reported:*

- < *Owner is liable for all taxes due (including roll-back) plus penalties and interest provided by local ordinance action if there is a material misstatement of fact in applications for special assessment.*
- < *Action if there is a material misstatement of fact in applications for special assessment. Owner is liable for all taxes due including roll-back plus penalties and interest provided by local ordinance (plus 100% of unpaid taxes if the misstatement is made with the intent to defraud the locality).*

**State Land Evaluation Advisory Council:**

*Composed of:*

- *Tax Commissioner*
- *Dean, College of Agriculture, VPI & SU*
- *Commissioner of Agriculture & Consumer Services*
- *Director, Department of Conservation & Recreation*
- *State Forester*

- < *To determine and publish prior to October 1 each year a range of suggested values to be effective the following January 1 or July 1 in the case of fiscal year localities, for each locality that has adopted an ordinance.*

On or before October 1 of each year the Advisory Council shall submit recommended ranges of suggested values to be effective the following January 1, or July 1 in the case of localities with fiscal year assessment under the authority of Chapter 30 of this subtitle, within each locality which has adopted an ordinance pursuant to the provisions of this article based on the productive earning power of real estate devoted to agricultural, horticultural, forest and open space uses and make such recommended ranges available to the commissioner of the revenue or duly appointed assessor in each such locality.

< *To base ranges of values on productive earning power in each special classification use.*

The Advisory Council, in determining such ranges of values, shall base the determination on productive earning power to be determined by capitalization of warranted cash rents or by the capitalization of incomes of like real estate in the locality or a reasonable area of the locality.

Any locality adopting an ordinance pursuant to this article shall forthwith file a copy thereof with the Advisory Council.

< *Each local government that adopts ordinance must file a copy with the State Land Evaluation Advisory Council.*

**§ 58.1-3240. Duties of Directors of Department of Conservation and Historic Resources, the State Forester and Commissioner of Agriculture and Consumer Services; remedy of person aggrieved by action or non-action of Director, State Forester or Commissioner.**

The Director of the Department of Conservation and Recreation, the State Forester, and the Commissioner of Agriculture and Consumer Services shall provide, after holding public hearings, to the commissioner of the revenue or duly appointed assessor of each locality adopting an ordinance pursuant of this article, a statement of the standards referred to in § 58.1-3230 and subdivision 1 of § 58.1-3233, which shall be applied uniformly throughout the Commonwealth in determining whether real estate is devoted to agricultural use, horticultural use, forest use or open space use for the purposes of this article and the procedure to be followed by such official to obtain the opinion referenced in subdivision 1 of § 58.1-3233. Upon the refusal of the Commissioner of Agriculture and Consumer Services, the State Forester or the Director of Conservation and Recreation to issue an opinion or in the event of an unfavorable opinion which does not comport with standards set forth in the statements filed pursuant to this section, the party aggrieved may seek relief in the circuit court of the county or city wherein the real estate in question is located, and in the event that the court finds in his favor, it may issue an order which shall serve in lieu of an opinion for the purposes of this article.

**Uniform standards to be provided after public hearing on:**

*Procedures to be followed in obtaining opinions regarding properties provided by the official who provides the standards for each class.*

- ***Agricultural and horticultural uses*** from the Commissioner of Agriculture & Consumer Services.
- ***Forest use*** from State Forester.
- ***Open space use*** from Director of Department of Conservation and Recreation.

< *In the event of unfavorable opinions or a refusal to issue an opinion, the property owner may seek relief from local courts of record.*

**§ 58.1-3241. Separation of part of real estate assessed under ordinance; contiguous real estate located in more than one taxing locality.**

A. Separation or split-off of lots, pieces or parcels of land from the real estate which is being valued, assessed

**Separation or split-off of lots:**

*Single properties located in more than one taxing locality are not to be treated as separate tracts for each locality for purposes of meeting minimum acreage.*

and taxed under an ordinance adopted pursuant to this article, either by conveyance or other action of the owner of such real estate, shall subject the real estate so separated to liability for the roll-back taxes applicable thereto, but shall not impair the right of each subdivided parcel of such real estate to qualify for such valuation, assessment and taxation in any and all future years, provided it meets the minimum acreage requirements and such other conditions of this article as may be applicable. Such separation or split-off of lots shall not impair the right of the remaining real estate to continuance of such valuation, assessment and taxation without liability for roll-back taxes, provided it meets the minimum acreage requirements and other applicable conditions of this article.

- B. 1. No subdivision, separation, or split-off of property which results in parcels which meet the minimum acreage requirements of this article, and that are used for one or more of the purposes set forth in § 58.1-3230 shall be subject to the provisions of subsection A.
- 2. The application of roll-back taxes pursuant to subsection A shall, at the option of the locality, also not apply to a subdivision, separation, or split-off of property made pursuant to a subdivision ordinance adopted under § 15.2-2244 that results in parcels that do not meet the minimum acreage requirements of this article, provided that title to the parcels subdivided, separated, or split-off is held in the name of an immediate family member for at least the first 60 months immediately following the subdivision, separation, or split-off.

For purposes of this subdivision, an "immediate family member" means any person defined as such in the locality's subdivision ordinance adopted pursuant to § 15.2-2244.

- C. Where contiguous real estate in agricultural, horticultural, forest or open space use in one ownership is located in more than one taxing locality, compliance with the minimum acreage shall be determined on the basis of the total area of such real estate and not the area which is located in the particular taxing locality.

**§ 58.1-3242. Taking the real estate assessed under ordinance by right of eminent domain.**

The taking of real estate which is being valued, assessed and taxed under an ordinance adopted pursuant to this article by right of eminent domain shall not subject the real estate so taken to the roll-back taxes herein imposed.

< *Any separation or split-off of lots or parcels shall subject the real estate so subdivided to the roll-back tax unless the resulting parcels meet the acreage and use requirements. If part of a tract of qualifying land is sold or changes to non-qualifying use, the remaining tract does not change if the acreage is sufficient to qualify.*

**Additional information for § 58.1-3242:**

< *Properties with special assessment that are taken by right of eminent domain are not subject to roll-back taxes.*



**§ 58.1-3243. Application of other provisions of Title 58.1**

The provisions of this title applicable to local levies and real estate assessment and taxation shall be applicable to assessments and taxation hereunder mutatis mutandis including, without limitation, provisions relating to tax liens, boards of equalization and the correction of erroneous assessments and for such purposes the roll-back taxes shall be considered to be deferred real estate taxes.

**Additional information for § 58.1-3243:**

< *These are general provisions to assure that the Special Assessment Act is coordinated with other existing statutes.*

**§ 58.1-3244. Article not in conflict with requirements for preparation and use of true values.**

Nothing in this article shall be construed to be in conflict with the requirements for preparation and use of true values where prescribed by the General Assembly for use in any fund distribution formula.

**Additional information for § 58.1-3244:**

< *These are general provisions to assure that the Special Assessment Act is coordinated with other existing statutes.*

## Part 2: Standards for Classifications

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## **Standards for classification of real estate as devoted to forest use under the Virginia Land Use Assessment Law**

Under the authority of § 58.1-3229 et seq. of the Code of Virginia, the State Forester adopts these Standards for Classification of Real Estate as Devoted to Forest Use Under the Special Assessment for Land Preservation to:

1. Encourage the preservation proper use of real estate in order to assure a readily available source of agricultural, horticultural, and forest products, and of open space within reach of concentrations of population.
2. Conserve natural resources in forms that will prevent erosion.
3. Protect adequate and safe water-supplies.
4. Preserve scenic natural beauty and open spaces.
5. Promote proper land-use planning and the orderly development of real estate for the accommodation of an expanding population.
6. Promote a balanced economy and ease/lessen the pressures which force the conversion of real estate to more intensive uses . . .

According to the specific authority and responsibility conveyed by §§ 58.1-3230, 58.1-3233 and 58.1-3240, the State Forester is directed to provide a statement of the standards which shall be applied uniformly throughout the state to determine if real estate is devoted to forest use. After holding public hearings, pursuant to the Administrative Process Act (§ 96.14:1 et. seq. of the Code of Virginia) the statement shall be sent to the Commissioner of the Revenue and the duly appointed assessor of each locality adopting an ordinance in compliance with Article 4 of Chapter 32 of Title 58.1 of the Code of Virginia.

### **§ 1. Technical Standards for Classification of Real Estate Devoted to Forest Use**

- A. The area must be a minimum of twenty acres and must meet the following standards to qualify for forestry use.
- B. **PRODUCTIVE FOREST LAND.** The real estate sought to be qualified shall be devoted to forest use which has existent on it, and well distributed, commercially valuable trees of any size sufficient to compose at least 40% normal stocking of forest trees, as shown in Table I. Land devoted to forest use that has been recently harvested of merchantable timber, is being regenerated into a new forest and not currently developed for nonforest use shall be eligible. To be qualified the land must be

growing a commercial forest crop that is physically accessible for harvesting when mature.

- C. **NONPRODUCTIVE FOREST LAND.** The land sought to be qualified is land devoted to forest use but which is not capable of growing a crop of industrial wood because of inaccessibility or adverse site conditions such as steep outcrops of rock, shallow soil on steep mountain sides, excessive steepness, heavily eroded areas, coastal beach sand, tidal marsh and other conditions which prohibit the growth and harvesting of a crop of trees suitable for commercial use.

#### **D. DEFINITIONS**

1. **TREE.** A tree is a single woody stem of a species presently or prospectively suitable for commercial industrial wood products.
2. **STOCKING.** Stocking is the number of trees three inches and larger in diameter breast high (d.b.h. - a point on the tree trunk outside bark 4.5 feet from ground level) required to equal a total basal area (b.a. is the area in square feet of a cross section of a tree at d.b.h.) of 75 square feet per acre, or where such trees are not present, there shall be present tree seedlings, or tree seedlings and trees in any combination sufficient to meet the 40% stocking set forth in Table 1.

**Table 1**  
**Minimum Number of Trees Required Per Acre to Determine**  
**30 Square Feet of Tree Basal Area of 40%**  
**Stocking for Classification as Forest Land**

D.B.H Range	D.B.H. in 2" Classes	Basal Area Per Tree	Per Acre	Per 1/5 Acre	Per 1/10 Acre
Up to 2.9" .....	Seedlings		400	80	40
3.0-4.9" .....	4	0.0873	343	69	34
5.0-6.9" .....	6	0.1964	153	31	15
7.0-8.9 .....	8	0.3491	86	17	9
9.0-10.9" .....	10	0.5454	55	11	6
11.0-12.9".....	12	0.7854	38	8	4
13.0-14.9".....	14	1.0690	28	6	3
15.0"+ .....	16+	1.3963	21	4	2

*NOTE*

(a) Area 1/5 acre; circle, diameter 105'4"; square 93'4" per side.

(b) Area 1/10 acre; circle, diameter 74'6"; square 66'.

(c) Number of seedlings present may qualify on a percentage basis; Example, 100 seedlings would be equivalent of 7.5 square feet of basal area (25% X 30 = 7.5).

(d) Seedlings per acre are based on total pine and hardwood stems. Where intensive pine management is practiced a minimum of 250 well distributed loblolly or white pine seedlings will qualify.

## **§ 2. Conservation of Land Resources, Management and Production, and Certification**

- A. To qualify for forest use, the owner shall certify that the real estate is being used in a planned program of timber management and soil conservation practices which are intended to:
1. Enhance the growth of commercially desirable species through generally accepted silvicultural practices.
  2. Reduce or prevent soil erosion by Best Management Practices such as logging road layout and stabilization, stream side management zones, water diversion practices and other Best Management Practices which prevent soil erosion and improve water quality.
- B. Certification of intent by the owner can be shown by:
1. A signed commitment to maintain and protect forest-land by documenting land-use objectives to include methods of resource management and soil and water protection or;
  2. Submitting a plan prepared by a professional forester.

### **Standards for classification of real estate as devoted to *open-space* use under the Virginia Land Use Assessment Law.**

Under the authority of § 58.1-3229 et seq. of the Code of Virginia, the Director of the Department of Conservation and Historic Resources adopts these Standards for Classification of Real Estate As Devoted to Open-Space Use Under the Virginia Land Use Assessment Law to:

1. Encourage the proper use of real estate in order to assure a readily available source of agricultural, horticultural and forest products, and of open space within reach of concentrations of population.
2. Conserve natural resources in forms that will prevent erosion.
3. Protect adequate and safe water supplies.
4. Preserve scenic natural beauty and open spaces.
5. Promote proper land use planning and the orderly development of real estate for the accommodation of an expanding population.
6. Promote a balanced economy and ease pressures which force the conversion of real estate to more intensive uses.

According to the specific authority and responsibility conveyed by §§ 58.1-3230 and 58.1-3240 of the Code of Virginia, the Director of the Department of Conservation and Recreation is directed to provide a statement of the

standards which shall be applied uniformly throughout the Commonwealth to determine if real estate is devoted to open-space uses. After holding public hearings, the statement shall be sent to the Commissioner of the Revenue and a duly appointed assessor of each locality adopting an ordinance in compliance with Article 4 of Chapter 32 of Title 58.1, of the Code of Virginia.

## **§ 1. General Standards**

To qualify as an open-space use, real estate must meet the requirements of both this section and the specific standards contained in Section 2 of these regulations. The general standards are as follows.

- A. **Consistency with land use plan.**
1. The open-space use of the property must be consistent with the land use plan of the county, city, or town which has been made and adopted officially in accordance with Article 4, Chapter 11, Title 15.1 of the Code of Virginia.
  2. A land use consistent with the land use plan means a use that is consistent with areas or land use zones depicted on a map that is part of the land use plan, or that directly supports or is generally consistent with stated land uses, natural resources conservation or historic preservation objectives, goals or standards of the land use plan.
  3. A property that is subject to a recorded perpetual conservation, historic or open-space easement held by any public body, or is part of an agricultural, a forestal or an agricultural and forestal district approved by local government, shall be considered to be consistent with the land use plan.
- B. **Minimum acreage.**
1. Except as provided in subdivision B 2 of this section, real estate devoted to open-space use shall consist of a minimum of five acres.
  2. If the governing body of any county, city or town has so prescribed by ordinance, real estate devoted to open space shall consist of a minimum of two acres when the real estate is:
  3. Adjacent to a scenic river, a scenic highway, a Virginia byway or public property listed in the approved State Comprehensive Outdoor Recreation Plan, also known as the Virginia Outdoors Plan (the Virginia Outdoors Plan can be obtained from the Department of Conservation and Recreation at 203 Governor Street, Suite 302, Richmond, Virginia 23219); or
  4. Located in a county, city or town having a density of population greater than 5,000 per square mile.

**C. Other Requirements.**

Real estate devoted to open-space shall be:

1. Within an agricultural, a forestal or an agricultural and forestal district entered into pursuant to Chapter 36 of Title 15.1 of the Code of Virginia;
2. Subject to a recorded perpetual easement that is held by a public body and that promotes the open-space use classification as defined in § 58.1-3230 of the Code of Virginia; or
3. Subject to a recorded commitment entered into by the landowner with the governing body in accordance with Section 3 of these regulations.

**D. Opinions.**

1. In determining whether a property meets the general and specific standards for open-space use, the local assessing officer may request an opinion from the Director of the Department of Conservation and Recreation under the provisions of Section 4 of these regulations.

**§ 2. Specific Standards**

The specific standards for determining whether real estate will qualify for special assessment based on open-space use are as follows. The term "land" includes water, submerged land, wetlands, marshes, and similar properties.

**A. Park or recreation use** - Lands that are provided or preserved for:

1. Any public, semi-public or privately-owned park, playground or similar recreational area, for public or community use, except any use operated with intent for profit. Examples:
  - Parks, play areas, athletic fields, botanical gardens, fishing or skating ponds.
  - Golf clubs, country clubs, swimming clubs, beach clubs, yacht clubs, scout camps.
  - Fairgrounds.
2. Golf courses operated for profit as a public service and having the park-like characteristics normally associated with a country club.
3. Buildings shall not cover more than 10% of the site.
4. Commercial recreational or amusement places, such as driving ranges, miniature golf courses, pony rides, trap shoots, marinas, motor speedways, drag strips, amusement parks and the like, shall not qualify.

**B. Conservation of land or other natural resources**

Lands that are provided or preserved for forest

preserves, bird or wildlife sanctuaries, watershed preserves, nature preserves, arboretums, marshes, swamps and similar natural areas.

**C. Floodways** - Lands that are provided or preserved for:

1. The passage or containment of waters, including the flood plains or valleys and side slopes of streams that are or may be subject to periodic or occasional overflow, such as flood plains identified by engineering surveys by the U.S. Corps of Engineers or others, or by soil surveys or topographic maps. Floodways also include adjacent lands that should be reserved as additional channels for future floods due to increased runoffs.
2. Coastal lowlands, such as bays, estuaries or ocean shores, subject to inundation by storms or high tides.
3. Tidal and non-tidal wetlands, such as swamps, bogs and marshes.

**D. Historic or Scenic Areas**

Lands that are provided or preserved for historic or scenic purposes are:

1. On the Virginia Landmarks Register or the National Register of Historic Places or contributing properties in an historic district listed in the Virginia Landmarks Register or the National Register of Historic Places. Information concerning properties on these Registers can be obtained from the Department of Conservation and Historic Resources.
2. Properties protected by scenic or open-space easements.
3. Places designated or recommended as "Scenic" by the Department of Conservation and Recreation, the Department of Transportation, the General Assembly or other State agency subject in each case to a specific area description provided by the designating agency.

**E. Assisting in the shaping of the character, direction and timing of community development, or for the public interest**

Lands that are officially planned or approved by the local governing body to be left in a relatively natural and undeveloped state and that are provided or preserved for the purpose of shaping the locality into neighborhoods and communities, identifying their boundaries, insulating incompatible uses from one another, directing growth, controlling the rate or timing of growth or otherwise serving the public interest as

determined by the local governing body.

Examples:

- Greenbelts, parkways and trail ways,
- Stream valleys,
- Forests and farmlands,
- Hilltops or hillsides,
- Mountaintops and mountainsides,
- Scenic vistas.

### § 3. Standards for Written Commitments by Landowners to Preserve Open-space Land Use

The written commitment entered into by landowners for the local governing body to preserve open-space land use, pursuant to subdivision 3 of § 58.1-3233 of the Code of Virginia, shall conform substantially to the following form of agreement:

#### OPEN-SPACE USE AGREEMENT

This Agreement, made this \_\_\_\_day of\_\_\_\_20 between \_\_\_\_\_, hereafter

called the Owner, and the [County, City or Town] of a political subdivision of the Commonwealth of Virginia, hereinafter called the [County, City or Town], recites and provides as follows:

#### RECITALS

1. The Owner is the owner of certain real estate, described below, hereinafter called the Property, and
2. The [County, City or Town] is the local governing body having real estate tax jurisdiction over the Property and
3. The [County, City or Town] has determined:
  - A. That it is in the public interest that the Property should be provided or preserved for [Insert one or more of the following uses: park or recreational purposes; conservation of land; conservation of (Insert description of other natural resource); an historic area; a scenic area; assisting in the shaping of the character, direction and timing of community development; or other use which serves the public interest by the preservation of open-space land as provided in the land-use plan.]; and
  - B. That the Property meets the applicable criteria for real estate devoted to open-space use as prescribed in Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1 of the Code of Virginia,

and the standards for classifying such real estate prescribed by the Director of the Virginia Department of Conservation and Recreation; and

- C. That the provisions of this agreement meet the requirements and standards prescribed under § 58.1-3233 of the Code of Virginia for recorded commitments by landowners not to change an open-space use to a nonqualifying use; and
  4. The Owner is willing to make a written recorded commitment to preserve and protect the open-space uses of the Property during the term of this agreement in order for the Property to be taxed on the basis of a use assessment and the Owner has submitted an application for such taxation to the assessing officer of the [County, City or Town] pursuant to § 58.1-3234 of the Code of Virginia and [citation of local ordinance]; and
  5. The [County, City or Town] is willing to extend the tax for the Property on the basis of a use assessment commencing with the next succeeding tax year and continuing for the term of this agreement, in consideration of the Owner's commitment to preserve and protect the open-space uses of the property, and on the condition that the Owner's application is satisfactory and that all other requirements of Article 4, Chapter 32, Title 58.1 of the Code of Virginia and [citation of local ordinance] are complied with.
- NOW THEREFORE**, in consideration of the recitals and the mutual benefits, covenants and terms herein contained, the parties hereby covenant and agree as follows:
1. This agreement shall apply to all of the following described real estate: [Insert property description]
  2. The owner agrees that during the term of this agreement:
    - A. There shall be no change in the use or uses of the Property that exist as of the date of this agreement to any use that would not qualify as an open-space use.
    - B. There shall be no display of billboards, signs or other advertisements on the property, except to (I) state solely the name of the Owner and the address of the Property, (ii) advertise the sale or lease of the Property; (iii) advertise the sale of goods or services produced pursuant to the permitted use of the Property, or (iv) provide warnings. No sign shall exceed four feet by four feet.
    - C. There shall be no construction, placement or maintenance of any structure on the Property unless such structure is either:

- 1) on the Property as of the date of this agreement; or
  - 2) related to and compatible with the open-space uses of the Property which this agreement is intended to protect or provide for.
- D. There shall be no accumulation of trash, garbage, ashes, waste, junk, abandoned property or other unsightly or offensive material on the Property.
- E. There shall be no filling, excavating, mining, drilling, removal of topsoil, sand, gravel, rock, minerals or other materials which alters the topography of the Property, except as required in the construction of permissible buildings, structures and features under this agreement.
- F. There shall be no construction or placement of fences, screens, hedges, walls or other similar barriers which materially obstruct the public's view of scenic areas of the Property.
- G. There shall be no removal or destruction of trees, shrubs, plants and other vegetation. The Owner may:
- 1) engage in agricultural, horticultural or silvicultural activities, provided that there shall be no cutting of trees, other than selective cutting and salvage of dead or dying trees, within 100 feet of a scenic river, a scenic highway, a Virginia Byway or public property listed in the approved State Comprehensive Outdoor Recreation Plan (Virginia Outdoors Plan); and
  - 2) remove vegetation which constitutes a safety, a health or an ecological hazard.
- H. There shall be no alteration or manipulation of natural water courses, shores, marshes, swamps, wetlands or other water bodies, nor any activities or uses which adversely affect water quality, level or flow.\*
- I. On areas of the Property that are being provided or preserved for conservation of land, floodways or other natural resources, or that are to be left in a relatively natural or undeveloped state, there shall be no operation of dune buggies, all-terrain vehicles, motorcycles, motorbikes, snowmobiles or other motor vehicles, except to the extent necessary to inspect, protect or preserve the area.\*
- J. There shall be no industrial or commercial activities conducted on the Property, except for the continuation of agricultural, horticultural or silvicultural activities; or activities that are conducted in a residence or an associated outbuilding such as a garage, smokehouse, small shop or similar structure which is permitted on the Property.
- K. There shall be no separation or split-off of lots, pieces or parcels from the Property. The Property may be sold or transferred during the term of this agreement only as the same entire parcel that is the subject of this agreement; provided, however, that the Owner may grant to a public body or bodies open-space, conservation or historic preservation easements which apply to all or part of the Property.
3. This agreement shall be effective upon acceptance by the [County, City or Town]; provided, however, that the real estate tax for the Property shall not be extended on the basis of its use value until the next succeeding tax year following timely application by the Owner for use assessment and taxation in accordance with [citation of applicable local ordinance]. Thereafter, this agreement shall remain in effect for a term of [Insert a period of not less than 4 nor more than 10] consecutive years.
  4. Nothing contained here in shall be construed as giving to the public a right to enter upon or to use the Property or any portion thereof, except as the Owner may otherwise allow, consistent with the provisions of this agreement.
  5. The [County, City or Town] shall have the right at all reasonable times to enter the Property to determine whether the Owner is complying with the provisions of this agreement.
  6. Nothing in this agreement shall be construed to create in the public or any member thereof a right to maintain a suit for any damages against the Owner for any violation of this agreement.
  7. Nothing in the agreement shall be construed to permit the Owner to conduct any activity or to build or maintain any improvement which is otherwise prohibited by law.
  8. If any provision of this agreement is determined to be invalid by a court of competent jurisdiction, the remainder of the agreement shall not be affected thereby.
  9. The provisions of this agreement shall run with the land and be binding upon the parties, their successors, assignees, personal representatives, and heirs.
  10. Words of one gender used herein shall include the other gender, and words in the singular shall include words in the plural, whenever the sense requires.
  11. This agreement may be terminated in the manner provided in § 15.1-1513 of the Code of Virginia for withdrawal of land from an agricultural, a forestal or an agricultural an agricultural and forestal district.
  12. Upon termination of this agreement, the Property shall thereafter be assessed and taxed at its fair market value, regardless of its actual use, unless the [County, City or



Town] determines otherwise in accordance with applicable law.

- 13. Upon execution of this agreement, it shall be recorded with the record of land titles in the Clerk's Office of the Circuit Court of, Virginia, at the Owner's expense.
- 14. NOTICE: WHEN THE OPEN-SPACE USE OR USES BY WHICH THE PROPERTY QUALIFIED FOR ASSESSMENT AND TAXATION ON THE BASIS OF USE CHANGES TO A NONQUALIFYING USE OR USES, OR WHEN THE ZONING FOR THE PROPERTY CHANGES TO A MORE INTENSIVE USE AT THE REQUEST OF THE OWNER, THE PROPERTY, OR SUCH PORTION OF THE PROPERTY WHICH NO LONGER QUALIFIES, SHALL BE SUBJECT TO ROLL-BACK TAXES IN ACCORDANCE WITH § 58.1-3237 OF THE CODE OF VIRGINIA. THE OWNER SHALL BE SUBJECT TO ALL OF THE OBLIGATIONS AND LIABILITIES OF SAID CODE SECTION.

\* Paragraphs H and I must be included in agreements for properties which are to be provided or preserved for natural areas left in undeveloped states, including floodways. These paragraphs are unnecessary for agreements for other types of land uses, such as for a park or a farm use.

\_\_\_\_\_ (Seal)  
 Owner  
 [Name of City, County, Town)  
 by  
 (Acknowledgments)

#### § 4. Opinions

In cases of uncertainty, the local assessing officer may request an opinion from the Director of the Department of Conservation and Recreation as to whether a particular property meets the criteria for open-space classification. The procedure for obtaining such an opinion is as follows:

- A. The local assessing officer shall address a letter to the Director, Department of Conservation and Recreation, 600 E. Main Street, Richmond, VA 23219, describing the particular use and situation and requesting an opinion as to whether or not it qualifies as an open space for the purpose of use value taxation. Such letter should be accompanied by exhibits such as land use maps, subdivision plats, open-space deeds or easements, applicable agricultural, forestal, historic district or other ordinances, if any, topographic maps, and photographs, sufficient to explain the situation adequately. The director may request additional information if needed.

- B. The director may hold a hearing at which the applicant and others may present additional information.
- C. The director will issue an opinion as quickly as possible after all necessary information has been received and any hearing completed.
- D. In the event of an unfavorable opinion which does not comport with standards set forth in the statements filed pursuant to § 58.1-3240, the party aggrieved may seek relief in the circuit court of the county or city wherein the real estate in question is located.

#### Certification

I hereby approve the final adoption of the amended Standards for the Classification of Real Estate as Devoted to Open Space Use under the Land Use Assessment Law as presented. I further certify the above standards as a true and correct copy.

Effective date: January 5, 1989

Signature

Name	B. C. Leynes, Jr.
Title	Director
Agency Name	Department of Conservation and Historic Resources
Date	November 16, 1988

#### Standards for classification of real estate as devoted to agricultural use and horticultural use under the Virginia Land Use Assessment Law

(2VAC5-20-10) The Commissioner of Agriculture and Consumer Services adopts these Standards for Classification of Real Estate As Devoted to Agricultural Use and to Horticultural Use Under the Virginia Land Use Assessment Law to:

- 1. Encourage the proper use of real estate in order to assure a readily available source of agricultural, horticultural, and forest products, and of open space within reach of concentrations of population.
- 2. Conserve natural resources in forms that will prevent erosion.
- 3. Protect adequate and safe water supplies.
- 4. Preserve scenic natural beauties and open spaces.

5. Promote proper land-use planning and the orderly development of real estate for the accommodation of an expanding population.
6. Promote a balanced economy and ease pressures which force the conversion of real estate to more intensive uses.

**§ 1. Previous and Current Use, and Exceptions (2VAC5-20-20)**

The real estate must meet all of the following standards to qualify for agricultural or for horticultural use.

**A. Previous Use.**

The real estate sought to be qualified must have been devoted, for at least five consecutive years previous, to the production for sale of plants or animals, or to the production for sale of plant or animal products useful to man, or devoted to another qualifying use including, but not limited to:

1. Aquaculture
2. Forage crops
3. Commercial sod and seed
4. Grains and feed crops
5. Tobacco, cotton, and peanuts pro pp
6. Dairy animals and dairy products
7. Poultry and poultry products
8. Livestock, including beef cattle, sheep, swine, horses, ponies, mules, or goats, including the breeding and grazing of any or all such animals
9. Bees and apiary products
10. Commercial game animals or birds
11. Trees or timber products of such quantity and so spaced as to constitute a forest area meeting standards prescribed by the State Forester, if less than twenty acres, and produced incidental to other farm operations
12. Fruits and nuts
13. Vegetables
14. Nursery products and floral products.

If a tract of real estate is converted from nonproduction to agricultural or horticultural production, the tract may qualify without a five-year history of agricultural or horticultural use only if the change expands or replaces production enterprises existing, on other tracts of real estate owned by the applicant.

**B. Current Use**

The real estate sought to be qualified must currently have a minimum of five acres devoted to the production for sale of plants or animals, or to the production for sale of plant or animal products useful

to man, or devoted to another qualifying use including, but not limited to, the items in Section 1.A above; except that no real estate devoted to the production of trees or timber products may qualify unless:

1. The real estate is less than 20 acres.
2. The real estate meets the technical standards prescribed by the State Forester, and
3. The real estate is producing tree or timber products incidental to other farm operations.

**C. Exceptions.**

**1. Conversions by farm operator - Non-Qualifying Real Estate.**

If a tract of real estate is converted from other uses or nonproduction to agricultural or horticultural production, the tract may qualify without a five-year history of agricultural or horticultural use when the change expands or replaces production enterprises existing on other tracts of real estate owned by the applicant, regardless of location.

**2. Conversions by farm operator - Qualifying Real Estate.**

If a tract of real estate is converted from a qualifying use (forestry or open space) to agricultural or horticultural production, the tract may qualify without the five-year history of agricultural or horticultural use.

**3. Government Action**

If a tract of real estate which has previously qualified for agricultural use taxation is not devoted to agricultural or horticultural production because of governmental actions, the tract or portions shall be considered productive for that period of time.

**4. Crops that require more than two years.**

The tract of real estate may qualify without the five-year history of agricultural or horticultural use if the tract of real estate is devoted to the production of any agricultural or horticultural crop that requires more than two years from initial planting until commercially feasible harvesting, and the locality in which the tract of real estate is located has waived with respect to such real estate the five-year-history-of-agricultural-or-horticultural-use requirement.

**§2. Conservation of Land Resources, Management and Production, and Certification (2VAC5-20-30)**

**A. Conservation of Land Resources.**

The applicant shall certify that the real estate is being used in a planned program of practices that:

1. With respect to real estate devoted to a use that disturbs the soil or that affects water quality, is intended to (in the case of soil) reduce or prevent soil erosion and (in the case of water) improve water quality by best management practices such as terracing, cover cropping, strip cropping, no-till planting, sodding waterways, diversions, water impoundments, and other best management practices, to the extent that best management practices exist for that use of the real estate.
2. With respect to real estate devoted to crops grown in the soil, is intended to maintain soil nutrients by the application of soil nutrients (organic and inorganic) needed to produce average yields of such crops or as recommended by soil tests.
3. Is intended to control brush, woody growth, and noxious weeds on row crops, hay, and pasture by the use of herbicides, biological controls, cultivation, mowing, or other normal cultural practices.

**B. Management and Production.**

The applicant shall certify that the real estate is being used in a planned program of management and production for sale of plants or animals (or plant or animal products useful to man), which include, but are not limited to, field crops, livestock, livestock products, poultry, poultry products, dairy, dairy products, aquaculture products, and horticultural products; or that the real estate is being used for any other thing that is a qualifying use pursuant to [2VAC5-20-20](#).

1. Field crop production shall be primarily for commercial uses and the average crop yield per acre on each crop grown on the real estate during the immediate three years previous, shall be equal to at least one-half of the county (city) average for the past three years; except that the local government may prescribe lesser requirements when unusual circumstances prevail and such requirements are not realistic.
2. Livestock, dairy, poultry, or aquaculture production shall be primarily for commercial sale of livestock, dairy, poultry and aquaculture products. Livestock, dairy and poultry shall have a minimum of 12 animal unit-months of commercial livestock or poultry per five acres of open land in the previous year. One animal unit to be one cow, one horse, five sheep, five swine, 100 chickens, 66 turkeys, 100 other fowl. (An animal unit-month means one mature cow or the equivalent on five acres of land for one month; therefore, 12 animal unit-months means the maintenance of one mature cow or the equivalent on each five acres for 12 months, or any

combination of mature cows or the equivalent and months that would equal 12 animal unit-months such as three mature cows or the equivalent for four months, four mature cows or the equivalent for three months, two mature cows or the equivalent for six months, etc.).

3. Aquaculture production shall be primarily for commercial sale of freshwater fish and shellfish under controlled conditions for food.
4. Horticultural production includes nursery, greenhouse, cut flowers, plant materials, orchards, vineyards and small fruit products.
5. Timber production, in addition to crop, livestock, dairy, poultry, aquaculture, and horticultural production on the real estate must meet the standards prescribed by the Department of Forestry for forest areas and will be assessed at use value for forestry purposes.

**Certification Procedures ([2VAC5-20-40](#))**

**A. Documentation.**

The commissioner of revenue or the local assessing officer may require the applicant to document what the applicant must certify pursuant to [2VAC5-20-30](#). The commissioner of revenue or local assessing officer may find one of the following documents useful in making his determination:

1. The assigned USDA/Farm Service Agency farm number and evidence of participating in a federal farm program;
2. Federal tax forms (1040F) Farm Expenses and Income, (4835) Farm Rental Income and Expenses, or (1040E) Cash Rent for Agricultural Land;
3. A Conservation Farm Management Plan prepared by a professional; or
4. Gross sales averaging more than \$1,000 annually over the previous three years.

**B. Interpretation of standards.**

In cases of uncertainty on the part of the commissioner of revenue or the local assessing officer, the law authorizes him to request an opinion from the Commissioner of Agriculture and Consumer Services as to whether a particular property meets the criteria for agricultural or horticultural classification. The procedure for obtaining such an opinion is as follows:

1. The commissioner of revenue or the local assessing officer shall address a letter to the Commissioner, Virginia Department of Agriculture and Consumer Services, 102 Governor Street Richmond, Virginia 23219, describing the use and situation, and requesting an opinion of whether the real estate qualifies as agricultural or horticultural real estate for the purpose of use-value taxation. The letter should include the following:
  - a. Owner's name and address.
  - b. Operator's name and address.
  - c. Total number of acres, acres in crops, acres in pastures, acres in soil conservation programs (Farm Service Agency, Natural Resources Conservation Service, Virginia Department of Conservation and Recreation programs), and acres in forest.
  - d. If more than one tract of real estate, the number of acres in each tract and whether the tracts are contiguous.
  - e. A copy of application for land use assessment taxation.
  - f. In any case involving a question about the applicability of the exception to the five-year-history-of-agricultural or horticultural-use requirement contained in [2VAC5-20-20 C 4](#) (relating to real estate devoted to the production of an agricultural or horticultural crop that requires more than two years from initial planting until commercially feasible harvesting), a statement as to whether the locality has waived with respect to such real estate, the five-year history of agricultural or horticultural use requirement.
2. The commissioner may request additional information, if needed, directly from the applicant; or he may hold a hearing at which the applicant and others may present additional information.
3. The commissioner will issue an opinion as soon as possible after all necessary information has been received.

## Part 3: Attorney General's Opinions

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Reassessment	July 10, 1987	Danville	Setliff	A notice is required when reassessment occurs.	100
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<b>Topic</b>	<b>Date</b>	<b>Locality</b>	<b>Contact</b>	<b>Summary</b>	<b>Page</b>
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<sup>1</sup> Denotes a court case rather than an Attorney General opinion.

September 20, 2013

**Mr. Larry W. Davis, Esquire**  
**Attorney for the County of Albemarle**

*Under § 10.1-1011, conservation easement land covered by the provisions of the statute must meet the minimum acreage requirement of § 58.1-3233 at the time the easement is dedicated, unless the easement was placed on the property before the local land use assessment ordinance was adopted; subsequent changes in acreage or use that are permitted under the conservation easement would not affect the continuing eligibility of the land for use assessment under § 10.1-1011(C). In addition, no back taxes, including the roll-back tax, may be imposed when conservation easement land, through apparent unpermitted use or development, no longer appears to qualify for use assessment under § 10.1-1011(C). Finally, upon the initiation of appropriate proceedings and the making of factual findings respecting the land and easement in question, such subsequent violations of the conservation easement could render the land ineligible for use assessment under § 10.1-1011(C).*

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the Code of Virginia.

#### **Issues Presented**

You ask three questions regarding the land use assessment and taxation of land that is subject to a perpetual conservation easement. Specifically, you ask whether perpetual conservation easements must satisfy the minimum acreage requirements of § 58.1-3233 in order to qualify for land use assessment and taxation under § 10.1-1011. You also ask whether land under a conservation easement must continue to meet the minimum acreage standards of § 58.1-3233 in order to annually qualify for land use assessment and taxation. Finally, you ask whether back taxes and roll-back taxes are required to be imposed to correct any erroneous under-assessment of non-qualifying property.

#### **Response**

It is my opinion that, under § 10.1-1011, conservation easement land covered by the provisions of the statute must meet the minimum acreage requirement of § 58.1-3233 at the time the easement is dedicated, unless the easement was placed on the property before the local land use assessment ordinance was adopted. It is further my opinion that subsequent changes in acreage or use that are permitted under the conservation easement would not affect the continuing eligibility of the land for use assessment under § 10.1-1011(C). In addition, it is my opinion that no back taxes, including the roll-back tax, may be imposed when conservation easement land, through apparent unpermitted use or development, no longer appears to qualify for use assessment under § 10.1-1011(C). Finally, however, it is my opinion that upon the initiation of appropriate proceedings and the making of factual findings respecting the land and easement in question, such subsequent violations of the conservation easement could render the land ineligible for use assessment under § 10.1-1011(C).

#### **Background**

You relate that, pursuant to § 58.1-3231, Albemarle County has adopted an ordinance to provide for the use assessment and taxation of "real estate devoted to open-space use," as that phrase is defined in § 58.1-3230. Under that ordinance, Albemarle County has set the minimum acreage requirement for real estate devoted to open-space at twenty (20) acres.' You also relate that it is common for conservation easements to allow for limited subdivision of lots and that, once that right is exercised, the newly-created parcels often will not meet the minimum lot size for land use assessment and taxation under the Albemarle County ordinance.

Based on your reading of applicable law, it is your opinion that land under a perpetual conservation easement must meet the minimum acreage requirements of the Albemarle County ordinance at the time the easement is dedicated and in the years thereafter. It is also your opinion that the Finance Director of Albemarle County is required to correct any under-assessment of non-qualifying real estate pursuant to §§ 58.1-3980 and 58.1-3981.

#### **Applicable Law and Discussion**

Your inquiry involves the application of and interplay among several statutory provisions relating to the special taxation of land for conservation purposes. Several basic principles of statutory construction apply to interpretation of those statutes with respect to the questions you pose. First, the plain meaning of the language used in a statute determines legislative intent unless a literal construction would lead to a manifest absurdity.' Virginia courts



"determine [legislative] intent from the words contained in the statute"<sup>3</sup> and are not free to add or ignore language contained therein.<sup>4</sup> Because statutes are "not to be construed by singling out a particular phrase," but must be construed as a whole,<sup>5</sup> they must be construed to give meaning to all of the words enacted by the legislature, and interpretations that render statutory language superfluous are to be avoided.<sup>6</sup> Additionally, when two statutes relate to the same or closely connected subjects they "must be considered together in construing their various material provisions,"<sup>7</sup> and "in cases of apparent conflict, they should be construed, if reasonably possible, in such manner that both may stand together."<sup>8</sup> Accordingly, "when one statute speaks to a subject in a general way and another deals with a part of the same subject in a more specific manner, the two should be harmonized, if possible, and where they conflict, the latter prevails."<sup>9</sup>

The statutory provisions implicated by your inquiry are those contained in Chapter 32, Article 4 and Chapter 32, Article 5 of Subtitle III of Title 58.1, which generally govern special assessments of real estate for land preservation, and § I 0.1-1011 in Chapter 10.1, the "Virginia Conservation Easement Act," of Title 10.1, which more specifically relates to taxation of land subject to a perpetual conservation easement.<sup>10</sup> Pursuant to § 58.1-3231, any local government that has adopted a land use plan may adopt an ordinance to provide for a special land use assessment of land that has been designated as agricultural, horticultural, forest, or open-space.<sup>11</sup> Prior to assessing any parcel of real estate under a land use ordinance, the local taxing official is required to make several factual determinations. Specifically, § 58.1-3233 requires the tax assessor to

1. Determine that the real estate meets the criteria set forth in § 58.1-3230 [i.e., agricultural, horticultural, forest and open-space] and the standards prescribed thereunder to qualify for one of the classifications set forth therein ... .
2. Determine further that real estate devoted solely to ... (iii) open-space use consists of a minimum of five acres or such greater minimum acreage as may be prescribed by local ordinance ....
3. Determine further that real estate devoted to open-space use is ... (ii) subject to a recorded perpetual easement that is held by a public body, and promotes the open-space use classification, as defined in § 58.1-3230 .... 1121

With respect to the taxation of land under perpetual easement for open-space preservation, § 10.1-1011(C) provides:

[L]and which is (i) subject to a perpetual conservation easement held pursuant to this chapter [the Virginia Conservation Easement Act] or the Open-Space Land Act (§ I 0.1-1700 et seq.), (ii) devoted to open-space use as defined in § 58.1-3230, and (iii) in any county, city or town which has provided for land use assessment and taxation of any class of land within its jurisdiction pursuant to § 58.1-3231 or § 58.1-3232, shall be assessed and taxed at the use value for open space, if the land otherwise qualifies for such assessment at the time the easement is dedicated. If an easement is in existence at the time the locality enacts land use assessment, the easement shall qualify for such assessment. Once the land with the easement qualifies for land use assessment, it shall continue to qualify so long as the locality has land use assessment.

First, you specifically seek the proper construction of the phrase "if the land otherwise qualifies" as used in § 10.1-1011(C). You suggest that this language requires land under perpetual conservation easement<sup>13</sup> to meet the minimum acreage requirements of § 58.1-3233. In support of this conclusion, you cite § 58.1-3233(2), which sets out minimum acreage standards for the open-space use classification, and § 10.1-1011(C), which provides that land under perpetual conservation easement is eligible for land use assessment if it is "devoted to open-space use as defined in § 58.1-3230" and "if the land otherwise qualifies for such assessment at the time the easement is dedicated" (emphasis added). You conclude that the phrase "otherwise qualifies for such assessment" must be construed to refer to the minimum acreage requirements of § 58.1-3233, this being the only potential object of the phrase "otherwise qualifies." I agree with such reasoning and that specific conclusion.

In order to give meaning to the phrase "otherwise qualifies" and thereby avoid rendering it superfluous, the phrase must refer to criteria outside of § 10.1-1011(C).<sup>14</sup> Furthermore, because both § 10.1-1011(C) and § 58.1-3233 relate to a closely connected subject- qualification for use assessment of open-space land - it is appropriate to consider them together. Accordingly, the phrase "otherwise qualifies" in § 10.1-1011(C) must be understood as a reference to

other provisions relating to the same or closely connected subjects but found elsewhere in the Code. In this case, those related provisions are found in §58.1-3233; however, because the minimum acreage requirement of § 58.1-3233 stands alone as the only requirement supplemental to those already provided for and contained in §10.1011(C), it is the only possible object of the referential phrase "otherwise qualifies."

With respect to the issue of changes in use or acreage authorized by the easement, I understand the phrase "at the time the easement is dedicated" in § 10.1-1011(C) to be clear, unambiguous and susceptible of only one interpretation. It operates to fix the time of qualification for use assessment to the time at which the easement is dedicated. I note that in the case of a perpetual conservation easement meeting the requirements of § 10.1-1011(C), the purpose of such an easement includes the "retaining or protecting the natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open-space use."<sup>15</sup> As a general matter, to achieve such conservation purposes in perpetuity, the landowner is required permanently to give up the right to use or develop the land in a manner that would be inconsistent with the conservation purposes and values of the easement.

Consequently, it may fairly be concluded that any rights of the grantor reserved at dedication have been determined by the easement holder to be consistent with the conservation purposes and values of the easement. Later changes in use or development that are permitted under the easement already have been determined to be consistent with the conservation purposes of the easement and would not affect the land's continuing eligibility for land use assessment under § 10.1-1011(C). It follows, therefore, that subsequent changes in acreage, if they result from a division permitted by the easement, would not affect the land's continuing eligibility for land use assessment.

Furthermore, § 10.1-1011(C) provides that once the land with the easement is qualified, that qualification shall continue so long as the locality has land use assessment. This sentence in the statute is also clear, unambiguous and susceptible of only one interpretation. So long as a locality has a land use assessment program, property under an open space easement will qualify for that program. The plain meaning of the statutory language controls. That meaning cannot be expanded to add a post-dedication requirement of continuing qualification.<sup>16</sup>

This conclusion finds support in an earlier Opinion of this Office that considered the relationship between temporary land use assessments and permanent open space easements:

By its plain language, § 10.1-1011 now requires lands permanently reserved as open space - under conservation or open-space easements meeting the requirements of § 58.1-3230 - to be assessed and taxed in the same way as lands that are being so used temporarily under a local use value assessment program .... Such a permanent easement affects the value of the ownership interest retained by the landowner, and the local tax assessing officer must take into account the effect of that change, as required by § 10.1-1011.<sup>17</sup>

Turning to your final question, § 58.1-3237 provides that real estate qualifying for land use becomes subject to roll-back taxes when the use qualifying the subject real estate "changes to a nonqualifying use," and liability for such taxes attaches "when [the] change in use occurs." Nonetheless, as a previous Opinion of this Office noted,

Section I 0.1-10 II does not subject such perpetual conservation or open-space easements to the same application, revalidation, roll-back and other administrative requirements that apply to other property under a local use value assessment program.<sup>18</sup>

In the case of a perpetual conservation easement, such land qualifies for land use assessment under § 10.1-1011 based on the easement being perpetual and in furtherance of open-space preservation. If unpermitted use or development were to occur and the land owner fails to cure the violation after a reasonable amount of time, this could constitute a violation of the easement. Both the Conservation Easement Act<sup>19</sup> and the Open-Space Land Act<sup>20</sup> specify which parties have the right to enforce the easements entered into pursuant to those laws and how such easements may be terminated. Those parties have the authority to challenge whether the property under easement is being managed appropriately. That issue is not left open for ancillary challenges through other mechanisms, such as the land use assessment program. This provides clarity and certainty to those who participate in the easement programs and is consistent with the previously stated principle that specific statutes take priority over more general statutes.<sup>21</sup> Until such time as the holder of the easement takes action to terminate the easement in accordance with the law or the express terms of the easement - or otherwise seeks a remedy pursuant to an enforcement action that would authorize

a result to the contrary - the clear mandate of the law would not allow a change in the taxable status of the property."<sup>22</sup>

A prior Opinion of the Attorney General stated that, "lack of enforcement of (an) easement ultimately would return the property to full fair market value assessment."<sup>23</sup> That Opinion, however, did not address the mechanism by which such a return to fair market value would be effected. It is my opinion that such a transition ordinarily could not occur absent appropriate action by one authorized under the easement or the statutes to enforce the terms of the easement. What form such an action might take would depend on the specific law under which the easement was granted, the specific terms of the easement and the particular facts in the case. Such determinations are questions of fact and would have to be made by the authorized taxing official or trier of fact, if contested or litigated, based on all the relevant facts.<sup>24</sup>

### Conclusion

Accordingly, it is my opinion that, under § 10.1-1011, conservation easement land covered by the provisions of the statute must meet the minimum acreage requirement of § 58.1-3233 at the time the easement is dedicated, unless the easement was placed on the property before the local land use assessment ordinance was adopted. It is further my opinion that subsequent changes in acreage or use that are permitted under the conservation easement would not affect the continuing eligibility of the land for use assessment under § 10.1-1011 (C). In addition, it is my opinion that no back taxes, including the roll-back tax, may be imposed when conservation easement land, through apparent unpermitted use or development, no longer appears to qualify for use assessment under § 10.1-1011(C). Finally, however, it is my opinion that upon the initiation of appropriate proceedings and the making of factual findings respecting the land and easement in question, such subsequent violations of the conservation easement could render the land ineligible for use assessment under § 10.1-1011(C).

<sup>1</sup> COUNTY OF ALBEMARLE, VA., CODE § 15-804.

<sup>2</sup> *Halifax Corp. v. First Union Nat' I Bank*, 262 Va. 91, 99-100, 546 S.E.2d 696, 702 (2001).

<sup>3</sup> *Williams v. Commonwealth*, 265 Va. 268, 271, 576 S.E.2d 468, 470 (2003) (citing *Vaughn, Inc. v. Beck*, 262 Va. 673, 677, 554 S.E.2d 88, 90 (2001)); *Thomas v. Commonwealth*, 256 Va. 38, 41, 501 S.E.2d 391, 393 (1998)).

<sup>4</sup> *BBF, Inc. v. Alstom Power, Inc.*, 274 Va. 326, 331, 645 S.E.2d 467, 469 (2007); see also *Alger v. Commonwealth*, 267 Va. 255, 261, 590 S.E.2d 563, 566 (2004) ("We 'assume that the legislature chose, with care, the words it used when it enacted the relevant statute.'" (quoting *Barr v. Town & Country Props., Inc.*, 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990))).

<sup>5</sup> *Va. Elec. & Power Co. v. Citizens for Safe Power*, 222 Va. 866, 869, 284 S.E.2d 613, 615 (1981).

<sup>6</sup> See *Cook v. Commonwealth*, 268 Va. Ill, 114, 597 S.E.2d 84, 86 (2004).

<sup>7</sup> See, e.g., *Colbert v. Commonwealth*, 47 Va. App. 390, 395, 624 S.E.2d 108, 110 (2006).

<sup>8</sup> 1977-78 Op. Va. Att'y Gen. 351, 353.

<sup>9</sup> *Va. Nat' Bank v. Harris*, 220 Va. 336, 340, 257 S.E.2d 867, 870 (1979)

<sup>10</sup> This Opinion is limited to interpreting the interplay between the statutes within those particular Chapters in the context of your specific inquiries.

<sup>11</sup> Section 58.1-3230 designates four classifications of real estate that qualify for land use assessment based on the use value of such real estate: agricultural, horticultural, forest, and open-space use.

<sup>12</sup> VA. CODE ANN. § 58.1-3233 (2009).

<sup>13</sup> Under § 10.1-1011(C), both "open-space easements" as defined in § 10.1-1700 and "conservation easements" as defined in § 10.1-1009 qualify for land use assessment if such easements meet the requirements of § 10.1-1011(C). Therefore, for purposes of this opinion, I make no distinction between conservation easements created under the Open-Space Land Act, VA. CODE ANN. §§ 10.1-1700 through

10.1-1705 (2012), or the Virginia Conservation Easement Act, VA. CODE ANN. §§ 10.1-1009 through 10.1-1016 (2012), unless specifically noted.

<sup>14</sup> A prior Opinion of this Office concluded that the phrase "otherwise qualifies for such assessment," as used in § 10.1-1 011(C), "means that the land must be devoted to open space as defined in § 58.1-3230." 1993 Op. Va. Att'y Gen. 7, 12. As you point out in your request, that Opinion does not specifically address acreage requirements. The Opinion's reference to open space use was simply to make the point that "[n]ot all land that is subject to an easement is assessed at open-space values regardless of its use." *Id.* at 12. As such, this Opinion is hereby distinguished and clarified with respect to the meaning of the phrase "otherwise qualifies" as used in § 10.1-1011(C).

<sup>15</sup> Section 10.1-1009 (20 12) (defining conservation easement); see also § 10.1-1700 (2012) (defining open-space easement).

<sup>16</sup> I note the possibility that a parcel of land could qualify initially and upon a subsequent permitted division, one or both of the resulting parcels could fall below the minimum acreage requirements. I also note that a conservation easement property consisting of less than the minimum acreage could qualify if it were in existence at the time of

Notwithstanding the somewhat incongruent results regarding acreage requirements that may occur in the implementation of this statute, it must be assumed that the General Assembly chose its words with care, and that the intent of the legislature must be ascertained by what the statute says and not by what might have been said to achieve a particular legislative end. *Commonwealth v. Amerson*, 281 Va. 414, 421, 706 S.E.2d 879, 884 (2011) (quoting *Virginian-Pilot Media Cos. v. Dow Jones & Co.*, 280 Va. 464,469,698 S.E.2d 900,902 (2010)); *Alger v. Commonwealth*, 267 Va. 255,261, 590 S.E.2d 563, 566 (2004).

<sup>17</sup>1993 Op. Va. Att'y Gen. 7, II.

<sup>18</sup> *Id.*

<sup>19</sup> Sections 10.1-1009 through 10.1-1016.

<sup>20</sup> Sections 10.1-1700 through 10.1-1705.

<sup>21</sup> *Va. Nat'l Bank*, 220 Va. at 340,257 S.E.2d at 870.

<sup>22</sup> See § 10.1-1011(C) (2012) ("[L]and which is (i) subject to a perpetual conservation easement ... , (ii) devoted to open-space use as defined in § 58.1-3230, and (iii) in any county, city or town which has provided for land use assessment and taxation of any class of land within its jurisdiction ... shall be assessed and taxed at the use value for open space .... Once the land with the easement qualifies for land use assessment, it shall continue to qualify so long as the locality has land use assessment.").

<sup>23</sup> 1993 Op. Va. Att'y Gen. 7, 12 n.3.

<sup>24</sup> 1997 Op. Va. Att'y Gen 195, 196; 1996 Op. Va. Att'y. Gen. 207,208.

December 10, 2009

**The Honorable Deborah F. Williams  
Spotsylvania County Commissioner of the Revenue**

*Contiguous parcels of real estate, titled in same owner, may be combined to form tracts of at least twenty acres devoted to forest use and at least five acres devoted to agricultural use and are eligible for use value assessment. Parcel with mixed use may qualify for land use assessment provided each use acreage meets required minimum acreage.*

**Issues Presented**

You ask whether contiguous parcels of real estate with identical ownership may be combined to form tracts that contain at least twenty acres devoted to forest use and five acres devoted to agricultural use to be eligible for use value assessment. You also ask whether a parcel that has a mixed use such as part forest and part agriculture can qualify for use value assessment when the use acreage does not meet the minimum requirement.

**Response**

It is my opinion that contiguous parcels of real estate that are titled in the same owner may be combined to form tracts of at least twenty acres devoted to forest use and at least five acres devoted to agricultural use and are eligible for use value assessment. It further is my opinion that a parcel with mixed use may qualify for a land use assessment provided the use acreage meets the required minimum acreage for each land use.

**Background**

You relate that Spotsylvania County allows contiguous parcels with identical ownership to receive the deferral as long as the total acreage of all parcels meets or exceeds the five acre minimum for agricultural use and twenty acre minimum for forestal use.

**Applicable Law and Discussion**

Article 4, Chapter 32 of Title 58.1, § 58.1-3229 (not set out), §§ 58.1-3230 through 58.1-3244, provides for the special assessment of real property for land preservation. In general, to qualify for land use assessment and taxation: (1) agricultural or horticultural property must consist of a minimum of five acres; (2) forest property must consist of a minimum of twenty acres; and (3) open-space property must consist "of a minimum of five acres or such greater minimum acreage as may be prescribed" by the locality.<sup>1</sup> Section 58.1-3233(2) provides that "[t]he minimum acreage requirements for special classifications of real estate shall be determined by adding together the total area of contiguous real estate excluding recorded subdivision lots recorded after July 1, 1983, titled in the same ownership." A 2004 opinion of the Attorney General concludes that the aggregation of parcels does not defeat the purposes underlying the land use program as long as the real estate that is divided into parcels remains under common ownership and is large enough that the division is not subject to the locality's subdivision ordinance.<sup>2</sup> Further, as long as the aggregated parcels otherwise satisfy § 58.1-3233(2), the purpose of the land use program is satisfied.<sup>3</sup> Therefore, it is my opinion that parcels may be aggregated for purposes of meeting minimum acreage requirements for land use taxation established by § 58.1-3233(2). Furthermore, other opinions of the Attorney General conclude that § 58.1-3233(2) authorizes the combination of contiguous parcels of real estate for the purpose of satisfying the minimum acreage requirement of the statute only when the contiguous parcels are titled in the same ownership.<sup>4</sup> I concur in these prior opinions. It also is my opinion that contiguous parcels of real estate being titled in the same ownership may be combined to form tracts that contain at least twenty acres devoted to forest use and five acres devoted to agricultural use to be eligible for use value assessment.

Prior opinions of the Attorney General tangentially answer your second inquiry.<sup>5</sup> A commissioner of the revenue should make the factual determination regarding whether a parcel meets the criteria for participation in the land use taxation and assessment program.<sup>6</sup> To qualify for the special assessment, the land must be devoted to agricultural, horticultural, forest or open-space uses, and must satisfy the minimum acreage requirement specified in § 58.1-3233.<sup>7</sup> In addition, I note that the separation of lots that do not meet the minimum acreage requirements triggers the application of roll-back taxes.<sup>8</sup> Therefore, it is my opinion that a parcel with mixed use, *i.e.*, part forest and part agriculture, cannot qualify for use value assessment unless each such use acreage meets the required acreage by itself.

**Conclusion**

Accordingly, it is my opinion that contiguous parcels of real estate that are titled in the same owner may be combined to form tracts of at least twenty acres devoted to forest use and at least five acres devoted to agricultural

use and are eligible for use value assessment. It further is my opinion that a parcel with mixed use may qualify for a land use assessment provided the use acreage meets the required minimum acreage for each land use.

<sup>1</sup>VA. CODE ANN. § 58.1-3233(2) (2009).

<sup>2</sup>See 2004 Op. Va. Att'y Gen. 201, 203.

<sup>3</sup>Id.

<sup>4</sup>See Op. Va. Att'y Gen.: 1989 at 325, 326; 1987-1988 at 138, 140.

<sup>5</sup>See *infra* notes 6-8 and accompanying text.

<sup>6</sup>See 2008 Op. Va. Att'y Gen. 141, 143.

<sup>7</sup>See Op. Va. Att'y Gen.: 2002 at 318, 319; *id.* at 315, 316; 1997 at 193, 194.

<sup>8</sup>See Op. Va. Att'y Gen.: 1990 at 245, 246; 1986-1987 at 306, 306-07; 1985-1986 at 305, 306; 1982-1983 at 545, 545; 1979-1980 at 339, 340.

**The Honorable Anne G. Sayers  
Northampton County Commissioner of the Revenue**

*Commissioner of revenue must include entire farm as being in county although portion of farm is within incorporated town; commissioner should proportionally assess portion of farm located within such town as separate line item on land book. For purposes of county's use value program, entire farm receives use assessment; when town within such county does not have use value ordinance, that portion of farm within town is subject to town taxes.*

**Issue Presented**

You ask, when preparing a land book, whether a commissioner of the revenue ("commissioner") is authorized to divide proportionally a farm that is situated in a county and in a town within the county and enter the farm as two separate line items. Further, when such county has a use value program for which the farm qualifies and the town does not have a use value ordinance, you ask whether the entire farm receives the use assessment or only the portion of the farm situated within the county.

**Response**

It is my opinion that, when preparing a land book, a commissioner of the revenue must assess the entire farm parcel as being in the county even though a portion of such farm is within an incorporated town. Further, the commissioner should assess that portion of the farm located within the town as a separate line item entry on the land book. It is my opinion that for purposes of the county's use value program for which such farm qualifies, the entire farm receives the use assessment for purposes of taxation by the county. Finally, when the town within such county does not have a use value ordinance, it is my opinion the portion of the farm that is within the town is subject to taxation by the town.

**Background**

You relate that Northampton County, which includes within its boundaries five incorporated towns, has an Agricultural Forest District Program.<sup>1</sup> You note that several tracts or parcels of land in the County have small portions that are also within the geographic boundaries of one of these towns. You relate that it has been the practice of Northampton County for purposes of real property taxation to assess separately the portion of such larger tracts of land that lie within an incorporated town.

You question whether the practice of assessing the parcel as two line items on the tax rolls is the correct way to handle these properties. Therefore, you seek guidance concerning whether the assessment of such a parcel as two entries on the tax rolls is appropriate and authorized by statute.

**Applicable Law and Discussion**

Section 58.1-3301(A) provides that "[t]he Department of Taxation shall prescribe the form of the land book to be used by the commissioner of the revenue" for a county. Under this authority, the Department of Taxation (the "Department") has prescribed forms that provide for the listing of basic information concerning each parcel of property, including the name and address of the owner, a description of the property, the value of land and improvements, and the amount of tax due.<sup>2</sup> Further § 58.1-3302 provides that the commissioner shall enter each town lot separately in the land book, and shall set forth, among other things, the name and address of the owner, a description of the property, its value and "the amount of tax at the legal rate." Section 58.1-3310 requires "[e]ach commissioner of the revenue [to] retain in his office the original land book" and to deliver a copy to the Department and to the treasurer and the clerk of the circuit court for his county.

Statutory language is ambiguous when it may be understood in more than one way.<sup>3</sup> An ambiguity also exists when statutory language lacks clarity and precision, or is difficult to comprehend.<sup>4</sup> "The province of [statutory] construction lies wholly within the domain of ambiguity, and that which is plain needs no interpretation."<sup>5</sup> When statutory language is clear and unambiguous, however, the plain meaning and intent of the enactment must be given to it.<sup>6</sup> It is my opinion that §§ 58.1-3301 and 58.1-3302 are free of any ambiguities. A commissioner is required as a part of his duties to prepare a land book which separately states the town property.<sup>7</sup>

Successive Virginia constitutions have contained provisions requiring “uniformity” in property taxation.<sup>8</sup> The Constitution of Virginia currently requires uniformity of taxation in Article X, § 1, which provides, in pertinent part, that:

All property, except as hereinafter provided, shall be taxed. All taxes shall be levied and collected under general laws and shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, except that the General Assembly may provide for differences in the rate of taxation to be imposed upon real estate by a city or town within all or parts of areas added to its territorial limits, or by a new unit of general government, within its area, created by or encompassing two or more, or parts of two or more, existing units of general government. [Emphasis added.]

The Supreme Court of Virginia has held that §§ 1 and 2 of Article X relating to property assessments must be construed together.<sup>9</sup> These sections constitute the twin principles of property taxation in the Commonwealth.<sup>10</sup> In pertinent part, § 2 provides that:

All assessments of real estate and tangible personal property shall be at their fair market value, to be ascertained as prescribed by law. The General Assembly may define and classify real estate devoted to agricultural, horticultural, forest, or open space uses, and may by general law authorize any county, city, town, or regional government to allow deferral of, or relief from, portions of taxes otherwise payable on such real estate if it were not so classified, provided the General Assembly shall first determine that classification of such real estate for such purpose is in the public interest for the preservation or conservation of real estate for such uses.

The net result of “these provisions is to distribute the burden of taxation, so far as is practical, evenly and equitably.”<sup>11</sup> In addition, the Virginia Supreme Court has held that “where it is impossible to secure both the standard of the true value and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law.”<sup>12</sup> Thus, uniformity is viewed as the paramount objective of the taxation of property.<sup>13</sup>

Pursuant to Article X, § 2 and Article 4, Chapter 32 of Title 58.1, §§ 58.1-3229 through 58.1-3244,<sup>14</sup> localities may adopt an ordinance providing that land devoted to agricultural, horticultural, forest and open-space use be assessed at a lower value, based on its use.<sup>15</sup> The purpose of the land use assessment statutes is to create a financial incentive to encourage the preservation of land for preferred uses.<sup>16</sup>

The settled construction placed upon [Article X, § 1] is that uniform taxation requires uniformity not only in the rate of taxation, and in the mode of assessment upon the taxable valuation, but the uniformity must be co-extensive with the territory to which it applies. If a tax is imposed by the State, it must be uniform over the whole State; if by a county, city, town, or other subordinate district, the tax must be uniform throughout the territory to which it is applicable.<sup>17</sup>

As noted in a 1970 opinion of the Attorney General, the constitutional requirement of uniformity of taxation “forbids exemption from county taxes of property located in a town.”<sup>18</sup> Property located in an incorporated town within a county is subject to taxation by both the county and town.<sup>19</sup> Consequently, the acreage of the entire farm, which qualifies for the Northampton County Agricultural Forestal District Program, must be listed on the county land book as exempt from county taxation. Although exempt from county taxation by the Program, the portion of that same property situate within the town must be listed as a separate line item entry in the land book and is subject to taxation by the town.

### **Conclusion**

Accordingly, it is my opinion that, when preparing a land book, a commissioner of the revenue must include the entire farm parcel as being in the county even though a portion of such farm is within an incorporated town. Further, the commissioner should proportionally assess the portion of the farm located within the incorporated town for entry as a separate line item on the land book. It is my opinion that for purposes of the county’s use value program for which such farm qualifies, the entire farm receives the use assessment for purposes of taxation by the county. Finally, when the town within such county does not have a use value ordinance, it is my opinion that the portion of the farm within the town is subject to taxation by the town.



<sup>1</sup> See *NORTHAMPTON COUNTY, VA., CODE OF ORDINANCES § 33.010* (2009), *Agricultural and Forestal Districts Program*, available at [http://www.amlegal.com/nxt/gateway.dll/Virginia/northampton\\_co\\_va/titleiiiadministration/chapter33financeandtaxation?f=templates\\$fn=altmain-nf.htm\\$3.0#JD\\_33.010](http://www.amlegal.com/nxt/gateway.dll/Virginia/northampton_co_va/titleiiiadministration/chapter33financeandtaxation?f=templates$fn=altmain-nf.htm$3.0#JD_33.010).

<sup>2</sup> 1992 *Op. Va. Att'y Gen.* 173, 174.

<sup>3</sup> *Supinger v. Stakes*, 255 Va. 198, 205, 495 S.E.2d 813, 817 (1998); *Va.-Am. Water Co. v. Prince William County Serv. Auth.*, 246 Va. 509, 514, 436 S.E.2d 618, 621 (1993); *Va. Dep't of Labor & Indus. v. Westmoreland Coal Co.*, 233 Va. 97, 101, 353 S.E.2d 758, 762 (1987).

<sup>4</sup> *Supinger*, 255 Va. at 205, 495 S.E.2d at 817; *Lee-Warren v. Sch. Bd.*, 241 Va. 442, 445, 403 S.E.2d 691, 692 (1991).

<sup>5</sup> *Winston v. City of Richmond*, 196 Va. 403, 408, 83 S.E.2d 728, 731 (1954).

<sup>6</sup> *Brown v. Lukhard*, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985).

<sup>7</sup> 1970-1971 *Op. Va. Att'y Gen.* 62, 62.

<sup>8</sup> See 2 A.E. *DICK HOWARD, COMMENTARIES ON THE CONSTITUTION OF VIRGINIA*, 1037-40 (1974).

<sup>9</sup> See, e.g., *Bd. of Supvrs. v. Leasco Realty, Inc.*, 221 Va. 158, 166, 267 S.E.2d 608, 613 (1980) (noting that Article X, §§ 1 and 2 must be read and construed together); *R. Cross, Inc. v. Newport News*, 217 Va. 202, 207, 228 S.E.2d 113, 117 (1976) (noting that first two sections of Article X must be construed together); *Smith v. City of Covington*, 205 Va. 104, 108, 135 S.E.2d 220, 222 (1964) (construing Article XIII, §§ 168 and 169 of 1902 Virginia Constitution, predecessors to Article X, §§ 1 and 2 of 1971 Virginia Constitution); *Tuckahoe Women's Club v. City of Richmond*, 199 Va. 734, 738, 101 S.E.2d 571, 574 (1958) (noting that §§ 168 and 169 must be read together); *Skyline Swannanoa, Inc. v. Nelson County*, 186 Va. 878, 881, 44 S.E.2d 437, 439 (1947) (noting that §§ 168 and 169 must be construed together); *Lehigh Portland Cement Co. v. Commonwealth*, 146 Va. 146, 152, 135 S.E. 669, 671 (1926) (noting that §§ 168 and 169 must be construed together).

<sup>10</sup> See *R. Cross*, 217 Va. at 207, 228 S.E.2d at 117 (noting that principles of taxation required by Virginia Constitution are fair market value and uniformity clauses of Article X).

<sup>11</sup> See *Skyline Swannanoa*, 186 Va. at 881, 44 S.E.2d at 439 (construing Article XIII, §§ 168 and 169); see also *S. Ry. Co. v. Commonwealth*, 211 Va. 210, 214, 176 S.E.2d 578, 581 (1970) (noting that courts in resolving disputes regarding fair market value versus uniformity seek to enforce equality in burden of taxation by insisting upon uniformity in mode of assessment and rate of taxation).

<sup>12</sup> See, e.g., *Women's Club*, 199 Va. at 738, 101 S.E.2d at 574.

<sup>13</sup> *Id.*

<sup>14</sup> Article 4 was enacted under the constitutional authority of Article X, § 2. Article 4 authorizes localities to enact ordinances providing for the use value assessment and taxation of constitutionally permitted classes of property and details the procedures for the assessment and taxation of such property. See 1997 *Op. Va. Att'y Gen.* 199, 199.

<sup>15</sup> *Id.* at 199-00 (stating that General Assembly intended use value to be lower than fair market value).

<sup>16</sup> *Id.* at 200.

<sup>17</sup> *Day v. Roberts*, 101 Va. 248, 251, 43 S.E. 362, 363 (1903), quoted in *Moss v. County of Tazewell*, 112 Va. 878, 883, 72 S.E. 945, 946 (1911).

<sup>18</sup> 1970-1971 Op. Va. Att'y Gen. 386, 386 (interpreting § 168 of 1902 Constitution.)

<sup>19</sup> *Id.*

**The Honorable Deborah F. Williams  
Commissioner of the Revenue for Spotsylvania County**

*Real property rezoned to more intensive use at request of owner must be removed from land use program and roll-back taxes assessed. Agricultural real property, which has been (1) rezoned at owner's request to more intensive use, (2) removed from land use program, and (3) assessed roll-back taxes subsequently must be rezoned to less intensive use before it can be eligible to receive land use taxation again. Real property with intensive zoning may qualify for land use assessment and taxation if local assessing official determines that it meets criteria.*

**Issues Presented**

You ask whether a parcel must be removed from the land use taxation program and assessed roll-back taxes when the parcel is rezoned at the owner's request to industrial use, and the owner fails to report a change in the actual use to the commissioner of the revenue. You also ask whether agricultural real property that was rezoned to a more intensive use, but which has been returned to use as a commercial farm for a period of three years, must be rezoned to a less intensive use before it is eligible for use taxation and assessment. Finally, you ask whether real property with intensive zoning may qualify for land use taxation and assessment if its zoning has not changed, but is being commercially farmed or used as forest and has never received land use taxation.

**Response**

It is my opinion that real property must be removed from the land use program and roll-back taxes assessed when such property is rezoned to a more intensive use at the owner's request. I also am of the opinion that agricultural real property, which has been (1) rezoned at the owner's request to a more intensive use, (2) removed from the land use program, and (3) assessed roll-back taxes subsequently must be rezoned to a less intensive use before it can be eligible to receive land use taxation again. Finally, it is my opinion that real property with intensive zoning may qualify for land use assessment and taxation if the local assessing official determines that it meets the criteria set forth in § 58.1-3230.

**Background**

You advise that an owner has requested that his commercial farm in Spotsylvania County be rezoned to permit industrial use. You advise further that the property owner has a mining contract and currently is mining the majority of the property for sand and gravel. You note that the owner eventually intends to mine the entire parcel. Finally, you state that the owner has not reported the rezoning or the change in use to the Spotsylvania County Commissioner of the Revenue.

**Applicable Law and Discussion**

In accord with the rule of statutory construction, *in pari materia*,<sup>1</sup> statutory provisions are not to be considered as isolated fragments of law.<sup>2</sup> Such provisions are to be considered as a whole, or as parts of a greater connected, homogeneous system of laws, or a single and complete statutory compilation.<sup>3</sup> Statutes *in pari materia* are considered as if they constituted but one act, so that sections of one act may be considered as though they were parts of the other act.<sup>4</sup>

“[A]s a general rule, where legislation dealing with a particular subject consists of a system of related general provisions indicative of a settled policy, new enactments of a fragmentary nature on that subject are to be taken as intended to fit into the existing system and to be carried into effect conformably to it, and they should be so construed as to harmonize the general tenor or purport of the system and make the scheme consistent in all its parts and uniform in its operation, unless a different purpose is shown plainly or with irresistible clearness. It will be assumed or presumed, in the absence of words specifically indicating the contrary, that the legislature did not intend to innovate on, unsettle, disregard, alter or violate a general statute or system of statutory provisions the entire subject matter of which is not directly or necessarily involved in the act.”<sup>5</sup>

Section 58.1-3237(A) provides that real property qualifying for land use assessment and taxation becomes subject to roll-back taxes when the use qualifying the property “changes to a nonqualifying use” or the zoning changes “to a more intensive use at the request of the owner or his agent.” Liability for roll-back taxes attaches either at the time such change in use or rezoning occurs.<sup>6</sup> Because liability for the roll-back tax attaches at the time of a change to a nonqualifying use or a change in zoning, the failure by an owner to report such change does not impact his liability

for the roll-back tax. Section 58.1-3238 clearly and unambiguously provides that failure to report a change in use relating to property for which an application for use value taxation was filed does not relieve such person from the liability for the roll-back taxes. In fact, such person is liable for the roll-back taxes and any penalties and interest that may be due.<sup>7</sup> Section 58.1-3237(D) imposes a notice requirement that serves to facilitate the assessment of roll-back taxes.<sup>8</sup> Therefore, a property owner becomes liable for roll-back taxes when the property is rezoned to a more intensive use at his or his agent's request, or the use of the property changes from a qualifying to a nonqualifying use.<sup>9</sup>

Section 58.1-3237(E) addresses the future eligibility for land use taxation and assessment of real property and provides that property rezoned to a more intensive use at the request of an owner or his agent is not eligible for land use taxation and assessment. An exception occurs when the rezoning to a more intensive use is required to establish, continue, or expand a qualifying use.<sup>10</sup> Real property does not become eligible for reconsideration for land use taxation and assessment unless and until the property is rezoned to agricultural, horticultural, or open space use and three years have passed since the subsequent rezoning was effective.<sup>11</sup>

Participation in the land use taxation and assessment program begins when a property owner submits an application to the local assessing officer.<sup>12</sup> Before the local assessing officer assesses real property under a land use taxation and assessment program adopted pursuant to § 58.1-3231, he must first determine whether such property satisfies the criteria specified in § 58.1-3230.<sup>13</sup> Furthermore, § 58.1-3233(1) authorizes the local assessing officer to seek an opinion regarding such determination from the Director of the Department of Conservation and Recreation, the State Forester, or the Commissioner of Agriculture and Consumer Services. Whether the parcel in question meets § 58.1-3230 criteria is a factual determination to be made by the local assessing officer.<sup>14</sup> Should a commissioner of the revenue make a factual determination that the parcel in question meets the criteria set forth in § 58.1-3230, it is my opinion that such parcel may qualify for use taxation and assessment.

### Conclusion

Accordingly, it is my opinion that real property must be removed from the land use program and roll-back taxes assessed when such property is rezoned to a more intensive use at the owner's request. I also am of the opinion that agricultural real property, which has been (1) rezoned at the owner's request to a more intensive use, (2) removed from the land use program, and (3) assessed roll-back taxes subsequently must be rezoned to a less intensive use before it can be eligible to receive land use taxation again. Finally, it is my opinion that real property with intensive zoning may qualify for land use assessment and taxation if the local assessing official determines that it meets the criteria set forth in § 58.1-3230.

<sup>1</sup> *"In pari materia" is the Latin phrase meaning "[o]n the same subject; relating to the same matter."* BLACK'S LAW DICTIONARY 807 (8th ed. 2004).

<sup>2</sup> See *Moreno v. Moreno*, 24 Va. App. 190, 198, 480 S.E.2d 792, 796 (1997).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 197-98, 480 S.E.2d at 796.

<sup>5</sup> *Prillaman v. Commonwealth*, 199 Va. 401, 405-06, 100 S.E.2d 4, 7 (1957) (quoting 50 AM. JUR., Statutes, §349, at 345-47, quoted in *Washington v. Commonwealth*, 46 Va. App. 276, 298, 616 S.E.2d 774, 785 (2005)(Benton, J. & Fitzpatrick, C.J., dissenting)); see also *Smith v. Kelley*, 162 Va. 645, 651, 174 S.E. 842, 845 (1934) (noting that in absence of words to contrary, legislature did not intend to alter or repeal general statute or system).

<sup>6</sup> See VA. CODE ANN. § 58.1-3237(D) (2004); *Chesterfield County v. Stigall*, 262 Va. 697, 702-03, 554 S.E.2d 59, 52 (2001).

<sup>7</sup> Section 58.1-3238 (2004). Section 58.1-3238 imposes a further penalty when a material misstatement regarding taxes is made with the intent to defraud a locality.

<sup>8</sup> See 1980-1981 Op. Va. Att'y Gen. 355, 357 (interpreting § 58-769.10, predecessor to § 58.1-3237).

<sup>9</sup> *Continued participation in the land use taxation and assessment program depends “on continuance of the real estate in a qualifying use, continued payment of taxes as referred to in § 58.1-3235, and compliance with the other requirements of [Article 4, Chapter 32 of Title 58.1] and the ordinance.” Section 58.1-3234 (2004).*

<sup>10</sup> *See § 58.1-3237(E).*

<sup>11</sup> *Id.*

<sup>12</sup> *See § 58.1-3234.*

<sup>13</sup> *See § 58.1-3233(1) (2004).*

<sup>14</sup> *Attorneys General historically have declined to render official opinions when the request involves a question of fact rather than one of law. See, e.g., Op. Va. Att’y Gen.: 1997 at 195, 196; 1996 at 207, 208.*

December 23, 2004

**Mr. Larry W. Davis**  
**Attorney for Albemarle County**

*Lots, which are not 'subdivision' per ordinance, created after July 1, 1983, by recorded plat subject to ordinance may be aggregated to meet land-use taxation minimum acreage requirements. Local taxing official must assess back taxes and rollback taxes for 3 preceding tax years; may correct property valuation error subject to rollback taxes within 3 years of such assessment.*

#### **Issue Presented**

You inquire regarding the aggregation of lots for purposes of land-use taxation. First, you ask whether lots created after July 1, 1983, by a recorded plat subject to a subdivision ordinance, which do not fall within the ordinance's definition of "subdivision," may be aggregated for purposes of meeting the minimum acreage requirements for favorable land-use taxation set forth in § 58.1-3233(2). Section 58.1-3233(2) relates to real estate devoted to agricultural, horticultural, forest, or open-space use. You next ask whether back taxes and rollback taxes, if any, must be imposed to correct inaccurate tax assessments resulting from an erroneous aggregation of contiguous lots.

#### **Response**

It is my opinion that lots created after July 1, 1983, by a recorded plat subject to a subdivision ordinance, but not falling within the ordinance's definition of "subdivision," may be aggregated for purposes of meeting minimum acreage requirements for land-use taxation established by § 58.1-3233(2). I concur with your opinion that the local taxing official must assess back taxes and rollback taxes for the three preceding tax years and may correct an error in the valuation of property subject to rollback taxes within three years of assessment of the rollback tax.

#### **Background**

You relate that, pursuant to § 58.1-3231, Albemarle County offers reduced real estate assessments and taxation on properties meeting certain use and size criteria. You note<sup>1</sup> that § 58.1-3233(2) establishes minimum acreage requirements that must be incorporated into any local land use ordinance. You also note that § 58.1-3233(2) allows the aggregation of certain contiguous parcels for the purpose of meeting the minimum acreage requirements. Finally, you relate that a question has arisen regarding the types of parcels that may be aggregated for purposes of meeting the minimum acreage requirements for land use assessment and taxation.

#### **Applicable Law and Discussion**

##### **I. Aggregation of Lots**

Article 4, Chapter 32 of Title 58.1, §§ 58.1-3229 through 58.1-3244, provides for the special assessment of real property for land preservation. In general, to qualify for land-use assessment and taxation: (1) agricultural or horticultural property must consist of a minimum of five acres; (2) forest property must consist of a minimum of twenty acres; and (3) open-space property must consist "of a minimum of five acres or such greater minimum acreage as may be prescribed" by the locality.<sup>2</sup> Section 58.1-3233(2) provides that "[t]he minimum acreage requirements for special classifications of real estate shall be determined by adding together the total area of contiguous real estate excluding recorded subdivision lots recorded after July 1, 1983, titled in the same ownership."

Your inquiry focuses on the phrase "recorded subdivision lots" as used in § 58.1-3233(2). Specifically, you ask whether § 58.1-3233(2) excludes from aggregation all lots created pursuant to a locality's subdivision ordinance or only those lots the creation of which falls within the definition of "subdivision."

Although Title 58.1 does not define the term "subdivision," Chapter 22 of Title 15.2, which governs planning, subdivision of land and zoning, provides the following definition:

*"Subdivision," unless otherwise defined in an ordinance adopted [by a locality], means the division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation of any single division of land into two lots or parcels, a plat of such division shall be submitted for approval in accordance with § 15.2-2258.<sup>3</sup>*

A 1989 opinion of the Attorney General addresses whether the reference to recorded subdivision lots in § 58.1-3233(2) refers to a subdivision plat recorded under a county's subdivision ordinance or to any division of a tract of land.<sup>4</sup> The 1989 opinion concludes that:

If an existing tract of land is divided into large parcels that are not subject to the county subdivision ordinance and the resulting parcels remain under common ownership, the eligibility of the resulting combined parcels for use value assessment is consistent with the purpose of preserving the property for protected uses. On the other hand, the division of a tract under the subdivision ordinance contemplates the sale of the parcels to multiple owners. ...

[T]herefore, ... the reference to recorded subdivision lots in § 58.1-3233(2) *refers to a subdivision plat recorded under the local subdivision ordinance*.... [P]arcel resulting from a plat not subject to the local subdivision ordinance may be combined to satisfy the minimum acreage requirements if the resulting parcels remain under common ownership.<sup>5</sup>

Since the 1989 Opinion was issued, the General Assembly has not modified the meaning of the phrase "recorded subdivision lots" in § 58.1-3233(2). "[T]he General Assembly is presumed to have knowledge of the Attorney General's interpretation of statutes, and the General Assembly's failure to make corrective amendments evinces legislative acquiescence in the Attorney General's interpretation."<sup>6</sup> Therefore, since recorded subdivision lots are those lots created by a subdivision plat recorded under a local subdivision ordinance, it follows that lots created pursuant to something other than a subdivision plat would not be excluded from any aggregation of property.

This interpretation is further supported by the purposes underlying the land-use assessment and taxation program. The manifest purpose of Article 4 is to create a financial incentive to encourage the preservation and proper use of real estate devoted to agricultural, horticultural, forest, and open-space uses.<sup>7</sup> The land-use taxation is intended to "ameliorate pressures which force the conversion of such real estate to more intensive uses and which are attributable in part to the assessment of such real estate at values incompatible" with the use and preservation for the desired purposes.<sup>8</sup> The purpose of the minimum acreage requirements in § 58.1-3233(2) is to allow land use assessment and taxation on only those parcels large enough to the further the goals of preserving agricultural, forest, and open-space lands.<sup>9</sup>

If real estate currently in land-use is divided into parcels, but remaining under common ownership, large enough that the division is not subject to the locality's subdivision ordinance, and if aggregated the new parcels otherwise satisfy § 58.1-3233(2), the aggregation of these parcels does not defeat the purposes underlying the land use program.<sup>10</sup> Divisions by subdivision plat under the subdivision ordinance, by contrast, contemplate the sale of the parcels<sup>11</sup> and are contrary to the legislative purposes underlying the land-use program.

## **II. Correction of Erroneous Assessments**

You also ask whether back taxes and rollback taxes, if any, must be imposed to correct inaccurate tax assessments resulting from an erroneous aggregation of contiguous lots. You conclude that the local taxing official must assess back taxes and rollback taxes for the three preceding tax years.<sup>12</sup>

Section 58.1-3903 provides:

If the commissioner of the revenue of any county ... ascertains that any local tax has not been assessed for any tax year of the three preceding tax years or that the same has been assessed at less than the law required for any one or more of such years, ... the commissioner of the revenue or other assessing officer *shall* list and assess the same with taxes at the rate or rates prescribed for that year .... [Emphasis added.]

Section 58.1-3981(D) provides that "[a]n error in the valuation of property subject to the rollback tax imposed under § 58.1-3237 for those years to which such tax is applicable *may* be corrected within three years of the assessment of the rollback tax." (Emphasis added.)

It is important to note the language used in § 58.1-3903, "shall,"<sup>13</sup> is mandatory, while that in § 58.1-3981(D), "may,"<sup>14</sup> is permissive. Back taxes for the three preceding tax years must be assessed. Correction of an error in the valuation of property subject to rollback taxes, however, is discretionary. Any such correction may be made within three years of assessment of the rollback taxes

### Conclusion

Accordingly, it is my opinion that lots created after July 1, 1983, by a recorded plat subject to a subdivision ordinance, but not falling within the ordinance's definition of "subdivision," may be aggregated for purposes of meeting minimum acreage requirements for land-use taxation established by § 58.1-3233(2). I concur with your opinion that the local taxing official must assess back taxes and rollback taxes for the three preceding tax years and may correct an error in the valuation of property subject to rollback taxes within three years of assessment of the rollback tax.

<sup>1</sup> *Any request by a county attorney for an opinion from the Attorney General "shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney's legal conclusions." Va. Code Ann. § 2.2-505(B) (LexisNexis Repl. Vol. 2001).*

<sup>2</sup> *Va. Code Ann. § 58.1-3233(2) (LexisNexis Repl. Vol. 2004).*

<sup>3</sup> *Va. Code Ann. § 15.2-2201 LexisNexis Repl. Vol. 2003).*

<sup>4</sup> *1989 Op. Va. Att'y Gen. 325, 326.*

<sup>5</sup> *Id. at 327 (citation omitted) (emphasis added).*

<sup>6</sup> *City of Winchester v. Am. Woodmark Corp.*, 250 Va. 451, 458, 464 S.E.2d 148, 153 (1995); *see also Tazewell County Sch. Bd. v. Brown*, 267 Va. 150, 163, 591 S.E.2d 671, 677 (2004).

<sup>7</sup> *See 2002 Op. Va. Att'y Gen. 318, 318-19; see also 1987-1988 Op. Va. Att'y Gen. 138, 139.*

<sup>8</sup> *1984 Va. Acts ch. 675, at 1178, 1373 (quoting § 58.1-3229, not set out in Virginia Code), quoted in 1997 Op. Va. Att'y Gen. 193, 194.*

<sup>9</sup> *1989 Op. Va. Att'y Gen.*, *supra* note 4, at 326-27.

<sup>10</sup> *Id. at 327.*

<sup>11</sup> *Id.*

<sup>12</sup> *See supra* note 1.

<sup>13</sup> *Use of the word "shall" in a statute generally indicates that its procedures are intended to be mandatory, rather than permissive or directive. See Op. Va. Att'y Gen.: 2003 at 124, 128 n.3; 1996 at 154, 158 n.3; 1989 at 250, 251-52.*

<sup>14</sup> *"Unless it is manifest that the purpose of the legislature was to use the word 'may' in the sense of 'shall' or 'must,' then 'may' should be given its ordinary meaning—permission, importing discretion." Masters v. Hart*, 189 Va. 969, 979, 55 S.E.2d 205, 210 (1949), *quoted in Bd. of Supvrs. v. Weems*, 194 Va. 10, 15, 72 S.E.2d 378, 381 (1952); *see also Op. Va. Att'y Gen.: 2003 at 99, 103 n.2; 2000 at 29, 32 n.2; 1999 at 193, 195 n.6; 1997 at 10, 12.*



December 14, 2004

**The Honorable Ronald S. Hallman  
City Attorney for the City of Chesapeake**

*If landowner has recorded perpetual easement held by locality devoted to open-space use, locality has no discretion and must grant open-space tax assessment to parcel so encumbered. If landowner proffers agreement not to change use of land, locality has discretion to accept, reject, or negotiate modification of agreement with landowner. Wetlands mitigation banks not otherwise wholly exempt from local real estate taxation must be assessed in same manner as similarly situated and classified property. Local tax assessor may require owners of wetlands mitigation banks to furnish certified statements of income and expenses attributable to such property.*

#### **Issues Presented**

You pose several questions concerning the establishment and taxation of certain wetlands mitigation banks within the City of Chesapeake.<sup>1</sup> You ask whether, assuming all qualifications are met,<sup>2</sup> a landowner may insist on enrolling in the city's land use assessment program, a wetlands mitigation bank as "real estate devoted to open-space use." You next ask whether wetlands mitigation banks may be classified and assessed for local taxation like other commercial properties in the city. Finally, you ask whether the city may request income and expense information from the owners of wetlands mitigation banks.

#### **Response**

It is my opinion that if a landowner has a recorded perpetual easement that qualifies as such under § 58.1-3233(3)(ii), the locality has no discretion in the matter and must grant open-space tax assessment to the parcel so encumbered. If, however, the landowner elects to proceed under § 58.1-3233(3)(iii), the locality has discretion to accept, reject, or negotiate modification of the proffered agreement with the landowner. It is also my opinion that wetlands mitigation banks not otherwise wholly exempt from local real estate taxation, must be assessed in the same manner as similarly situated and classified property. Finally, it is my opinion that the local tax assessor may require owners of wetlands mitigation banks to furnish certified statements of income and expenses pursuant to § 58.1-3294.

#### **Background**

You relate that in recent years, private landowners in the City of Chesapeake have purchased wetlands or prior converted agricultural land in order to establish wetlands mitigation banks in the city. These banks sell wetlands mitigation credits<sup>3</sup> to landowners who are required by the United States Army Corps of Engineers or the Virginia Department of Environmental Quality to mitigate the impact on jurisdictional wetlands as a condition of a fill permit. The wetlands mitigation banks must be restored, maintained, and preserved in accordance with the requirements of the Army Corps of Engineers. You state many landowners operate private wetlands mitigation banks as a for-profit "business enterprise."<sup>4</sup>

You relate that since the establishment of these mitigation banks in Chesapeake, the local assessor has questioned the proper classification and lawful assessment of these banks. You advise that the city assessor typically will reduce the assessment of "delineated" wetlands to a nominal amount per acre. For wetlands without a delineation,<sup>5</sup> the landowners have the option of enrolling the property in the city's land use assessment program as real property devoted to open-space use, provided that all applicable qualifications are met.

Finally, you represent that these wetlands mitigation banks are similar to other wetlands in Chesapeake, in that they may not be intended or be suitable for development in the near future. They differ from other wetlands, however, as they are a source of income to their owners.

#### **Applicable Law and Discussion**

Section 58.1-3666 declares that wetlands

*that are subject to a perpetual easement permitting inundation by water ... are ... a separate class of property and shall constitute a classification for local taxation separate from other classifications of real property. The governing body of any county, city or town may, by ordinance, exempt or partially exempt such property from local taxation. [Emphasis added.]*

Section 58.1-3666 defines "wetlands" as areas that are "inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and that under normal conditions does support, a prevalence of

vegetation typically adapted for life in saturated soil conditions, and *that [are] subject to a perpetual easement permitting inundation by water.*" (Emphasis added.) These types of wetlands have a perpetual easement and are not the subject of your first inquiry. Your inquiry specifically concerns certain similarly situated real property that is not subject to a perpetual easement and, thus, is ineligible for the classification expressed in § 58.1-3666.

Article 4, Chapter 32 of Title 58.1, §§ 58.1-3229 through 58.1-3244, sets forth the statutory framework authorizing localities to provide special tax assessments for land preservation activities and uses. Specifically, this statutory scheme provides that real estate classified for agricultural, horticultural, forest, and open-space use is eligible for special tax treatment as established in § 58.1-3233. Owners of the parcels of real estate described in your request may elect to participate in such a program. Some of the parcels may be eligible to serve as wetlands mitigation banks, from which the Commonwealth Transportation Commissioner may purchase compensatory credits to mitigate "adverse impacts to wetlands" caused by certain development projects.<sup>6</sup> These purchases result in revenue or income to the owners of wetlands mitigation banks.

Section 58.1-3231 permits a locality to adopt an ordinance providing for special classifications of real estate devoted to open-space use. Section 58.1-3230 defines "real estate devoted to open-space use" as

real estate used as, or preserved for, (i) park or recreational purposes, (ii) conservation of land or other natural resources, (iii) floodways, [or] (iv) *wetlands as defined in § 58.1-3666*, ... and consistent with the local land-use plan under uniform standards prescribed by the Director of the Department of Conservation and Recreation pursuant to the authority set out in § 58.1-3240, and in accordance with the Administrative Process Act. [Emphasis added.]

Section 58.1-3233 requires that prior to assessing any real estate under an ordinance adopted pursuant to Article 4, the local assessing office must make certain determinations regarding the use of the subject real estate. This determination is to insure compliance with the requirements of the ordinance and state law in order to receive the tax benefit. It is my understanding that the City of Chesapeake has adopted a program allowing for use-value assessment and taxation of real estate devoted to open-space use. You state that the described wetlands mitigation banks meet the requirements for classification as real estate devoted to open-space use, except with regard to compliance with § 58.1-3233(3)(ii) or (iii). This is the essence of your question.

Pursuant to § 58.1-3233(3)(ii), one of the criteria for a local assessing officer to determine is that real estate devoted to open-space use is "subject to a recorded perpetual easement that is held by a public body, and promotes the open-space use classification, as defined in § 58.1-3230." If a wetlands mitigation bank is subject to a recorded perpetual easement under § 58.1-3233(3)(ii), then it would qualify for the tax treatment afforded to property generally classified for open-space use. In such instances, the plain and unambiguous language of the statute dictates that a perpetual easement is sufficient to qualify the property.

In the case of something less than a perpetual easement, § 58.1-3233(3)(iii) provides that landowners shall enter into a recorded commitment

with the local governing body, or its authorized designee, not to change the use to a nonqualifying use for a time period stated in the commitment of not less than four years nor more than ten years. Such commitment shall be subject to uniform standards prescribed by the Director of the Department of Conservation and Recreation pursuant to the authority set out in § 58.1-3240.

The agreement entered into pursuant to § 58.1-3233(3)(iii) requires the "mutual assent" of the parties, as with any other contractual agreement.<sup>7</sup> This interpretation is based on the applicable standards promulgated by the Department of Conservation and Recreation<sup>8</sup> and the model Open-Space Use Agreement<sup>9</sup> furnished as part of the standards.<sup>10</sup> Such an agreement is in the nature of a contract, and the local governing body has discretion to accept or reject it.<sup>11</sup> In addition, the local governing body may propose to modify the tendered agreement and negotiate with the landowner.<sup>12</sup>

Accordingly, I am of the opinion that if the locality is presented with a perpetual wetlands easement qualifying as such under § 58.1-3233(3)(ii), it must be accepted, whereas if the locality is presented with an agreement proffered pursuant to § 58.1-3233(3)(iii), the locality may, in its discretion, accept, reject, or negotiate a modification of the tendered agreement.

Turning to your other questions, as a threshold matter, if the wetlands mitigation bank has met the requirements of § 58.1-3233(3), and the locality has provided for a complete exemption from local taxation, your questions concerning valuation and the ability of the local tax assessor to secure financial information would seem moot.<sup>13</sup> The question remains, however, for nonqualifying wetlands mitigation banks that are not accepted in a locality's open-space land use program or are partially exempt from local taxation.

The answer to these questions is controlled by Article X of the Constitution of Virginia. Article X, § 1 stipulates that "[a]ll property, except as hereinafter provided, shall be taxed." Thus, taxation is the rule, and exemption from taxation is the exception.<sup>14</sup> Section 1 also provides that "[a]ll taxes ... shall be uniform upon the same class of subjects." Article X, § 2 provides that "[a]ll assessments of real estate ... shall be at their fair market value, to be ascertained as prescribed by law."<sup>15</sup> (Emphasis added.) Section 58.1-3201 prescribes that "[a]ll real estate, except that exempted by law, shall be subject to such annual taxation as may be prescribed by law." The described wetlands mitigation banks are not exempted by law.

Clearly, wetlands mitigation banks, which are not wholly exempt from local taxation or otherwise eligible to be included in the special land use classification program, and which are a source of revenue to their owners, are not accorded special protection. Accordingly, a locality must consider and assess them for real property taxation in the same manner as similarly situated and classified property.

You also ask if the local tax assessor may request income and expense information from the owners of wetlands mitigation banks. Section 58.1-3294 provides that a "duly authorized real estate assessor" may require owners of certain "income-producing real estate" to furnish certified statements of income and expenses attributable to such property. I find no specific definition of "income-producing real estate" in either that statute or in Virginia case law. Generally, the term "income" means "money or other form of payment that one receives, usu[ally] periodically, from employment, business, investments, royalties, gifts, and the like."<sup>16</sup> Similarly, "producing" means to "bring into existence; to create."<sup>17</sup>

The described wetlands mitigation banks meet the definition of "income-producing." Although § 58.1-3294 does not speak directly to wetlands mitigation banks, the statute applies to them. Moreover, there is no exclusion in § 58.1-3294 for wetlands mitigation banks or any other special classification of land use. In fact, local appraisers need financial and income information to adequately evaluate any proposed assessments.<sup>18</sup> Therefore, it is also my opinion that the local assessing officer may request such information from owners of such property. Indeed, it may be in the best interests of the landowners to provide such information, as actual revenue may be lower than an assessment based on a projection of potential "economic rent."<sup>19</sup> Section 58.1-3294 provides that failure to provide the requested financial information prevents the owners of the subject property from introducing such information at a subsequent judicial proceeding for correction of an alleged excessive assessment.<sup>20</sup>

### Conclusion

Accordingly, it is my opinion that if a landowner has a recorded perpetual easement that qualifies as such under § 58.1-3233(3)(ii), the locality has no discretion in the matter and must grant open-space tax assessment to the parcel so encumbered. If, however, the landowner elects to proceed under § 58.1-3233(3)(iii), the locality has discretion to accept, reject, or negotiate modification of the proffered agreement with the landowner. It is also my opinion that wetlands mitigation banks not otherwise wholly exempt from local real estate taxation, must be assessed in the same manner as similarly situated and classified property. Finally, it is my opinion that the local tax assessor may require owners of wetlands mitigation banks to furnish certified statements of income and expenses pursuant to § 58.1-3294.

<sup>1</sup> Although you represent that the city's land use ordinance mirrors § 58.1-3231, I assume for purposes of this opinion that you request an interpretation of state law only, and not a review of the operation of the city's applicable ordinance. The Attorney General renders opinions only on questions requiring an interpretation of state or federal law, rule or regulation, and not on local ordinances. See 1976-1977 Op. Va. Att'y Gen. 17, 17.

<sup>2</sup> For the purposes of this opinion, I assume that this is a reference to all applicable statutory and regulatory qualifications except those specified in § 58.1-3233(3)(ii) and (iii).

<sup>3</sup> I understand that these mitigation credits are sold and do not constitute leasehold interests subject to tax assessment. See Va. Code Ann. § 58.1-3203 (LexisNexis Repl. Vol. 2004).

<sup>4</sup> As such, it is my understanding that these owners do not qualify as "organization[s] exempted from taxation." Section 58.1-3603(A) (LexisNexis Repl. Vol. 2004).

<sup>5</sup> You consider wetlands to be delineated if they are shown as such on applicable plats approved by the U.S. Army Corps of Engineers. For the purposes of this opinion, I assume that such wetlands are not the subject of your inquiry, as they are "subject to a perpetual easement," and are to be declared separate from other classes of real property for purposes of local taxation. Section 58.1-3666 (LexisNexis Repl. Vol. 2004).

<sup>6</sup> Va. Code Ann. § 33.1-223.2:1 (LexisNexis Supp. 2004) ("Wetlands mitigation banking."); Va. Code Ann. § 62.1-44.15:5(E) (LexisNexis Supp. 2004) (conditioning Virginia Water Protection Permit on "compensatory mitigation for adverse impacts to wetlands"), cited in 1999 Op. Va. Att'y Gen. 179, 183 n.2 (quoting portion of subsection B, now codified in subsection E, of § 62.1-44.15:5).

<sup>7</sup> See *Augustine Golf Dev. Corp. v. Stafford County Bd. of Supvrs.*, 40 Va. Cir. 308, 310 (1996).

<sup>8</sup> See 4 Va. Admin. Code 5-20-10 to 5-20-40 (Law. Co-op. 1996 & West Supp. 2004).

<sup>9</sup> See *id.* 5-20-30 (Law. Co-op. 1996).

<sup>10</sup> See Va. Code Ann. § 10.1-104(B) (LexisNexis Supp. 2004) (authoring Department of Conservation and Recreations to promulgate regulations necessary to carry out activities administered by Department); see also § 58.1-3230 (LexisNexis Repl. Vol. 2004) (requiring that classification of real estate devoted to open-space use shall be consistent with local land-use plan under uniform standards prescribed by Director of Department); § 58.1-3240 (LexisNexis Repl. Vol. 2004) (requiring local assessor to apply Department's standards uniformly throughout Commonwealth in determining whether real estate may be devoted to open-space use).

<sup>11</sup> See *Augustine*, 40 Va. Cir. at 310 ("A review of the agreement tendered by Augustine, which is in substantial conformity with the form promulgated by the Secretary [of the Department of Conservation and Recreation], is replete with language traditionally associated with contracts.").

<sup>12</sup> *Id.*

<sup>13</sup> See, e.g., *Washington County v. Sullins Coll. Corp.*, 211 Va. 591, 596, 179 S.E.2d 630, 633 (1971) (holding that since property in question was otherwise exempt from real estate taxation, fact that property may have generated profit is irrelevant. This decision was rendered under former liberal interpretation of constitutional exemptions from taxation).

<sup>14</sup> See *DKM Richmond Assocs. v. City of Richmond*, 249 Va. 401, 407, 457 S.E.2d 76, 80 (1995).

<sup>15</sup> See 1981-1982 Op. Va. Att'y Gen. 186 (discussing constitutionality of House Bill 324, which added predecessor statute to § 58.1-3294, although that particular section was not at issue).

<sup>16</sup> *Black's Law Dictionary* 766 (7th ed. 1999).

<sup>17</sup> *Id.* at 1225 (defining verb "produce").

<sup>18</sup>Section 58.1-3294 sets forth a requirement for response. The fact that a local tax assessor actually may have the requested information does not excuse the taxpayer from providing it. See *Sterling Park Shopping Ctr., L.P. v. Loudoun County Bd. of Supvrs.*, 50 Va. Cir. 196, 198 (1999) (noting that question is not whether county had information, but whether petitioner complied with § 58.1-3294, and petitioner did not).

<sup>19</sup>See *Seaone v. Fairfax County Bd. of Supvrs.*, 35 Va. Cir. 351 (1995) (comparing actual rents to economic rents).

<sup>20</sup>See *Sterling Park*, 50 Va. Cir. at 198; see also *City of Richmond v. Gordon*, 224 Va. 103, 110, 294 S.E.2d 846, 850 (1982) ("[T]here is a clear presumption in favor of the validity of the assessment.") (quoting *Bd. of Supvrs. V. Leasco Realty, Inc.*, 221 Va. 158, 165, 267 S.E.2d 608, 612 (1980)); accord *Seaone*, 35 Va. Cir. at 361-62.

**The Honorable Charles L. Campbell  
Commissioner of the Revenue for Page County**

*Authority for local governing body to increase minimum acreage for land classified for open-space use for purpose of special land use taxation; no statutory authority for such increase for land classified for agricultural, horticultural or forest use.*

**Issue Presented**

You ask whether a local governing body, pursuant to § 58.1-3233(2), is authorized to increase the minimum acreage of real estate classified for agricultural, horticultural, forest and open-space use for the purpose of special land use taxation.

**Response**

It is my opinion that § 58.1-3233(2) authorizes a local governing body to increase the minimum acreage for land classified for open-space use for the purpose of special land use taxation. Section 58.1-3233(2) does not authorize such an increase for land classified for agricultural, horticultural or forest use.

**Applicable Authorities and Discussion**

Virginia adheres to the Dillon Rule of strict construction, which provides that "[local governing bodies] have only those powers which are expressly granted by the state legislature, those powers fairly or necessarily implied from expressly granted powers, and those powers which are essential and indispensable."<sup>1</sup> Any doubt as to the existence of a power must be resolved against the locality.<sup>2</sup> The Dillon Rule recognizes that localities are political subdivisions of the Commonwealth,<sup>3</sup> which, in turn, rests on the foundation of Article I, § 14 of the Constitution of Virginia.<sup>4</sup>

Article 4, Chapter 32 of Title 58.1, §§ 58.1-3229 through 58.1-3244, sets forth the statutory framework authorizing localities to provide special tax assessments for land preservation activities and uses. Section 58.1-3231 provides that "[a]ny county, city or town which has adopted a land-use plan may adopt an ordinance to provide for the use value assessment and taxation, in accord with the provisions of this article, of real estate classified in § 58.1-3230." Adoption of such an ordinance is discretionary. Real estate classified for agricultural, horticultural, forest and open-space use<sup>5</sup> is eligible for special tax treatment as established in § 58.1-3233.

Section 58.1-3233 requires the "local assessing officer" to determine that the real estate being considered for a special assessment meets the criteria and standards prescribed in § 58.1-3230.<sup>6</sup> Specifically, § 58.1-3233(2) requires the local assessing officer to determine that

real estate devoted solely to (i) agricultural or horticultural use consists of a minimum of five acres, (ii) forest use consists of a minimum of twenty acres and (iii) open-space use consists of a minimum of five acres *or such greater minimum acreage as may be prescribed by local ordinance.* [Emphasis added.]

Your inquiry concerns whether the phrase "or such greater minimum acreage as may be prescribed by local ordinance"<sup>7</sup> applies solely to the immediately preceding phrase or to all the preceding clauses. If the phrase applies only to "open-space use consist[ing] of a minimum of five acres," a locality is authorized to increase the minimum acreage solely for that classification. If the phrase, however, applies to all three clauses, a locality is authorized to increase the minimum acreage for all four classifications of real estate.

It is well settled that "where the language of a statute is free from ambiguity, its plain meaning is to be accepted without resort to the rules of interpretation."<sup>8</sup> The phrase "or such greater minimum acreage as may be prescribed by local ordinance" applies solely to "open-space use."<sup>9</sup>

If there were genuine ambiguity as to the meaning of a statute, it would be appropriate to apply the rules of statutory construction to determine legislative intent.<sup>10</sup> "Language is ambiguous when it may be understood in more than one way, or simultaneously refers to two or more things. If the language is difficult to comprehend, is of doubtful import, or lacks clearness and definiteness, an ambiguity exists."<sup>11</sup>

In that case, "[r]eferential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent."<sup>12</sup> "Open-space use" is the last antecedent prior to the qualifying clause in § 58.1-3233(2)(iii), and there is nothing in the grammatical construction of the sentence to indicate an intent that the qualifying clause applies to the other antecedent uses. Using this rule of statutory construction, the phrase in § 58.1-3233(2)(iii), "or such greater minimum acreage as may be prescribed by local ordinance," applies solely to "open-space use."

Whether you give the statute its plain meaning or resort to the rules of statutory construction, the result is the same. The General Assembly set minimum acreage requirements in all four classifications for land use taxation. In only one classification, that of open-space use, did the legislature grant localities the ability to increase the minimum acreage.

### Conclusion

Accordingly, it is my opinion that § 58.1-3233(2) authorizes a local governing body to increase the minimum acreage for land classified for open-space use for the purpose of special land use taxation. Section 58.1-3233(2) does not authorize such an increase for land classified for agricultural, horticultural or forest use.

<sup>1</sup>*Arlington County v. White*, 259 Va. 708, 712, 528 S.E.2d 706, 708 (2000) (quoting *City of Virginia Beach v. Hay*, 258 Va. 217, 221, 518 S.E.2d 314, 316 (1999)).

<sup>2</sup> 2A Eugene McQuillin, *The Law Of Municipal Corporations* § 10.19, at 369 (3d ed. 1996); see 2000 Op. Va. Att'y Gen. 75, 76.

<sup>3</sup> "County government ... is ... one of the instruments or agencies through which the State performs its functions of government. It is an arm of the State." *Board of Supervisors v. Cox*, 155 Va. 687, 710, 156 S.E. 755, 762 (1931).

<sup>4</sup> Article I, § 14 guarantees "[t]hat the people have a right to uniform government; and, therefore, that no government separate from, or independent of, the government of Virginia, ought to be erected or established within the limits thereof." This language is identical to Article I, § 14 of the 1902 Constitution and remains unchanged from § 14 of the Declaration of Rights, adopted June 12, 1776.

<sup>5</sup> Va. Code Ann. § 58.1-3230 (Michie Repl. Vol. 2000).

<sup>6</sup> Va. Code Ann. § 58.1-3233(1) (LexisNexis Supp. 2002).

<sup>7</sup> Section 58.1-3233(2)(iii) (Lexis Nexis Supp. 2002).

<sup>8</sup> *City of Portsmouth v. City of Chesapeake*, 205 Va. 259, 269, 136 S.E.2d 817, 825 (1964).  
9Section 58.1-3233(2)(iii).

<sup>10</sup> Op. Va. Att'y Gen.: 1986-1987 at 263, 263; 1982-1983 at 605, 606.

<sup>11</sup> *Lee-Warren v. School Bd.*, 241 Va. 442, 445, 403 S.E.2d 691, 692 (1991).

<sup>12</sup> 2A Norman J. Singer, *Statutes And Statutory Construction* § 47:33, at 369 (6th ed. 2000); see also *National Coalition for Students v. Allen*, 152 F.3d 283 (4th Cir. 1998) (noting that qualifying phrase refers to its immediate antecedent).

February 15, 2002

**The Honorable Judy S. Crook  
Commissioner of the Revenue for Franklin County**

*Splitting off of smaller parcels from large tract does not make such tract ineligible for land use assessment and taxation. Question whether taxpayer made material misstatement of facts in revalidation application or that material change in facts has occurred is decision to be made by commissioner of revenue based on all relevant facts. Use of statutory procedures to correct erroneous assessments. No authority for local governing body to determine if property qualifies for special land use assessment and taxation in individual case.*

You inquire regarding the revalidation procedure of certain land for special assessment.

You relate that a taxpayer timely applied for and participates in a locality's land use assessment program. You also relate that, in 1999, the taxpayer timely filed the locality's annual revalidation application for continued participation in the program. After filing the application but before the January 1, 2000, assessment date, the taxpayer conveyed two parcels of the qualifying property to his son, which you later discovered. You note that the son has paid rollback taxes on the two parcels.

You first inquire whether, pursuant to § 58.1-3234 of the *Code of Virginia*, a commissioner of the revenue may void the taxpayer's revalidation form for land use assessment as to the remaining property. For the purposes of this opinion, I shall assume that the remaining property meets the acreage necessary to qualify for the special use assessment. I further assume that the use of such property has not changed and that the separation of the parcels in question does not constitute a subdivision of the property under a local ordinance.

Article 4, Chapter 32 of Title 58.1, §§ 58.1-3229 through 58.1-3244, sets forth the provisions for the special assessment of real property for land preservation. The manifest purpose of these statutes is to create a financial incentive to encourage the preservation and proper use of real estate devoted to agricultural, horticultural, forest, and open-space uses.<sup>1</sup> Thus, Article 4 provides for favorable tax treatment of property devoted to such uses so long as such property satisfies the applicable use and acreage requirements, as established in §§ 58.1-3230 and 58.1-3233(2).<sup>2</sup>

Section 58.1-3241 addresses the consequences of separating, splitting off, or subdividing lots from real estate which is being valued, assessed, and taxed under a land use assessment program. Section 58.1-3241(A) states that such actions "shall not impair the right of each subdivided parcel ... to qualify for [special use] valuation, assessment and taxation ..., provided it meets the minimum acreage requirements and such other conditions ... as may be applicable." Importantly, § 58.1-3241(A) adds that such separation "shall not impair the right of the remaining real estate to [retain] such valuation, assessment and taxation." Accordingly, this Office previously has concluded that § 58.1-3241 makes it clear that the split-off of a small parcel does not, in and of itself, cause an otherwise qualifying larger tract to lose its eligibility for valuation, assessment, and taxation under a land use ordinance during the year in which the split-off occurred.<sup>3</sup> In the instant case, therefore, the mere splitting off of the smaller parcels from the large tract does not make such tract ineligible for land use assessment and taxation.

In order for a property owner to qualify for land use value assessment, § 58.1-3234 requires him to first "submit an application for taxation on the basis of a use assessment to the local assessing officer." You indicate that the taxpayer in issue has properly done so. Section 58.1-3234(3) permits a locality, by ordinance, to require the owner to "revalidate annually with such locality, on or before the date on which the last installment of property tax prior to the effective date of the assessment is due, on forms prepared by the locality, any applications previously approved." You provide that the taxpayer also has complied with this requirement.<sup>4</sup> Lastly, § 58.1-3234(3) provides:

In the event of a material misstatement of facts in the application or a material change in such facts prior to the date of assessment, such application for taxation based on use assessment granted thereunder shall be void and the tax for such year extended on the basis of [fair market] value.<sup>5</sup>

The facts presented do not suggest that the taxpayer has made a material misstatement of facts in the revalidation application or that a material change in facts has occurred;<sup>6</sup> however, this determination is ultimately one to be made by the commissioner of the revenue based on all the relevant facts.<sup>7</sup>



You next ask whether a taxpayer may file a petition under § 58.1-3984 to correct an erroneous assessment for removal of a parcel from land use designation. Section 58.1-3243 provides that the provisions of Title 58.1 "shall be applicable to assessments and taxation" under the special use provisions, including "the correction of erroneous assessments."

Finally, you inquire whether a local governing body has the authority to determine whether a particular parcel qualifies for land use assessment and taxation. I am unaware of any statute that authorizes the local governing body to determine if property qualifies for special land use assessment and taxation in an individual case.

<sup>1</sup> See 1984 Va. Acts ch. 675, at 1178, 1373 (setting forth declaration of policy in § 58.1-3229, not set out in Virginia Code); 1989 Op. Va. Att'y Gen. 325, 326

<sup>2</sup> See, e.g., 1997 Op. Va. Att'y Gen. 193, 193.

<sup>3</sup> 1985-1986 Op. Va. Att'y Gen. 305, 305.

<sup>4</sup> Compare 1985-1986 Op. Va. Att'y Gen. 308 (concluding that, where revalidation form is not timely filed, land use assessment may not continue).

<sup>5</sup> See Va. Code Ann. § 58.1-3236(D) (Michie Repl. Vol. 2000).

<sup>6</sup> See also § 58.1-3238 (Michie Repl. Vol. 2000) (providing that misstatement of number and identities of known property owners, actual use of property, or intentional misrepresentation of acreage on application shall be considered material misstatement of fact).

<sup>7</sup> See §§ 58.1-3233, 58.1-3236 (Michie Repl. Vol. 2000); see also 1996 Op. Va. Att'y

November 2, 2001

**The Honorable Michael C. Allen (Circuit Court) and Lawrence L. Koontz, Jr. (Supreme Court)  
Chesterfield County Circuit Court**

In this appeal, we consider whether Code § 58.1-3241(A) authorizes Chesterfield County to assess "roll-back" taxes, defined in Code § 58.1-3237, against certain real property as a result of conveyances of the entire property in two separate parcels by the owner, in the absence of a change in the use of the property.

**BACKGROUND**

The material facts are not in dispute. In 1954, Charles W. Stigall acquired, by single deed, two contiguous parcels of real property consisting of approximately 135 acres in Chesterfield County. The larger of the two parcels, denominated by the parties in this case as the "Falling Creek" parcel, consisted of approximately 120 acres. The smaller parcel, denominated by those parties as the "A.G. Tyler" parcel, consisted of approximately 15 acres.<sup>1</sup>

In 1975, pursuant to the applicable provisions of the statutory scheme for Special Assessment for Land Preservation contained in Code § 58.1-3229 et seq., Chesterfield County adopted an ordinance providing for reduced assessment and taxation of real estate devoted to agricultural, horticultural, forest, or open space use (special land use tax program). Thereafter, the Falling Creek parcel was devoted to forest use, as defined in Code § 58.1-3230, and accepted by the County as qualified for reduced assessment and taxation under its special land use tax program.

In 1979 or 1980, the Commonwealth acquired by eminent domain a portion of the Falling Creek parcel for the construction of the Powhite Parkway, "a limited access, interstate grade freeway." The Powhite Parkway bisected the Falling Creek parcel into two unequal sections; one with approximately 26 acres lying north of the freeway and the other with approximately 84 acres lying south of the freeway. Although the two sections of the Falling Creek parcel were physically separated by the construction of the Powhite Parkway, the County continued to tax the Falling Creek parcel as a single unit under its special land use tax program. At the time of the eminent domain taking of a portion of this parcel, Charles Stigall did not record a subdivision plat or otherwise take any action that would reflect in the County's land records a legal separation of the parcel into two separate tracts.

Following the death of Charles Stigall in 1998, the Falling Creek parcel became the property of his widow, Margaret B. Stigall. On October 7, 1999, for the purpose of estate planning, Margaret Stigall conveyed that portion of the Falling Creek parcel lying south of the Powhite Parkway by deed to The Margaret B. Stigall Living Trust, a revocable inter vivos trust. On the same date and for the same purpose, she conveyed that portion of the Falling Creek parcel lying north of the Powhite Parkway by deed to The Stigall Family Limited Partnership. These deeds along with a 1988 plat reflecting the physical division of the Falling Creek parcel were duly recorded in the County land records. No change in the use of the property occurred as a result of these conveyances.

On December 27, 1999, the County, pursuant to Code § 58.1-3241(A), assessed roll-back taxes against the Falling Creek parcel in the amount of \$ 22,087.74 based on the above described conveyances by Margaret Stigall. The amount of the tax represented the difference between the actual tax paid under the special land use tax program and the tax which would have been due had the real estate been taxed on its fair market value assessment during "the five most recent complete tax years." Code §58.1-3237(B). Thereafter, on May 25, 2000, Margaret Stigall, in her capacity as trustee of her inter vivos trust, and The Stigall Family Limited Partnership (collectively, the taxpayers) filed a joint application in the Circuit Court of Chesterfield County for correction of erroneous assessment of these roll-back taxes.

Upon the filing of the County's responsive pleading and the parties' agreement that the material facts were not disputed, the trial court permitted the taxpayers to make an oral motion for summary judgment.<sup>2</sup> In a letter opinion dated August 21, 2000, and subsequently adopted by reference in the final order, the trial court, applying what it characterized as the "ordinary and commonly understood meanings" of the terms used in Code § 58.1-3241(A), initially ruled that the Falling Creek parcel "was not separated and split[-off] when [Margaret] Stigall made the conveyances of 1999, but years earlier - when the Commonwealth built the Powhite Parkway." Because this separation did not result from an "action of the owner," the trial court concluded that the roll-back tax assessment permitted by Code § 58.1-3241(A) was not triggered. The trial court further ruled that following the 1999 conveyances to the trust and the partnership, the taxpayers "made the necessary attestation that the properties will continue to be devoted to 'forest use,' and each of the parcels is of sufficient acreage to qualify for inclusion in the

land use [tax] program authorized by Code § 58.1-3231" and, thus, "satisfy the requirements of Code § 58.1-3237(D)."

In its final order, entered on September 12, 2000, the trial court incorporated by reference its prior letter opinion, granted the taxpayers' motion for summary judgment, and ordered that the County "exonerate [the property in question] of all roll-back taxes imposed in 1999." In an order dated February 23, 2001, we awarded the County this appeal.

### DISCUSSION

Beyond question the statutory scheme invoked by this case regarding a special land use tax program that provides for reduced assessment and taxation of real estate devoted to agricultural, horticultural, forest, or open space use is intended by the legislature to promote the preservation of such real estate for the public benefit. The key to that preservation is the amelioration of the pressure that forces landowners to convert their property to more intensive uses. One source of that pressure is the assessment of property devoted to one or more of these uses at values incompatible with such use. See Code § 58.1-3229 (1984 Repl. Vol.).

In this context, one intended goal of this statutory scheme is the continued qualifying use of property which has qualified previously for the reduced taxation provided by a special land use tax program following a proper application by the owner. Code § 58.1-3234. [HN1] Thus, under Code § 58.1-3237(A), when the qualifying use of particular real property changes to a "nonqualifying use" or the zoning of that property is changed to a "more intensive use" at the request of the owner or his agent, that portion of the property which no longer qualifies for reduced assessment and taxation "shall be subject to additional taxes . . . referred to as roll-back taxes." Pertinent to the present case, Code § 58.1-3237(D) expressly provides that "liability to the roll-back taxes shall attach when a change in use occurs . . . . Liability to the roll-back taxes shall not attach when a change in ownership of the title takes place if the new owner . . . continues the real estate in the use for which it is classified" prior to the transfer of title to the new owner.

In the present case, the County concedes that the real estate in question has not undergone a change in use and in subsequent years will qualify for reduced assessment and taxation under its special land use tax program so long as that real estate continues to be devoted to forest use by the new owners. Nonetheless, the County contends here, as it did in the trial court, that Code § 58.1-3241(A) authorizes it to assess roll-back taxes against that real estate as a result of the 1999 conveyances by Margaret Stigall.

Code § 58.1-3241(A) provides that:

Separation or split-off of lots, pieces or parcels of land from the real estate which is being valued, assessed and taxed under an ordinance adopted pursuant to this article, either by conveyance or other action of the owner of such real estate, shall subject the real estate so separated to liability for the roll-back taxes applicable thereto, but shall not impair the right of each subdivided parcel of such real estate to qualify for such valuation, assessment and taxation in any and all future years, provided it meets the minimum acreage requirements and such other conditions of this article as may be applicable. Such separation or split-off of lots shall not impair the right of the remaining real estate to continuance of such valuation, assessment and taxation without liability for roll-back taxes, provided it meets the minimum acreage requirements and other applicable conditions of this article.

No subdivision of property which results in parcels which meet the minimum acreage requirements of this article, and which the owner attests is for one or more of the purposes set forth in § 58.1-3230, shall be subject to the provisions of this subsection.

The County asserts that although the Falling Creek parcel was physically "separated" as a result of the prior eminent domain taking of a portion of it by the Commonwealth, Code § 58.1-3241(A) contemplates a legal separation, which occurred when the remaining acreage of that parcel was conveyed in separate parcels to two different owners in 1999 by Margaret Stigall. The County further asserts that the "safe-harbor" provision provided by the second paragraph of Code § 58.1-3241(A) is not applicable because the taxpayers concede that the purpose of the 1999 conveyances was for estate planning and, thus, Margaret Stigall could not, and did not, attest that the purpose of the legal separation was for one or more of the purposes of agricultural, horticultural, forest, or open space use set forth in Code § 58.1-3230.

In response, the taxpayers first contend that the trial court properly ruled the eminent domain taking by the Commonwealth caused the separation of the Falling Creek parcel rather than the 1999 conveyances by Margaret Stigall. Continuing, the taxpayers further contend that because the eminent domain taking did not subject the property to liability for roll-back taxes at that time, Code § 58.1-3242, the trial court correctly determined that Code § 58.1-3237(D) rather than Code § 58.1-3241(A) controlled whether roll-back taxes were to be assessed against the "separated" parcels. Finally, the taxpayers maintain that even if the 1999 conveyances potentially subjected these parcels to liability for roll-back taxes under Code § 58.1-3241(A), the safe-harbor provision of that statute applies because the separated parcels continue to be used "for one or more of the purposes set forth in Code § 58.1-3230."

We do not agree with the contentions of either party in their entirety. However, for the reasons that follow, we are of opinion that the trial court reached the correct result although for the wrong reason. Accordingly, we will assign the correct reason and affirm that result. See *Mitchem v. Counts*, 259 Va. 179, 191, 523 S.E.2d 246, 253 (2000).

Under familiar principles, when we construe a statute we endeavor to ascertain and give effect to the intention of the legislature. In doing so, we must assume that the legislature chose, with care, the words it used in enacting the statute, and we are bound by those words when we apply the statute. *Barr v. Town & Country Properties*, 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990). Moreover, we examine a statute in its entirety, rather than by isolating particular words or phrases. *Shelor Motor Co.*, 261 Va. at 479, 544 S.E.2d at 348. [HN4] With respect to a special land use tax program, we also are of opinion that the relief it affords in the form of a special assessment "operates as an exemption or deferral from taxation. Consequently, all provisions of the [authorizing] Act ought to be strictly construed against the taxpayer." 1978-79 Op. Va. Att'y Gen. 273, 274.

With these principles in mind, we begin our analysis by addressing the trial court's initial conclusion that the eminent domain taking by the Commonwealth of a portion of the Falling Creek parcel constituted a "separation or split-off" of that property as contemplated by Code § 58.1-3241(A). Undoubtedly, this taking and, more particularly, the barrier created by the subsequent construction of the Powhite Parkway resulted in a physical division of the Falling Creek parcel. By its express terms, however, this statute is only applicable to a "conveyance or other action of the owner." A taking by eminent domain is not an action of the owner in any sense. Moreover, this statute, viewed in its entirety, clearly evinces a legislative intent that the triggering "subdivision of property" into "lots, pieces or parcels of land" be a legal separation rather than a mere physical separation.

The creation of new lots, pieces, or parcels of land is a legal separation of property because it results from action by the owner and involves, at a minimum, a change in the legal description of the property, either by metes and bounds or by plat, which is duly recorded in the appropriate land records. Such was exactly the case when Margaret Stigall recorded the 1999 deeds and the 1988 plat in the County's land records, legally separating the Falling Creek parcel into two separate parcels owned by the taxpayers. Accordingly, we hold that the trial court erred in ruling that the eminent domain taking of a portion of the Falling Creek parcel caused a "separation or split-off" of that property as contemplated by Code § 58.1-3241(A).

As we have previously noted, the trial court's conclusion that the Falling Creek parcel was separated by the eminent domain taking of a portion of that parcel, rather than by Margaret Stigall's conveyances, logically led it to then apply the provisions of Code § 58.1-3237(D) which, if applicable, would support the ultimate result reached by the trial court that the property in question was not liable to the assessment of roll-back taxes. This would be so because the County concedes that no change in the use or zoning of the property had occurred and the taxpayers, as new owners, continued to devote the property to forest use for which it had qualified for reduced assessment and taxation under the County's special land use tax program. We are of opinion, however, that the proper construction of Code § 58.1-3241(A) nonetheless supports the result reached by the trial court under the facts of this case.

Code § 58.1-3241(A) is only applicable when the conveyance or other action of the owner of real estate causes a separation or split-off of lots, pieces, or parcels of land "from the real estate which is being valued, assessed and taxed" under a local special land use tax ordinance. (Emphasis added). The "remaining real estate" continues to receive the benefit of reduced assessment and taxation "without liability for roll-back taxes" provided it continues to qualify for beneficial treatment. Thus, by its express terms, this statute contemplates a separation or split-off of a portion of the real estate in such a manner that there is a "remaining" portion of the original parcel.<sup>3</sup> It does not contemplate or address the conveyance of the original parcel in its entirety by the owner. Rather, when the owner conveys the real estate in its entirety to a new owner or owners either as one parcel or as separate "lots, pieces or parcels," the liability to roll-back taxes, if any, is controlled by the provisions of Code § 58.1-3237(D). In addition,

the owner need not satisfy the safe-harbor provision of Code § 58.1-3241(A) by attesting that the subdivision of the property is for one or more of the purposes set forth in Code § 58.1-3230 because the potential liability to roll-back taxes under Code § 58.1-3241(A) has not been triggered by such a conveyance or conveyances.

In the present case, it is undisputed that only a change in ownership occurred and the property continued to be devoted to forest use and qualified for reduced assessment and taxation under the County's special land use tax program. Accordingly, we hold that the trial court reached the right result that the property in question was not liable to the roll-back taxes assessed against it by the County.

### CONCLUSION

For these reasons, we will affirm the judgment of the trial court in favor of the taxpayers.

<sup>1</sup> For clarity we will hereafter omit any reference to the A.G. Tyler parcel even though the record reflects that a portion of it was involved in the various proceedings and conveyances which we will subsequently relate. We do so because there is a discrepancy in the record regarding the total acreage of that parcel impacted by those proceedings and conveyances, and the parties agree that taxation of the A.G. Tyler parcel is not at issue in this appeal.

<sup>2</sup> The County styled its pleading responding to the taxpayers' application as a "demurrer" and subsequently filed a "Memorandum in Support of Demurrer." Within these pleadings, however, the County contested the factual allegations of the application and, thus, its challenge to the suit cannot be viewed as constituting a "demurrer" and proper supporting argument for that form of pleading, which admits the truth of the facts contained in the pleading to which it is addressed. *Cox Cable Hampton Roads, Inc. v. City of Norfolk*, 242 Va. 394, 397, 410 S.E.2d 652, 653 (1991). It is evident from the record, however, that the County consented to the case being resolved by the trial court on the taxpayers' oral motion for summary judgment because the facts asserted in the taxpayers' application were not disputed for purposes of resolving the legal issue before the trial court. Accordingly, we will review the judgment of the trial court under the standard of review applicable in such cases. *Shelor Motor Co. v. Miller*, 261 Va. 473, 478, 544 S.E.2d 345, 348 (2001).

<sup>3</sup> In the present case, the County concedes that it did not treat either of the two parcels created by the 1999 conveyances as the "remaining real estate" that was not subject to roll-back taxes. Rather, the County taxed both parcels.

February 26, 2001

**The Honorable Thomas D. Horne**  
**Loudoun County Circuit Court**

Dear Counsel:

Plaintiffs seek a tax refund for real estate taxes paid for 1999. In addition, they request the return by the County of Loudoun certain filing fees paid as a condition precedent to their re-enrollment in the land use tax program. Prior to the tax year in question, the relevant parcels had been determined eligible for assessment based upon use rather than fair market value. The use value assessment was denied for the 1999 tax year because of plaintiffs failure to make timely revalidation as required by the county ordinance. Plaintiffs contend, and the County denies, that the forms were filed prior to the November deadline.

Should the Court determine that the plaintiffs failed to show timely filing of the revalidation forms, it is the position of the plaintiff that no such filing was required for 18 of the 30 parcels assessed. These 18 parcels lay within an Agricultural and Forestal District. Thus, they argue, the provisions of the enabling legislation by which such districts may be created by county ordinance should be read so as to dispense with an annual revalidation requirement.

It is the stated policy of the Commonwealth that real and tangible personal property is to be assessed at fair market value except that taxpayers may, by state statute and local ordinance, receive a deferral or relief from taxes on land devoted to agricultural, horticultural, forest or open space uses. VA Const. art. X § 2. Pursuant to the authority granted it by the Constitution, the General Assembly has, *inter alia*, recognized use-value assessments generally (Va. Code Ann. tit. 58.1 ch. 32 Part. 4) and as specifically applied to Agricultural and Forestal Districts (Va. Code Ann. tit. 15.2 ch.43) and Conservation Easements (Va. Code Ann. tit. 10 ch.10.1).

Loudoun County has enacted an ordinance concerning the assessment and taxation of real estate according to its use. Loudoun County, Va., Ordinances, ch. 848. The county ordinance, consistent with the administrative procedures set forth in the statute, requires that property participating in the use assessment be revalidated annually on forms prepared by the County.

The revalidation forms were prepared and given to Marion Bohley, an employee of plaintiffs, Ticonderoga Farms, Inc. and SWPP Development Co. She was instructed to deliver them to the office of the assessor located at the Loudoun County Department of Financial Services, a place she had never visited before. Ms. Bohley states that she delivered the forms to someone in that office. She took no receipt for the forms and cannot identify, by name, the person to whom the forms were delivered. Despite an intense search by the employees of the county office, the forms could not be located. They were not filed with the assessor prior to the November deadline or the extended grace period for filing.

Plaintiff's evidence falls far short of demonstrating, even by a preponderance of the evidence, that the forms reached anyone employed by the county assessor. It would be sheer speculation to assume they reached the appropriate taxing authority. Any risk of missed delivery by the courier chosen by the plaintiffs cannot be charged to the taxing authority. 308 Va. Op. Att'y. Gen. (1985-86).

Plaintiffs contend that in the absence of evidence of timely filing, they were nevertheless not required to file revalidation forms as to the 18 parcels located in an agricultural and forestal district. A determination of this claim is a matter of statutory interpretation. Particularly germane to the instant inquiry are the principles of statutory construction that the words of a statute be given their plain meaning and that opinions of the Attorney General be given deference in such matters. *Browning-Ferris, Inc. v. Commonwealth*, 225 Va. 157,300 S.E.2d 603 (1983).

The legislature has provided that land required to be valued and which is encumbered, according to statute, with a permanent open space easement need not be the subject of an application or revalidation as required by a local use value assessment program. The Attorney General has noted,

[b]y its plain language, § 10-1011, now requires lands permanently used as open space-wide conservation or open-space easements meeting the requirements of § 58.1-3230 to be assessed and taxed in the same way as lands that are being so used temporarily under a local use value assessment program. As a result, property under

such an easement may be assessed and taxed for its value as open space without any application by its owner and possibly without the owner's knowledge. 7 Va. Op. Att'y. Gen. (1993).

While there are substantial differences between the statutory provisions relating to permanent open space easements and those that apply to agricultural and forestal districts, this interpretation is instructive when considering the instant case. The point to be made is that there are situations where administrative requirements of the tax code permitting use value assessments may be obviated by express legislative mandate. In such situations, although a parcel may need to otherwise qualify for use value assessment, the taxpayer is under no obligation to independently file an application or seek revalidation from the taxing authority. Inclusion becomes automatic.

Had the legislature intended that the administrative requirements of making application and for revalidation to apply, they would have said so. Instead, when considering lands located in Agricultural and Forestal Districts, it chose to “automatically” qualify such lands, if the requirements for the assessment are satisfied.

Pursuant to Va. Code Ann. § 15.2-4312A,

Land lying within a district and used in agricultural or forestal production shall automatically qualify for an agricultural or forestal Use-value assessment pursuant to Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1, if the requirements for such assessment contained therein are satisfied. Any ordinance adopted pursuant to § 15.2-4303 shall extend such use-value assessment and taxation to eligible real property within such district whether or not a local ordinance pursuant to § 58.1-3231 has been adopted.

The requirements for inclusion are set forth in Va. Code Ann. § 58.1-3233. The procedures to be followed, including revalidation, are contained in Va. Code Ann. § 58.1-3234. No mention of compliance with such procedural requirements as a predicate of use-value treatment is provided for in Va. Code Ann. § 15.2-4312. To the contrary, as noted earlier, qualification is “automatic.” Unlike permanent open space easements, upon termination of a district or withdrawal or removal of land from a district, land that is no longer part of the district shall be subject to the roll-back taxes provided for in Va. Code Ann. § 58.1-3237. Va. Code Ann. § 15.2-4314.

Accordingly, the Court finds that the plaintiffs are entitled to a refund of the excess taxes paid on the 18 parcels in the Agricultural and Forestal District, but not as to the remaining 12 parcels. As to the 12 parcels, revalidation was required and not perfected. Moreover, they shall be entitled to any fees paid in connection with the revalidation as to those parcels.

Mr. Moseley may draw an order consistent with this opinion to which counsel may note their exceptions.

September 25, 2000

**The Honorable R. Steven Landes**  
**Member, House of Delegates**

*No authority for locality to issue tax credits for property devoted to agricultural and forestal production within agricultural and forestal districts or subject to conservation easements.*

You ask whether a county has the authority to issue tax credits to taxpayers whose land is used in agricultural and forestal production within agricultural and forestal districts or whose property is subject to conservation easements.

Pursuant to Article X, § 2 of the Constitution of Virginia (1971)<sup>1</sup> and Article 4, Chapter 32 of Title 58.1, §§ 58.1-3229 through 58.1-3244 of the *Code of Virginia*,<sup>2</sup> localities may adopt an ordinance providing that land devoted to agricultural, horticultural, forest and open-space use be assessed at a lower value, based on its use.<sup>3</sup> The purpose of the land use assessment statutes is to create a financial incentive to encourage the preservation of land for preferred uses.<sup>4</sup> These statutes authorize localities to grant a tax preference in the form of a reduction in the assessed value of qualifying real estate;<sup>5</sup> however, they do not provide for a credit against taxes owed on such property.

Virginia adheres to the Dillon Rule of strict construction, which provides that local governing bodies have only those powers that are expressly granted, or those necessarily or fairly implied from expressly granted powers.<sup>6</sup> Section 58.1-3220.01, for example, allows localities to grant tax credits for rehabilitated residential structures. I am unaware, however, of any statutes authorizing a locality to grant a tax credit for the land use or conservation easements described in your inquiry. Accordingly, it is my opinion that a county does not have the authority to issue such a tax credit.<sup>7</sup>

*<sup>1</sup>Article X, § 2 provides: "The General Assembly may define and classify real estate devoted to agricultural, horticultural, forest, or open space uses, and may by general law authorize any county, city, town, or regional government to allow deferral of, or relief from, portions of taxes otherwise payable on such real estate[.]"*

*<sup>2</sup>Article 4, Chapter 32 of Title 58.1 was enacted under the constitutional authority of Article X, § 2. Article 4 authorizes localities to enact ordinances providing for the use value assessment and taxation of constitutionally permitted classes of property and details the procedures for the assessment and taxation of such property.*

*<sup>3</sup>See 1997 Op. Va. Att'y Gen. 199 (stating that General Assembly intended use value to be lower than fair market value).*

*<sup>4</sup>See id. at 200.*

*<sup>5</sup>See also §§ 10.1-1009 to 10.1-1016 (regarding tax preferences applicable to conservation easements).*

*<sup>6</sup>See City of Chesapeake v. Gardner Enterprises, 253 Va. 243, 482 S.E.2d 812 (1997); City of Richmond v. Confrere Club of Richmond, 239 Va. 77, 387 S.E.2d 471 (1990).*

*<sup>7</sup>The General Assembly, however, has authorized localities to adopt ordinances providing that land devoted to agricultural, horticultural, forest, and open-space use be assessed at a lower value upon application of the landowner. See §§ 58.1-3231, 58.1-3234; see also § 10.1-1011 (relating to taxation of conservation easements).*



October 29, 1999

**The Honorable William K. Barlow**  
**Member, House of Delegates**

*County-wide rezoning resulting in portion of property being rezoned to more intensive use not requested by owner does not affect continued qualification of property under land-use ordinance. Property once eligible that becomes ineligible for land-use value assessment and taxation is to be assessed at fair market value. Roll-back taxes equal difference between tax levied when land qualified for special assessment and tax that would have been levied had property been subject to fair market value assessment rather than special assessment. County's inclusion in its determination of roll-back taxes value of rezoned portion of property is consistent with statutes governing roll-back taxes.*

You ask for guidance regarding the calculation of roll-back taxes pursuant to § 58.1-3237 of the Code of Virginia.

You relate that certain property in Prince George County has been farmed for many decades and has thus qualified for a special assessment for land preservation ordinance pursuant to Article 4, Chapter 32 of Title 58.1, §§ 58.1-3229 through 58.1-3244. You also relate that, in the 1960s, 2.5 acres of this property was zoned for commercial use by the county, but not at the request of the property owner. You advise that, prior to 1996, the entire tract of land was used for agricultural purposes, and was, therefore, taxed at land-use value. You also advise that notices sent by the county to the property owner reflected two total assessed values of the property—fair market and land use. You state that, in 1996, a portion of the property, which included the commercially zoned 2.5 acres, was sold. You further state that, upon such conveyance, the county included in its determination of roll-back taxes on such property the value of the 2.5 acres as commercially zoned. You inquire whether the determination should have been made by dividing the total assessed value of the property by the total number of acres to arrive at a per-acre value.

Section 58.1-3231 authorizes localities to adopt ordinances providing for the "use value assessment" of real property. To qualify for the special assessment, the land must be devoted to agricultural, horticultural, forest or open-space uses, as specified in § 58.1-3230. The purpose of Article 4 is to create a financial incentive to encourage the preservation and proper use of real estate classified for such uses.<sup>1</sup> The imposition of roll-back tax liability furthers this goal by encouraging the property owner to continue preserving the land for one of the classifications established and defined in § 58.1-3230.<sup>2</sup> Discontinuing the favorable tax treatment when the land no longer satisfies the use or acreage requirements of Article 4 is consistent with this stated purpose.<sup>3</sup>

Generally, a property owner is subject to roll-back tax liability when a change in use or size of the property results from action by the property owner.<sup>4</sup> A 1983 opinion of the Attorney General concludes that action by an owner to rezone his land to a more intensive use, thereby making it eligible for development, will render it ineligible for land-use valuation,<sup>5</sup> whereas a county-wide rezoning, which is not requested by the owner and which results in a change in zoning to a more intensive use, does not disqualify the land from land-use valuation, assessment and taxation until the use of the land changes.<sup>6</sup>

Accordingly, in the instant case, the county-wide rezoning occurring in the 1960s, which resulted in a portion of the property being rezoned to a more intensive use not requested by the owner, did not affect the continued qualification of the property under the land-use ordinance.

Section 58.1-3241(A), however, provides:

Separation or split-off of lots, pieces or parcels of land from the real estate which is being valued, assessed and taxed under an ordinance adopted pursuant to this article, either by conveyance or other action of the owner of such real estate, shall subject the real estate so separated to liability for the roll-back taxes applicable thereto ....

Under this provision, it is the action of the owner selling the property that triggers roll-back tax liability. Thus, although the fact that the owner did not request the zoning change is a consideration when determining whether the property continues to qualify for land-use assessment, this fact is immaterial to property that does not qualify for such assessment.

"[R]oll-back taxes [are] considered to be deferred real estate taxes."<sup>7</sup> Accordingly, § 58.1-3237 provides that such "deferred tax for each [applicable] year shall be equal to the difference between the tax levied and the tax that would

have been levied based on the fair market value assessment of the real estate for that year."<sup>8</sup> Therefore, roll-back taxes are equal to the difference between the tax levied under the land-use assessment statutes and the tax that would have been levied pursuant to the assessed fair market value of the property had it not been subject to the special assessment.<sup>9</sup>

Accordingly, once property that had been eligible for land-use value assessment and taxation is made ineligible for land-use assessment and taxation, such property is to be assessed at fair market value.<sup>10</sup> The Supreme Court of Virginia has construed "fair market value" generally as "the price [a property] will bring when it is offered for sale by one who desires, but is not obliged, to sell it, and is bought by one who is under no necessity of having it."<sup>11</sup> In determining fair market value, "all the capabilities of the property and all the uses to which it may be applied or for which it is adapted, are to be considered,"<sup>12</sup> with the assessment based on the highest and best use of the property.<sup>13</sup>

Ultimately, fair market value is a factual question to be determined by the commissioner of the revenue upon a consideration of the factors affecting the property's value.<sup>14</sup> It is my opinion, however, that, under the facts presented, the determination made by Prince George County appears to be consistent with the statutes governing roll-back taxes.

<sup>1</sup> See 1984 Va. Acts ch. 675, at 1178, 1373 (citing § 58.1-3229, not set out in Virginia Code); 1997 Op. Va. Att'y Gen. 195, 195.

<sup>2</sup> 1997 Op. Va. Att'y Gen. 193, 194.

<sup>3</sup> *Id.*

<sup>4</sup> See § 58.1-3237(A), (D), (E); 1997 Op. Va. Att'y Gen., *supra* note 2, at 194.

<sup>5</sup> 1983-1984 Op. Va. Att'y Gen. 369, 370.

<sup>6</sup> *Id.* at 370 n.1 (citing 1975-1976 Op. Va. Att'y Gen. 357).

<sup>7</sup> Section 58.1-3243; see also 1982-1983 Op. Va. Att'y Gen. 541, 544.

<sup>8</sup> Section 58.1-3237(B), (C).

<sup>9</sup> See *id.*; 1997 Op. Va. Att'y Gen., *supra* note 2, at 194 n.2.

<sup>10</sup> 1987-1988 Op. Va. Att'y Gen. 540, 541.

<sup>11</sup> *Woman's Club v. City of Richmond*, 199 Va. 734, 737, 101 S.E.2d 571, 574 (1958) (citation omitted); see also 1997 Op. Va. Att'y Gen. 196, 197.

<sup>12</sup> *Woman's Club*, 199 Va. at 738, 101 S.E.2d at 574; see also 1997 Op. Va. Att'y Gen., *supra*, at 197.

<sup>13</sup> See *County Bd. of Arlington v. Commonwealth*, 240 Va. 108, 393 S.E.2d 194 (1990); *Waynesboro v. Keiser*, 213 Va. 229, 232-33, 191 S.E.2d 196, 198-99 (1972) (although two adjacent parcels are used for residential purposes, fact that one parcel is zoned for industrial use materially affects its market value); 1997 Op. Va. Att'y Gen., *supra*.

<sup>14</sup> Op. Va. Att'y Gen.: 1997, *supra* note 11, at 197; 1987-1988 at 534, 536.

December 2, 1997

**The Honorable Robert F. McDonnell**  
**Member, House of Delegates**

*Roll-back taxes are imposed only when actual use of land changes to nonqualifying use; change in use of property is event that triggers roll-back tax liability. Commissioner of revenue makes factual determination whether actual use of property has changed to nonqualifying use. If commissioner determines that property has remained idle and no actual change in use has occurred, roll-back tax liability would not attach.*

You ask whether a landowner is liable for roll-back taxes on certain property that has qualified under a locality's special assessment for land preservation ordinance pursuant to Article 4, Chapter 32 of Title 58.1, §§ 58.13229 through 58.13244 of the *Code of Virginia*.

You relate that such property has been farmed for many decades and has thus qualified for the special assessment. You advise that in 1992, a tenant who had been farming the property ceased doing so. You further state that within a few months thereafter, a new tenant began farming the property once again. You assert that the property remained "idle" during the lapse between tenants and was not used for a more intensive purpose. You inquire, therefore, whether the property owner is liable for roll-back taxes for the five years preceding 1992 (the year in which the earlier tenant ceased farming).<sup>1</sup>

Section 58.13231 authorizes localities to adopt ordinances providing for the use value assessment of real property. To qualify for the special assessment, the land must be devoted to agricultural, horticultural, forest or open-space uses, as specified in § 58.13230. Section 58.13237(C) provides that "[l]iability to the roll-back taxes shall attach when a change in use occurs."

The purpose of the land use assessment statutes is to create a financial incentive to encourage the preservation and proper use of real estate devoted to agricultural, horticultural, forest and open-space uses by "ameliorat[ing] pressures which force the conversion of such real estate to more intensive uses and which are attributable in part to the assessment of such real estate at values incompatible" with the use and preservation for the desired purposes.<sup>2</sup>

A prior opinion of the Attorney General concludes that "roll-back taxes are imposed only when the actual use of the land changes to a nonqualifying use."<sup>3</sup> Consistent with the statutory purpose, change in the use of the property is the event that triggers roll-back tax liability.<sup>4</sup> Thus, for example, building a residence on property that had qualified for the special assessment is a change in use resulting in roll-back tax liability.<sup>5</sup> Similarly, use of pastureland as an airport for ultralight aircraft is a change in use that disqualifies property previously subject to special assessment.<sup>6</sup>

Whether the actual use of property has changed to a nonqualifying use is a factual determination to be made by the local commissioner of the revenue.<sup>7</sup> I am unable to comment on any factual matters raised by your inquiry. The Office of the Attorney General historically has declined to render official opinions when the request involves a question of fact rather than one of law.<sup>8</sup> Should a factual determination by the commissioner of the revenue reveal that the property in question has remained "idle" and no actual change in use of the property has occurred, it is my opinion that roll-back tax liability would not attach.

<sup>1</sup> Generally, roll-back taxes are equal to the difference between the tax levied during the past five years under the land-use assessment statutes and the tax that would have been levied had the property not been subject to the special assessment. See § 58.13237(B).

<sup>2</sup> 1984 Va. Acts ch. 675, at 1178, 1373 (quoting § 58.13229, not set out in Code).

<sup>3</sup> 19821983 Op. Va. Att'y Gen. 551, 552. Compare 19871988 Op. Va. Att'y Gen. 599 (holding that for purposes of exemption from real estate taxation, property acquired by charitable organization and held for future charitable use is not exempt until it is put to exempt use).

<sup>4</sup> 19801981 Op. Va. Att'y Gen. 355, 357.

<sup>5</sup> See *id.* at 356.

<sup>6</sup> See 19831984 Op. Va. Att'y Gen. 367.

<sup>7</sup> Section 58.13236; see also 1996 Op. Va. Att'y Gen. 207, 208.

<sup>8</sup> 1991 Op. Va. Att'y Gen. 122, 124, and prior opinions cited therein. The authority of this Office to issue official advisory opinions under § 2.1118 is limited to questions that are legal in nature. See Op. Va. Att'y Gen.: 19861987 at 1, 6; 19771978 at 31; see also 2 A.E. DICK HOWARD, COMMENTARIES ON THE CONSTITUTION OF VIRGINIA 668 (1974).

October 28, 1997

**The Honorable W. Jean Shrewsbury  
Commissioner of the Revenue for Augusta County**

*Commissioner of revenue must consider State Land Evaluation Advisory Council's recommendations of value of property devoted to agricultural use but does not have to base assessment on such recommendations. Commissioner must exercise personal judgment and consider all available evidence in determining whether Council's recommendations are indicative of fair market value of property within jurisdiction. In determining indicia relevant to fair market value of property devoted to agricultural use, commissioner may consider economic conditions existing in locality as factor affecting value of property. Commissioner has no authority to adjust fair market value of property based on financial effect ultimate determination will have on taxpayer; has no jurisdiction to consider whether property owner will receive government services equivalent to tax imposed.*

You ask whether, in valuing real estate for agricultural use under § 58.13236 of the land use assessment and taxation provisions of the *Code of Virginia*,<sup>1</sup> you may disregard the recommendations of the State Land Evaluation Advisory Council. You ask also whether you may consider certain other factors, such as the financial and economic conditions of farms in the locality and the value of government services received by farmers in comparison to the value of services received by owners of residential and business property.

The land use assessment and taxation statutes are enacted pursuant to the authority granted the General Assembly in Article X, § 2 of the Constitution of Virginia (1971) to "define and classify real estate devoted to agricultural, horticultural, forest, or open space uses, and ¼ by general law authorize any county, city, town, or regional government to allow deferral of, or relief from, portions of taxes otherwise payable on such real estate if it were not so classified." Absent the legislation enacted under this authority, the real estate would be subject to the general requirement in Article X, § 2 that "[a]ll assessments of real estate and tangible personal property shall be at their fair market value."

The Supreme Court of Virginia has defined "fair market value" generally as the price a property will bring when it is offered for sale by a willing seller who is under no compulsion to sell and is bought by a willing buyer who is under no necessity of having the property.<sup>2</sup> In making this determination, all uses to which the property may be adapted are to be considered, not only the current use,<sup>3</sup> with the assessment based on the highest and best use of the property.<sup>4</sup>

If, however, the property qualifies for land use assessment as agricultural property, § 58.13236(A) provides that the commissioner of the revenue shall consider "only those indicia of value" that the property has for agricultural use. The commissioner may not consider the value the property would bring for some higher category of lawfully permitted use.<sup>5</sup> Other than this distinction, any of the factors ordinarily considered in determining the fair market value of property are appropriate for the commissioner to consider in determining the value of the agricultural property.<sup>6</sup>

The Court has recognized that the assessment of fair market value depends on numerous factors, such as the property's location, appearance, availability for use and the economic situation in the area.<sup>7</sup> The ultimate issue remains the effect of the factors on the price the property will bring when offered for sale by one who is not obliged to sell and purchased by one who is under no necessity to buy.<sup>8</sup>

Fair market value is a factual question for determination by the commissioner of the revenue.<sup>9</sup> In assessing property qualifying for land use taxation, the commissioner is to determine the value in accordance with § 58.13236. While § 58.13236(A) requires the commissioner to "consider" the recommendations of value made by the State Land Evaluation Advisory Council, the statute does not mandate that the commissioner base the assessment on these recommendations.<sup>10</sup> Rather, § 58.13236(A) provides that the commissioner is to exercise his "personal knowledge, judgment and experience" and consider all "available evidence." If, in exercising this judgment and considering other evidence, the commissioner determines that the recommendations made by the Council are not indicative of the fair market value of property devoted to agricultural use within the jurisdiction, it is my opinion that the commissioner may then disregard the recommendations.

In determining the "indicia" that are relevant to the fair market value of property devoted to agricultural use, the focus of the inquiry is the effect that the factor would have on the value of the property for such use. It is my opinion that, while a commissioner may consider the economic conditions existing in the locality as a factor that affects the

value of agricultural property, a commissioner has no authority to adjust the fair market value of the property on the basis of the financial effect the ultimate determination will have on the taxpayer. It is also my opinion that a commissioner has no authority to consider whether a property owner will receive government services equivalent to the amount of the tax imposed. While these are issues of legitimate local concern, they are not within the jurisdiction of the commissioner of the revenue.

<sup>1</sup> Article 4, Chapter 32 of Title 58.1, §§ 58.13229 to 58.13244.

<sup>2</sup> See *Woman's Club v. City of Richmond*, 199 Va. 734, 101 S.E.2d 571 (1958). The Court consistently has recognized that most local taxing authorities apply a fixed multiple or percentage to fair market value to arrive at assessed value but that this practice does not eliminate the requirement of determining fair market value. See *Fray v. Culpeper County*, 212 Va. 148, 149, 183 S.E.2d 175, 177 (1971).

<sup>3</sup> *Woman's Club*, 199 Va. at 738, 101 S.E.2d at 574 (in estimating value of property on market, assessor is to consider "all the capabilities of the property and all the uses to which it may be applied or for which it is adapted"; determining market value is not question of value of property to present owner).

<sup>4</sup> See *County Bd. of Arlington v. Commonwealth*, 240 Va. 108, 393 S.E.2d 194 (1990) (assessment of real estate should seek to determine fair market value by consideration of highest and best use in particular location); *Waynesboro v. Keiser*, 213 Va. 229, 23233, 191 S.E.2d 196, 19899 (1972) (although two adjacent parcels currently are being used for residential purposes, fact that one parcel is zoned for industrial use materially affects its market value); see also *Fairfax County v. Virginia Dept. of Transp.*, 247 Va. 259, 440 S.E.2d 610 (1994) (while market value is determined on basis of various uses to which land is susceptible, it is appropriate to consider only specific use if land is committed to that use and cannot be put to another use economically).

<sup>5</sup> See 1990 Op. Va. Att'y Gen. 239, 240. The purpose and intent of use value assessment is to encourage the preservation of land for agricultural, horticultural, forest or open space uses by "ameliorat[ing] pressures which force the conversion of such real estate to more intensive uses and which are attributable in part to the assessment of such real estate at values incompatible with its use and preservation for agricultural, horticultural, forest or open space purposes." 1984 Va. Acts ch. 675, at 1178, 1373 (quoting § 58.13229, not set out in Code).

<sup>6</sup> In fact, § 58.13236(D) requires the commissioner to determine the fair market value of the property as applied to other property within the jurisdiction and to record both the use value and the fair market value of the property in the land book.

<sup>7</sup> See *Smith v. City of Covington*, 205 Va. 104, 10809, 135 S.E.2d 220, 223 (1964).

<sup>8</sup> *Id.* at 109, 135 S.E.2d at 223.

<sup>9</sup> See 1987/1988 Op. Va. Att'y Gen. 534, 536 (fair market value is factual question for commissioner of revenue to determine upon consideration of factors affecting value).

<sup>10</sup> Section 58.13236(A) provides: "In valuing real estate for purposes of taxation by any county, city or town which has adopted an ordinance pursuant to this article, the commissioner of the revenue or duly appointed assessor shall consider only those indicia of value which such real estate has for agricultural, horticultural, forest or open space use, and real estate taxes for such jurisdiction shall be extended upon the value so determined. In addition to use of his personal knowledge, judgment and experience as to the value of real estate in agricultural, horticultural, forest or open space use, he shall, in arriving at the value of such land, consider available evidence of agricultural, horticultural, forest or open space capability, and the recommendations of value of such real estate as made by the State Land Evaluation Advisory Council."

In contrast to this language in § 58.13236(A), § 58.13236(B) and (C) contains mandatory language regarding the total area of real estate and the structures the commissioner is to include in the assessment.

September 11, 1997

**The Honorable Anne G. Sayers  
Commissioner of the Revenue for Northampton County**

*Purpose of land use assessment statutes is to create financial incentive to further preservation of land within Commonwealth for agricultural, horticultural, forest and open space uses. Assessing property that qualifies for land use assessment at value greater than fair market value determined pursuant to general reassessment would discourage such preservation. General Assembly did not intend to permit locality to adopt ordinance imposing higher tax liability on property devoted to such uses.*

You ask whether, when a property owner applies for use value assessment on his property under a county ordinance adopted pursuant to § 58.13231 of the Code of Virginia and the assessment will be higher than the fair market value established in the last general reassessment, the property should be taxed on the basis of the use value assessment or the general assessment.

Article X, § 2 of the Constitution of Virginia (1971) establishes a general requirement that "[a]ll assessments of real estate and tangible personal property shall be at their fair market value." Section 2 further provides that the General Assembly may "define and classify real estate devoted to agricultural, horticultural, forest or open space uses," declare that the public interest requires preservation of those uses, and authorize local governments to allow "deferral of, or relief from, portions of taxes otherwise payable on such real estate if it were not so classified."

Acting pursuant to this authority, the General Assembly has adopted §§ 58.13229 through 58.13244, permitting local governments to enact ordinances providing for the use value assessment and taxation of the constitutionally permitted classes of property and detailing the procedures for the assessment and taxation. Section 58.13229 declares the preservation of land devoted to those uses to be "vital to the public interest," and states that the intent of use value assessment is to "ameliorate pressures which force the conversion of such real estate to more intensive uses and which are attributable in part to the assessment of such real estate at values incompatible with its use and preservation for agricultural, horticultural, forest or open space purposes."<sup>1</sup>

Section 58.13236(A) provides that property that qualifies for the special assessment is to be assessed by considering "only those indicia of value which such real estate has for agricultural, horticultural, forest or open space use." Section 58.13236(D) provides that the property also is to be evaluated on the basis of the fair market value as applied to other property within the jurisdiction and that the land book records are to show both values.

The primary object of statutory construction is to ascertain and give effect to legislative intent.<sup>2</sup> The intent clearly expressed in § 58.13229 is to encourage the preservation of land within the Commonwealth for agricultural, horticultural, forest and open space uses. The purpose of the land use assessment statutes is to create a financial incentive to further the preservation of land for such uses.<sup>3</sup>

It is inconsistent with the authority granted the legislature in the Constitution and with the legislature's purpose and intent expressed in § 58.13229 for property that qualifies for land use assessment to be assessed at a value greater than the fair market value determined pursuant to a general reassessment.<sup>4</sup> This result would defeat the entire purpose of encouraging preservation of land for the preferred uses and, in fact, would actually discourage such preservation.

It is my opinion that, in authorizing localities to enact land use ordinances, the General Assembly did not intend to permit a locality to impose a higher tax liability on property devoted to one of the favored uses. If, pursuant to the local ordinance and the statutes controlling land use assessment and taxation,<sup>5</sup> the property would be subject to a higher tax liability, either the local ordinance should be amended or applied to avoid this result or a property owner should be advised to withdraw his application for special assessment.<sup>6</sup>

<sup>1</sup> See 1984 Va. Acts ch. 675, at 1178, 1373 (adding Title 58.1, containing § 58.13229, not set out in Code).

<sup>2</sup> See *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

<sup>3</sup> See *Op. to Hon. Robert V. Vaughan, Va. Beach Comm'r Rev.*, at 2 (July 24, 1997).

*4 This outcome also would render inoperative the statutory provisions requiring the payment of roll-back taxes when real estate no longer qualifies for land use assessment. See §§ 58.13237, 58.13241.*

*5 The commissioner of the revenue or other assessing officer is to determine the value of real estate that qualifies for land use assessment in accordance with § 58.13236.*

*6 Section 58.13231 permits but does not require a locality to enact a land use ordinance. Pursuant to § 58.13234, a property owner must submit an application for the use value assessment and taxation.*



July 24, 1997

**The Honorable Robert P. Vaughan**  
**Commissioner of the Revenue for the City of Virginia Beach**

*Land taken by government through power of eminent domain is not subject to roll-back taxes. Residual parcel, which no longer meets minimum acreage requirement after its separation from parcel taken by governmental entity in condemnation proceeding, is not subject to roll-back tax liability.*

You present a hypothetical situation where a governmental entity, through its power of eminent domain, purchases five acres of an eight-acre parcel of land that is being taxed under a locality's special assessment for land preservation ordinance. The remaining three acres do not meet the minimum acreage requirements to continue to qualify for land-use taxation. You ask whether, under these circumstances, the property owner is liable for roll-back taxes on the residual three-acre parcel.

Article 4, Chapter 32 of Title 58.1, §§ 58.13229 through 58.13244 of the Code of Virginia, authorizes localities to adopt ordinances providing for the use value assessment of real property. To qualify for the special assessment, the land must be devoted to agricultural, horticultural, forest or open-space uses, as specified in § 58.13230, and must satisfy the minimum acreage requirement specified in § 58.13233.<sup>1</sup>

Section 58.13237(A) provides that when the use by which property qualified for special assessment changes to a nonqualifying use or the zoning of the real estate is changed to a more intensive use at the request of the owner or his agent, the property becomes subject to roll-back taxes.<sup>2</sup> In addition, § 58.1-3241(A) provides that, upon the separation or split-off of lots, pieces or parcels of the land, "either by conveyance or other action of the owner" of the land, the separated parcels become subject to roll-back taxes if they no longer meet the qualifying use and minimum acreage requirements of the land use ordinance.<sup>3</sup>

Section 58.13242 provides a general exception from liability for roll-back taxes when land is taken through the governmental exercise of the power of eminent domain:

The taking of real estate which is being valued, assessed and taxed under an ordinance adopted pursuant to this article by right of eminent domain shall not subject the real estate so taken to the roll-back taxes herein imposed.

In the hypothetical situation you present, the original tract consisted of eight acres and met the minimum five-acre requirement specified in § 58.13233(2). The governmental entity, through its power of eminent domain, purchased five acres, leaving the property owner with a three-acre parcel. It is clear that, pursuant to § 58.13242, the property owner is not liable for the payment of roll-back taxes on the five-acre parcel purchased by the governmental entity. It is also clear that the remaining three-acre parcel will no longer qualify for land use assessment and taxation. It is less clear, however, whether the property owner will be liable for roll-back taxes on the three-acre parcel.

It may be said that, because § 58.13242 removes from roll-back tax liability only that portion of the land that was taken by the government in the exercise of its power of eminent domain, i.e., only the "real estate so taken," the property owner is liable for roll-back taxes on the three-acre parcel not taken by the government. It also may be said, however, that, because the roll-back tax liability imposed by § 58.13241 for separating a parcel of land is triggered only when the separation results from an "action of the owner of [the] real estate," the property owner is not liable for roll-back taxes when the separation results from action by the government.

The aim of statutory construction is to ascertain and give effect to the intent of the legislature.<sup>4</sup> The purpose for which a statute is enacted is of primary importance in construing the statute and in ascertaining the legislative intent.<sup>5</sup> The purpose of the land use assessment statutes is to create a financial incentive to encourage the preservation and proper use of real estate devoted to agricultural, horticultural, forest and open-space use by "ameliorat[ing] pressures which force the conversion of such real estate to more intensive uses and which are attributable in part to the assessment of such real estate at values incompatible" with the use and preservation for the desired purposes.<sup>6</sup> The minimum acreage requirement limits eligibility to parcels deemed to be of sufficient size to further the legislative purpose.<sup>7</sup> The imposition of roll-back tax liability likewise furthers this goal by encouraging the property owner to continue to preserve the land for one of the qualifying uses.

Discontinuing the favorable tax treatment when the land ceases to satisfy the use or acreage requirements of the statutes is consistent with this stated purpose. In my opinion, however, subjecting the property to roll-back taxes

when, through no action of the owner, the property ceases to satisfy the requirements for continuing land use assessment does not further the statutory purposes. In fact, inserting such an uncertain liability into the statutory scheme may serve to discourage owners from preserving their property in reliance on the favorable tax treatment. Accordingly, it is my opinion that in the facts you present, the three-acre parcel not taken by the governmental entity in the condemnation proceeding is not subject to roll-back tax liability.

This conclusion is consistent not only with the statutory purpose, but also with the express language of the statutes.<sup>8</sup> Both §§ 58.13237 and 58.13241 contain language indicating that the property owner is subject to roll-back tax liability when the change in use or size results from action by the property owner.<sup>9</sup>

Moreover, § 58.13242 indicates a clear legislative intent to remove from roll-back tax liability changes that result from the taking of real estate by right of eminent domain.

<sup>1</sup> *The minimum acreage requirement is five acres for property devoted to agricultural and horticultural use, twenty acres for property devoted to forest use, and, with certain qualifications, five acres for property devoted to open-space use. Section 58.13233(2).*

<sup>2</sup> *Basically, the roll-back taxes are equal to the difference between the tax levied during the past five years under the land-use assessment statutes and the tax that would have been levied had the property not been subject to the special assessment. See § 58.13237(B). The roll-back taxes are considered deferred real estate taxes. See § 58.13243.*

<sup>3</sup> *Section 58.13241(A) provides: "Separation or split-off of lots, pieces or parcels of land from the real estate which is being valued, assessed and taxed under an ordinance adopted pursuant to this article, either by conveyance or other action of the owner of such real estate, shall subject the real estate so separated to liability for the roll-back taxes applicable thereto, but shall not impair the right of each subdivided parcel of such real estate to qualify for such valuation, assessment and taxation in any and all future years, provided it meets the minimum acreage requirements and such other conditions of this article as may be applicable. Such separation or split-off of lots shall not impair the right of the remaining real estate to continuance of such valuation, assessment and taxation without liability for roll-back taxes, provided it meets the minimum acreage requirements and other applicable conditions of this article.*

*"No subdivision of property which results in parcels which meet the minimum acreage requirements of this article, and which the owner attests is for one or more of the purposes set forth in § 58.13230, shall be subject to the provisions of this subsection."*

<sup>4</sup> *See Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).*

<sup>5</sup> *See VEPCO v. Prince William Co., 226 Va. 382, 388, 309 S.E.2d 308, 311 (1983); Op. Va. Att'y Gen.: 1995 at 4, 5; 1987/1988 at 538, 539.*

<sup>6</sup> *1984 Va. Acts ch. 675, at 1178, 1373 (quoting § 58.13229, not set out in Virginia Code).*

<sup>7</sup> *See 1989 Op. Va. Att'y Gen. 325, 32627.*

<sup>8</sup> *See Vollin v. Arlington Co. Electoral Bd., 216 Va. 674, 222 S.E.2d 793 (1976) (analysis of legislative intent includes appraisal of subject matter and purpose of statute, as well as its express terms).*

<sup>9</sup> *A zoning change to a more intensive use must be "at the request of the owner or his agent." Section 58.13237(A), (C), (D). Separation of the land is to be by conveyance "or other action of the owner." Section 58.13241(A).*

April 8, 1996

**The Honorable Audrey T. Brooks**  
**Commissioner of the Revenue for the City of Fredericksburg**

*Commissioner of revenue makes determination whether locality's adoption of ordinance amending text of zoning ordinance or amending proffers initiated by property owners constitutes change in zoning to more intensive use at request of property owners or their agents that would trigger assessment of roll-back taxes. Change in use occurs when timber is removed from forest land and open-space land is developed for commercial uses. Roll-back taxes would apply to land that has changed to nonconforming use-one that does not meet statutory definitions of real estate devoted to agricultural, horticultural, forest or open-space use.*

You ask whether a change in zoning would occur that would trigger the assessment of roll-back taxes under § 58.13237 of the *Code of Virginia*<sup>1</sup> should a locality adopt a local ordinance amending the text of a zoning ordinance or amending proffers initiated by property owners, to allow a more intensive use of property within a zoning district. In addition, you ask for a definition of the term "more intensive" as it is used in § 58.13237(A).

You indicate that, in 1988, the Fredericksburg City Council established, by ordinance, a planned development-commercial zoning district, primarily allowing twenty-six commercial uses, and no special uses, within the district. The ordinance contained other regulations, including bulk restrictions on floor area ratio and open-space requirements. The following year, the city rezoned an additional 310-acre tract to the planned development-commercial zoning district, which included a set of proffers voluntarily submitted by the property owners. Subsequent to this rezoning, a portion of the property has continued to be subject to land-use taxation.

You relate that the property owners filed an application to modify the proffers and the generalized development plan affecting the property, which was approved by city council. The owners again approached city council about modifying the proffers contained in the original plan, and city council approved the amendment to the proffers affecting the property. A change in the use of the land has occurred due to removal of timber from forest land and development of open-space land for commercial uses.

Your questions concerning whether certain facts constitute a change in zoning to a more intensive use at the request of the property owners for purposes of § 58.13237 are factual determinations to be made on a case-by-case basis by the local commissioner of the revenue. The Attorney General has declined to render official opinions when the request involves a question of fact rather than one of law.<sup>2</sup> A prior opinion of the Attorney General concludes that whether a developer's proffers of cash and off-site road improvements qualify for certain statutory protections "necessarily depends on an evaluation of all the relevant surrounding facts and circumstances [and] requires an evaluation of the attendant facts and circumstances."<sup>3</sup> Thus, the Attorney General declined to render an opinion.<sup>4</sup>

Therefore, I must decline to reach a conclusion on whether the specific facts and circumstances in the scenarios you describe constitute a change in zoning to a more intensive use at the request of the property owners or their agent for purposes of assessing roll-back taxes under § 58.13237. Based on the policy underlying the disincentive implicit in the roll-back tax,<sup>5</sup> it does not appear that the term "change in zoning," as used in § 58.13237, is so restrictive as to mean only a formal zoning classification change. The term would seem to include any change initiated by a property owner that would allow a more intensive use of land than previously was possible.

You also ask whether the term "more intensive," as used in § 58.13237(A), means a greater maximum square footage of building area, an increased number and variety of commercial uses, or both. It is axiomatic that "the statutory term is to be construed in its ordinary meaning, given the context in which it is used."<sup>6</sup> "Intensive" is defined as "of, relating to, or marked by intensity or intensification"; "highly concentrated"; "tending to strengthen or increase ... to give force or emphasis."<sup>7</sup>

"Virginia adheres to the rule of strict construction of tax exemptions."<sup>8</sup> Taxation is the rule rather than the exception.<sup>9</sup> "Therefore, tax statutes are strictly construed against the taxpayer. When a tax statute is susceptible to two constructions, one granting an exemption and the other denying it, the latter construction is adopted."<sup>10</sup> This result is mandated by the Constitution of Virginia, which states that "[e]xemptions of property from taxation as established or authorized hereby shall be strictly construed."<sup>11</sup> "The rule of strict construction stems from the announced policy of this Commonwealth to distribute the tax burden uniformly and upon all property. Thus, any provision granting an immunity from taxes, whether called an exclusion, limitation or exemption, is narrowly construed."<sup>12</sup>

To the extent that the use of the land has changed to a nonconforming use, i.e., one that does not meet the definitions in § 58.13230-real estate devoted to agricultural, horticultural, forest or open-space use-then the roll-back taxes in § 58.13237 would apply. Section 58.13237(C) provides that liability for such roll-back taxes attaches when either a change in use or a change in zoning to a more intensive use "at the request of the owner or his agent occurs."<sup>13</sup> Therefore, even if you were to conclude that a "change in zoning" had not occurred that would trigger the roll-back taxes, an actual change in use nevertheless would trigger the imposition of roll-back taxes on those specific areas.

<sup>1</sup> Section 58.13237 provides, in part:

*"(A) When real estate qualifies for assessment and taxation on the basis of use under an ordinance adopted pursuant to [Article 4, Chapter 32 of Title 58.1], and the use by which it qualified changes to a nonqualifying use, or the zoning of the real estate is changed to a more intensive use at the request of the owner or his agent, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes. Such additional taxes shall only be assessed against that portion of such real estate which no longer qualifies for assessment and taxation on the basis of use or zoning...."*

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*"(C) Liability to the roll-back taxes shall attach when a change in use occurs, or a change in zoning of the real estate to a more intensive use at the request of the owner or his agent occurs.... The commissioner shall forthwith determine and assess the roll-back tax, which shall be assessed against and paid by the owner of the property at the time the change in use which no longer qualifies occurs, or at the time of the zoning of the real estate to a more intensive use at the request of the owner or his agent occurs ...."*

*"(D) Real property zoned to a more intensive use, at the request of the owner or his agent, shall be subject to and liable for the roll-back tax at the time such zoning is changed.... Real property zoned to a more intensive use at the request of the owner or his agent after July 1, 1988, shall be subject to and liable for the roll-back tax at the time of such zoning."*

<sup>2</sup> See, e.g., 1991 Op. Va. Att'y Gen. 122, 124, and opinions cited therein.

<sup>3</sup> 1991 Op Va. Att'y Gen. 63, 65.

<sup>4</sup> *Id.*

<sup>5</sup> *The General Assembly has provided for special assessment of local taxes for land preservation. Section 58.13229 specifies the policy behind the land preservation assessment: "An expanding population and reduction in the quantity and quality of real estate devoted to agricultural, horticultural, forest and open space uses make the preservation of such real estate a matter vital to the public interest. It is, therefore, in the public interest (a) to encourage the preservation and proper use of such real estate in order to assure a readily available source of agricultural, horticultural and forest products and of open spaces within reach of concentrations of population, to conserve natural resources in forms which will prevent erosion, to protect adequate and safe water supplies, to preserve scenic natural beauty and open spaces and to promote land-use planning and the orderly development of real estate for the accommodation of an expanding population, and (b) to promote a balanced economy and ameliorate pressures which force the conversion of such real estate to more intensive uses and which are attributable in part to the assessment of such real estate at values incompatible with its use and preservation for agricultural, horticultural, forest or open space purposes." Ch. 675, 1984 Va. Acts 1178, 1373.*

<sup>6</sup> *Loyola Fed. Savings v. Herndon*, 218 Va. 803, 805, 241 S.E.2d 752, 753 (1978).

<sup>7</sup> *WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY* 629 (1990).

<sup>8</sup> *WTAR Radio-TV v. Commonwealth*, 217 Va. 877, 879, 234 S.E.2d 245, 247 (1977).

<sup>9</sup> *Id.*; see also *Winchester TV Cable v. State Tax Com.*, 216 Va. 286, 290, 217 S.E.2d 885, 889 (1975).

<sup>10</sup> *WTAR Radio-TV*, 217 Va. at 879, 234 S.E.2d at 247; see also *Winchester TV Cable*, *supra* note 9.

<sup>11</sup> VA. CONST. art. X, § 6(f) (1971).

<sup>12</sup> *Forst v. Rockingham*, 222 Va. 270, 276, 279 S.E.2d 400, 403 (1981); see also *Commonwealth v. Wellmore Coal*, 228 Va. 149, 320 S.E.2d 509 (1984).

<sup>13</sup> In *City of Virginia Beach v. ESG Enterprises*, 243 Va. 149, 413 S.E.2d 642 (1992), the Supreme Court of Virginia held that "subsection C [of § 58.13237] is determinative of the timing and payment of the roll-back assessment," and that roll-back taxes could not be assessed "until a more intensive use of the property occurs." *Id.* at 153, 154, 413 S.E.2d at 644, 645. *ESG Enterprises* was decided January 10, 1992. At a later date in 1992, the General Assembly amended § 58.13237(C) to make it clear that liability for roll-back taxes attaches when either "a change in use occurs, or a change in zoning of the real estate to a more intensive use at the request of the owner or his agent occurs." Ch. 3, 1992 Va. Acts Spec. Sess. 2, 2.

November 19, 1993

**The Honorable Joyce L. Clark  
Commissioner of the Revenue for Orange County**

You note that a 1993 amendment to § 10.1–1011 of the Code of Virginia requires land that is subject to a perpetual conservation or open-space easement to be assessed and taxed at its open-space use value in any jurisdiction that has adopted use value assessment and taxation for any class of land. You ask several questions about the effect of this amendment:

1. May land under a conservation or open-space easement be assessed and taxed based on its value as open space without an application from its owner, and possibly without the owner's knowledge?
2. Does property that is subject to such easements have to be revalidated periodically to be assessed and taxed based on its open-space use value?
3. If a locality has adopted a use value assessment program that does not cover forest or open-space uses, would land under such easements that is used for forest or open-space purposes qualify for open-space use assessment?
4. Must all land that is subject to conservation or open-space easements be assessed at its open-space value, regardless of the actual use of such land?
5. What is the meaning of the clause in amended § 10.1–1011, stating “if the land otherwise qualifies for such assessment”?
6. Will property that is under a conservation easement qualify for use value assessment even though the property currently is not enrolled in the locality's use value assessment program?

**I. Applicable Constitutional and Statutory Provisions**

Article X, § 2 of the Constitution of Virginia (1971) generally requires all assessments of real property to be at fair market value, but also provides, in part:

The General Assembly may define and classify real estate devoted to agricultural, horticultural, forest, or open space uses, and may by general law authorize any county, city, town, or regional government to allow deferral of, or relief from, portions of taxes otherwise payable on such real estate if it were not so classified, provided the General Assembly shall first determine that classification of such real estate for such purpose is in the public interest for the preservation or conservation of real estate for such uses.

Both the Open–Space Land Act, §§ 10.1–1700 through 10.1–1705, and the Virginia Conservation Easement Act, §§ 10.1–1009 through 10.1–1016, deal with easements in gross.<sup>1</sup>

The Open–Space Land Act authorizes public bodies to protect open space by acquiring easements in gross that restrict the use of land to open-space uses. See § 10.1–1703. Section 58.1–3205 provides that the assessment of property subject to an open-space easement must reflect any change in market value resulting from the easement, while the value of the easement held by the public body is exempt from tax on the same basis as other property of the public body.

The Virginia Conservation Easement Act authorizes certain charitable organizations to accept easements in gross to preserve open space. See § 10.1–1009 (definition of “holder”); § 10.1–1010. Section 10.1–1011 relates to the taxation of property that is subject to conservation easements, and property that is subject to easements held by public bodies under the Open–Space Land Act. As amended in 1993, § 10.1–1011 provides:

Where the easement by its terms is perpetual, neither the interest of the holder of a conservation easement nor a third-party right of enforcement of such an easement shall be subject to state or local taxation nor shall the owner of the fee be taxed for the interest of the holder of the easement. Land which is (i) subject to a perpetual conservation easement held pursuant to this chapter or the Open Space Land Act (§ 10.1–1700 et seq.), (ii) devoted to open-space use as defined in § 58.1–3230, and (iii) in any county, city or town which has provided for land use assessment and taxation of any class of land within its jurisdiction pursuant to §58.1–3231 or §

58.1–3232, shall be assessed and taxed at the use value for open space, if the land otherwise qualifies for such assessment at the time the easement is dedicated. If an easement is in existence at the time the locality enacts land use assessment, the easement shall qualify for such assessment. Once the land with the easement qualifies for land use assessment, it shall continue to qualify so long as the locality has land use assessment.

The use value assessment program established by Article 4, Chapter 32 of Title 58.1, §§ 58.1–3229 through 58.1–3244, was enacted under the constitutional authority of Article X, § 2. Section 58.1–3230 designates four classifications of real estate that are eligible for use value assessment: agricultural, horticultural, forest and open-space use. Under § 58.1–3231, any local government that has adopted a land-use plan

may adopt an ordinance to provide for the use value assessment and taxation, in accord with the provisions of this article, of real estate classified in § 58.1–3230....

Land used in agricultural and forestal production within an agricultural district, a forestal district or an agricultural and forestal district that has been established under § 15.1–1506 et seq., shall be eligible for the use value assessment and taxation whether or not a local land-use plan or local ordinance pursuant to this section has been adopted.

Such ordinance shall provide for the assessment and taxation in accordance with the provisions of this article of any or all of the four classes of real estate set forth in § 58.1–3230.

Section 58.1–3233 requires:

Prior to the assessment of any parcel of real estate under any ordinance adopted pursuant to this article, the local assessing officer shall:

1. Determine that the real estate meets the criteria set forth in § 58.1–3230 ...;
2. Determine further that [the] real estate [meets the applicable minimum acreage requirements].  
... and
3. Determine further that real estate devoted to open-space use is (i) within an agricultural, a forestal, or an agricultural and forestal district ... or (ii) subject to a recorded perpetual easement that is held by a public body, and promotes the open-space use classification, as defined in § 58.1–3230, or (iii) subject to a recorded commitment entered into by the landowners with the local governing body, or its authorized designee, not to change the use to a nonqualifying use for a time period stated in the commitment of not less than four years nor more than ten years.... Such commitment shall run with the land for the applicable period, and may be terminated in the manner provided in § 15.1–1513 for withdrawal of land from an agricultural, a forestal or an agricultural and forestal district.

Section 58.1–3234 requires “[p]roperty owners [to] submit an application for taxation on the basis of a use assessment to the local assessing officer” within a specified time preceding the tax year for which use value taxation is sought and “whenever the use or acreage of such lands previously approved changes.” An application fee may be charged for all such applications. See *id.* The governing body may require annual revalidation of any applications previously approved, and may impose a revalidation fee every six years. See *id.*

Section 58.1–3236 directs the local assessor to keep records of two values on land subject to use value taxation. The assessor must

consider only those indicia of value which such real estate has for agricultural, horticultural, forest or open space use<sup>2</sup>.... In addition to use of his personal knowledge, judgment and experience ... he shall ... consider available evidence of agricultural, horticultural, forest or open space capability, and the recommendations of value of such real estate as made by the State Land Evaluation Advisory Council.

Section 58.1–3236(A).

The tax assessor also must value property in a use value program on the basis of its fair market value, and maintain the land book records “to show both the use value and the fair market value of such real estate.” Section 58.1–3236(D).

Section 58.1–3237 provides that when real estate qualifying for use value assessment changes to a use that is not so qualified, it shall be subject to additional taxes referred to as “roll-back taxes.”

Section 58.1–3239 directs the State Land Evaluation Advisory Council to “determine and publish a range of suggested values,” based on the productive earning power of real estate in the locality being used “for each of the several soil conservation service land capability classifications for agricultural, horticultural, forest and open space uses in the various areas of the Commonwealth as needed to carry out the provisions of this article.”

## **II. Section 10.1–1011 Requires Use Value Assessment and Taxation of Land Under Permanent Conservation or Open Space Easements in Any Locality with Use Value Assessment Program; Administrative Provisions of Use Value Assessment Statutes Do Not Apply**

By its plain language, § 10.1–1011 now requires lands permanently reserved as open space—under conservation or open-space easements meeting the requirements of § 58.1–3230—to be assessed and taxed in the same way as lands that are being so used temporarily under a local use value assessment program. As a result, property under such an easement may be assessed and taxed for its value as open space without any application by its owner and possibly without the owner's knowledge. Such a permanent easement affects the value of the ownership interest retained by the landowner, and the local tax assessing officer must take into account the effect of that change, as required by § 10.1–1011.

Section 10.1–1011 does not subject such perpetual conservation or open-space easements to the same application, revalidation, roll-back and other administrative requirements that apply to other property under a local use value assessment program. For property that is under a permanent easement meeting the requirements of § 58.1–3230, revalidation of the property's use is not necessary, because the landowner no longer has the right to change the property's use to another use that would be incompatible with the protection of open space. In my opinion, therefore, there is no need for revalidation or a revalidation fee on such property; nor is there any basis for imposing roll-back taxes.<sup>3</sup>

Under amended § 10.1–1011, if a locality has a use value program that does not cover forest and open-space uses, land under conservation or open-space easement used for forest or open-space uses still will qualify for open-space use value assessment. Land encumbered by such a perpetual easement meets the definitional requirement in § 58.1–3230 of being “preserved for ... conservation of land or other natural resources ... or scenic purposes.” Section 10.1–1011 reflects the General Assembly's conclusion that this tax treatment is appropriate, because the owners of land that is subject to such open-space or conservation easements permanently have protected open space and thus permanently have given up a part of their land's value.

Not all land that is subject to an easement is assessed at open-space values regardless of its use. Under § 10.1–1011, in jurisdictions that have adopted any use value assessment classification, only land that is both subject to a perpetual conservation or open-space easement and devoted to open-space use under § 58.1–3230 is required to be assessed at use value. If land that is under an open-space or conservation easement does not meet both these requirements, it does not meet the necessary qualifications for use value assessment.

In my opinion, the phrase “if the land otherwise qualifies for such assessment,” as used in § 10.1–1011, means that the land must be devoted to open space as defined in § 58.1–3230. Moreover, it is my opinion that properties under an open-space or conservation easement will qualify for use value assessment in a locality that has such a program, even though those properties are not currently in the use value program. Section 10.1–1011 makes it clear that lands under permanent easement need not already be enrolled in the use value assessment program to qualify for assessment based on their value as open space.

<sup>1</sup> “An easement in gross is not appurtenant to any estate in land or does not belong to any person by virtue of ownership of estate in other land but is mere personal interest in or right to use land of another[.]” *BLACK'S LAW DICTIONARY 510* (6th ed. 1990).

<sup>2</sup> *In determining the area devoted to the special use, real estate under structures or facilities used in connection with such use shall be included, but the farmhouse, or any other structures unrelated to such special use, shall be excluded in determining the area of such use. Section 58.1–3236(C). Structures not related to such use are to be “assessed and taxed by the same standards ... as other taxable structures and other real estate in the locality.” Id.*



<sup>3</sup> *If such an easement is violated, there is no provision in § 10.1–1011 or in §§ 58.1–3230, 58.1–3231 and 58.1–3232 that would apply the roll-back tax. Unpermitted development of such a property, however, would be evidence of a lack of enforcement of the easement, which would, after a reasonable time, make the land no longer subject to a “perpetual easement.” If the easement is not being enforced, the property will not be in compliance with the § 58.1–3233(3)(ii) requirement of promoting open-space use classification. Accordingly, such lack of enforcement of the easement ultimately would return the property to full fair market value assessment.*

August 25, 1993

**The Honorable James H. Chamblin  
City of Loudon**

This case is before the Court on the application of Luck Stone Corporation ("Luck") pursuant to Section 58.1-3984 to correct an allegedly erroneous assessment of roll-back taxes by the County of Loudoun ("County") on approximately 150 acres owned by Luck. Although several issues are presented in this case, the primary issue is whether the granting of a special exception is a change in zoning which causes the land to no longer be eligible for the land use program under Section 58.1-3237 and 58.1-3237.1.

For the reasons hereinafter set forth, I am of the opinion that the granting of a special exception is not a change in zoning. Further, the Court finds that there has been no change in the use of the property from the prior years when the County determined that the property was eligible for the land use program. The relief requested in the application is, therefore, granted.

#### **FACTS**

In 1989 Luck acquired the property in question. It is adjacent to Luck's existing quarry. Prior to its acquisition, at the time of its acquisition and from its acquisition to the date of the hearing the land has been used by Marvin Donohoe to graze cattle. At least as far back as 1987 the land has been in the land use program established by ordinance of the County because of agricultural (cattle grazing) and forestal use (approximately 30 to acres is wooded). Cattle have grazed over all the approximately 150 acres. There has been no change or discontinuance of such use. The land has been in the land use program for more than five years.

From the time of its acquisition by Luck in 1989 to the present the land has always been zoned A-3, an agricultural-residential zoning category under the Loudoun County Zoning Ordinance.

After Luck acquired the land, it applied to rezone the land from A-3 to I-1, an industrial zoning category, in August 1989. It paid an application fee of \$10,695.00. The purpose of the rezoning application was to permit future expansion of the quarry on this land. The I-1 zoning would allow such a use by right. During the review process individuals in the County Department of Planning, Zoning and Community Development did not support the rezoning request and suggested to Luck to seek a special exception from the Board of Supervisors to permit the extraction of natural resources in an A-3 zone as permitted by the zoning ordinance.

Luck withdrew the rezoning application, the County refunded the rezoning fee, and Luck, on April 4, 1990, filed an application for a special exception to permit extraction of natural resources within an A-3 zone and paid an application fee of \$4,388.00.

The Board of Supervisors granted the special exception on March 11, 1991, subject to 37 conditions. Luck has not expanded its quarry into this land. It has done nothing in furtherance of the special exception. None of the conditions have been met. As stated above, the use of the land has not changed since Luck acquired it in 1989.

In 1992 the County determined that the land covered by the special exception was not eligible for the land use program because of the granting of the special exception, and has assessed roll-back taxes, penalty and interest for the years 1987, 1988, 1989, 1990, 1991, 1992 and the first half of 1993. Luck has paid a portion of the assessed taxes under protest. The County claims unpaid taxes, penalty and interest of over \$140,000.00 through August 31, 1993.

The Court is aware that roll-back taxes are not assessed on all the land for all the foregoing years and that the land included in the special exception did not include all of the 150 acres or all of the land included in the rezoning application, but such distinctions are not necessary for the decision herein.

#### **CONCLUSIONS OF LAW**

Although counsel were not exactly specific as to what state statute or county ordinance formed the basis of the County's decision to assess roll-back taxes, it is apparent that the County's purported authority comes from either Section 58.1-3237 or Section 58.1-3237.1, or both. The statutes are similar, and basically provide that if real estate

in the land use program is “rezoned” or there is a “change in zoning” thereof to a more intense use at the request of the owner, then roll-back taxes attach.

The County may argue that special exceptions are a part of the zoning process, that the Supreme Court uses zoning law standards in reviewing special exception cases or that Luck's pursuit of the special exception violates the stated goals of the land use program, but I am of the opinion that this case is simply one of construing the statute or statutes which the County asserts as authority for imposing roll-back taxes because of the granting of the special exception.

Section 58.1-3237 (A) provides, in pertinent part:

“When real estate qualifies for assessment and taxation on the basis of use under an ordinance adopted pursuant to this article, and the use by which it qualified changes to a nonqualifying use, or the zoning of the real estate is changed to a more intensive use at the request of the owner or his agent, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes.” (Emphasis supplied).

The County asserted (and Luck did not argue otherwise) that Section 58.1-3237.1 applies to Loudoun County. Section 58.1-3237 (2) provides, in pertinent part:

The governing body may provide that when the zoning of the property taxed under the provisions of this article is changed to allow a more intensive nonagricultural use at the request of the owner or his agent, such property shall not be eligible for assessment and taxation under this article. (Emphasis supplied).

As can be seen from the statutes, the event that triggers the roll-back taxes is a “change” in “zoning”. The statutes do not provide that the granting of a special exception triggers roll-back taxes. Therefore, the County is not permitted to assess roll-back taxes unless the granting of a special exception constitutes a change in zoning.

In construing a statute the Court must ascertain and give effect to the intention of the legislature. The intention is determined from the words used in the statute. *Watkins vs. Hall*, 161 Va. 924, 930 (1934).

“Zoning” is defined in Section 15.1-430 (k):

“Zoning” or “to zone” means the process of classifying land within a governmental entity into areas and districts, such areas and districts being generally referred to as “zones”, by legislative action and the prescribing and application in each area and district of regulations concerning building and structure designs, building and structure placement and uses to which land, buildings and structures within such designated areas and districts may be put.

“Special exception” is defined in Section 15.1-430 (i):

“Special exception” means a special use, that is a use not permitted in a particular district except by a special use permit granted under the provisions of this chapter and any zoning ordinances adopted herewith.

By the statute zoning is the process of classifying land into zones and the prescribing and application in each zone of regulations concerning building and structure designs and placement and the uses to which the land, buildings and structures may be put. By statute a special exception is a special use, i.e. a use permitted only by a special use permit. It is a use “to which land . . . may be put” under the zoning ordinance. The County prescribed this use when it adopted the zoning ordinance. Put another way, the adoption of a zoning ordinance is the means to accomplish the process defined in Section 15.1-430 (k) as “zoning”; and the process prescribed the special use permitted by special use permit defined in Section 15.1-430 (i) as a special exception.”

The authority cited by Luck from other jurisdictions, e.g. *Stoddard vs. Edelman*, 4 Cal. App. 3d 544 (1970); *Board of County Commissioners of Washington County vs. H. Manny Holtz, Inc.*, 65 Md. App. 574 (1985), hold, in my opinion, correctly that a special exception is not a “rezoning.” There can be no logical argument that “rezoning” and “change in zoning” are not synonymous.

At 83 Am Jur 2d Zoning and Planning Section 962, it is stated as follows:

The grant of a special use permit through an ordinance is not an amendment of the general zoning ordinance. Rezoning contemplates the amendment of an existing zoning ordinance which changes the zoning classification of a previously zoned area. On the other hand, while the granting of an unclassified use permit may authorize a change in land use, the issuance of a special permit contemplates an exception granted pursuant to a previously existing zoning ordinance, subject to certain guides and standards laid down therein. (Emphasis supplied).

Under Section 15.1-486 the zoning of property is accomplished when the governing body by ordinance classifies territory within its jurisdiction. Similarly, under Section 15.1-491 (g) a rezoning or change in zoning occurs when the governing body by ordinance amends the property's zoning classification. *Laird vs. City of Danville*, 225 Va. 256, 261 (1983). The County did not amend the property's zoning classification by ordinance when the special exception was granted. The text of the zoning ordinance has remained the same. There has been no amendment to the zoning ordinance. Hence, there has been no change in zoning.

Not only are “zoning” and “special exception” different under the statutory definitions, but also there are differences found in both state and local law. The County treats applications for rezoning different from applications for a special exception in the area of the fee charged the applicant. The Board of Supervisors can impose conditions on a special exception (for example, the 37 conditions placed on Luck's special exception), but it cannot on a rezoning (only the applicant can proffer conditions). Specifically, in this case the Board of Supervisors placed a 60 year time limit on the special exception, but it could not have placed a time limit on a rezoning. Only the Board of Supervisors can rezone land, but the authority to issue special exceptions can be delegated to another entity; e.g. Board of Zoning Appeals.

This Court approached the statutes in this case in the same manner as the Supreme Court approached Section 58.1-3237 (as it then existed) in *City of Virginia Beach vs. ESG Enterprises*, 243 Va. 149 (1992). The statutes are clear and unambiguous. They refer to changes in zoning. They do not refer to the granting of a special exception. If the legislature had intended to include the granting of a special exception as a mechanism to trigger roll-back taxes, then it could easily have included it in the statutes.

There is no need to address the issue of whether extraction of natural resources is complimentary to the agricultural use of the land under Section 848.045 of the County ordinances because the zoning of the land has not changed. Hence, the complimentary use issue never comes into play.

The County's argument that the roll-back taxes should be imposed because Luck's obtaining of the special exception violates the primary purpose of the land use program to preserve land used for agricultural, horticultural, forest and open space (see Section 58.1-3229) is not persuasive. First, there is no statute that allows the assessment of roll-back taxes if a landowner does something that violates the primary purpose of the land use program. Secondly, until the recent amendments to the statutes to provide that a change in zoning can trigger roll-back taxes, only a change to a non-qualifying use would trigger roll-back taxes. Presumably, this is exactly the point made by the Supreme Court in the Virginia Beach case which led to the 1992 amendments to the statutes. Thirdly, the taxation of land on a land use assessment is based on the use to which the land is actually being put, and not the use to which it might legally be put in the future, except in the case of a change in zoning. The legislature decided to allow a tax break based on the lower land use assessment based in turn on the actual use of the land as the means to encourage preservation of land for the four purposes. If the legislature had wanted to base land use programs upon the potential uses of a parcel of real estate, then it could have done so, but it decided not to do so.

Let Mr. Ackerly submit an order consistent herewith granting Luck the relief requested in its application to which Ms. Gilmore may note her exception.

January 8, 1993

**The Honorable Alice Jane Childs  
Commissioner of the Revenue of Fauquier County**

You ask whether a tract of land titled in the name of a trustee and held for a sole beneficiary should be considered “in the same ownership” as the contiguous tract titled only in the name of the sole beneficiary, for purposes of combining the acreage of contiguous parcels under § 58.1–3233 of the Code of Virginia.

**I. Applicable Statutes**

Sections 58.1–3229 through 58.1–3244 permit localities to adopt ordinances allowing real property devoted to agricultural, horticultural, forest or open space use to be assessed for the purposes based on its value for such use.

Section 58.1–3229 declares the preservation of land devoted to those uses to be “vital to the public interest.” And states that the intent of use value assessment is to “ameliorate pressures which force the conversion of such real estate to more intensive uses and which are attributable in part to the assessment of such real estate at values incompatible with its use and preservation for agricultural, horticultural, forest or open space purposes.” Ch. 675, 1984 Va.Acts 1178, 1373 (§ 58.1–3229 not set out in Code).

Section 58.1–3233 details determinations to be made by the assessing officer to make property eligible for assessment on the basis of its use value, including certain minimum acreage requirements. Section 58.1–3233(2) provides that “[t]he minimum acreage requirements for special classifications of real estate shall be determined by adding together the total area of contiguous real estate ... titled in the same ownership.” (Emphasis added.)

**II. Legal Title to Property Vested in Trustee; Equitable Title in Beneficiary**

The Code does not define “ownership” for purposes of applying the provisions of § 58.1–3233, and there has been no judicial interpretation of the terms as used in that statute. In the absence of such statutory or judicial definition, the term should be given its plain and ordinary meaning. *Anderson v. Commonwealth*, 182 Va. 560, 565–66, 29 S.E.2d 838, 840–41 (1944); 1989 Att’y Gen. Ann. Rep. 317, 318. Generally, “owner” is defined as:

The person in whom is vested the ownership, dominion, or title of property....

\* \* \*

The term “owner” is used to indicate a person in whom one or more interests are vested for his own benefit. The person in whom the interests are vested has “title” to the interests whether he holds them for his own benefit or for the benefit of another. *Black’s Law Dictionary* 1105 (6th ed. 1990).

A “trust” is defined as “[a] fiduciary relationship in which one person is the holder of the title to property subject to an equitable obligation to keep or use the property for the benefit of another.” *Id.* at 1508.

Property held in trust has both a “legal owner” and an “equitable owner.” The “legal owner” is

[o]ne who is recognized and held responsible by the law as the owner of property. In a more particular sense, one in whom the legal title to real estate is vested, but who holds it in trust for the benefit of another, the latter being called the “equitable” owner.

*Id.* at 1106. The “equitable owner” is

[o]ne who is recognized in equity as the owner of property, because the real and beneficial use and title belong to him, although the bare legal title is vested in another, e.g., a trustee for his benefit. One who has a present title in land which will ripen into legal ownership upon the performance of conditions subsequent. There may therefore be two “owners” in respect of the same property, one the nominal or legal owner, the other the beneficial or equitable owner *Id.* at 1105.

**III. Treating Subject Properties as “in Same Ownership” Is Consistent with Expressed Legislative Intent**

The primary object of statutory construction is to ascertain and give effect to legislative intent. See *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983); 1991 Att’y Gen. Ann. Rep. 58, 60. The legislative intent clearly expressed in § 58.1–3229 is encouragement of preservation of land in agricultural, horticultural, forest and open space use. Manifestly, the requirement in § 58.1–3233(2) for a minimum acreage of contiguous parcels “in

the same ownership” is intended to ensure that tracts of land receiving the tax benefits of use value assessment are and remain sufficiently large to provide the public benefits the General Assembly has identified.<sup>1</sup>

In my opinion, that public benefit is not adversely affected by having one of the adjacent qualifying tracts titled in the name of a trustee and the other tract titled in the name of that trustee's sole beneficiary. The beneficiary has the equitable, beneficial ownership of both tracts. In the facts you present, therefore, the tracts are “in the same ownership” for purposes of § 58.1-3233(2).

<sup>1</sup> Section 58.1-3015 provides that, “[i]f the property is held in trust for the benefit of another, it shall be listed by and taxed to the trustee, if there be any in this Commonwealth, and if there be no trustee in this Commonwealth, it shall be listed by and taxed to the beneficiary.” This reflects the fact that the beneficiary ultimately is responsible for real estate taxes, because they constitute a lien on his beneficial interest in the property

September 21, 1990

**The Honorable James W. Hopper  
County Attorney for Powhatan County**

You ask whether the board of supervisors of a county may direct the officer assessing real estate in the county for tax purposes to assess according to the property's existing use, rather than its highest and best use. You also ask whether a board of supervisors may enact an ordinance designating all private residences in a certain part of the county as "real estate devoted to agricultural use" in order to make those residential properties eligible for use value assessment and taxation under a county ordinance adopted pursuant to §§ 58.1-3229 through 58.1-3244 of the Code of Virginia.

**I. Applicable Constitutional and Statutory Provisions**

Article X, 2 of the Constitution of Virginia (1971) establishes a general requirement that "[a]ll assessments of real estate and tangible personal property shall be at their fair market value." The same section of the Constitution further permits the General Assembly to "define and classify real estate devoted to agricultural, horticultural, forest or open space uses," to declare that the public interest requires preservation of those uses and to authorize local governments, within prescribed limits, to allow relief from, or deferral of, portions of the tax that would be payable on such real estate if it were not classified and valued on the basis of such use.

Section 58.1-3201 provides that "all real estate, except that exempted by law, shall be subject to annual taxation,' and requires that all assessments of real estate be at "100 percent fair market value"

Acting pursuant to Article X, 2, the General Assembly has adopted §§ 58.1-3229 through 58.1-3244, authorizing and detailing procedures for local use value assessment and taxation of the constitutionally permitted classes of property.

Section 58.1-3230 specifies that

*'[r]eal estate devoted to agricultural use'* shall mean real estate devoted to the bona fide production for sale of plants and animals useful to man under uniform standards prescribed by the Commissioner of Agriculture and Consumer Services or devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government.

**II. Board of Supervisors May Not Order Assessments of Real Estate at Less than Fair Market Value**

The answer to your first inquiry is dictated by the constitutional and statutory requirement for uniform assessments at 100 percent fair market value. Va. Const. Art. X, 2; Va. Code Ann. § 58.1-3201. Fair market value is the price a property will bring when it is offered for sale by a willing seller who is under no compulsion to sell, and if bought by a willing buyer who is under no necessity of having the property. *Woman 's Club v. City of Richmond*, 199 Va. 734, 737, 101 S.E.2d 571, 574 (1958). All uses to which the property may be adapted are to be considered in determining the value, not only the current use. *Id.* at 738, 101 S.E.2d at 574. The taxing authority must assess in a manner that avoids "all disuniformity reasonably avoidable" *Perkins v. Albemarle*, 214 Va 416, 418, 200 S.E.2d 566, 568 (1973). Fair market value, not current use, is the constitutionally mandated criterion. *See City of Waynesboro v. Keiser*, 213 Va. 229, 234, 191 S.E.2d 196, 199 (1972); see also 1987-1988 Att'y Gen. Ann. Rep 534.

Any directive by a board of supervisors that certain property should be assessed only on the basis of its existing use manifestly would result in the assessing officer's having to disregard the higher values that some properties would bring if sold by a willing seller and bought by a willing buyer for some higher category of lawfully permitted use. Based on the cases discussed above, I am of the opinion that Article X, 2 and § 58.1-3201 prohibit a board of supervisors from enacting such a directive, except as provided for agricultural, horticultural, forestal and open space use value assessments under §§ 58.1-3229 through 58.1-3244.

**III. Board of Supervisors May Not Classify All Residential Property in Designated Area as Agricultural to Make Property Eligible for Use Value Assessments**

As discussed above, a board of supervisors may make agricultural property eligible for use value assessment. In doing so, however, the board must adhere to the requirements set forth in §§ 58.1-3229 through 58.1-3244.

The definition contained in § 58.1-3230 makes it clear that, to be eligible for assessment based on agricultural use value, a property must actually be in use for the bona fide production of agricultural products for sale, or be withheld from productive use under a federal soil conservation program. To be deemed agricultural the use of the property must

meet uniform standards adopted by the Commissioner of Agriculture and Consumer Services. A board of supervisors obviously may not ignore the plain language of this statutory definition and adopt its own inconsistent definition that includes properties not actually being put to agricultural use. *See* 1989 Att'y Gen. Ann. Rep 113, 115.

Any such designation of residential properties that was limited solely to a particular area of the county would, moreover, violate the requirement that assessments be uniform on all property of the same classification within the county. *See Perkins v. Albemarle*, 214 Va. at 418-19, 200 S.E.2d at 568-69.

It is my opinion, therefore, that a board of supervisors may not adopt an ordinance of the nature described in your second inquiry.



February 7, 1990

**The Honorable Joseph Rigo  
Commissioner of the Revenue for York County**

You ask several questions arising from the subdivision of a parcel of land into five smaller parcels. The original parcel qualified for land-use taxation.<sup>1</sup>

**I. Facts**

The original parcel of land owned by *A* had been assessed since 1958 as 50.49 acres, measured by metes and bounds in the original conveyance. You state that the parcel had been in land-use taxation since the enactment of this program in York County. In 1978, *A* deeded a portion of his parcel to his son, *B*. In this conveyance, *A* thought he was transferring a ten-acre parcel to *B*. A survey later measured *B*'s parcel at 22.79 acres, however, and not ten acres. When *B* recorded this plat of survey in 1983, your office corrected *B*'s assessment in the land book to be 22.79 acres, rather than ten acres. *A*'s remaining parcel was not surveyed, and no plat has been recorded on the remainder. *A*'s real estate assessment has not changed.

In 1987, *A* deeded 15.04 surveyed acres from the original parcel of land to another son, *C*. *A* then assumed his unsurveyed remainder parcel consisted of 25.45 acres, as assessed by your office. *A* deeded the residual property in three parcels to his daughters *D*, *E* and *F*. When those parcels were surveyed, however, they totaled only 13.57 acres, not 25.45, with no land remaining, and each individual parcel was less than five acres.

Based on these facts, you ask whether (1) *A*'s unsurveyed remainder parcel should have been reduced on the land book by the additional 12.79 acres added to *B*'s parcel; (2) roll-back taxes are precipitated by *A*'s transfer of the parcels to *D*, *E* and *F*; and (3) *A*, upon his written application, is entitled to a refund pursuant to § 58.1-3990 of the Code of Virginia for taxes paid on acreage previously conveyed.

**II. Applicable Statutes**

Section 58.1-3281 requires the commissioner of the revenue to ascertain all the real estate and the person to whom it is chargeable with taxes a January 1 of each year. Section 58.1-3313 requires the commissioner of the revenue to correct mistakes made in land book entries.

Section 58.1-3241 requires that individual lots split off from qualifying parcels shall meet the minimum acreage requirement to qualify for land-use taxation or be subject to roll-back taxes. Section 58.1-3241(A) provides:

Separation or split-off of lots, pieces or parcels of land from the real estate which is being valued, assessed and taxed under an ordinance adopted pursuant to this article [Article 4, Chapter 32 of Title 58.1], either by conveyance or other action of the owner of such real estate, shall subject the real estate so separated to liability for the roll-back taxes applicable thereto, but shall not impair the right of each subdivided parcel of such real estate to qualify for such valuation, assessment and taxation in any and all future years, provided it meets the minimum acreage requirements and such other conditions of this article as may be applicable... .

No subdivision of property which results in parcels which meet the minimum acreage requirements of this article, and which the owner attests is for one or more of the purposes set forth in § 58.1-3230, shall be subject to the provisions of this subsection.

Section 58.1-3233 details the duties of a commissioner of revenue in the assessment of real estate for land-use taxation. The minimum five-acre requirement is described in § 58.1-3233 (2).

Section 58.1-3990 authorizes local governing bodies by ordinance to provide for refunds of local taxes erroneously paid and provides, in part:

If such ordinance be passed, and the commissioner of the revenue is satisfied that he has erroneously assessed any applicant with any local taxes, he shall certify to the tax collecting officer the amount erroneously assessed . . .

\* \* \*

No refund shall be made in any case when application there for was made more than three years after the last day of the tax year for which such taxes were assessed . . .

### **III. Remainder of A's Unsurveyed Parcel Should Be Reduced by Additional Acreage Added to B's Parcel**

You first ask whether A's unsurveyed remainder parcel should have been reduced on the land book by the additional 12.79 acres shown to be part of B's parcel by the survey and the plat recorded in 1983. Section 58.1-3281 requires a commissioner of the revenue to determine ownership of real estate on January 1 of each year.

In this instance, A's original parcel had been assessed since 1958 on 50.49 acres. The survey of the parcel A conveyed to son B in 1978 showed the new parcel to include 22.79 acres rather than the approximately ten acres deeded by metes and bounds. Prior Opinions of this Office conclude that a commissioner of the revenue should correct acreage figures shown in the land book upon receiving information that the existing land book figures are incorrect. See Att'y Gen. Ann. Rep: 1985-1986 at 298; 1982-1983 at 105; 1972-1973 at 85.

The best information available in the facts you present demonstrates that 22.79 acres was conveyed from the original tract of 50.49 acres. It is my opinion that § 58.1-3313 requires a commissioner of the revenue to correct acreage figures shown in the land book to reflect the best information available. It is further my opinion, therefore, that A's unsurveyed remainder parcel should have been reduced on the land book by the additional 12.79 acres shown to be part of B's parcel by the plat recorded in 1983.

### **IV. Individual Lots Must Meet Acreage Requirement for Eligibility for Land-Use Taxation**

You next ask whether A's conveyance of the three residual parcels to children D, E and F subjects these parcels to liability for roll-back taxes.

Each individual lot or parcel separated from a parcel that has been assessed under land-use taxation must satisfy the minimum acreage requirements of § 58.1-3233 to avoid subjecting the separated lot or parcel to liability for roll-back taxes. See § 58.1-3241(A). Prior Opinions of this Office consistently conclude that the separation of lots that do not meet the minimum acreage requirements triggers the application of roll-back taxes. Att'y Gen. Ann. Rep.: 1986-1987 at 306; 1985-1986 at 305; 1982-1983 at 545; 1979-1980 at 339.

In the facts you present, none of the three parcels conveyed by A to children D, E and F contains the required five acres. It is my opinion, therefore, that A's conveyance of the three residual parcels to D, E and F subjects each of these three parcels to liability for roll-back taxes.

### **V. Taxpayer May Apply for Refund of Taxes Erroneously Paid Due to Error in Number of Acres Assessed**

Your final question is whether A, upon his written application, is entitled to a refund pursuant to § 58.1-3990 for taxes paid on acreage previously conveyed. I assume that the jurisdiction you serve has enacted an ordinance pursuant to § 58.1-3990 to provide for refunds of local taxes erroneously paid. Taxes assessed against, and paid by, A on acreage previously conveyed would constitute an erroneous assessment and payment. It is my opinion, therefore, that upon application of A, refunds would be due him for taxes paid on that acreage, subject to the applicable three-year statute of limitations on such refunds.

### **VI. Summary**

To summarize, it is my opinion in the facts you present that:

1. A's unsurveyed remainder parcel should be reduced in the land book by the additional acreage added to B's parcel by survey;
2. Roll-back taxes are due on the parcels transferred to D, E and F because the individual lots do not meet the minimum acreage requirement for land-use taxation; and
3. A is entitled to a refund for the applicable three-year limitation period under an ordinance passed pursuant to § 58.1-3990 for taxes erroneously assessed and paid on acreage previously conveyed.

*VIRGINIA's statutes concerning "Special Assessment for Land Preservation" are detailed in Va. Code Ann. § 58.1-3229 to 58.1-3244.*

March 16, 1989

**The Honorable Benjamin L. Pinckard  
Commissioner of the Revenue for Franklin County**

You ask whether contiguous parcels of real estate shown on a recorded plat may be combined to form tracts that contain at least twenty acres devoted to forest use and, thereby, be eligible for use value assessment.

**I. Facts**

You provide two recorded plats that divide single tracts of land into multiple parcels, each of which is larger than five acres. You state that the division of property into lots greater than five acres in area does not constitute a subdivision under the county's subdivision ordinance. The plats, therefore, did not require the approval of the county subdivision agent prior to their recordation.

**II. Applicable Statutes**

Article 4, Ch.32 of Tit.58.1, §§ 58.1-3229 through 58.1-3244 of the Code of Virginia, provides for the use value assessment of real property to encourage the preservation of land for agricultural, horticultural, forest and open space uses. Section 58.1-3233(2) requires that property devoted to forest use consist of at least twenty acres to qualify for use value assessment. Section 58.1-3233(2) further provides that "[t]he minimum acreage requirements for special classifications of real estate shall be determined by adding together the total area of contiguous real estate excluding recorded subdivision lots titled in the same ownership. For purposes of this section, properties separated only by a public right of way are considered contiguous."<sup>1</sup>

Article 7, Ch. 11 of Tit. 15.1, §§ 15.1-465 through 15.1-485 provides for the orderly subdivision of land in Virginia localities. Section 15.1-465 requires that Virginia localities adopt a subdivision ordinance. Section 15.1-466 generally details the authorized provisions for local subdivision ordinances. Section 15.1-430(1) defines the term "subdivision" as follows:

*'Subdivision,' unless otherwise defined in a local ordinance adopted pursuant to § 15.1-465, means the division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation of any single division of land into two lots or parcels, a plat of such division shall be submitted for approval in accordance with § 15.1-475. The subdivision of property must be accomplished in compliance with the local subdivision ordinance. See §§ 15.1-473 and 15.1-475.*

**III. Parcels Shown on Plat of Division Not Subject to Local Subdivision Ordinance and, Remaining Under Common Ownership, May be Combined to Satisfy Minimum Acreage Requirements**

A prior Opinion of this Office concludes that § 58.1-3233(2) authorizes the combination of contiguous parcels of real estate for the purpose of satisfying the minimum acreage requirement of this statute only when the contiguous parcels are titled in the same ownership. *See* Opinion to Patrick J. Morgan, County Attorney for New Kent County, dated October 27, 1988 (copy enclosed). *Compare* 1986-1987 Att'y Gen. Ann. Rep.306 (prior Opinion rendered before 1988 amendment to § 58.1-3233(2) concluding that landowner may not combine recorded subdivision lots to qualify for land use taxation). Recorded subdivision lots, whether under common ownership or separately owned, may not be combined to satisfy the minimum acreage requirements. *Id.*

I assume, therefore, for purposes of this Opinion, that the separate parcels shown on the plats you present remain under common ownership. If the resulting parcels are not under common ownership, the contiguous parcels may not be combined in any event to satisfy the minimum acreage requirement. *See* § 58.1-3233(2). The question presented by your inquiry, therefore, is whether the reference to "recorded subdivision lots" in § 58.1-3233(2) refers to a subdivision plat recorded under a subdivision ordinance or to any division of a tract of land.

The primary object of statutory construction is to ascertain and give effect to legislative intent. *See Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983). The purpose of a subdivision ordinance is "to assure the orderly subdivision of land and its development" *See* § 15.1-465. Among the concerns addressed by subdivision ordinances are the coordination of existing and planned streets, the provision of drainage, water, and sewerage systems, and the preservation of critical slopes. *See* § 15.1-466(A). *See also* 1986-1987 Att'y Gen. Ann. Rep. 121, 123. Section 15.1-430(1) defines the term "subdivision" but authorizes local governments to adopt a definition of

"subdivision" that differs from the statutory definition based on existing local conditions. *See also Board of Supervisors v. Land Company, 204 Va. 380, 131, S.E.2d 290 (1963).*

The purposes of the use value assessment is to create a financial incentive to encourage the preservation and proper use of real estate devoted to agricultural, horticultural, forest and open space uses. *See* § 58.1-3229. The minimum acreage requirements of § 58.1-3233(2) manifestly are intended to limit eligibility for use value assessment to tracts of sufficient size to contribute to the overall goal of preserving valuable agricultural, horticultural, forest and open space areas. The evident purpose of the 1988 amendment to § 58.1-3233(2) was to permit a property owner to combine contiguous parcels he owns to satisfy the minimum acreage requirements.

If a property owner who has combined contiguous parcels for purposes of use value assessment subsequently transfers title to one of these parcels and the remaining parcel or parcels do not meet the minimum eligibility requirements of § 58.1-3233(2), the property owner would be subject to rollback taxes pursuant to § 58.1-3241. If an existing tract of land is divided into large parcels that are not subject to the county subdivision ordinance and the resulting parcels remain under common ownership, the eligibility of the resulting combined parcels for use value assessment is consistent with the purpose of preserving the property for the protected uses. *Id.* On the other hand, the division of a tract under the subdivision ordinance contemplates the sale of the parcels to multiple owners.

Considering the purposes of both the use value assessment statutes and the subdivision enabling statutes, therefore, it is my opinion that the reference to recorded subdivision lots in § 58.1-3233(2) refers to a subdivision plat recorded under the local subdivision ordinance. It is further my opinion, therefore, that parcels resulting from a plat not subject to the local subdivision ordinance may be combined to satisfy the minimum acreage requirements if the resulting parcels remain under common ownership.

*'See Ch. 462, 1988 Va. Acts 575, 576.*

October 11, 1988

**The Honorable Catherine V. Ashby  
The Commissioner of the Revenue for Loudon County**

You ask whether the three-year deferral period in § 58.1-3237 (D) of the Code of Virginia applies when the prior rezoning of the property to a more intensive use was initiated by county government. You also ask if my conclusion changes if the real property previously was taxed under the land use program but was removed pursuant to the provisions of § 58.1-3237.1(1).

**I. Applicable Statutes**

Section 58.1-3237(D) provides:

Real property rezoned to a more intensive use, at the request of the owner or his agent, shall be subject to the roll-back tax at the time the zoning is changed. Real property rezoned to a more intensive use before July 1, 1988, at the request of the owner or his agent, shall be subject to the roll-back tax at the time the qualifying use is changed to a nonqualifying use. No real property rezoned to a more intensive use at the request of the owner or his agent shall be eligible for taxation and assessment under this article, provided that these provisions shall not be applicable to any rezoning which is required for the establishment, continuation, or expansion of a qualifying use. If the property is subsequently rezoned to agricultural, horticultural, or open space, it shall be eligible for consideration for assessment and taxation under this article only after three years have passed since the rezoning was effective. [Emphasis added.]

Section 58.1-3237.1 allows certain counties to include additional, more restrictive provisions in any ordinance adopted pursuant to Art. 4, Ch. 32 of Tit. 58.1, which concerns land use classification for real estate taxation. Section 58.1-3237.1(1) provides, for instance, that "[t]he governing body may exclude land lying in planned development, industrial or commercial zoning districts from assessment under the provisions of this article. This provision applies only to zoning districts established prior to January 1, 1980."

**II. Facts**

You state that, in the early 1970s, the Board of Supervisors of Loudoun County, on its own initiative, designated certain property for an industrial use category. The county implemented a land use tax program, but the property referred to above was never included in the program. In 1988, the property was rezoned to an agricultural use category. Under these circumstances, you ask whether the owner must wait three years before the property is eligible to be included in the land use program.

In your second fact situation, you state that the property once had been taxed under the land use program but had been removed pursuant to the provisions of § 58.1-3237.1(1). This land subsequently was rezoned to agricultural use. You ask whether the three-year waiting period applies to these facts.

**III. Three-Year Period in § 58.1-3237(D) Applies Only if Original Rezoning Made at Request of Owner or Agent**

In the interpretation and construction of a statute, the purpose for which it is enacted is of primary importance. *Norfolk So. Ry. Co. v. Lassiter*, 193 Va. 360, 68 S.E.2d 641 (1952). Since there is nothing in § 58.1-3237(D) which compels a different interpretation, the words in this statute are to be given the usual meaning they express, including their proper grammatical effect. *See* 1986-1987 Att'y Gen. Ann. Rep. 53. Both the purpose and the language of § 58.1-3237(D) support the conclusion that the three-year deferral period applies only if the original rezoning was at the request of the owner or his agent.

Unlike § 58.1-3237(A), § 58.1-3237(D) applies generally at the time qualifying land, because of a change in zoning, becomes subject to a more intensive use, regardless of the actual use of the property.<sup>1</sup> The purpose of § 58.1-3237(D), therefore, is to encourage the continuation of the qualifying use by discouraging landowners from obtaining the rezoning of previously eligible property. This purpose is not furthered, and may be hindered, by applying the three-year waiting period to zoning changes not requested by the owner. A landowner whose property becomes eligible for land use taxation will be more likely to continue the qualifying use without a three-year waiting period.

The grammatical construction of § 58.1-3237(D) also supports the conclusion that the three-year waiting period does not apply if the original rezoning was not at the request of the owner. Each of the first three sentences in § 58.1-

3237(D) refers to "real property rezoned to a more intensive use at the request of the owner or his agent." The fourth sentence refers only to "the property." "The," as a definite pronoun, denotes a particular or specified person or thing -- in this instance, the real property described in the preceding sentences. It is my opinion, therefore, that the three-year waiting period in § 58.1-3237(D) applies only if the original rezoning was requested by the owner or his agent.

**IV. Three-Year Deferral of Eligibility Does Not Apply to Land Rezoned Agricultural upon Removal from Planned Development, Industrial or Commercial Zoning District Under § 58.1-3237.1(1)**

Section 58.1-3237.1(1) allows a county to limit the extent of deferral or relief from taxation based on land use. See Opinion to the Honorable V. Earl Dickinson, Member, House of Delegates, December 22, 1987 (copy enclosed). This statute does not require a three-year deferral of eligibility upon a change in zoning under the second set of circumstances you present, and it is my opinion that the purpose of the statute would not be furthered by such a requirement. Because the original removal from eligibility was not at the request of the owner or his agent, it is further my opinion that § 58.1-3237(D) likewise does not require a deferral period following the subsequent rezoning.

*<sup>1</sup> If the rezoning to a more intensive use occurred before July 1, 1988, roll-back tax liability does not attach until the use changes. See § 58.1-3237(D).*

**The Honorable V. Earl Dickinson  
Member, House of Delegates**

You ask three questions concerning the special assessment and taxation of agricultural, horticultural, forest, or open-space real estate provided by Art. X, § 2 of the Constitution of Virginia (1971) and §§ 58.1-3229 through 58.1-3244 of the Code of Virginia. Specifically, you ask whether (1) § 58.1-3237.1 unconstitutionally permits a locality which has adopted a land use ordinance to exclude property in certain zoning districts from such tax treatment; (2) property owners so excluded should be compensated by the locality for the difference between property taxes paid at market value and at land use values while such property remains in an otherwise qualifying land use; and (3) the remaining provisions of § 58.1-3237.1 are constitutional.

**I. Applicable Law**

Article X, § 2 authorizes the General Assembly to enact general laws to permit local governments to ordain tax deferral or relief on agricultural, horticultural, forest, or open-space land. This exception to the general provision that real estate must be taxed at its fair market value also provides that "(i)n the event the General Assembly defines and classifies real estate for such purposes, it shall prescribe the limits, conditions, and extent of such deferral or relief." *Id.* (emphasis added).

Section 58.1-3237.11 prescribes the limits, conditions and extent of tax deferral or relief as required by Art. X, § 2. It authorizes any county not organized under the forms of local government in Chs. 13, 14 or 15 of Tit. 15.1 2 and which is contiguous to a county with the urban executive form of government to add to its land use ordinance provisions to exclude from land use assessment: (1) land lying in planned development, industrial or commercial zoning districts, or (2) land enrolled under a land use ordinance where the zoning of the parcel is changed at the request of the owner or his agent to allow a more intensive nonagricultural use. Property under the second exclusion is subject to roll-back taxes at the time of the zoning change. The second exclusion does not apply to property zoned for agricultural use when rezoning to a more intensive use is complementary to agricultural use, the agricultural use continues, and there is no change in ownership after the rezoning request.

**II. Section 58.1-3237.1 Consonant with Authority of General Assembly Granted in Art. X, § 2**

In accordance with Art. X, § 2, the General Assembly has defined and classified real estate devoted to agricultural, horticultural, forest, or open-space uses and authorized any county, city, or town which has adopted a land use plan to adopt an ordinance to tax such land at its use value. See §§ 58.1-3229 through 58.1-3244. Article X, § 2 mandates that the General Assembly must then prescribe the limits, conditions, and extent of deferral or relief from taxation based on such land use classifications. Section 58.1-3237.1 is consonant with this constitutional mandate because it addresses the limits, conditions and extent of land use assessment and taxation.

**III. Section 58.1-3237.1 [\*4] Constitutional; No Authority or Basis Exists for Payment to Property Owners Excluded from Land Use Assessment**

Based on the above, it is my opinion that the § 58.1-3237.1 exclusion from land use assessment and taxation for property located in certain zoning districts is constitutionally permissible because it falls within the General Assembly's duty to prescribe the limits, conditions, and extent of deferral or relief from real estate taxation based on land use provided in Art. X, § 2. For the same reason, it is my opinion that the additional provisions of § 58.1-3237.1 are constitutional.

Property made ineligible for land use assessment and taxation under the provisions of § 58.1-3237.1 is to be assessed at its fair market value. See Art. X, § 2. It is my opinion, therefore, that there is no basis for compensating owners of such property for the difference between property taxes paid at market value and the taxes paid at land use value. Any such payment would effectively make nonuniform the taxes "upon the same class of subjects<sup>3</sup> within the territorial limits of the authority levying the tax" in violation of Art. X, § 1.

<sup>1</sup> Chapter 628, 1987 Va. Acts 1047.

<sup>2</sup> Respectively, those forms of local government are: county executive form and county manager form; county manager plan and county board form; and urban county executive form.

<sup>3</sup> The class of subjects in this instance is all real estate not enrolled in the land use taxation program.





**The Honorable Staige F. Miller, Jr.  
Commissioner of the Revenue for Warren County**

You ask two questions concerning roll-back tax liability under § 58.1-3237 of the Code of Virginia. You first ask whether the seller of property enrolled in a land use assessment program can give a general warranty deed stating that the property is free from all encumbrances. You next ask whether the Virginia Port Authority (the "VPA") is liable to the locality for the roll-back tax when it purchases land enrolled in a land use assessment program and then changes the use to one which disqualifies the land from the land use assessment program.

**I. Applicable Statute**

Section 58.1-3237 provides, in pertinent part:

- A. When real estate qualifies for assessment and taxation on the basis of use under an ordinance adopted pursuant to this article, and the use by which it qualified changes to a nonqualifying use, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes . . . .
- C. Liability to the roll-back taxes shall attach when a change in use occurs . . . . The owner of any real estate rezoned as provided in subsection D, or liable for roll-back taxes, shall, within sixty days following such change in use or zoning, report such change to the commissioner of the revenue or other assessing officer on such forms as may be prescribed. The commissioner shall forthwith determine and assess the roll-back tax, which shall be assessed against and paid by the owner of the property at the time the change in use which no longer qualifies occurs and shall be paid to the treasurer within 30 days of the assessment. [Emphasis added.]

**II. Seller May Not Give General Warranty Deed when Land Is Enrolled in Land Use Assessment Program**

Enrolling real estate in a land use assessment program creates the possibility of future roll-back taxes. Prior Opinions of this Office conclude that such action constitutes an encumbrance on the land in the nature of an inchoate lien. See Att'y Gen. Ann. Reps.: 1979-1980 at 337; 1978-1979 at 271; 1976-1977 at 299. Based on the above, it is my opinion that a seller would not be able to give the buyer a general warranty deed, guaranteeing that the property is free from all encumbrances. If the seller did give a general warranty deed under these circumstances, the buyer would have a cause of action against the seller for any roll-back tax which the buyer is required to pay. See 1976-1977 Att'y Gen. Ann. Rep. 299.

**III. Roll-back Tax Liability Does not Arise when Owner Who Makes Change in Use Is State Agency**

Section 58.1-3237 provides that the owner who makes the change in use which triggers the roll-back tax is liable to the locality for that tax. See also 1979-1980 Att'y Gen. Ann. Rep. 337 (church liable for roll-back tax for five year period preceding change of use). When the buyer who makes the change is a state agency,<sup>1</sup> however, a different result occurs. "It is an ancient rule of statutory construction, one consistently applied by [the Virginia Supreme] Court for more than a century, that the sovereign is not bound by a statute of general application, no matter how comprehensive the language, unless named expressly or included by necessary implication." Commonwealth v. Spotsylvania, 225 Va. 492, 494, 303 S.E.2d 887, 889 (1983). Based on the above, roll-back tax liability does not arise since § 58.1-3237 does not expressly apply to the transaction you describe. This rule of statutory construction has particular application in the context of taxation statutes because of the long-standing policy that "[t]axes are not to be assessed against [the Commonwealth] or its subdivisions unless the right to tax is made plain." Norfolk v. Nansemond Supervisors, 168 Va. 606, 626, 192 S.E. 588, 596 (1937).

**IV. Under Facts Presented, Neither Seller nor Buyer Is Liable for Roll-Back Taxes**

Section 58.1-3237 provides that the owner of the property who changes the use to a nonqualifying use is liable for the roll-back tax. Under the facts you present, the owner who changed the use was the buyer, the Virginia Port Authority, and not the seller. Thus, the seller is not liable for the roll-back tax. Furthermore, based on the above, it is my opinion that the roll-back tax liability under § 58.1-3237 does not arise when the buyer who changes use of land to a nonqualifying use is a state agency, such as the Virginia Port Authority.

<sup>1</sup> The escrow agreement you provided recognizes that the Virginia Port Authority is a state agency for purposes of property taxation.

July 10, 1987

**The Honorable Jack L. Setliff  
Commissioner of the Revenue for the City of Danville**

You ask two questions concerning land-use assessments. You ask first whether the notice of change in assessment required by § 58.1-3330 of the Code of Virginia is required when land-use assessment values are adjusted in conjunction with a general reassessment. You also ask whether an aggrieved taxpayer may apply to the board of equalization for review of a land-use assessment under § 58.1-3350.

**I. Notice Required When Land-Use Assessment Values Adjusted**

Section 58.1-3330(A) is applicable to your first question and provides, in pertinent part, that

[w]henever in any county, city or town *there is a reassessment of real estate, or any change in the assessed value of any real estate, notice shall be given* by mail directly to each property owner, as shown by the land books of the county, city or town whose assessment has been changed. (Emphasis added.)

In addition, § 58.1-3243, found in Art. 4, Ch. 32 of Title 58.1, which deals with land-use assessments, provides, in pertinent part, that

[t]he provisions of Title 58.1 ...applicable to local levies and real estate assessment and taxation shall be applicable to assessments and taxation hereunder *mutatis mutandis* including, without limitation, provisions relating to tax liens, boards of equalization and the correction of erroneous assessments. (Emphasis added.)

The phrase, "assessments and taxation hereunder" in § 58.1 3243 refers to land-use assessment and taxation under Art. 4. Based on these statutes, it is my opinion that the notice of change in assessment required by § 58.1-3330 is required when land-use assessment values are adjusted in conjunction with a general reassessment.

**II. Land-Use Assessment May Be Appealed to Board of Equalization**

The answer to your second inquiry is also found in § 58.1.3243, as quoted above, and in § 58.1-3350. The latter statute provides that "[a]ny person aggrieved by any assessment under this chapter may apply for relief to the board of assessors, or if none, to the board of equalization created under Article 14 (§ 58.1-3370 et seq.) of this, chapter." (Emphasis added.) The "chapter" referred to in § 58.1-3350 is Ch. 32, which includes Art. 4, dealing with land-use assessments. Based on the above, it is my opinion that an aggrieved taxpayer may apply to the board of equalization for review of a land-use assessment as provided by § 58.1 -3350.

March 16, 1987

**The Honorable Mayo K. Gravatt  
Commonwealth's Attorney for Nottoway County**

You asked two questions concerning the availability of land use taxation for parcels located in a subdivision. Specifically, you ask whether (1) a landowner may combine a number of lots in a subdivision to qualify for land use taxation; and (2) each individual lot in the subdivision must meet acreage and other requirements for determination of eligibility for this taxation.

**I. Facts**

A large parcel of land was subdivided into lots ranging in size from one-third of an acre to 20 acres. The subdivision was recorded in 1950. Approximately one-third of the lots have been sold, and 10 homes built. The remainder of the lots consist primarily of standing timber. A previous commissioner of the revenue allowed the subdivision lots to be assessed together and be placed in land use taxation.

**II. Applicable Statutes**

Section 58.1-3233 states that local assessing officers are to make certain determinations before real estate is assessed. The section further provides that real estate devoted to an open-space use must consist of a minimum of 5 acres.

Section 58.1-3285 is also relevant to your inquiry and provides, in part:

Whenever a tract of land is subdivided into lots under the provisions of law and plats thereof are recorded each lot in such subdivision shall be assessed and shown separately upon the land books, as required by law.

Section 58.1-3241 governs the taxation of a lot which has been separated from a parcel previously assessed under land use taxation and provides, in part, as follows:

- A. Separation or split-off of lots, pieces or parcels of land from the real estate which is being valued, assessed and taxed under an ordinance adopted pursuant to this article, either by conveyance or other action of the owner of such real estate, *shall subject the real estate so separated to liability for the roll-back taxes applicable thereto, but shall not impair the right of each subdivided parcel of such real estate to qualify for such valuation, assessment and taxation in any and all future years, provided it meets the minimum acreage requirements and such other conditions of this article as may be applicable.* Such separation or split-off of lots shall not impair the right of the remaining real estate to continuance of such valuation, assessment and taxation without liability for roll-back taxes, provided it meets the minimum acreage requirements and other applicable conditions of this article. [Emphasis added.]

The roll-back tax provisions of § 58.1-3237 also apply when a change in the use of the real estate occurs. That statute states, in part:

- A. When real estate qualifies for assessment and taxation on the basis of use under an ordinance adopted pursuant to this article, and the use by which it qualified changes to a nonqualifying use, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes ...Such additional taxes shall only be assessed against that portion of such real estate which no longer qualifies for assessment and taxation on the basis of use. If in the tax year in which the change of use occurs, the real estate was not valued, assessed and taxed under such ordinance, the real estate or portion thereof shall be subject to roll-back taxes for such of the five years immediately preceding in which the real estate was valued, assessed and taxed under such ordinance.

**III. Conclusion: Individual Lots May Not Be Combined to Qualify for Land Use Taxation**

Based on the above statutes, it is my opinion that a landowner may not combine subdivision lots for the purpose of qualifying for land use taxation. The commissioner of the revenue, or some other local assessing officer, must determine whether each parcel meets the minimum 5-acre requirement to qualify for such taxation. If a particular parcel consists of 5 acres or more, it may qualify. Any parcel which does not meet either the use requirement or the minimum acreage requirement is subject to roll-back taxes under §§ 58.1-3237 and 58.1-3241.

*(Ed. Note: See amendments to the Code of Virginia since this opinion.)*

November 13, 1985

**The Honorable Catherine V. Ashby  
Commissioner of the Revenue for Loudoun County**

This is in reply to your inquiry concerning Art.4, Ch. 32 of Title 58.1 of the Code of Virginia, § 58.1-3229 et seq., which relates to special assessment for land preservation. Section 58.1-3231 authorizes any county, city or town which has adopted a land-use plan to adopt an ordinance to provide for the use value assessment and taxation of certain real estate. Section 58.1-3235 provides for the removal of land from the special assessment program for failure to pay delinquent taxes. You point out that taxpayers participating in the program must pay the 1984 taxes by November 1, 1985, or the treasurer must notify the commissioner of revenue to remove the parcel from the program. You ask for which under an ordinance adopted pursuant to this article, either by conveyance or other action of the owner of *such* years (1984, 1985 or 1986) removal is effective when a parcel of land is removed from the use value assessment and taxation program.

Section 58.1-3235 reads as follows:

Alf on June 1 of any year the taxes for any prior year on any parcel of real property which has a special assessment as provided for in this article are delinquent, the appropriate county, city or town treasurer shall forthwith send notice of that fact and the general provisions of this section to the property owner by first-class mail. If after the notice has been sent, such delinquent taxes remain unpaid on November 1, the treasurer shall notify the appropriate commissioner of the revenue who shall remove such parcel from the land use program"

At the same time that § 58-769.8:1, the antecedent statute § 58.1-3235, was enacted, a reference to 58-769.8:1 was inserted in the last paragraph of § 58.769.8, the antecedent statute to § 58.1-3234. *See* Ch. 508, Acts of Assembly of 1980. The last paragraph of § 58.1-3234 states that "continuation of valuation, assessment and taxation under an ordinance adopted pursuant to this article shall depend on continued payment of taxes as referred to in § 58.1-3235." It is a well settled rule of statutory construction that statutes relating to the same subject which were enacted by the General Assembly at the same time must be considered and construed together. *See South Norfolk v. Norfolk*, 190 Va. 591,58 S.E.2d 32 (1950).

It is clear from reading the above quoted portions of §§ 58.1-3234 and 58.1-3235 that the General Assembly intended removal from the program for delinquent taxes to be prospective only. "Continuation" in the land use program is conditioned upon the continued payment of property taxes. Use of the word "continuation" implies the possibility of future participation if conditions are met. "Continuation" does not imply any action with respect to past years.

Section 58.1-3237 sets forth the circumstances under which assessment for roll-back taxes would be required. A roll-back assessment would be, in effect, a retroactive removal from the land use assessment program. Failure to pay delinquent taxes is not mentioned in § 58.1-3237 as circumstance which would trigger such roll-back taxes.

Based on the foregoing, it is my opinion that if 1984 real estate taxes are not paid by November 1, 1985, then the commissioner of the revenue should remove the parcel from participation in the use value assessment and taxation program for the year 1986. The landowner thereafter may apply and be reinstated in the program if all prior delinquent taxes and applicable penalties and interest are paid and he submits a new application to the local assessing officer within the time limits established by § 58.1-3234. *See* 1983-1984 Report of the Attorney General at 368.

October 8, 1985

**The Honorable Robert H. Burns  
Commissioner of the Revenue for Tazewell County**

You ask whether a commissioner of the revenue may remove an entire 150-acre tract from participation in a county use value assessment and taxation program adopted under Art.4 of Ch. 32, Title 58.1 of the Code of Virginia, § 58.1 -3229 et seq.<sup>1</sup> following the failure of the landowner to report the conveyance and change in use of a 0.601-acre portion of the tract within the 60-day period allowed for such reports by the local land use ordinance.

Section 58.1-3241 provides, in pertinent part, as follows:

*“Separation or split-off of lots, pieces or parcels of land from the real estate which is being valued, assessed and taxed under an ordinance adopted pursuant to this article, either by conveyance or other action of the owner of such real estate, shall subject the real estate so separated to liability for the roll-back taxes applicable thereto, but shall not impair the right of each subdivided parcel of such real estate to qualify for such valuation, assessment and taxation in any and all future years, provided it meets the minimum acreage requirements and such other conditions of this article as may be applicable. Such separation or split-off of lots shall not impair the right of the remaining real estate to continuance of such valuation, assessment and taxation without liability for rollback taxes, provided it meets the minimum acreage requirements and other applicable conditions of this article”* (Emphasis added.)

The conveyance in question results in a 149.399-acre parcel and a split-off lot of 0.601 acre. The 0.601-acre tract does not meet the minimum acreage requirements of § 58.1-3233,<sup>2</sup> and, therefore, it does not qualify for future participation in the land use assessment program, regardless of whether or when the change is reported to you. The split-off lot also is subject to roll-back taxes for which the grantor, in this case, is liable. *See* 1982-1983 Report of the Attorney General at 545; 1979-1980 Report of the Attorney General at 339. Failure of the grantor to report the split-off in accordance with § 58.1-3237(C) will not prevent the imposition of roll-back taxes, penalties and interest. *See* § 58.1-3238.

The remaining 149.399-acre tract meets minimum acreage requirements and has experienced no change in use. The emphasized language in the quoted provisions of § 58.1-3241 makes it clear that the split-off of the 0.601-acre parcel does not, in and of itself, cause the 149.399-acre tract to lose its eligibility for valuation, assessment and taxation under the land use ordinance with no liability for roll-back taxes. Thus the 149.399-acre tract would remain eligible for land use taxation during the year in which the split-off took place, assuming that this tract also meets other applicable conditions for continued eligibility. One such condition is that "(a)n application shall be submitted *whenever* the use of acreage of such land previously approved *changes . . .*" Section 58.1 -3234. (Emphasis added.) The land use statutes do not fix a time for submission of an application "whenever" use of acreage changes, separate from the normal application times provided in § 58.1-3234. Failure to submit such an application would have no effect, therefore, upon the eligibility of the 149.399-acre tract for continued land use taxation in the year in which the split-off occurred.

Eligibility for future years would be governed by compliance with the provisions of the ordinance enacted within the terms of §58.1-3234, in order to reenroll the 149.399-acre tract. Pursuant to § 58.1-3234, an application for reenrollment must be submitted:

"(1) At least sixty days preceding the tax year for which such taxation is sought.

(2) In any year in which a general reassessment is being made the property owner may submit such application until thirty days have elapsed after his notice of increase in assessment is mailed in accordance with §58.1-3330, or sixty days preceding the tax year, whichever is later; or

(3) In any locality which has adopted a fiscal tax year under Chapter 30 of this Subtitle III, but continues to assess as of January 2, such application must be submitted for any year at least sixty days preceding the effective date of the assessment for such year"

In § 2(a) of the Tazewell County ordinance, the county adopted the times specified in former § 58-769.8, which has been reenacted as § 58.1-3234, for submitting the application. Thus, if the county assessment date is January 1, the taxpayer has until November 2<sup>3</sup> to submit an application for reenrollment in the land use assessment program.

The requirement for reporting changes in use or acreage within sixty days of the change is only relevant for purposes of the 0.601-acre lot's roll-back tax liability under §§ 58.1-3237 and 58.1-3241. Failure to report a change of use of the 0.601-acre lot within sixty days of that change of use does not affect a determination of future participation in the land use assessment program for the 149.399-acre tract, so long as other conditions are met. Failure to report a change in use within sixty days of the change does subject the taxpayer to penalties and interest on the roll-back tax as may be provided by ordinance. *See* § 58.1-3238. Section 7(a) of the Tazewell County ordinance provides for such penalties and interest.

Based on the foregoing, it is my opinion that the 0.601-acre tract should be removed from future participation in the land use program because it fails to meet minimum acreage requirements, and roll-back taxes should be assessed. With respect to the remaining 149.399-acre tract, if the taxpayer submits an application showing the change in acreage within the applicable time specified in § 58.1-3234, and no other change in acreage or use occurs, then you should allow that tract to remain in the land use assessment program not only as to the year in which the split-off occurred but for future years in which eligibility is maintained.

*<sup>1</sup> Section 58.1-3231 authorizes any county, city or town which has adopted a land use plan to adopt an ordinance to provide for use value assessment, in accord with Art. 4, of real estate classified in § 58.1-3230, which establishes and defines classifications of real estate devoted to "agricultural use," "horticultural use," "forest use," and "open-space use."*

*<sup>2</sup> Section 58.1-3233 provides that prior to the assessment of any parcel of real estate under any ordinance adopted pursuant to Art. 4, the local assessing officer must determine, inter alia, "that real estate devoted (I) agricultural or horticultural use consists of a minimum of 5 acres, (ii) forest use consists of a minimum of 20 acres and (iii) open-space use consists of a minimum of 5 acres..."*

*<sup>3</sup> See §§ 58.1-8 and 58.1-9 for due dates which fall on a Saturday, Sunday or legal holiday, and filing returns by mail.*

September 13, 1985

**The Honorable R.W. Arnold, Jr.**  
**County Attorney for Louisa County**

You ask whether a local ordinance adopted under the provisions of Art. 4 of Ch. 32 of Title 58.1 of the Code of Virginia, relating to special assessment for land preservation, may provide for the removal from the locality's use value assessment and taxation program of real property on which taxes are delinquent, at a date different from that provided by State law.<sup>1</sup>

Your question pertains to § 58.1-3235, which provides as follows:

"If on June 1 of any year the taxes for any prior year on any parcel of real property which has a special assessment as provided for in this article are delinquent, the appropriate county, city or town treasurer shall forthwith send notice of that fact and the general provisions of this section to the property owner by first-class mail. If, after the notice has been sent, such delinquent taxes remain unpaid on November 1, the treasurer shall notify the appropriate commissioner of the revenue who shall remove such parcel from the land use program."

Section 58.1-3235 contains no language permitting the locality to change the dates for review of delinquent taxes for purposes of complying with the statutory procedure to remove parcels from the land use program. It clearly establishes June 1 as the date for review of the delinquent taxes "for any prior year." The local ordinance in question, however, provides that if real estate under a land use assessment and taxation ordinance is delinquent as of December 31 of the taxable year, the property is removed from the special assessment and taxation program without notice.

Section 58.1-3231, concerning the authority of a locality to adopt a land use assessment and taxation ordinance, specifically provides that the ordinance must be "in accord with the provisions of this article." Virginia follows the Dillon Rule of strict construction concerning the legislative powers of local governing bodies. See *Tabler v. Fairfax County*, 221 Va. 200, 269 S.E.2d 358 (1980). Moreover, a local governing body may not enact an ordinance inconsistent with State law. See § 1-13.17; *Loudoun County v. Pumphrey*, 221 Va. 205, 269 S.E.2d 361 (1980).

Based on the foregoing, it is my opinion that a local ordinance may not alter those dates established for review of tax delinquent property under § 58.1-3235, and the local ordinance about which you inquire therefore is invalid in that regard. The county treasurer must review delinquent taxes for all prior years as of June 1 for purposes of complying with the statutory procedure for notice of delinquencies and removal of parcels from the land use assessment program.

<sup>1</sup> *Article X, § 2 of the Constitution of Virginia (1971) requires that "[a]ll assessments of real estate and tangible personal property shall be at their fair market value, to be ascertained as prescribed by law." This same section of the Constitution grants to the General Assembly the authority to make an exception to the rule of taxation at fair market value in the case of "real estate devoted to agricultural, horticultural, forest, or open space uses." The exercise of this authority by the General Assembly is subject to the condition that the General Assembly "shall prescribe the limits, conditions, and extent of such deferral or relief."*



July 9, 1985

**The Honorable Alice Jane Childs  
Commissioner of the Revenue for Fauquier County**

**OPINION**

You ask whether a special forest use land assessment should be granted to a taxpayer for two parcels of land which in your opinion do not meet the minimum acreage requirements of § 58.1-3233 of the Code of Virginia. You state that the taxpayer owns a total of 21.25 acres, being 17.32 acres of forest land, a .51-acre pond, a one-acre house site, and 2.42 acres of open land.

Section 58.1-3230 defines real estate which may be assessed for forest use as "land including the standing timber and trees thereon, devoted to tree growth in such quantity and so spaced and maintained as to constitute a forest area under standards prescribed by the Department of Conservation and Historic Resources . . . ." Section 58.1-3233 provides, in pertinent part, as follows:

"[T]he local assessing officer shall:

1. Determine that the real estate meets the criteria set forth in § 58.1-3230 and the standards prescribed thereunder to qualify for one of the classifications set forth therein . . . and
2. Determine further that real estate devoted to . . . (ii) forest use consists of a minimum of 20 acres . . . ."

Pursuant to § 58.1-3233, you, as the local assessing officer, have the duty to determine whether the criteria for special forest use land assessment set forth in §§ 58.1-3230 and 58.1-3233 are met. You have made such a factual determination. Based on the information provided, it is my opinion that you are correct in your finding that the land in question does not meet the criteria because the minimum acreage requirement is not met.

April 3, 1985

**The Honorable Frank W. Nolen**  
**Member, Senate of Virginia**

You have asked whether a locality can void a use value assessment application authorized by §§ 58.1-3229 *et seq.* of the Code of Virginia under the following circumstances.

The taxpayer had timely applied for and participated in the land use assessment program with respect to a certain parcel of land for tax years prior to tax year 1984. In February 1983, a deed was recorded by which the taxpayer land use assessment for tax year 1984. In response to the question, "Has there been any change in acreage or ownership by the recording since January 1, of this year?" the taxpayer responded "No." <sup>1</sup> Before the January 1, 1984 assessment date, the commissioner of the revenue discovered the February 1983 ten acre conveyance in the deed book. Based on this information, he voided the application for special use assessment on the taxpayer's parcel. Accordingly, the taxpayer was assessed on January 1, 1984, for real property taxes on the portion of the parcel that he still owned on the basis of fair market value as applied to other real estate in the jurisdiction. Section 58.1-3234 contains the pertinent statutory language as follows:

*"An application shall be submitted whenever the use or acreage of such land previously approved changes . . .*

*In the event of a material misstatement of facts in the application or a material change in such facts prior to the date of assessment, such application for taxation based on use assessment granted there under shall be void and the tax for such year extended on the basis of the value determined under § 58.1-3236D (fair market value as applied to other real estate in the jurisdiction.)" (Emphasis added.)*

Note that the statute contemplates voiding an application, either because of a material misstatement or because of a material change in facts. According to the facts presented in the November 1983 application, no change in acreage had occurred. In fact, however, ten acres had been sold. An application reflecting the change was not submitted before the January 1, 1984 assessment date. Section 58.1-3234 clearly allows the locality to void the application and to value the property at fair market value as other real estate in the jurisdiction.<sup>2</sup>

Based on the foregoing, it is my opinion that a locality can void a use value assessment application when a material change in acreage occurs before the January 1 assessment date if the taxpayer does not submit a new application reflecting the change. The entire parcel loses the special use valuation and must be assessed at fair market value for that tax year.

<sup>1</sup> *The Taxpayer indicated that he so answered the question because he had assumed that the deed had been recorded in late 1982. In any event, however, the commissioner of the revenue apparently has no record that the taxpayer ever initiated a change of information concerning the change in facts.*

<sup>2</sup> *The application can be void under the authority of § 58.1-3234 because there was a material change in the facts. The provisions in § 58.1-3238, relating to material misstatements and intentional misrepresentation, need not be considered in the circumstances you have presented.*

May 17, 1984

**The Honorable Lois B. Chenault  
Commissioner of the Revenue for Hanover County**

You have asked whether the landowner or successor to the owner of a parcel of real estate, which has previously been removed from a land use program under § 58-769.8:1 conveyed ten acres of the parcel to a new owner. In November 1983, as is required annually in the locality, the taxpayer reapplied for (58.1-3235) by reason of delinquent taxes, may reapply for inclusion of the parcel in the program. Your inquiry is based on the assumption that the parcel otherwise qualifies for the land use program.

Your question pertains to the Land Use Taxation Act (the "Act"), § 58-769.4 *et seq.* (58.1-3229) of the Code of Virginia, which authorizes localities to provide an ordinance for the use value assessment and taxation of real estate as classified in § 58-769.5 (58.1-3230) Section 58-769.8:1 (58.1-3235) requires removal of real estate from the land use program if, after mail notice to the property owner on June One of taxes delinquent for any prior year on property which has a special land use assessment under the Act, the delinquent taxes remain unpaid on November One. The last paragraph of § 58-769.8 (58.1-3234) also bases the continuation of valuation and assessment under a local land use program ordinance on the "continued payment of taxes as referred to in § 58-769.8:1..."

I find nothing in §§ 58-769.8 (58.1 -3234) or 58-769.8: 1 (58.1 3235) or any other section of the Act to prohibit a landowner from reapplying and being reinstated to the land use program after removal pursuant to § 58-769.8:1 (58.1-3235).<sup>1</sup> Accordingly, if all the prior delinquent taxes and applicable penalties and interest are paid,<sup>2</sup> it is my opinion that the landowner could submit a new application for taxation under the locality's land use program to the local assessing officer within the time limits established in § 58-769.8. (58.1-3234). *See* 1979-1980 Report of the Attorney General at 339 (holding that real estate removed from taxation on the basis of use under a different set of facts is not forever disqualified from special land use tax treatment.)<sup>3</sup>

<sup>1</sup> *Cf. Opinion to the Honorable David L. Berry, Commissioner of the Revenue for Rockingham County, dated November 7, 1983 (parcel for which zoning changed to a more intensive use is permanently ineligible): but cf. Ch. 222, Acts of Assembly of 1984 (reverses Berry Opinion restoring eligibility three years after parcel is rezoned to an eligible land use).*

<sup>2</sup> *The requirement that all delinquent taxes as well as applicable interest and penalties be paid prior to acceptance or approval of the application is evident from the last two sentences of the third paragraph of § 58-769.8. These sentences provide: "Except as provided by local ordinance, no application for assessment based on use shall be accepted or approved if at the time the application is filed, the tax on the land affected is delinquent. Upon the payment of all delinquent taxes, including penalties and interest, the application shall be treated in accordance with the provisions of this section." This language was added to the Code in 1979. See Ch. 632, Acts of Assembly of 1979. The "except" clause permits a locality by ordinance to provide for acceptance and approval of the land use program application even where taxes are delinquent. Such a local provision would clearly be repugnant to the removal provisions for delinquent taxes enacted in 1980. See Ch. 508, Acts of Assembly of 1980. The later amendment, therefore, operates as a repeal of the "except" clause. See Miller v. State Entomlt, 146 Va. 175, 135 S.E. 813 (1926), aff'd 276 U.S. 272 (1928).*

<sup>3</sup> *This opinion dealt with the conveyance of five acres from a larger parcel of forest land. The five-acre tract alone did not meet the minimum acreage requirement for eligibility for assessment based on use. The opinion held that the tract could, in the future, qualify for forest use valuation if it is combined with a contiguous parcel owned by the same person because the total acreage would meet the minimum size requirements.*

November 7, 1983

**The Honorable David L. Berry  
Commissioner of the Revenue for Rockingham County**

Section 58-769.10(D) (58.1 -3237 D) of the Code of Virginia states in part:

"If at any time after July one, nineteen hundred eighty the zoning of property taxed under the provisions of this article is changed to a more intensive use at the request of the owner or his agent, such property shall not be eligible for assessment and taxation under this article for the years such change is effective or any subsequent tax year, but it shall not be subject to roll-back taxes until a change in use occurs."

The language of this section is clear: the land is ineligible for land use taxation for the year that the rezoning change is effective or for any subsequent tax year, regardless of the fact that there may not be a change in use of the land or that the property or a portion thereof is sold to a new owner.<sup>1</sup>

The provisions of § 58-769.13 (58.1-3241) do not change this result. Section 58-769.13(a) (58.1-3241A) states in part that separation or split-off of lots from real estate valued under land use shall subject it to the roll-back tax but "shall not impair the right of each subdivided parcel of such real estate to qualify for such valuation, assessment and taxation in any and all future years, provided it meets the minimum acreage requirements and *such other conditions of this article* as may be applicable . . ." (Emphasis added.) Land which has been rezoned at the request of its owner to a more intensive classification and then subdivided would not meet the "other conditions of this article."

This result is in accordance with the purpose of the land use valuation statutes. The purpose is stated in § 58-769.4 (58.1-3229), to be to tax land in a manner that will promote its preservation. This section and § 58-769.10(D) (58.1-3237 D) provide in effect, that in determining whether a property qualifies for land use, an intensive zoning classification in effect prior to July 1, 1980 will not be considered. Action by an owner, however, to rezone his land to a more intensive use so as to make it eligible for development will render it ineligible for land use valuation. This section could easily be circumvented if its effect could be avoided by merely selling off the land immediately after obtaining the rezoning.

Furthermore, if the new owner wishes to use the land for purposes which would make it eligible for use valuation he may obtain a rezoning to a less intensive category. The intensive zoning classification would no longer apply and the land would then be eligible for land use valuation in the future if all other requirements are met.

*' A prior Opinion of this Office held that a county-wide rezoning, not requested by the owner, which resulted in a change in zoning to a more intensive use did not disqualify the parcel from land use valuation, assessment and taxation until the use of the parcel changed.*

*See 1975-1976 Report of the Attorney General at 357. That result was not overruled by the addition of § 58-769.10(D) (§58-769.10), Ch. 363. Acts of Assembly of 1980, because in order to trigger that provision the action to change the zoning to a more intensive use must originate with the owner or his agent.*

June 10, 1983

**The Honorable P. Warren Anderson, Jr.  
Commissioner of the Revenue for Amelia County**

You advise that Amelia County withdrew forestry from the land use tax program in 1980, effective in the 1981 tax year. Thereafter, forestal land no longer qualified for special tax assessment based on land use under § 58-769.4 (58.1-3229) *et seq.* of the Code of Virginia.

You have asked which years are to be considered in applying roll-back taxes pursuant to § 58-769.10 (58.1 -3237) if a parcel's use is subsequently changed from forestal use to nonqualifying use, now that the county has deleted the particular category from use value assessment under which the parcel had been qualified. I assume that the parcel was not assessed at use value in 1981 because forestal use was no longer an eligible category and that the new use was not an eligible use under the ordinance. (Other eligible uses would include agricultural, horticultural and open-space. *See* § 58- 769.5, 58.1-3230)

Section 58-769.10(A) (58.1-3237A) provides that:

"When real estate qualifies for assessment and taxation on the basis of use under an ordinance adopted pursuant to this article, and the use by which it qualified changes, to a nonqualifying use, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes, in an amount equal to the amount, if any, by which the taxes paid or payable on the basis of the valuation, assessment and taxation under such ordinance were exceeded by the taxes that would have been paid or payable on the basis of the valuation, assessment or taxation of other real estate in the taxing locality *in the year of the change and in each of the five years immediately preceding the year of the change*, plus simple interest on such roll-back taxes at the same interest rate applicable to delinquent taxes in such locality, pursuant to § 58-847 (58.2-3916) or § 58-964 (58.2-3918). *If in the tax year in which the change of use occurs the real estate was not valued, assessed and taxed under such ordinance, the real estate shall be subject to roll-back taxes for such of the five years immediately preceding in which the real estate was valued, assessed and taxed under such ordinance.*" (Emphasis added)

Turning to your specific question of which years are to be included in the roll-back when the land use changes, the answer depends upon which year the use changes. If the use had changed in 1980 or any preceding year, the first sentence in § 58-769.10(A) (58.1-3237A) would apply; thus, the rollback would apply for 1980 (the year of the change) and the five years preceding 1980 in which the land was assessed at the land use rate. On the other hand, based on the assumption that the change in use occurred after 1980, the last sentence above quoted would be applicable. Therefore, when the land use changes, roll-back taxes may be imposed for the years, not exceeding five of the immediately preceding years, in which the county provided for use value assessment of forestal land and in which the land was assessed based on its forestal use. The year 1980 was the last year in which the ordinance applied to forestal use, and thus would be the latest year to be counted when applying the roll-back.<sup>1</sup>

<sup>1</sup> For example, if the use first changes in 1983 to a nonqualifying use, the rollback tax would be imposed for the years 1978, 1979 and 1980 (the three years of the preceding five years in which the land was taxed at the use rate).

May 26, 1983

**The Honorable Dabney H. Bowles  
Commissioner of the Revenue for Louisa County**

You have asked whether you are required to assess a landowner with roll-back taxes when lands assessed under the land use program have been removed from the use value assessment program for failure to pay taxes. In my opinion, the roll-back tax should not be assessed in such a case.

Section 58.769.8:1 (58.1-3235) of the Code of Virginia provides:

"If on June one of any year the taxes for any prior year on any parcel of real property which has a special assessment as provided for in this article are delinquent, the appropriate county, city or town treasurer shall forthwith send notice of that fact and the general provisions of this section to the property owner by first-class mail. If after sending such notice, such delinquent taxes remain unpaid on November One, the treasurer shall notify the appropriate commissioner of the revenue who shall remove such parcel from the land use program"

Roll-back taxes are imposed by § 58-769.10(a), (58.1-3237 (A), which states in part:

"When real estate qualifies for assessment and taxation on the basis of use under an ordinance adopted pursuant to this article, and the use by which it qualified changes, to a nonqualifying use, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes . . ." (Emphasis added.)

Sections 58-769.10(C) (58.2-3237 C) and 58-769.13 (a) (58.2-3241 A) further define "a nonqualifying use" to make it clear that roll-back taxes are imposed only when the actual use of the land changes to a nonqualifying use or the acreage changes to an amount less than the minimum requirement. The mere fact that the parcel has been removed from the use value assessment program does not, of itself, subject such land to roll-back taxes.<sup>1</sup>

In prior Opinions, this Office has pointed out situations where removal of a parcel from land use assessment does not subject it to roll-back taxes. For example, a change in use of a portion of a parcel subjects only that portion to the roll-back tax, and not the portion remaining in a qualifying use. However, while failure to report the change in use to the commissioner of the revenue may result in disqualification of the entire parcel from continuation in the use assessment program, it does not subject the unaltered acreage to roll-back taxes. 1980-1981 Report of the Attorney General at 355.

In another Opinion it was noted that while a change in the statutory criteria for use valuation might remove a parcel from the program, the roll-back taxes would not be imposed in the absence of an actual change in the parcel's use. 1972-1973 Report of the Attorney General at 426. Therefore, unless the parcels have changed to a nonqualifying use or size, removal from land use valuation because of delinquency of taxes would not subject them to the roll-back tax.

<sup>1</sup> *Although the land will no longer be qualified for the land use assessment for future years, § 58-769.10 does not require the imposition of the additional taxes for the past years until the actual use of the land changes.*

May 23, 1983

**The Honorable Alice Jane Childs  
Commissioner of the Revenue for the County of Fauquier**

You have asked whether a sludge lagoon on land leased by a farmer qualifies for the special assessment available under Title 58, Ch.15, Art. 1 . I (Title 58.1, Ch.32, Art.4) of the *Code of Virginia*.

You advise that the lagoon was built by a private processor on the farmer's land. You have stated further that the owner/farmer and other farmers will use the sludge as fertilizer on their farms. I assume that Fauquier County has adopted an ordinance pursuant to § 58-769.6 (58.1-3231) providing for special use assessment. From your statement of the facts, I also assume that you are asking particularly whether the land in question qualifies for the special classification labeled "(r)real estate devoted to agricultural use" defined in § 58-769.5(a) (58.2-3230A).

The applicable portion of § 58-769.5(a) (58.1-3230A) establishes a special classification for real estate "when devoted to the bona fide production for sale of plants and animals useful to man under uniform standards prescribed by the Commissioner of Agriculture and Commerce . . ."

According to *Webster's Seventh New Collegiate Dictionary* (1972), sludge is "precipitated solid matter produced by water and sewage treatment processes." The land in question is used for storage of sludge, rather than for the "bona fide production for sale of plants . . ." The fact that fertilizer used in farming is a by-product of the treatment processes does not alter the fact that the direct use of the land is not for agricultural purposes.

Based on the foregoing, it is my opinion that a sludge lagoon built by a private firm on land leased to it by a farmer does not qualify for the special assessment available for land devoted to agricultural use under § 58-769.5(a) (58.1-3230).

March 10, 1983

**The Honorable Victor J. Smith  
Commissioner of the Revenue for the City of Harrisonburg**

You have asked several questions concerning the administration by the City of Harrisonburg of a land use assessment ordinance on land annexed from an adjoining county which had a land use ordinance in effect prior to annexation. The annexation decree required the city to adopt such an ordinance but does not address its administration. Preferably, the problem presented by administering this program in the city should be referred to the annexation court, which is subject to being reconvened in the manner provided by law at anytime during a period of ten years from the effective date of the order of annexation. However, in an effort to assist your office, I will express my opinion on the questions you have presented.

First, you ask whether taxpayers who were under land use taxation in the county must be accepted as such by the city without making application or whether the city may require such taxpayers to make application and pay the application fee.

Section 58-769.8 (58.1-3234) of the Code of Virginia requires property owners to submit an initial application to "the local assessing officer. . ." Section 58-769.6:1 (58.13232)<sup>1</sup> states that "*la*ll of the provisions of this (the land-use taxation article shall be applicable to . . ." a city land use ordinance except that if annexed land was a part of a county which had in operation a land use ordinance, the city may adopt its land use ordinance for the tax year prior to April first, and "applications from landowners may be received at any time within thirty days of the adoption of the ordinance. . ." (Emphasis added.) Read together, these sections contemplate that applications will be made to the city's assessing officer, under the city's new ordinance, regardless of the status of the land when it was in another taxing jurisdiction.

It is my opinion that an application under a new ordinance submitted to a new taxing authority is a "new" application. The city assessing authority is under no duty, absent agreement or order, to accept without application or fee the classifications created by the county for parcels enrolled in its land use taxation program. In fact, the valuation of land may be different under each jurisdiction (although the eligibility should not) because each assessing officer is required to use his "personal knowledge, judgement and experience" as to the value of the real estate, as well as the recommendation of the State Land Evaluation Advisory Committee. *See* § 58.769.9(a) (58.1-3236A). Further, the taxpayer may be required to pay an application fee with his application. *See* § 58-769.8 (58.1-3234). Thus, in answer to your first question, I conclude that the city may require landowners to submit applications and pay the prescribed fee. This appears to be a harsh result, but no other provision has been made to administer the program.

In your next question, you have inquired whether an application fee may be required for each parcel on the land book, even if such parcels are in common ownership and are contiguous. This Office has opined that if the parcels are separately assessed on the land book, a separate application is required for each parcel. *See* 1979-1980 Report of the Attorney General at 339; 1974-1975 Report of the Attorney General at 456. Because § 58-769.8 (58.1-3234) permits a fee to be charged for "all such applications," it is my opinion that a separate fee may be charged for each parcel of land for which a separate application is required to be made, regardless of contiguity. However, the locality is not required by § 58-769.8 (58.1-3234) to charge such fees and it is my opinion that the land use taxation ordinance may provide for one fee for more than one application covering contiguous parcels.

You next inquire whether, if a taxpayer has the right to request that his contiguous parcels be combined into one parcel, the request must be formal and include a plat or if it may be an oral request. This Office has previously stated that an owner of contiguous tracts may petition the commissioner of the revenue to consolidate such tracts into one line in the land book. *See* 1979-1980 Report of the Attorney General, *supra*; 1958-1959 Report of the Attorney General at 277. There is no statutory procedure established for this process. However, I note that § 58-804(e) (58.1-3285) requires that "(w)henever a tract of land has been subdivided into lots under any provision of general law and plats thereof have been recorded, each lot in such subdivision shall be assessed and shown separately upon the books." Consequently, if a plat for the separate parcels is on record, then it appears that a plat showing the parcels combined as one must subsequently be recorded in order for the commissioner of the revenue to assess and show such parcels as one. In that case a plat must be submitted; however, where no such subdivision plat was formally recorded, there appears to be no reason to require such formality when parcels are to be combined.



You next ask whether such a request to combine contiguous parcels is effective for the current tax year or whether it is to be treated as a land transfer and given effect in the year following the year of the request.

For the purposes of land use taxation, the landowner is required to make application prior to November first in order to be so assessed during the subsequent tax year.<sup>2</sup> Real property is generally assessed against its owner on January first. *See* § 58-769 (58.1-3232) 1974-1975 Report of the Attorney General at 527. The petition for consolidation must be made and approved prior to the application; then when the application is made, it will take effect the following tax year (or in the case of annexed property, pursuant to § 58-769.6:1 (58.1-3232), for that tax year.<sup>3</sup> A consolidation request made subsequent to the date that the application for land use assessment must be made cannot, of course, affect the application process. Because no change in ownership is involved, the act of consolidation has no effect on the assessment date of January first. Therefore, in my opinion, a timely request for consolidation of separate parcels takes effect as soon as it is approved by the commissioner of the revenue and is shown in the land books. If that occurs prior to the date an application for land use assessment must be and is made, then one application may be made for the combined parcel, for the relevant tax year.

You next ask three questions concerning the administration of roll-back taxes on land in the annexed area.

In your first question, you set out the following factual situation: assume a parcel of land was under the county's land use ordinance for four years, then under the city's for one year, and a change in use subjects it to the roll-back tax while under city jurisdiction. Based on these facts, you ask whether the city is entitled to assess and collect the roll-back taxes for the entire five years. In my opinion, the answer to that question is no.

Because the roll-back is a tax under § 58-769.10 (58.1 3237), it subjects the real estate to a lien, pursuant to § 58-762 (58.1-3340). The roll-back tax is considered to be a deferred tax according to § 58-769.15(h) (58.1-3243) and would constitute an inchoate lien in the years prior to a change in use. *See* 1976-1977 Report of the Attorney General at 299. That lien runs in favor of the authority to which taxes are owed. For the years it was under county jurisdiction, that was the county. Furthermore, § 15.1-1041 provides that "(a)ll taxes assessed in the territory annexed for the year at the end of which annexation becomes effective and for all prior years shall be paid to the county." Consequently, in my opinion, the city is not entitled to roll-back tax for years when the land was under county jurisdiction, then clearly, the county valuations and rates must apply for those years.

Finally, you ask if the city must compute the roll-back for the time the parcel was in the city and notify the county of the change in use and have the county compute and bill the landowner with its share of roll-back taxes or, alternatively, must the city do all the roll-back computations and billing and share the proceeds with the county on a pro rata basis.

There is no clear statutory guidance here. This question emphasizes the desirability of reconvening the annexation court for clarification. Of course, in absence of court direction, there is no reason why an agreement may not be made between the city and county with respect to any step in the collection of roll-back taxes, and particularly, with respect to notification to the county of a change in use. In the absence of an agreement or provision in the annexation decree, however, there is no statutory duty on the city to collect such taxes for the county.

<sup>1</sup> *The September 9, 1982, order of the Supreme Court affirming the order of the three-judge annexation court was not entered soon enough for the city, under § 58-769.6 (§ 58.1-3231), to ordain land use taxation prior to June 30, 1982, so that the entire city would come under the ordinance for tax year 1983. Section 58-769.6:1 (§ 58.1-3232), therefore, places two restrictions on the city land use ordinance adopted November 23, 1982: (1) the city's land use ordinance applies to only the real estate in the area newly annexed, and (2) the ordinance is effective only for the 1983 tax year. A new ordinance must be adopted prior to June 30, 1983, to be effective for tax years 1984 and thereafter.*

<sup>2</sup> *In the case of annexed property, there is a grace period by § 58.769.6:1 (§ 58.1-3232).*

<sup>3</sup> *The land use assessment application process will have taken place prior to the time the commissioner of the revenue has prepared and delivered the land book to the treasurer after which time "no alteration shall be made therein by him affecting the taxes or levies for that year." See (§ 58.1-3311.)*

February 10, 1983

**The Honorable John Watkins**  
**Member, House of Delegates**

You have asked two questions concerning use value assessment of real property. First, you ask whether a locality may remove a parcel of real estate from a use value assessment program merely because the ownership changed from individual ownership to a partnership consisting of the same owners. Second, you inquire whether a locality may require a survey of the real estate to accompany an application for use value assessment as a prerequisite for eligibility.

The answer to your first question is provided by § 58-769.8 (58.1-3234) of the Code of Virginia, which states, in part, as follows:

A Continuation of valuation, assessment and taxation under an ordinance adopted pursuant to this article shall depend on continuance of the real estate in the use for which classification is granted, continued payment of taxes as referred to in § 58-769.8:1 (58.1-3235), and compliance with the other requirements of this article and the ordinance *and not upon continuance in the same owner of title to the land.*" (Emphasis added.)

In my opinion, a parcel may continue in a use value assessment program despite a complete change in ownership, so long as the actual use of the land does not change and the other prerequisites of § 58-769.8 (58.1 -3234) are satisfied.<sup>1</sup>

In answer to your second question, I find no basis for permitting a locality to automatically require every application for use value assessment to be accompanied by a survey. Section 58-769.8 (58.1-3234) requires property owners wishing to qualify for use value assessment to submit an application on forms prepared by the State Tax Commissioner. In addition, an application fee may be required by the locality. No other specific application requirements are set out. In determining whether a parcel qualifies for use values assessment, the local assessing officer must make certain requirements.<sup>2</sup> If a question should arise whether the parcel meets these minimum acreage requirements, it may be necessary for the applicant to produce evidence which will qualify the parcel for the minimum acreage. Although such evidence may include a survey, the locality should consider all facts that are relevant on the question whether the property meets the use requirements.

<sup>1</sup> *The corollary to this section is § 58-769.10(58.1-3237), which provides for imposition of a roll-back tax if the use does change to a nonqualifying use. That section provides, in subsection (C), that "(l)iability to the roll-back taxes shall attach when a change in use occurs but not when a change in ownership of the title takes place if the new owner continues the real estate in the use for which it is classified. . . ." See 1980-1981 Report of the Attorney General at 355.*

<sup>2</sup> *Section 58-769.7(b) (58.1-3233 2) sets the following minimum: (1) agricultural or horticultural use – 5 acres; (2) forest use - 20 acres; (3) open-space use - 5 acres (2 acres in certain cities, counties and towns).*

September 28, 1982

**The Honorable G.M. Weems  
Treasurer of Hanover County**

You have requested my opinion regarding liability for back taxes when "land use assessment" is changed. Your inquiry involves a fact situation where the owner of real estate, which real estate qualifies for forestal use value assessment and taxation,<sup>1</sup> conveys 16.2 acres of such real estate to a purchaser. Because twenty (20) acres is the minimum acreage required for qualification for forestal use value assessment and taxation, it is clear that such conveyed parcel no longer qualifies for use value assessment and taxation. Moreover, the split-off parcel in this instance, is subject to roll-back taxes pursuant to § 58-769.13(a). 1979-1980 Report of the Attorney General at 339. You ask whether the seller or the purchaser is liable for the roll-back tax liability.

Of course, the land itself is subject to a lien for such roll-back taxes. 1976-1977 Report of the Attorney General at 299 and 1972-1973 Report of the Attorney General at 423. Insofar as personal liability is concerned, § 58-769.13(a) states that:

"Separation or split-off of lots, pieces or parcels of land from the real estate which is being valued, assessed and taxed under an ordinance adopted pursuant to this article, either by conveyance or other action of the owner of such real estate shall subject the real estate so separated to liability for the roll-back taxes applicable thereto . . . ." (Emphasis added.)

Therefore, it is the action of the seller of the real estate which triggers the roll-back tax liability.

This Office has previously opined that "the owner of the land who makes the change which disqualifies the land from the land use assessment program should be billed for the roll-back taxes . . ." in construing an earlier version of § 58-769.10.<sup>2</sup> 1976-1977 Report of the Attorney General at 299. I am of the opinion that the same result should obtain here; that is, the owner of the land whose action triggered the roll-back tax liability should be billed for such liability. In the fact situation you have posited, such owner of the land is the seller. This result places the tax burden upon the landowner whose action caused the liability to attach and who enjoyed the benefits of participation in the land use assessment program.

<sup>1</sup> Section 58-769.7 of the Code of Virginia requires a minimum of twenty acres for assessment as "real estate devoted to . . . forest use . . . ."

<sup>2</sup> The action which results in roll-back tax liability is the separation or split-off of land under use value assessment and taxation, by conveyance or other action of the owner, which separated land fails to meet the minimum acreage requirements of § 58-769.7(b).

September 4, 1980

**The Honorable Frederick T. Gray  
Member, Senate of Virginia**

You have asked three questions pertaining to "roll-back" taxes under § 58-769.10 (58.1-3237) of the Code of Virginia as amended, in the following situations.

**Facts**

You have posited three hypothetical fact situations and asked how § 58-769.10 (58.1-3237) would apply.

1. A landowner owns 120 acres and is participating in the county's land use tax program. *See* §§ 58-769.4 (58.1-3229) to 58-769.15:1 (58.1-3244). While retaining title to the land, the landowner permits one of his children to build a home on a portion of the land.
2. After the home is completed, the landowner, by deed or gift, conveys the land upon which the house was built and five surrounding acres to his son. An additional three acres is also conveyed to the landowner's daughter at this time.
3. The landowner did not notify the taxing authorities of these gifts in writing.

**Questions**

Under each fact situation, should a roll-back tax apply, and if so, should the roll-back be applied to the entire tract or only to the land conveyed or changed in use?

**Analysis**

No dates are given as to when building on the parcel commenced or when the deeds of gift were executed. Section 58-769.10(A) (58.1-3237), has been amended several times since its original enactment; however, none of these amendments are germane to your inquiries.

1. Under § 58-769.10(A) (58.1-3237), when land qualifying for use assessment and taxation is converted to a non-qualifying use, a roll-back tax liability attaches. Building a residence is such a change in use. Section 58-769.10(B) (58.1-3237) provides the formula by which the roll-back tax liability is computed. Subparagraph B does not require that the roll-back tax be applied to the entire parcel but rather limits the roll-back to "real estate which has changed in use." The use of the 120 acre parcel which initially qualified has not changed; rather, a change in use has occurred only upon that portion of the parcel upon which the son has built a house. Only that small parcel has changed in use and is liable for the roll-back tax.

To hold that the entire 120 acre parcel is subject to roll-back tax liability first would require the conclusion that the use of the entire parcel has changed. Such a conclusion, under the facts considered, simply defies common sense. Moreover, that result would not carry out the intent<sup>1</sup> of the General Assembly *i.e.*, to encourage the preservation of certain uses of real estate and to ameliorate the financial pressures towards converting such real estate to more intensive uses. *See* § 58-769.4 (58.1-3229) and Art. X, § 4 of the *Constitution of Virginia* (1971).

However, the remaining, and larger portion of the 120 acres may be disqualified from further continuance in the use assessment program if an application informing the assessing officer of the change in use were not timely filed. *See* §§ 58-769.8 (58.1-3234) and 58-769.10(C) (58.1-3237). No five year roll-back liability is involved with respect to such acreage.

2. The first inquiry does not state how many acres of the total 120 acres were changed in use. Such a determination is a factual one and the later deeds of gift, while perhaps probative, are not dispositive of the question. If the acreage conveyed by the deeds of the gift is the same acreage which was changed in use, there is no additional roll-back liability because such roll-back was previously triggered by the change in use, and the conveyances are not changes in use.

Of course, failure to report the change in acreage can disqualify the parcels from continued participation in the use assessment program. *See* § 58-769.8 (58.1-3234).

If the deeds of gift involve less real estate than that previously subjected to roll-back tax liability, no further roll-back taxes are incurred. If the deeds of gift convey additional real estate beyond that previously subjected to roll-

back taxes, then additional roll-back liability may attach *if* an accompanying change of use also occurs. In any event, the real estate deeded to the daughter and son will no longer qualify for future participation in the use assessment program because the minimum acreage requirement cannot be satisfied.

3. As previously noted, change in use is the event which triggers roll-back tax liability. Whether or not notification to the assessing officer is given, the liability attaches. The notice is simply a mechanism by which assessment of the roll-back taxes can be facilitated. The political subdivision should receive payment in a more expeditious manner, while a landowner avoids undue penalty and interest accruals. In addition, the landowner should be thereby prompted to reapply for participation in the use assessment program, assuming his remaining real estate continues to qualify. The application must be timely filed or the landowner cannot participate in the program. *See* Report of the Attorney General (1975-1976) at 359.

<sup>1</sup> *Requiring a roll-back tax on the entire parcel would also be inconsistent with the policy of § 58-769.13(a) which permits the remaining real estate to continue in the use assessment program. (§ 58.1-3241)*

May 1, 1980

**The Honorable C. Phillips Ferguson  
Commonwealth's Attorney for the City of Suffolk**

You have asked if a church may be liable for the "roll-back" tax authorized by § 58-769.10 (58.1-3237) of the Code of Virginia (1950), as amended, in the following circumstances.

**Facts**

A church purchased a parcel of land which, at the time of acquisition, was qualified for and received the benefits of land use assessment and taxation. Thereafter, the church changed the use of the property to a "non-qualifying use" for purposes of land use taxation. It is assumed that the parcel is otherwise exempt from taxation from the date purchased by the church.

**Question**

Can the church be held liable for roll-back taxes which relate to the period before the church purchased the property?

**Analysis**

The Virginia Constitution (1971) guarantees that the real property owned by a church is exempt from taxation when used for certain specified purposes. See Art. X, § 6(a)(2).

A distinction must be made, however, between the taxation of property owned by a church and the accountability of a church to satisfy a liability arising from an encumbrance (choate or inchoate) which runs with the land and existed prior to the purchase of the land by the church.

Section 58-769.10 (58.1-3237) provides, and this Office has so ruled, that the roll-back tax is the nature of an inchoate lien which runs with the land and is created at the time the parcel is accorded favorable tax treatment under the land use assessment and taxation program. See Reports of the Attorney General (1978-1979) at 271; (1976-1977) at 299; (1972-1973) at 423. The inchoate lien attaches on a year-to-year basis as long as the property is enrolled in the land use program and the owner is otherwise subject to property tax. See § 58-769.10. The fact that the church performs the act ("change in use") which triggers the inchoate lien does not change the fact that the church acquired the property subject to such lien.<sup>1</sup> *Id.*

Based upon the foregoing, it is my opinion that the church is liable for the roll-back tax for each of the five years immediately preceding the year of "change of use" during which the land was taxed under a land use ordinance and was owned by a non-tax exempt entity.

<sup>1</sup> Sections 58-769.15 (58.1-3243) supports this position in that it clearly provides that "roll-back taxes shall be considered to be deferred real estate taxes" subject to the general law relating to tax liens.

October 29, 1979

**The Honorable Stanley R. Lewis  
Commissioner of the Revenue for Middlesex County**

You ask whether tax relief for the elderly (§ 58-760.1 (58.1-3210 - 58.1-3219) of the Code of Virginia (1950), as amended) may be extended to a parcel which already enjoys a partial tax exemption under the land use taxation program (§§ 58-769.4 *et. seq.*) (58.1-3229).

**Facts**

Copies of your local ordinances which authorize these two forms of tax relief show: (1) that the land use taxation ordinance provides a tax exemption based upon the difference in the assessed value of the parcel due to the difference between "fair market" and "land use" values and, (2) that the tax relief for the elderly is expressed as an exemption from a certain percentage of the tax otherwise imposed upon the parcel, which percentage is in indirect proportion to the combined income of the owner(s) of such parcel. Also, tax relief for the elderly cannot exceed \$ 150 of tax liability.

The taxpayer in this case maintains his dwelling place upon the parcel in question.

**Analysis**

First, we are bound by the general rule of statutory construction which requires that each statute or statutory scheme be given its full effect unless doing so would clearly conflict with the purpose of another law. *Board of Supervisors v. Marshall*, 215 Va. 756 214 S.E.2d 146 (1975).

Second, nothing in the two tax relief schemes, either as authorized by general laws or as implemented by your local ordinances, indicates that tax relief under one scheme is meant to preclude tax relief under the other.

Third, this Office has previously held that tax relief for the elderly can extend to the entire parcel upon which the taxpayer's dwelling house is situated. *See* Report of the Attorney General (1975- 1976) at 346.

Fourth, administrative implementation of both measures is easily accomplished in this instance, to wit: (1) tax liability for the entire parcel is determined using the land use value for the parcel as the amount against which the tax rate is applied; (2) a further exemption from the tax liability computed under (1) is then determined in accordance with the "total combined income" formula set-out in your local ordinance; in accordance with your ordinance, that such additional exemption may not exceed \$150 of the tax liability determined in (1) above.

Based upon the foregoing, it is my opinion that both tax relief measures may be applied to this particular parcel of land under the terms of your local ordinances.

September 21, 1979

**The Honorable Dabney H. Bowles  
Commissioner of the Revenue for Louisa County**

You ask several questions concerning the Land Use Taxation Act, §§ 58-769.4 *et seq.* (58.1-3229), of the Code of Virginia (1950), as amended.

**Facts**

A 75 acre tract of forest land qualified for assessment and taxation on the basis of use for the years 1977 and 1978. On June 30, 1978, "A" conveys 5 acres of the tract to "B" On August 14, 1978, "B" reconveys the same land to "A."

**Questions**

1. Whether a roll-back tax is incurred when the five acre tract is split-off by conveyance from the 75 acre tract?
2. Whether the five acre tract could be eligible for use-value assessment if it is reconveyed to the original owner?
3. Whether a new application is required for the remaining 70 acres to be eligible for use-value assessment?
4. Whether one new application is sufficient to qualify the 70 and 5 acre tracts?

**Roll-Back**

Section 58-769.13(a) provides:

"Separation or split-off of lots, pieces or parcels of land from the real estate which is being valued, assessed and taxed on the basis of use . . . either by conveyance or other action of the owner of such real estate shall subject the real estate so separated to liability for the roll-back taxes applicable thereto . . . No subdivision of property which results in parcels which meet the minimum acreage requirements of this article . . . shall be subject to the provisions of this subsection."

The conveyance from "A" to "B" is clearly a "split-off" of a parcel within the meaning of the statute. Even if the conveyance were a "subdivision of property" within the meaning of the second paragraph of subsection (a) of the statute, the 5 acre parcel fails to meet the minimum acreage requirements for forest land. *See* § 58-769.7(b) (58.1-3233). Consequently, there is no doubt that the conveyance "subject[s] the real estate so separated to liability for the roll-back taxes applicable thereto."

The question remains, however, whether the word "subjects" means that the mere act of split-off triggers the roll-back, or whether an actual "change in use" within the meaning of § 58-769.10 (58.1-3237), must occur before the roll-back is imposed.<sup>1</sup> A review of the legislative history of § 58-769.13(a) (58.1-3241) supports the former construction. *See* Ch. 385 [1978] Acts of Assembly. Prior to 1978, § 58-769.13(a) stated that a split-off would subject the real estate to liability for the roll-back only if the land so separated was put to "a use other than agricultural, horticultural, forest or open-space. . . ." In 1978, the "change in use" proviso was eliminated from the statute. Additionally, the second paragraph of subsection(a) of the statute, also a 1978 amendment, contemplates that the split-off parcel can only escape the liability for roll-back if it meets the minimum acreage requirement of § 58-769.7(b) (58.1-3233). In this instance, however, the parcel was not split off until June 30, 1978, the day before the effective date of the amendment to § 58-769.13(a) (58.1-3241). Consequently, the roll-back would not apply to this conveyance under any circumstances.

If, on the other hand, the conveyance had taken place on or after July 1, 1978, it is my opinion that the roll-back tax liability, as computed under § 58-769.10 (58.1-3237), would apply to the split-off parcel.

**Eligibility of the Reconveyed Acreage**

Even though the 5 acre tract, standing alone, does not meet the minimum acreage requirement for forest land (§ 58-769.7(b) (58.1-3233)), the parcel can qualify in the future, if, after being combined with another contiguous tract(s) owned by the same person, the total acreage of the parcels meets the minimum size requirement. *See* Report of the Attorney General (1975-1976) *supra*. Consequently, if all other statutory and regulatory conditions of the Act are met, the 5 acre tract could qualify for forest use valuation because, upon reconveyance, it is contiguous with a forestal parcel larger than 15 acres which is owned by the same taxpayer.



### **Application Requirement**

Section 58-769.8 (58.1-3234) provides that "[a]n application shall be submitted whenever the use or acreage of such land previously approved changes. . ." Irrespective of the reconveyance, the acreage of the previously approved tract changed in 1978. Consequently, a new application must be timely filed by the taxpayer to secure continued eligibility in the land-use program. The question remains whether a separate application is necessary for the 5 acre tract upon reconveyance. The general rule is that a separate application is required for each tract which is separately stated on the Land Book. *See* Report of the Attorney General (1974-1975) at 456. In this instance, the 1979 Land Book should show the original 75 acre tract as two parcels, one 70 acres and the other 5 acres. *See* § 58-803 (58.1-3309). This office has previously opined that the owner of contiguous tracts may petition the Commissioner of the Revenue to consolidate such tracts onto one line in the Land Book. *See* Report of the Attorney General (1958-1959) at 277. However, consolidation on one line of the Land Book should not be permitted until five years has elapsed since the split-off parcel has again qualified for favorable land use tax treatment.<sup>2</sup>

Based on the foregoing, it is my opinion that a new application must be filed for both tracts in order for each to be eligible for continued assessment based on use.

<sup>1</sup> *This Office has previously ruled that "a change in acreage or a severance of a qualified parcel so that a portion thereof no longer meets minimum acreage requirements will not subject the land to roll-back taxes so long as a qualifying use continues." See Opinion to the Honorable Alice Jane Childs, Commissioner of the Revenue, Fauquier County, dated February 18, 1976, found in the Report of the Attorney General (1975-1976) at 341-342.*

<sup>2</sup> *Under § 58-769.10 (§ 58.1-3237), liability for roll-back taxes extends back for five years. Consolidation on one line on the Land Book would aggregate two parcels with different land use tax histories. If a later event triggered a roll-back of taxes, it would be very difficult to determine the amount of the liability. This result can be avoided by stating the parcels separately on the Land Book until each has at least a five year history of favorable land use tax treatment. Of course, this separate statement on the Land Book has no effect on the eligibility of the parcel to qualify or continue in the land use program.*

May 16, 1979

**The Honorable Julia M. Taylor  
County Attorney for Loudoun County**

You ask whether a local assessing officer may use a three acre "rule of thumb" to determine the extent of land excluded from special use assessment as "additional real estate as may be actually used in connection with, the farmhouse or home or any other structure not related to such special use . . ." as provided under § 58-769.9(b) (58.1-3236) of the Code of Virginia (1950), as amended (a portion of the Land Use Taxation Act (§§ 58-769.4, *et seq.*) (58.1-3229). It appears that this "rule of thumb" is used for purposes of administrative convenience.

**Analysis**

Article X, Section 2, of the Virginia Constitution (1971), provides that if the General Assembly grants land use tax relief or deferral "it shall prescribe the limits, conditions, and extent of such deferral or relief." Under the Act, the General Assembly dealt specifically with the question you ask. Section 58-769.9(b) (58.1-3236), provides, in part:

"(b) . . . real estate under, and such additional real estate as may be actually used in connection with, the farmhouse or home or any other structure not related to such special use shall be excluded in determining such total area (eligible for land use taxation)" (Emphasis added.)

The key issue, then, is the proper meaning of the word "actually."

It is a universally recognized rule of statutory construction that plain unambiguous words ought to be accorded their ordinary meaning. 17 KJ. *Statutes* § 37(1951.) *Webster's New Collegiate Dictionary* (1977 ed.) defines "actually" to mean:

- “1: in act or in fact: REALLY . . .
- 2: at the present moment . . .
3. in point of fact: in truth . . .”

Another generally recognized rule of construction is that the meaning of a word should be determined with reference to the context in which it appears. 17 MJ. *Statutes* §§ 41 and 42 (1951). Applying these two rules of construction, it appears that the assessing officer may not apply a three acre "rule of thumb," although to do so may be administratively expedient.

First, the plain meaning of the word "actually" demands a more precise determination of the land to be excluded. While it is impractical to require a survey to determine the area of excluded land, the statute certainly requires that the assessing officer makes a reasonable, personal judgement as to the amount of land really put to the nonexempt use. Second, land use tax relief operates as an exemption or deferral from taxation. Consequently, all provisions of the Act ought to be strictly construed against the taxpayer. *See e.g., Manassas Lodge No. 1380, Loyal Order of Moose, Inc. V. County of Prince William*, 218 Va. 220, 237 S.E. 2d 102 (1977). To the extent that the administrative practice would tend to grant the landowner tax relief or deferral in more property than was intended by the General Assembly, such practice is erroneous.

It is suggested that the assessing officer has the administrative discretion to use the "three acre" rule for two reasons: (1) the practice is a reasonable exercise of his authority under § 58-769.9(c) (58.1-3236), and (2) by excluding the three acres from special assessment, he is assessing home sites throughout the A-3 zone equally<sup>1</sup> whether or not the home sites are attached to acreage receiving special assessment. Neither contention is valid.

First § 58-769.9(c) (58.1-3236) provides only that the land and structures which do not qualify for land use taxation "shall be valued, assessed and taxed by the same standards, methods and procedures as other taxable structures, methods and procedures as other taxable structures and other real estate in the locality." This section deals only with valuation. It has nothing to do with determining the "extent" of qualifying or nonqualifying land, which is what the assessor is required to do under § 58-769.9(b) (58.1-3236).

Second, this Office has previously found that "the use of the land rather than its zoning classification is the basis for qualification for land use taxation." *See Report of the Attorney General (1975-1976) at 357.* Consequently, the zoning status of the land has no bearing on the question you ask.

Based upon the foregoing, it is my opinion that the local assessor does not have the discretion, for purposes of administrative convenience, to apply a standard “three-acre” rule to determine the area of real estate not put to a special use within the meaning of § 58-769.9(b) (58.1-3236).

*<sup>1</sup>You say that large portions of your county are zoned “A-3,” an agricultural/residential category which requires a minimum of three acres for every home site.*

April 2, 1979

**The Honorable Benjamin L. Pinckard**  
**Commissioner of the Revenue for Franklin County**

You have asked several questions concerning land use taxation and the business license tax.

#### **Land Use Taxation**

You first ask if an applicant for land use taxation may obtain enrollment of only a portion of a parcel of land which is separately stated on the local land book. For the reasons set forth below, the answer to this question is no.

Article X, Section 2, of the Virginia Constitution (1971), provides that the General Assembly enacted what is popularly known as the Land Use Assessment Act (hereinafter the "Act"), §§ 58-769.4 *et seq.* (58.1-3229), of the Code of Virginia (1950), as amended. The Act explicitly sets for the limits, conditions and extent of the tax relief available. Further, this Office has ruled previously that even a local government is without authority to modify the conditions and standards established by the General Assembly for land use taxation relief. *See* Opinion to the Honorable J. E. Givens, Chairman, Commission of the Industry of Agriculture, dated August 21, 1972, and found in the Report of the Attorney General (1972-1973) at 447.

The Act specifically requires that application for land use taxation must be made upon each parcel of land owned by the applicant, as such parcel appears on the land book. *See* §§ 58-769.8 (58.1-3234) and 58-769.7 (58.1-3233). The requirement that each parcel be valued as a whole and readily identifiable by reference to the local land book is necessary because an inchoate tax lien exists against the parcel from the moment it is accorded preferable tax treatment under the Act. Such lien may ripen into an actual lien upon a change in use of the parcel. *See* § 58-769.10 (58.1-3237).

Based upon the foregoing, it is my opinion that a landowner may not obtain preferable land use tax treatment on less than the full acreage of a parcel of real estate, as such parcel is described upon the land book.

*(Ed. Note: Opinion presented contains only that portion relating to use-value assessment.)*

June 7, 1978

**The Honorable Benjamin L. Pinckard**  
**Commissioner of the Revenue for Franklin County**

You have asked several questions concerning land use taxation and personal property tax penalties.

**Land Use Taxation**

1. You ask if it would be legal in a county which has adopted land use taxation as authorized by § 58-769.4 *et seq.* (58.1-3229) of the Code of Virginia (1950), as amended, to charge an annual revalidation fee for such application for taxation on the basis of use assessment.

Section 58-769.8 (58.1-3234) provides that, in order to enjoy land use taxation, the land owner "must submit an application for taxation on the basis of use assessment to the local assessing officer . . ." within a statutorily prescribed length of time.

It further provides that a locality may require an annual revalidation of previously approved applications for land use assessment. Moreover, the statute specifically provides that "*an application fee* may be required to accompany all such applications" but, no fee is authorized for revalidation of an application. (Emphasis added.) I am advised that the Real Estate Appraisal and Mapping Division of the Department of Taxation, which assists in the local administration of the land use taxation laws, does not interpret § 58-769.8 (58.1-3234) to authorize a fee for the mere revalidation of an application. Thus, it is my opinion that § 58-769.8 (58.1-3234) does not authorize a locality to require any fee upon the revalidation of an application of an application for land use taxation.

2. You ask if it would be legal to require a reapplication fee each year for each parcel which has previously qualified for land use taxation.

There is no doubt that a locality may require an application fee to accompany all applications. Section 58-769.8 (58.1-3234) clearly provides, however, that an application is required in two circumstances only: 1) upon the initial application for land use taxation and, 2) "(a)n application shall be submitted whenever the use or acreage of such land previously approved changes . . ."

Consequently, it is my opinion that a locality may not require reapplication or a reapplication fee for land use taxation, except where the use or acreage of the land previously approved changes.

*(Ed. Note: See amendments to the Code of Virginia since this opinion presented contains only that portion relating to use value assessment.)*

January 13, 1978

**The Honorable Charles K. Tribble**  
**Auditor of Public Accounts**

This is in response to your inquiry in which you raised several questions concerning the imposition of roll-back taxes. Section 58-769.10 (58.1-3237) of the Code of Virginia (1950), as amended, provides for the assessment of roll-back taxes when the use of land assessed under a land use assessment program is changed to a nonqualifying use. The land owner becomes subject to a roll-back tax, which essentially is a tax consisting of the differences between the tax which would have been owing had the land been assessed at fair market value, and the tax which was paid under the use value assessment. In addition, the land owner is liable for interest on this difference.

I will answer your questions *seriatim*:

(1) "Is the Commissioner of Revenue or the Treasurer responsible for assessing the six percent per annum simple interest pursuant to § 58-769.10 (58.1-3237)?"

Section 58.769.10 (58.1-3237) is silent as to the responsibility for computing and assessing the interest which is owed on the roll-back tax. Under the terms of § 58-769.10 (58.1-3237) the commissioner of revenue is to determine and assess the roll-back tax and the tax is to be paid by the taxpayer to the treasurer within thirty days of assessment. Under § 58-864 (58.1-3103), it is the duty of the commissioner of the revenue to assess local taxes. The treasurer then is charged with the responsibility of collecting such taxes and levies. There is no reason to believe that the General Assembly, in enacting § 58-769.10 (58.1-3237) intended that this division of responsibility be any different in the assessment and collection of roll-back taxes. Consequently, I am of the opinion that the commissioner of the revenue should assess the roll-back taxes and forward this assessment to the treasurer. The treasurer can then send the bill to the taxpayer, with interest added, and collect the tax from the taxpayer in accordance with the terms of § 58-769.10 (58.1-3237).

(2) "If the assessment is not paid within thirty days as required by the aforementioned statute, (§ 58-769.10) (58.1-3237) does an additional penalty attach similar to that provided for by § 58-963 (58.1-3915)?"

Where a taxpayer complies with the terms of § 58-769.10 (58.1-3237) and reports within sixty days a change in the use of his land to a nonconforming use, I am aware of no provision of law which would authorize imposition of penalty other than § 58-963 (58.1-3915). The penalty provided by § 58-963 (58.1-3915) is available when a person fails to pay a local levy on or before the fifth day of December. The amount of the penalty is five per centum of the outstanding tax liability.

Under § 58-769.10 (58.1-3237), roll-back taxes are not delinquent until thirty days after they have been assessed. Thus, for any roll-back taxes assessed prior to November 5, the penalty provided by § 58-963 (58.1-3351) would be available only where such taxes remain unpaid after December 5.

(3) "Under the same facts as in number 2, does interest continue to run from the date of the original assessment of roll-back taxes at six percent per annum pursuant to § 58-769.10 (58.1-3237), or does the interest rate pursuant to § 58-964 (58.1-3918) apply after June 30 of the year next following the assessment year at eight percent per annum?"

The six per centum interest is to be computed and added to the amount of the roll-back taxes and becomes a liability which must be paid within thirty days following assessment, along with the roll-back taxes. Once the roll-back taxes have gone unpaid more than thirty days after assessment, they become delinquent taxes and should be treated in the same manner as other delinquent taxes. Thus, the provisions of § 58-964 (58.1-3354) providing for interest at the rate of eight per centum per annum from June 30 of the year following the assessment year are applicable to the delinquent roll-back taxes.

January 3, 1978

**The Honorable Henry Lee Carter  
Commonwealth's Attorney, Orange County**

You request my opinion whether the “*forestal land portion*” of an agricultural and forestal district, created in a locality pursuant to the Agricultural and Forestal Districts Act, §§ 15.1-1506 through 1513 of the Code of Virginia (1950), as amended, can qualify for land-use valuation and taxation pursuant to the Land Use Act. *See* §§ 58-769.4 through 769.16, and § 15.1-1512A. Your inquiry arises within a locality which has *partially* adopted the Land Use Act - *only* lands devoted to *agricultural* and *horticultural uses* qualify for land-use valuation and taxation. (Emphasis added.)

The Land Use Act authorizes the various taxing jurisdictions within the Commonwealth to allow real property, put to agricultural, horticultural, forest and open space uses, to be valued for property tax purposes at its “use-value.” The “use-value” is lower than fair market value and results in property tax relief or deferral to the owner of the real property affected. The Agricultural and Forestal Districts Act (AFDS), enacted in 1977, extends the tax relief benefits of the Land Use Act to any parcel of land within a taxing jurisdiction which qualifies under the AFDS as an agricultural and/or forestal district. The interplay between the two Acts is what gives rise to your inquiry.

Section 15.1 - 1512A of the AFDS provides:

“Land used in agricultural and forestal production *within an agricultural and forestal district shall qualify for an agricultural or forestal value assessment on such land pursuant to § 58-769.4 et seq. (58.1-3229), of the Code of Virginia, (Land Use Act), if the requirements for such assessment contained therein are satisfied.*”  
(Emphasis added).

Assuming all other requirements on the AFDA are complied with, § 15.1-1512A makes it clear that the forestal land portion of an agricultural and forestal district created in a locality pursuant to the AFDS qualifies for forest land use-valuation and taxation under the Land Use Act if such forest land satisfies the requirements of the Land Use Act, to-wit: § 58-769.5 (c) (58.1-3230), (definition of land devoted to forest use); and § 58-769.7 (58.1-3233), (minimum size of such land and local assessing officer's determination that land meets criteria of § 58-769.5(c)) (58.1-3230).

I am unaware of any provision in the AFDS which requires a locality to adopt the Land Use Act, as to any of the classifications of real property provided therein, as a condition precedent to the adoption of the AFDS in that locality. In fact, the General Assembly has expressed an opposite intention in this regard. The second paragraph of § 58-769.6 (58.1-3231) of the Land Use Act, enacted in 1977 as an amendment thereto and enacted contemporaneously with the AFDA, (Chapter 681 (1977) Acts of Assembly 1375, 1381) provides:

“Land used in agricultural and forestal production within an agricultural and forestal district that has been established under § 15.1-1506 *et seq.*, (the AFDA), shall be eligible for the use value assessment and taxation *whether or not a local land-use plan or local ordinance pursuant to* (the first paragraph of) § 58-769.6 (58.1-3231) has been adopted.”

The clear language of the 1977 Amendment to § 58-769.6 (58.1-3231) states that a locality may implement the AFDA “whether or not” the locality has adopted “a local land-use plan or local ordinance,” both of which are necessary conditions for implementation of the Land Use Act in any locality. Since the AFDA may be adopted in a locality which failed to comply with all requirements necessary for the adoption of the Land Use Act, in whole or in part, *a fortiori*, the AFDA may be adopted in a locality which has adopted the Land Use Act as to one or more of the classifications of real estate defined in § 58-769.5 (58.1-3230), as is the case in this instance.

I must point out that in order to qualify for land use assessment and taxation under either the AFDA or the Land Use Act, the locality must comply with the requirements of Article X, Section 2, of the Constitution of Virginia (1971), which provides, in pertinent part:

“No such deferral or relief (from real estate taxes for real estate devoted to agricultural, horticultural, forest, or open-space uses) shall be granted within the territorial limits of any county, city, town or regional government *except by ordinance adopted by the governing body thereof*” (Emphasis added).

If the emphasized language of the 1977 Amendment to § 58-769.6 (58.1-3231) *supra*, is construed to allow land use-valuation and taxation under the AFDA without an "ordinance" as required under Article X, Section 2, *supra*, the Amendment contravenes the Virginia Constitution, and in this respect the amendment is unconstitutional. That result is not necessary in this instance. A fundamental rule of statutory construction provides that where a statute is susceptible of two constructions, one of which is plainly within the legislative power and the other without, the court must adopt the former construction. *See Ocean View Improvement Corp. v Norfolk & W. Ry.*, 205 Va. 949, 955, 140 S.E.2d 700, 704 (1965). It is equally reasonable that the 1977 Amendment should be construed in the following manner. The emphasized portion of the 1977 Amendment to § 58-769.6 (58.1-3231), *supra*, is immediately preceded by the phrase, "shall be eligible for the use value assessment and taxation . . ." This phrase clarifies and limits the language which follows it. Thus, even though the locality may adopt the AFDA "whether or not" the locality has performed all acts necessary for adoption of the Land Use Act, it is merely "eligible" for tax deferral or relief. Accordingly, only if the locality conforms with all requirements of the AFDA and the Constitution, including the "ordinance" requirement of Article X, Section 2, does tax relief or deferral result.

Based upon the foregoing, it is my opinion that a locality may implement the AFDA without regard to whether the same locality has adopted the Land Use Act as to any or all of the classifications of real property provided therein, but tax deferral or relief accrues only if all requirements detailed in the AFDA and the Constitution of Virginia are met.

*(Ed. Note: See amendments to the Code of Virginia since this opinion.)*



December 12, 1977

**The Honorable W. H. Forst**  
**Chairman, State Land Evaluation Advisory Committee**

This is in response to your letter submitted on behalf of the State Land Evaluation Advisory Committee (SLEAC). I shall respond to your inquiries *seriatim*.

1. Are horticultural products, i.e., orchard trees vineyards and nursery stock, real property for the purpose of taxation pursuant to § 58-769.4 (58.1-3229), *et seq.*?

It is not necessary to decide whether all horticultural products, under all circumstances, constitute real property in the common law sense, for the purpose of assessing and taxing real estate. Sections 58-769.4 through 769.15:1 (58.1-3229 through 3244) of the Code of Virginia (1950), as amended, provided, *inter alia*, that "real estate devoted to horticultural use" may be assessed and taxed by the locality at a special land use-value. To determine the land use-value, § 58-769.9 (58.1-3236) directs the local assessing official to "consider only those indicia of value which such real estate has for . . . horticultural, . . . use . . ." "In addition to use of his personal knowledge, judgment and experience *as to the value of real estate in . . . , horticultural . . . use*, he shall, in arriving at the value of such land, *consider available evidence of . . . , horticultural, . . . capability*, and the recommendations of value of such real estate as made by the State Land Evaluation Advisory Committee." (Emphasis added.)

Section 58-769.9 (58.1-3236) clearly contemplates that the value of the various horticultural products located and grown on real property devoted to horticultural use is an important factor in determining the "horticultural capability" of the particular real estate, and ultimately, the land's use-value, I concur with the position enunciated previously by this office that if real estate is "devoted to horticultural use," within the context of § 58-769(b) (58.1-3236), then the horticultural products located and grown thereon are, in the limited sense indicated in this opinion, "assessed as real estate for the purpose of land use taxation." See Opinion of this Office to the Honorable Russell I. Townsend, Jr., Member, Senate of Virginia, dated February 23, 1976, and found in the Report of the Attorney General (1975-1976) at 358.

2. "Although not specifically authorized by law, is the 'add on' method recommended by the Committee (SLEAC) for use-value assessment (of certain horticultural lands) pursuant to Paragraph 58-769.4, *et seq.* (58.1-3229), permitted by law and sufficiently reasonable to withstand attack as being arbitrary and capricious?"

The reason for the adoption of the "add on" method of use valuation and the conditions under which it may be implemented were recently published by SLEAC in its *Procedures for Determining Ranges of Use-Values*, at 13 (Sept. 1977) (SLEAC, *Procedures*) as follows:

"Because of the complexity of determining the use-value of land devoted to vineyard and nursery use, the SLEAC recommends for the tax-year 1978 that use-values of land devoted to such use in the applicable jurisdiction to be those values determined, suggested, and published for land in agricultural use in such jurisdiction. After the use-value of the land is determined, the use-value of the vineyard or nursery items on the land may, pursuant to authority in Section 58-769.9 (58.1-3236) of the Code, be appraised by the responsible officials in each of the several jurisdictions authorizing use-value taxation of real estate in horticultural use." (Emphasis added.)

"What constitutes arbitrary action is difficult to define, because it is dependent upon the purpose and subject of a particular act and the circumstances and conditions surrounding it." *Newport News v. Elizabeth City Co.*, 189 Va. 825, 840, 55 S.E. 2d 56, 64 (1949). Generally, administrative action is arbitrary and capricious where it represents the will or whim of the administrative body rather than its judgment or where it has no reasonable basis, no reasonable relation to a lawful purpose, or is without support of the evidence. See 2 Am. Jur. 2d, *Administrative Law*, § 651(1962), and cases cited therein.

In the face of inadequate financial data upon which to determine the use-value of land devoted to nursery and vineyard horticultural uses, SLEAC recommends that the use value of comparable agricultural land in the locality is a suitable starting-off place to determine such use-value.

Section 3.1-646.1, Code of Virginia (1950), as amended, provides, in pertinent part:

"Whenever the terms 'agriculture, agricultural purposes, *agricultural uses*' or words of similar import are used in any of the statutes of the State of Virginia, such terms shall include horticulture . . . , horticultural purposes . . . , *horticultural uses* . . . , and words of similar import applicable to agriculture shall likewise be applicable to horticulture. . ." (Emphasis added.)

The General Assembly has clearly recognized the many similarities between the horticultural and agricultural industries. It is not unreasonable, therefore, to utilize the usevalue of comparable agricultural land as a framework upon which to ascertain the use-value of certain horticultural lands. "After the (agricultural) use-value of the land is determined, the use-value of the vineyard or nursery items on the land may, *pursuant to authority in Section 58-769.9 (58.1-3236) of the Code*, be appraised by the . . ." appropriate local assessing official. SEAC, *Procedures, supra*. The use of the word "may" clearly indicates that the "add on" of the use-value of the vineyard or nursery is discretionary with the local assessing official. The "add on" may be applied only in those instances where the local assessing official determines that the comparable agricultural use-value does not accurately reflect the total use-value of the particular horticultural land in question. *See generally* § 58-769.9 (58.1-3236).

Based upon the foregoing, it is my opinion that the "add on" method of valuation recommended by SLEAC for the valuation of land devoted to certain horticultural uses, as applied in the proper circumstance, is not an arbitrary and capricious exercise of the authority vested in SLEAC under § 58-769.4 *et seq.* (58.1-3229).

December 7, 1976

**The Honorable Lois B. Chenault**  
**Commissioner of the Revenue of Hanover County**

This is in response to your inquiry whether real property owned by a public service corporation may qualify for land use assessment.

Pursuant to Article X, Section 2, of the Constitution of Virginia, the General Assembly enacted Article 1.1 of Chapter 15 of Title 58 (§§ 58-769.4 to -769.15:1) (58.1-3229 to 58.1-3244) of the Code of Virginia (1950) as amended, providing a separate tax classification of real property used in certain ways. Section 58.1-3231 provides in part, that [a]ny county, city or town in the Commonwealth which has adopted a land-use plan may adopt an ordinance to provide for the use value assessment and taxation, in accord with the provisions of this article, of real estate classified in § 58-769.5 (58.1-3230)"

Article X, Section 2, of the Constitution specifies that real property owned by a public service corporation is a separate classification of property, to be assessed at the state level. Section 58-503.1 provides that the State Corporation Commission is the state agency authorized to assess public service corporation property for taxation. There is no constitutional or statutory provision permitting local assessment of special use real property owned by public service corporations, even in instances where a locality has enacted a land use assessment ordinance. I am of the opinion that § 58-503.1 (58.1-2600) requires that assessment of public service corporation property must be conducted by the State Corporation Commission, and that the Commission is without authority to assess on the basis of land use. *Cf. Report of the Attorney General (1971-1972) at 425.*

December 7, 1976

**The Honorable W. H. Forst  
Chairman, State Land Evaluation Advisory Committee**

This is in response to your recent letter from which I quote:

"The State Land Evaluation Advisory Committee is charged by law (§ 58-769.11) (58.1-3239) with the duty of determining and publishing a range of suggested values for each of the several soil conservation service land capability classifications for agricultural, horticultural, forestry and open space uses in the various areas of the State as needed to carry out the provisions of Article 1.1 of Chapter 15 of the Code of Virginia (1950), as amended.

"It has been the policy of this Committee to determine and publish a range of values each year for each of the uses eligible for special assessment under the required local ordinance. Most of the localities utilizing the special assessment of real estate devoted to agricultural, horticultural, forest or open space land, reassess periodically under special statutes. Do the uniformity provisions of Article X, Section 1, of the Constitution, particularly as construed by the Virginia Supreme Court in the case of *Perkins v. County of Albermarle*, 214 Va. 416, require that use-value assessments be applied as of each year?"

Article X, Section 1, of the Virginia Constitution provides, in pertinent part:

" . . . All taxes shall be . . . uniform upon the same classes of subjects within the territorial limits of the authority levying the tax . . . "

Article X, Section 2, of the Constitution specifically permits the General Assembly to "define and classify real estate devoted to agriculture, horticultural, forest, or open space uses, and . . . by general law authorize any county, city, town or regional government to allow deferral of, or relief from, portions of taxes otherwise payable on such real estate if it were not so classified . . ." Consequently, I am of the opinion that it is constitutionally permissible for the legislature to authorize taxation of special use real estate in a different manner than other real estate.

While such different treatment is constitutionally permissible, I am aware of no provision of law whereby the General Assembly has authorized localities to change the assessed value of the specialty assessed real estate between general reassessments. Section 58-759 (58.1-3320) provides that:

"Taxes for each year on real estate subject to reassessment shall be extended on the basis of the last general reassessment made prior to such year, subject to such changes as may have been lawfully made."

Section 58-763 (58.1-3351) provides certain instances in which a locality may change the value of real estate between general reassessments but these instances do not include the annual publication of the range of values to which you refer.

Where a locality is on an annual assessment basis, values may be adjusted to reflect changes in the published range of values, since a reassessment would occur each year. In all other instances, i.e., where reassessments occur less frequently than annually, no statutory authority exists for permitting a locality to change the value of property assessed, under the land use provisions, merely to reflect a change in the published range of values. Consequently, I am of the opinion that, unless a locality is on annual assessment basis, adjustment of property values, made in accordance with the published range of values, is not authorized by law.

October 13, 1976

**The Honorable Lee T. Keyes  
Commissioner of the Revenue of Loudoun County**

This is in response to your inquiry regarding "roll-back" taxes under the land use assessment program, as described in § 58-769.10 (58.1-3237) of the Code of Virginia (1950), as amended. You state you have a situation where an owner of land received permission to have the land assessed at a land use value and subsequently sold the land. The new owner was unaware that the land was restricted in use, due to the election of the former owner to qualify for land use assessment, and decided to use the land in a nonqualifying manner.

The third paragraph of § 58-769.10 (58.1-3237) provides as follows:

"Liability to the roll-back taxes shall attach when a change in use occurs but not when a change in ownership of the title takes place if the new owner continues the real estate in the use for which it is classified under the conditions prescribed in this article and in the ordinance. The owner of any real estate liable for roll-back taxes shall, within sixty days following a change in use, report such change to the commissioner of the revenue or other assessing officer on such forms as may be prescribed. The Commissioner shall forthwith determine and assess the roll-back tax, which shall be paid to the treasurer within thirty days of assessment.

I am of the opinion that the owner of the land who makes the change which disqualifies the land from the land use assessment program should be billed for the roll-back taxes under this paragraph.

You have also asked if language in deeds of transfer stating that the land subject to land use assessment is "free from all encumbrances" is violated by the grantor's election to restrict the use of the land, in order to qualify for land use assessment. If the obligation to continue using the land in a manner to qualify for land use assessment in order to avoid liability for roll-back taxes can be considered an encumbrance, the grantee may have a cause of action against the grantor for any roll-back taxes which he is required to pay. This follows from the fact that, where roll-back taxes are not paid, the land is subject to a lien for these taxes. *See* Report of the Attorney General (1972-73) at 423.

Section 58-769.8 (58.1-3234) provides that the names of landowners whose land is assessed at a use value are to be indexed in the clerk's office, and thus land assessed at use value is a matter of public record. Knowledge, either actual or constructive, of an encumbrance, however, is not sufficient to relieve the grantor from his obligations under the deed of transfer. *See generally Adams v. Seymour*, 191 Va. 372, 61 S.E.2d. 23 (1950). In discussing the nature of an encumbrance, one authority has stated that:

"[A]lien or easement is properly viewed as a burden upon land, depreciative of its value, notwithstanding it does not directly conflict with the passage of title thereto. A burden may be only inchoate, yet if it is a right which may be enforced against the property and against the will and consent of the owner, it is within the category of an encumbrance" 5 MJ. *Covenants* §25 (1975 Cum. Supp. at 85-86).

Consequently, I am of the opinion that subjecting land to land use assessment and the possibility of future roll-back taxes constitutes an encumbrance. Despite this effect on the potential rights and duties of the parties, the deed represents a valid transfer of title between them.

February 23, 1976

**The Honorable Russell I. Townsend, Jr.**  
**Member, Senate of Virginia**

This is in response to your requests for my opinion relating to land use taxation and assessment of real estate by localities which assess on a fiscal year basis.

Your first inquiry is as follows:

"In accordance with Article I .1 Title 58, Code of Virginia, Section 58-769 (58.1-3341) through 58-769.16(58.1-3244), inclusive, is the value of the standing timber trees included in range of values suggested by the State Land Evaluation Advisory Committee? And, if so, *should* they be?"

In my Opinion to the Honorable R. S. Burruss, Jr., Member, Senate of Virginia, dated May 21, 1975, and found in the Report of the Attorney General (1974- 1975) at 492, I held that the value of timber standing on land classified as real estate devoted to forest use should be assessed on a land use basis as well as the real estate itself. Section 58-769.11 (58.1-3239) requires that the State Land Evaluation Advisory Committee determine and publish a range of values suggested values for land classified for forest use. Under this section, the value of the standing trees should be included in the range of values suggested by the Committee. To implement this requirement, the Division of Forestry of the Department of Conservation and Economic Development has computed a range of present values for standing timber. To these values, the Division has added \$7.00 for the cost of seedlings. No allowance has been made for site preparation and no distinction has been made between the use value of a mature stand of timber and cut over woodland. The resulting values are published by the Committee in accordance with the requirements of § 58-769.11 (58.1 3239).

Your next inquiry is as follows:

"What is the application of § 58-769 (58.1-3210 to 58.1 3219), as amended, concerning the 100 percent assessment as the same would apply to a locality which, in accordance with State laws and local charters, has adopted an annual assessment program and has adopted a fiscal year assessment date of July 1 in accordance with § 58-851.7: *i. e.* (58.1-3010), what would spread the 100 percent assessment on its Land Book? And, when would the State Corporation Commission be required to furnish the assessments at 100 per cent on Public Service properties to the locality?"

As a result of Senate Bill 597 introduced in the 1975 session of the General Assembly, § 58-760 (58.1-3201 and 58.1-3202), was amended to require that beginning, January 1, 1976, all general reassessment or annual assessments of real estate must be made at 100 percent fair market value. In my opinion to the Honorable Frederic Lee Ruck, County Attorney for Fairfax County, dated July 8, 1975, a copy of which is enclosed, I held that the requirement of assessment at 100 percent fair market value will apply for the first time to those boards of assessors or annual assessors which begin the reassessment process on or after January 1, 1976, with the necessary result that the first effective tax day for the change on the land books will be January 1, 1977. Section 58-851.6 authorizes counties, cities, and towns to levy real estate taxes on a fiscal year basis of July 1 to June 30, and further provides that, except as authorized in § 58-851.7 (58.1-3010), all real estate in such a locality shall be assessed as of January 1 prior to such fiscal year. Section 58-851.7 (58.1-3010) provides that when a locality adopts fiscal year assessments, it may provide that real estate other than public service corporation property be assessed as of the first day of July. In localities adopting fiscal year assessments, public service corporation property must continue to be assessed at its value as of January 1 prior to such assessment date. Under these sections, the locality would spread the 100 percent assessment on its land book as of July 1 if its ordinance so provides. Public service corporation property, however, will continue to be assessed at its value as of January 1 prior to such assessment date. If no ordinance under § 58-851.7 has been adopted, the locality must continue to assess as of January 1 prior to such fiscal year as provided by § 58-796.6 (58.1-3231). In either event, the State Corporation Commission must assess public service corporation property at its value on January 1 prior to such fiscal year. Public service corporation values will be published in August for application by the locality as of the effective date of its assessment as hereinabove provided.

You further inquire as follows:

"Would horticulture products - trees, shrubs, boxwood, etc. "under § 58-758 (58.1-3200) be assessed as real estate for the purpose of taxation?"

Under §§ 58-769.4 (58.1-3229) to 769.15:1 (58.1-3244), real estate devoted to horticultural use may be assessed by the localities at a special land use rate under an ordinance adopted pursuant to § 58-769.6 (58.1-3231). If the locality adopts such an ordinance, real estate devoted to horticultural use is entitled to special assessment. The term real estate devoted to horticultural use is defined by § 58-769.5(b) (58.1-3230) to include “grapes, nuts, and berries; vegetables; nursery and floral products under uniform standards prescribed by the Commissioner of Agriculture and Commerce.” Under such standards, trees shrubs and boxwoods are assessed as real estate for the purpose of land use taxation.

Your final inquiry is as follows:

"In accordance with §§ 58-769.4 (58.1-3229) through 58-769.16 (58.1-3244), inclusive, if ownership of a property (or any portion thereof) changes while such property is assessed under an approved Land Use Assessment application, is the new owner required to file and/or refile for Land Use Assessment in order for the "Roll-Back Lien" to be applicable?"

Section 58-769.8 (58.1 - 3234) provides that property owners must submit an application for land use assessment by November 1 preceding the tax year for which taxation is sought. Once filed, an application remains valid unless the use or acreage of the previously approved land changes. Although the locality may require a property owner to revalidate his previously-approved application annually the application for prior years remains valid for future years unless the use or acreage of the land previously approved changes. Section 58-769.8 (58.1-3234) specifically provides that "[c]ontinuation of valuation, assessment and taxation under an ordinance adopted pursuant to this article shall depend on continuance of the real estate in the use for which classification is granted and compliance with the other requirements of this article and the ordinance *and not upon continuance in the same owner of title to the land.*" (Emphasis added.) Accordingly, I am of the opinion that a change in ownership will not require an additional application unless a change in use or acreage also occurs.

*(Ed. Note: See amendments to the Code of Virginia since this opinion.)*

December 19, 1975

**The Honorable E. O. Rudolph, Jr.**  
**Commissioner of Revenue for Frederick County**

This is in response to your request for my opinion whether a county wide rezoning, without the request of a property owner whose property qualifies for land use taxation, disqualifies the property for such land use taxation when the zoning changes from a less intensive to a more intensive classification.

Section 58-769.6 (58.1 -3231) of the Code of Virginia (1950), as amended, authorizes localities, which have adopted a land use plan, to enact ordinances which provide for the assessment and taxation of agricultural, horticultural, forest and open space land according to its use value. Section 58-769.7 (58.1 -3233) sets forth some of the criteria which must be met before land may qualify for land use taxation under an ordinance adopted pursuant to § 58-769.6 (58.1-3231). In addition to other requirements, § 58-769.7 (58.1-3233) requires that the property meet the use criteria set forth in § 58-769.5 (58.1-3230).

It is clear from the foregoing sections that the use of the land rather than its zoning classification is the basis for qualification for land use taxation. Section 58-769.10 (58.1-3237) further affirms this view by stating that, when the use changes to a nonqualifying use, the property may be subjected to roll-back taxes. In many instances, however, zoning changes do not terminate pre-existing uses. *Harbison v. City of Buffalo*, 4 N.Y.2d 553, 152 N.E.2d 42 (1958). *See Note*, 102 U.Pa. l. Rev. 91,92 (1953). If under amended zoning ordinance, an existing qualifying use is permitted to continue or a qualifying use is permissible despite the fact that nonqualifying uses are also permissible, qualifying land is still entitled to land use taxation.

*(Ed. Note: See amendments to the Code of Virginia since this opinion.)*



May 21, 1975

**The Honorable R. S. Burrus, Jr.**  
**Member, Senate of Virginia**

This is in response to your recent request for my opinion relating to taxation of standing timber in counties that have adopted special land use assessments for forest land pursuant to § 58-769.6 (58.1-3231) of the Code of Virginia (1950), as amended. You ask whether, in such counties, a special land use assessment applies to both the land and the standing timber, or whether it applies only to the underlying land.

Under § 58-769.9 (58.1-3236), the assessing officer must assess qualifying forest land by considering only the indicia of value which it has for forest uses. Section 58-769.5(c) (58.13230) defines such real estate to include the underlying land and the standing timber and trees thereon. Therefore, a special use assessment of forest land applies to both the land and the standing timber thereon. My Opinion to the Honorable Andrew Ellis, Jr., dated September 19, 1974, held that the full fair market value of trees growing upon qualifying forest land should not be added to the use value of the underlying land for special assessment purposes. Rather, the use value of such trees, calculated pursuant to § 58-769.9 (58.1-3236), and in accordance with the procedures established by the State Land Evaluation Advisory Committee, should be added thereon. The State Land Evaluation Advisory Committee has developed a manual for classification, assessment, and taxation of such real estate. The forms incorporated therein reflect the requirements of the law respecting the inclusion of the value of standing timber in special land use valuation.

May 16, 1975

**The Honorable George R. St. John**  
**County Attorney for Albemarle County**

This is in response to your recent request for my opinion relating to special land use assessment under an Albemarle County Ordinance passed pursuant to § 58-769.6 (58.1-3231) of the Code of Virginia (1950), as amended. You ask whether a person who has entered a contract to buy property prior to November 1 of the year may apply for special land use assessment although he will not acquire title to the property until after November 1.

Local real estate taxes are assessed against the owner of taxable property on January 1 of each taxable year. The word "owner" includes any person who has the usufruct, control, or occupation of the land on that date whether his interest is an absolute fee, or less than a fee. *City of Richmond v. McKenny* 194 Ba. 427,73 S.E.2d 781 (1951); *Stark v. City of Norfolk*, 183 Ba. 282,32 S.E.2d 59 (1944).

Special land use assessment of qualified property applies to such an owner as of January 1, provided the requirements of §§ 58-769.4 (58.1-3229) through 58-769.16 (58.1-3244) are met Section 58-769.15 (58.1-3243).

Section 58-769.8 requires that the owner submit an application for special land use taxation by November 1 of the preceding year so that the assessing officer may determine the propriety of such special assessment effective January 1. In my opinion, a person who has contracted to buy property prior to November 1 may apply for special land use assessment for the following year. The ownership requirement of § 58-769.8 (58.1-3234) will be met if he becomes an owner before January 1 of the following year.

April 9, 1975

**The Honorable Lawrence R. Ambrogio**  
**Commonwealth's Attorney for Frederick County**

I have received your recent letter inquiring whether a person who owns several contiguous parcels of real estate, all of which are eligible for use value tax assessment pursuant to § 58-769.4 (58.1-3229) et seq., *Code of Virginia* (1950), as amended, must make a separate application for such assessment as to each parcel, or whether all of the parcels may be included in one application.

The answer to your question depends upon the manner in which the parcels are assessed on the land book. If the parcels are jointly assessed on the land book, one application is sufficient. If the parcels are separately assessed on the land book, I am of the opinion that a separate application should be made for each parcel. Section 58-769.9(d) (58.1-3236) provides that "land book records shall be maintained to show both the use value and the fair market value of such real estate" and the application forms prepared by the State Tax Commissioner pursuant to § 58-769.8 (58.1-3234) require certain land book data for the parcel as to which the application is submitted to be placed on the application. The instructions for the form state that an application "shall be filed for each line of the land book."

If separate parcels are combined in the application, it would be difficult for the commissioner of revenue to properly process the application and prepare the land book and it could create confusion if at a future date one of the parcels should be sold or become subject to the roll-back taxes imposed pursuant to § 58-769.10 (58.1-3237). Contiguous parcels of property which are owned by the same person or persons may be combined by the commissioner of revenue and entered on the land book as one parcel upon the request of the owner. *See Report of the Attorney General* (1958-1~/59) at 277. If this procedure is followed, separate land use applications would not be required.

March 18, 1975

**The Honorable George R. St. John**  
**County Attorney for Albemarle County**

This is in response to your recent request for my opinion whether a county which elects to adopt a land use tax ordinance must readopt such an ordinance each year, or whether such an ordinance, once adopted, is continuous.

Special land use assessment and taxation is authorized by §§ 58-769.4 et seq. (58.1-3229) of the Code of Virginia (1950), as amended. Section 58-769.6 (58.1-3231) authorizes certain counties to adopt land use assessment ordinances, and provides:

" . . . The provisions of this article shall not be applicable in any county, city or town for any year unless such an ordinance is adopted by the governing body thereof not later than June thirty of the previous year."

Once such an ordinance is adopted not later than June 30 of the preceding year, it has necessarily been adopted not later June 30 of all subsequent years. Therefore, the quoted provision does not require annual reenactment of a land use assessment ordinance.

*(Ed. Note: See amendments to the Code of Virginia since this opinion)*

January 27, 1975

**The Honorable Frank M. Morton, III  
County Attorney for James City County**

I have received your recent letter, from which I quote:

"James City County adopted in October of 1974, two categories of the Land Use Assessment Statute relating to agriculture and horticulture. Subsequent to the adoption of same and while processing applications thereunder, the following questions have arisen for which I would be grateful for your advice and guidance.

1. May an owner with property qualifying under the agricultural and/or horticultural provisions include for purposes of relief additional forest property of less than 20 acres which property otherwise meets the standards for forestry under §§ 58-769.4 *et seq.* (58.1-3229), of the Code of Virginia, 1950, as amended?
2. Would the answer to the above remain the same if the forest area was in excess of 20 acres?"

Section 58-769.4 *et seq.* (58.1-3229), Code of Virginia (1950), as amended, provides for real property taxation of certain land on the basis of its value for designated uses instead of its fair market value. Section 58-769.5 (58.1-3230) classifies and defines real estate devoted to agricultural, horticultural, forest and open-space use to permit such assessment and taxation, and §§ 58-769.5 (a) and (b) (58.13230) and 58-769.12 (58.1-3240) authorize the Commissioner of Agriculture and Commerce to prescribe uniform standards within the classifications. Pursuant to this authority, the Commissioner has promulgated a statement of these standards effective August 10, 1973, which provides that agricultural and horticultural uses include real estate devoted to the production for sale of "[t]rees or timber products of such quantity and so spaced as to constitute a forest area meeting standards prescribed by the Director of the Department of Conservation and Economic Development, if less than twenty (20) acres, and produced incidental to other farm operations" The less than twenty acre quantity was selected in view of the fact that land otherwise eligible for forest classification must consist of a minimum of twenty acres as required by § 58-769.7(b) (58.1-3233), and therefore if the tract was twenty acres or greater in size it would qualify for forest use assessment.

In consideration of the foregoing, I am of the opinion that property qualifying for agricultural or horticultural use value assessment includes forest property of less than twenty acres, when devoted to the production for sale of trees or timber products incidental to other farm operation, if such land constitutes a forest area within the standards prescribed by the Director of the Department of Conservation and Economic Development. With respect to your second question, since the standards limit the quantity of forest property eligible for agricultural or horticultural use value assessment to less than twenty acres, only that portion of the forest land in excess of this amount must be taxed on the basis of its fair market value where the county has not elected to adopt an ordinance providing for use value assessment of forest land.

*(Standards for forest land now prescribed by State Forester)*

**March 25, 1974**

**The Honorable F. Caldwell Bagley  
County Attorney for Prince William County**

Your recent letter requested an opinion whether Prince William County can adopt an ordinance for assessment of agricultural, horticultural, forest or open space land in accordance with use, under § 58-769.6 (58.1-3231), Code of Virginia (1950), as amended, if it has no county-wide comprehensive land-use plan, but only a partial plan as permitted under § 15.1-452.

In a letter to the Honorable Robert L. Gilliam, III, Commonwealth's Attorney for Westmoreland County, dated September 13, 1972, a copy of which is enclosed, I ruled that § 58-769.6 (58.1-3231) required that a county have adopted a comprehensive plan before adopting a use assessment ordinance. The purpose of this statutory requirement is to permit the county to limit use assessment to those areas where the use of the land does not conflict with the county's plan of development. Moreover, the standards issued by the Department of Agriculture under § 58-769.12 (58.1-3240) require that the property be used consistently with the land-use plan of the county. As it is not possible to permit use taxation only in those areas of the county covered by a partial land-use plan, it is my opinion that the county must wait until it has adopted a completed plan before it adopts an ordinance under § 58-769.6 (58.1-3231).

June 7, 1973

**The Honorable Alice Jane Childs**  
**Commissioner of the Revenue for Fauquier County**

Your letter of May 28 requested an opinion interpreting the requirement of § 58-769.8 (58.1-3234) of the Code of Virginia that "property owners" submit applications for taxation. The provisions for assessment of land devoted to agricultural, horticultural, forest and open space uses on the basis of its use extend to the landowner the privilege to pay taxes on a lower valuation of his property than fair market value. Section 58-769.10 (58.1-3237) providing for roll-back taxes in the case of a change in use, creates an obligation to which the landowner submits when he applies for assessment by use. Because the land will be subject to the lien of the roll-back taxes in the future, it is my opinion that the words "property owners" should be interpreted to mean all owners of the property, and therefore that all owners of any property for which an application is filed should be accounted for in the application I will answer your specific questions *seriatim*.

1. How should estate of heir property be handled?  
It is my opinion that every heir to the property for which assessment in accordance with use is desired should sign the application unless an affidavit signed by all heirs is recorded in the Clerk's office designating the person who has the power to make such an application. It would be advisable for the Commissioner of the Revenue to note on the application the book and page on which this affidavit is recorded. If it is impossible to account for all the heirs, application should not be permitted until the question of ownership is resolved.
2. What procedure should be used where property is owned by infants?  
In the case where the infant is residing with his parents, you may accept the signature of the parents or parent with whom he is living as that of his guardian. The child should be required to sign also if he is old enough to do so. Here the child is not residing with a parent, an instrument designating a guardian should be recorded in the Clerk's office.
3. When accepting applications from corporations, must all corporate officers sign?  
The application should contain the signature of one officer who is authorized by the corporation to sign on its behalf. It is unnecessary for any more than one to sign.
4. Is it permissible for people claiming to be agents for landowners to sign the application?  
Unless a power of attorney or other legal document designating the agent empowered to sign use assessment applications is recorded in the Clerk's office, no agents should be permitted to sign. Again, a marginal notation on the application of books and page would be advisable.
5. Is a witnessed "x" mark acceptable? Must it be notarized?  
In my opinion, a witnessed "x" mark is acceptable for a person who is unable to write. Two witnesses would be advisable. It is not necessary to have it notarized.

*(Ed. Note: See Amendments to the Code of Virginia since this opinion.)*

June 1, 1973

**The Honorable Donald W. Devine  
Commonwealth's Attorney for Loudoun County**

I have received your letter of May 10, 1973, from which I quote:

"In October of 1972, the Loudoun County Board of Supervisors adopted an ordinance to provide for special assessment and taxation of agricultural, horticultural, forestry, and open space real estate pursuant to the provisions of Article I .1, Chapter 15, Title 58 of the Code of Virginia (1950) as amended. The Board of Supervisors at that time declared the ordinance to be effective for the 1973 real estate tax year. A number of property owners submitted applications for taxation on the basis of use assessment by November 1, 1972 as required by § 58-769.8 (58.1-3234).

Under the provisions of § 58-769.5 (58 1-3230), 'real estate devoted to agricultural use' and 'real estate devoted to horticultural use' were established and defined, thereby requiring the local officer to insure that the applicant's real estate fell within the definition in § 58.769.5 (58.1-3230) and the requirements of § 58-769.7 were met relating to minimum acreage and gross revenue in determining qualifications for special land use tax treatment.

The 1973 Virginia General Assembly, in Chapter 209 of the Acts, amended § 58-769.5 (58 1-3230) to the extent of removing the statutory definitions of agricultural and horticultural real estate and inserting in their stead authority for the Commissioner of Agriculture and Commerce to prescribe uniform standards for real estate to meet in order to qualify for special treatment as agricultural or horticultural real estate. Due to the effect of the 1973 amendments, it now appears that certain real estate which appeared to be entitled to special assessment as agricultural or horticultural real estate under the 1971 Act will not be so entitled under the uniform standards soon to be prescribed by the Commissioner of Agriculture and Commerce.

In light of the foregoing, I request your opinion as to the following:

1. Can the Board of Supervisors change the effective date of the ordinance passed in October 1972 so that it would not now be effective for the 1973 tax year but, instead, would only be effective for tax year 1974, thereby allowing the local assessor to determine qualification for special assessment treatment under the forthcoming standards to be promulgated by the Commissioner of Agriculture and Commerce, and not under present law?
2. Can the Board apply the standards to be promulgated by the Commissioner of Agriculture and Commerce retroactive to January 1, 1973, so that qualification for special assessment for the 1973 tax year will be determined under the 1973 amendments and not the definitions of the 1971 Act?
3. Can the Board apply the standards to be promulgated by the Commissioner of Agriculture and Commerce retroactive to January 1, 1973, so that qualification for special assessment for the 1973 tax year will be determined under the 1973 amendments and not the definitions of the 1971 Act? Can the Board apply the forthcoming standards to be promulgated by the Commissioner of Agriculture and Commerce for the remaining portion of the 1973 tax year?
4. Would land owners who qualify for special assessment and taxation under the 1971 Act but whose real estate no longer qualifies under the 1973 amendment and the Commissioner's standards be subject to a roll-back tax for preceding years?"

With respect to your first question, I am unaware of any legal principle that would preclude the board from changing the effective date of the use assessment ordinance from January 1, 1973, to January 1, 1974. The tax rate has not yet been fixed, and the taxpayers have not been assessed with 1973 real property taxes. Although the applications required by § 58-769.8 (58.1-3234), Code of Virginia (1950), as amended, have been submitted and the property has been valued on the basis of its use for purposes of assessment, I am of the opinion that this action has not vested the taxpayers with a legal right to use value assessments for the 1973 tax year. Accordingly, I conclude that the board may defer the effective date of the ordinance to January 1, 1974.

Your second and third questions are related in that in either case a change in the qualifications at this time might result in denial of a taxpayer's right to apply for use assessment pursuant to § 58-769.8 (58.1-3234) because an application cannot now be accepted for the 1973 tax year. See my opinion to the Honorable Ivan Mapp, Commissioner of the



Revenue for the City of Virginia Beach, dated March 30, 1973, a copy of which is enclosed. Assuming, *arguendo*, that a change could be made by the board pursuant to the amended statutes which become effective today, the board cannot, in my opinion, select the portion of the amendments it wishes to follow and disregard the balance. Regardless of the fact that the standards to be promulgated are unlikely to broaden the qualifying uses, it is conceivable that a use previously thought to be ineligible might be within the standards. In addition, § 58-769.7(b) (58.1-3233) no longer contains the gross sales provision and thus property which was not eligible because it had not produced sufficient revenue in prior years can now qualify. It is my opinion, therefore that the answer to your second and third question is in the negative.

In reply to your fourth question, § 58-769.10 (58.1-3237) provides that property is subject to roll-back taxes when “. . . the *use* by which it qualified changes, to a nonqualifying use . . .” (Emphasis supplied.) The statute does not purport to subject property to such taxes unless its use changes; and, therefore, I am of the opinion that a change in the statutory criteria for use value assessment does not operate to subject property which no longer qualifies to the roll-back taxes.

March 30, 1973

**The Honorable Ivan Mapp  
Commissioner of the Revenue for the City of Virginia Beach**

I have received your letter of March 21, 1973, from which I quote:

"Several property owners who live in Virginia Beach have failed to meet the deadline of November 1, 1972 to file an application with this office to have property assessed under the new State law as it applies to special assessments of agricultural, forest and open space real estate.

"These people have expressed a desire to make application at this time. I will appreciate if you will advise me whether or not the law permits the Commissioner of Revenue to accept applications, process them and assess real estate as open space land after the expiration of the deadline"

Article X, Section 2, of the revised Constitution of Virginia provides that the General Assembly may define and classify real estate devoted to agriculture, horticultural, forest, or open space uses and may by general law authorize any locality to allow deferral of, or relief from, portions of taxes otherwise payable on such real estate. The General Assembly is required to ". . . prescribe the limits, conditions, and extent of such deferral or relief."

Section 58-769.4, *et seq.* (58.1-3229), Code of Virginia (1950), as amended, authorizes counties, cities and towns to adopt an ordinance providing for assessments of certain land upon the basis of its value for the use to which it is devoted. Section 58-769.8 (58.1-3234) provides, *inter alia*:

*"Property owners must submit an application for taxation on the basis of a use assessment to the commissioner of the revenue by November one preceding each tax year for which such taxation is sought"*

Section 58-769.8 (58.1-3234) prescribes, in unequivocal terms, one of the conditions of tax relief which is authorized by Article X, Section 6. Therefore, it is my opinion that the commissioner of the revenue is not permitted to accept applications for use assessment for any tax year after the deadline of November one of the preceding year.

*(Ed. Note: See amendments to the Code of Virginia since this opinion.)*

September 13, 1972

**The Honorable Robert L. Gilliam, III**  
**Commonwealth's Attorney for Westmoreland County**

I have received your recent letter inquiring whether § 58-769.6, (58.1-3231) Code of Virginia (1950), as amended, requires that a county adopt a "land-use plan" pursuant to § 15.1-446 as a condition precedent to the adoption of an ordinance under § 58-769-6 (58.1-3231). You indicate that Westmoreland County has enacted a zoning ordinance and zoning map but has not adopted a "land-use plan."

Section 58-769-6, (58.1-3231) authorizing local governing bodies to classify and assess agricultural, horticultural, forest and open space land on the basis of use, provides in pertinent part:

"Any county, city or town in the Commonwealth *which has adopted a land-use plan* may adopt an ordinance to provide for the assessment and taxation, in accordance with the provisions of this article, of real estate classified in § 58-769.5 (58.1-3230)." (Emphasis supplied.)

Section 15.1-446 contemplates the preparation of a comprehensive plan for the physical development of the territory within its jurisdiction by the local planning commission. Such plan shall show the commission's long range recommendations for the general development of the territory covered by the plan. The portion of the plan designating areas for various types of public and private development and use, such as different kinds of residential, commercial, industrial, agricultural, conservation, recreation, public service, flood plain and drainage, and other areas may be known as a "Land Use Plan"

Although § 58-769.6 (58.1-3231) does not specifically refer to the § 15.1-446 "land-use plan," the Commission of the Industry of Agriculture approved a model ordinance to be used by localities which contained a footnote providing that "a land-use plan pursuant to Virginia Code § 15.1-446 is required by [§ 58-769.6] (58.1-3231) to be adopted before the enactment of this ordinance." In view of this interpretation of § 58-769.6 (58.1-3231) by a State agency which was actively involved in the preparation and implementation of the bill providing for use assessment, I am of the opinion that a "land-use plan" pursuant to § 15.1-446 must be adopted by a country prior to its enactment of an ordinance under § 58-769.6 (58.1-3231).

September 12, 1972

**The Honorable Herbert A. Pickford  
County Attorney for Albemarle County**

Your letter of September 7 requests an opinion whether a locality may adopt an ordinance pursuant to Article 1.1 of Chapter 15 of Title 58 of the Code of Virginia (§ 58-769.4 *et seq.*) (58.1-3229) which provides minimum sizes for tracts which are greater than those set forth in § 58-769.7 (58.1-3233).

Section 58-769.7 (58.1-3233) states in part:

“Prior to the assessment of any parcel of real estate under any ordinance adopted pursuant to this article, ‘responsible officers’ shall:

“(b) Determine further that real estate devoted to (1) agricultural or horticultural use consists of a minimum of five acres (2) forest use consists of a minimum of twenty acres and (3) open space use consists of a minimum of five acres.”

In addition, § 58-769.6 (58.1-3231) states:

“Such ordinance shall provide for the assessment and taxation in accordance with the provisions of this article of *all four classes of real estate set forth in § 58 769.5 (58.1-3230.)*” (Emphasis supplied)

Section 58-769.7 (58.1-3233) is mandatory in language. In addition, if a locality were able to increase the minimum acreage, it would be able to avoid the clear intent expressed in § 58-769.6 (58.1-3231) that all classes be taxed according to use if an ordinance is adopted. For these reasons, I am of the opinion that a locality may not increase the minimum acreage requirements.

*(Ed Note: See amendments of the Code of Virginia since this opinion)*

August 21, 1972

**The Honorable J. E. Givens**  
**Chairman, Commission of the Industry of Agriculture**

Your recent letter requested an interpretation of the constitutional provision permitting tax relief for land classified as agricultural, horticultural, forest, or open space. The pertinent part of Article X, Section 2, states as follows:

"The General Assembly may define and classify real estate devoted to agricultural, horticultural, forest, or open space uses, and may by general law authorize any county, city, town, or regional government to allow deferral, or relief from, portions of taxes otherwise payable on real estate if it were not so classified, provided the General Assembly shall first determine that classification of such real estate for such purpose is in the public interest for the preservation or conservation of real estate for such uses. In the event the General Assembly defines and classifies real estate for such purposes, it shall prescribe the limits, conditions, and extent of such deferral or relief. No such deferral or relief shall be granted within the territorial limits of any county, city, town, or regional government except by ordinance adopted by the governing body thereof"

In 1971 the General Assembly enacted enabling legislation, which is found in Article 1.1 of Chapter 15 of Title 58 (§ 58-769.4 *et seq.*) (58.1-3229) of the *Code of Virginia*. You asked the following questions:

1. Could the General Assembly permit a local government to decide which one or more of the four classes of property should be allowed tax deferral?

Section 58-769.6 (58.1-3231) of the current enabling legislation requires that any ordinance permitting assessment according to use embrace all four classes of real estate. In my opinion, the constitutional provision quoted above permits but does not dictate the approach. The Constitution does require that the General Assembly determine that protection of any class is in the public interest before permitting tax deferral for it. The legislative finding in § 58-769.4 (58.1-3229) is a general one, and applies equally to all four classes. It is my opinion that the General Assembly would have to make a separate finding as to each classification in order to permit a locality to provide for deferral on one class and not on the others.

There would not, in my opinion, be a constitutional objection if the General Assembly should permit a locality to defer tax on land used for agriculture but not that used for forests or horticulture even though horticultural and forest uses are usually considered types of agricultural use. The Constitution gives the General Assembly the power to define the classes of real estate as well as to establish them; so long as the definition is reasonable in relation to the legislative determination that preservation of such real estate is in the public interest. I believe the classification would be constitutional.

2. May a land-use plan, or a zoning ordinance, be used as an aid in classification of property?

Section 58-789.5 (58.1-3230) defines the classes of real estate eligible for tax deferral. The local ordinance granting deferral must use the same definitions. Unless the General Assembly changes these definitions to include a reference to zoning or land-use classification, a locality may not condition tax deferral under this statute on the classification of land in a zoning ordinance or land-use plan. However, the definitions of real estate devoted to forest and open space uses refer to standards set by the Director of the Department of Conservation and Economic Development and the Director of the Commission of Outdoor Recreation, respectively. In my opinion, those officials could include as a standard a requirement that the land be zoned for a use compatible with the definition in the statute, or be included on a land-use plan.

3. Would classification in relation to zoning have any effect on the regular zoning procedures?

In my opinion, conditioning tax deferral on zoning would not change the zoning procedures now set out in the Code. In general, a change in zoning is made by the local governing body after recommendations from a planning commission on the motion of the property owner. The legality of the decision may be appealed to the court of record, and from there to the Supreme Court.

4. Could the procedure for classifying property according to use be channeled through the local governing body?

At present, application for assessment in accordance with use is made to the commissioner of the revenue. In my opinion, there would no constitutional objection if the General Assembly should designate the local governing body, or another official, to receive such applications. The Constitution does require that the General Assembly define the classes of property which may be exempt. Once a classification is made, all property within the class must be treated alike. For this reason, the governing body could not be given the power either to define the classes or to decide on a case by case basis which property should be permitted deferral; it would merely be permitted a ministerial determination whether certain property comes within a class defined by the General Assembly.

*(Ed. Note: See amendments of the Code of Virginia since this opinion.)*

June 23, 1971

**The Honorable M. Patton Echols, Jr.**  
**Member, Senate of Virginia**

I have received your letter of June 12, from which I quote:

“This law [1971 Acts of Assembly, ch. 172] requires any county which uses it to make special classifications for all four categories, namely, agricultural, horticultural, forest and open space (*see* § 58-769.6).”

“§ 58-769.5 defines open space in various ways, one of them being ‘or assisting in the shaping of the character, direction, and timing of community development.’ Would it be permissible for a county to adopt an open space definition that would use only that portion of (d) rather than all of it in view of the requirement that such ordinance shall provide for . . . *all four* classes of real estate?”

Virginia Code § 58-769.5(d) provides:

“Real estate devoted to open space use shall mean real estate when so used as to be provided or preserved for park or recreational purposes conservation of land or other natural resources, flood ways, historic or scenic purposes, or assisting in the shaping of the character, direction and timing of community development, *under uniform standards prescribed by the Director of the Commission of Outdoor Recreation* pursuant to the authority set out in § 58-769.12, and the local ordinance.” (Emphasis supplied.)

The clear intent of the General Assembly in enacting chapter 172 was to require the same standards to be used wherever a local use value tax ordinance is adopted. Indeed, as you point out in your letter, a locality may not pass an ordinance unless it gives tax relief to all four classes of property. In my opinion, a locality could not restrict the definition of property falling within any one class. To the extent, however, that the uniform standards to be prescribed by the Director of the Commission of outdoor Recreation require compliance with local land use plans, the locality may have some control over the property which will be given relief.

You also ask:

“A secondary and related question is whether or not the reference in § 58-769.5(d) which mentions the ‘standards prescribed by the director of the Commission of Outdoor Recreation’ applies to the entire subsection(d) or whether it applies to ‘assisting in the shaping of the character, etc.’”

Had the General Assembly intended the standards to apply only to the phrase, “assisting . . . development,” there should have been no comma following the last word of the phrase. I construe the standards to apply to the entire subsection (d).

## Part 4: Model Ordinances

Web addresses to the ordinances of four Virginia localities: Cumberland County, Franklin County, King William County, and Lancaster County are provided below. These localities each have different geographical characteristics as well as variations in their use-value taxation program.

Localities with all classifications: agricultural, horticultural, forestry, and open space:

### 1. Cumberland County

Step 1. (Control + Click to follow link) <http://library.municode.com/index.aspx?clientId=13342>

*Note: See listings on the left hand side of page for the next steps.*

Step 2. **Chapter 58** (Click)

Step 3. **Article VII** (Click)

Step 4. **Division 2** (Click)

### 2. Franklin County

Step 1. (Control + Click to follow link) <http://library.municode.com/index.aspx?clientId=10799>

*Note: See listings on the left hand side of page for the next steps.*

Step 2. **Chapter 20** (Click)

Step 3. **Article II** (Click)

Step 4. **Division 2** (Click)

### 3. King William County

Step 1. (Control + Click to follow link) <http://library.municode.com/index.aspx?clientID=13752>

*Note: See listings on the left hand side of page for the next steps.*

Step 2. **Chapter 70** (Click)

Step 3. **Article II** (Click)

Step 4. **Division 2** (Click)

Locality with agricultural classification only:

### 4. Lancaster County

Step 1. (Control + Click to follow link) <http://library.municode.com/index.aspx?clientId=12484>

*Note: See listings on the left hand side of page for the next steps.*

Step 2. **Chapter 62** (Click)

Step 3. **Article II** (Click)

Step 4. **Division 4** (Click)



**Part 5:**  
**Application Form for Taxation**  
**on the Basis of Land Use Assessment**

**APPLICATION FOR TAXATION  
ON THE BASIS OF A LAND USE ASSESSMENT**

A single application prepared in triplicate shall be filed for each line on the land book. More than one classification may be included on the one application. APPLICATION WILL NOT BE ACCEPTED IF THERE ARE DELINQUENT TAXES ON THIS PARCEL.

\_\_\_\_\_ County, City or Town

District, Ward or Borough: \_\_\_\_\_

Owner(s) Name appearing on Land Book

\_\_\_\_\_ Mailing Address:

\_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

<b>Official Use Only</b>	
Application No. _____	Yr _____
Type Application: New _____	Split _____
Fee: \$ _____	Taxes Verified _____
Map No. _____	
No. of Acres _____	
Description _____	
_____	
Date application must be returned by: _____	
Official processing application: _____	

**QUALIFYING USES**

**I. Agricultural Use:** . . . . . No. of Acres \_\_\_\_\_

Is this real estate devoted to the bona fide production for sale of plants and animals useful to man or devoted to and meeting the requirements and qualification for payments with an agency of the federal government? . . . . . YES \_\_\_ NO \_\_\_\_\_

1. What field crops are being produced to qualify this parcel of real estate under the agricultural standards . . . . .  
Hay \_\_\_ Corn \_\_\_ Soybeans \_\_\_ Alfalfa \_\_\_ Other \_\_\_\_\_

2. How many of the following animals were on the real estate the previous years? How many months? . . . . .  
Cows \_\_\_\_\_ Horses \_\_\_\_\_ Sheep \_\_\_\_\_ Swine \_\_\_\_\_ Chickens \_\_\_\_\_ Turkeys \_\_\_\_\_ Other \_\_\_\_\_

**II. Horticulture Use:** . . . . . No. of Acres \_\_\_\_\_

Is this real estate devoted to the bona fide production for sale of fruits of all kinds, vegetables; nursery and floral products or real estate devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government? . . . . . YES \_\_\_ NO \_\_\_\_\_

**III. Forest Use:** . . . . . No. of Acres \_\_\_\_\_

Is this real estate devoted to forest use, including the standing timber and trees thereon, devoted to the growth in such quantity and so spaced and maintained as to constitute a forest area? . . . . . YES \_\_\_ NO \_\_\_\_\_

**IV. Open Space Use:** . . . . . No. of Acres \_\_\_\_\_

Is this real estate so used as to be provided or preserved for park or recreational purposes, conservation of land or other natural resources, floodways, historic or scenic purposes, or assisting in the shaping of the character, direction, and timing of community development or for the public interest and consistent with the local land-use plan? . . . . . YES \_\_\_ NO \_\_\_\_\_

**AFFIDAVIT**

I/we the undersigned certify that all land for which use taxation is requested meets all requirements of the uniform standards prescribed by the Commissioner of Agriculture and Consumer Services, the Director of the Department of Conservation and Recreation, and the State Forester. I/we declare under penalties of law that this application and any attachments hereto have been examined by me and to the best of my knowledge are true and correct. I/we do hereby grant permission to the Soil Conservation Service to provide information on Land Capability Classes to the proper authorities for the purpose of administering the land use ordinance.

Signature of owner or corporation officer: \_\_\_\_\_ Title: \_\_\_\_\_

Corporation name: \_\_\_\_\_

NOTE: Failure to obtain signatures of all parties owning an interest in this real estate constitutes a material misstatement of fact.

Signatures of all other parties owning an interest in this real estate.

\_\_\_\_\_  
\_\_\_\_\_

§ 58.1-3238 Penalties - Any person failing to report properly any change in use of property for which an application for use value taxation had been filed shall be liable for all such taxes in such amount and at such times as if he had complied herewith and assessments had been properly made, and he shall be liable for, such penalties and interest thereon as may be provided by ordinance. Any person making a material misstatement of fact in any such application shall be liable for all such taxes, in such amounts and at such times as if such property had been assessed on the basis of fair market value as applied to other real estate in the taxing jurisdiction, together with interest and penalties thereon. If such material misstatement was made with the intent to defraud the locality, he shall be further assessed with an additional penalty of 100% of such unpaid taxes.

**INSTRUCTIONS**

**1. GENERAL QUALIFICATIONS** - Land may be eligible for special valuation and assessment when it meets the following criteria:

**AGRICULTURAL:** When devoted to the bona fide production for sale of plants and animals useful to man under uniform standards prescribed by the Commissioner of Agriculture and Consumer Services, or when devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government. Requiring 5 acres minimum in agricultural use.

**HORTICULTURAL:** When devoted to the bona fide production for sale of fruits of all kinds, including grapes, nuts and berries; vegetables; nursery and floral products under uniform standards prescribed by the Commissioner of Agriculture and Consumer Services, or when devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government. Requiring 5 acres minimum.

**FOREST:** When devoted to tree growth in such quantity and so spaced and maintained as to constitute a forest area under standards prescribed by the State Forester. Requiring 20 acres minimum in forest use.

**OPEN SPACE:** When so used as to be provided or preserved for park or recreational purposes, conservation of land or other natural resources, floodways, historic or scenic purposes, or assisting in the shaping of the character, direction, and timing of community development or for the public interest and consistent with the local land use plan under uniform standards prescribed by the Director of the Department of Conservation and Recreation. Requires 5 acres minimum in Open Space use unless the local ordinance specifies otherwise.

**2. FILING DATE** - Property owners must submit an application on the basis of a re-assessment to the local assessing officer at least sixty days preceding the tax year for which such taxation is sought. In any year in which a general reassessment is being made such application may be submitted until thirty days have elapsed after the notice of increase in assessment is mailed.

**3. LATE FILING** - The governing body, by ordinance, may permit applications to be filed within no more than sixty (60) days after the filing deadline specified upon the payment of a late filing fee to be established by the governing body.

**4. PROOF OF QUALIFICATIONS** - The applicant must furnish, upon request of the local assessing officer, proof of all prerequisites to use valuation and assessment, such as proof of ownership, description, areas, uses, and production.

**IMPORTANT CHANGE IN USE, ACREAGE OR ZONING ROLL BACK TAXES AND PENALTY**

(a) Whenever land which has qualified for assessment and taxation according to use has been converted to a non-qualifying use or rezoned to a more intensive use at the request of the owner or his agent, that land is subject to the roll-back tax as provided in section 58.1-3237(D).

(b) In the event of a change in use, acreage, or zoning, the property owner must report such change to the local Commissioner of the Revenue, or other assessing officer, within sixty days of said change.

**DO NOT WRITE IN THIS SPACE  
LAND USE CALCULATIONS**

<b>AGRICULTURAL</b>			<b>HORTICULTURAL</b> (includes the value of nursery stock and orchard trees)					
Soil Capacity Class	Number of Acres	Rate Per Acre	Appraised Use Value	Type of use (i.e. apple, peach, etc.)	Soil Capability Class	Number of Acres	Rate X Per Acre	= Appraised Use Value
I	_____	_____	_____	_____	_____	_____	_____	_____
II	_____	_____	_____	_____	_____	_____	_____	_____
III	_____	_____	_____	_____	_____	_____	_____	_____
IV	_____	_____	_____	_____	_____	_____	_____	_____
V	_____	_____	_____	_____	_____	_____	_____	_____
VI	_____	_____	_____	_____	_____	_____	_____	_____
VII	_____	_____	_____	_____	_____	_____	_____	_____
Tobacco	_____	_____	_____	_____	_____	_____	_____	_____
Peanuts	_____	_____	_____	_____	_____	_____	_____	_____
<b>TOTALS:</b>	_____	_____	\$ _____	_____	_____	_____	_____	\$ _____

  

<b>OPEN SPACE:</b>			<b>FOREST</b> (includes the value of standing timber trees)					
				Site index Grouping	Number of Acres	Rate Per Acre	Appraised Use Value	
	_____	_____	_____	Excellent	_____	_____	_____	_____
	_____	_____	_____	Good	_____	_____	_____	_____
	_____	_____	_____	Fair	_____	_____	_____	_____
<b>TOTALS:</b>	_____	_____	\$ _____	Non-Prod.	_____	_____	_____	_____
				<b>TOTALS:</b>	_____	_____	\$ _____	

**RECAPITULATION**

Use Value Appraisals	Acres	Use Value	
AGRICULTURAL	_____	\$ _____	
HORTICULTURAL	_____	\$ _____	
FOREST	_____	\$ _____	
OPEN SPACE	_____	\$ _____	
<b>TOTAL QUALIFYING ACREAGE</b>	_____	<b>TOTAL USE VALUE \$</b> _____	
		<b>QUALIFYING LAND</b>	
Fair Market Value-Ineligible Land		Fair Market Value	<b>ASSESSED USE VALUE OF QUALIFYING AND NONQUALIFYING REAL ESTATE</b>
Farm House Acreage	_____	\$ _____	Land \$ _____
Other Nonqualifying Acreage	_____	\$ _____	Bldgs. \$ _____
Total Nonqualifying Acreage	_____	\$ _____	Total \$ _____
Add: Qualifying & Nonqualifying Acreage		<b>TOTAL FAIR MARKET VALUE OF NONQUALIFYING LAND</b> \$ _____	
<b>TOTAL:</b>	_____		

**GRAND TOTAL LAND ASSESSMENT QUALIFYING AND NONQUALIFYING \$ \_\_\_\_\_**

## Appendix A: Agricultural and Forestal Districts Act

Because of recent requests, this section has been included in the SLEAC manual.

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***Agricultural and Forestal Districts Act  
Law and General  
Synopsis***

CODE OF VIRGINIA

GENERAL SYNOPSIS BY SECTIONS

Chapter 43 of Title 15.2

**§ 15.2-4301. Declaration of policy.**

It is the policy of the Commonwealth to conserve and protect and to encourage the development and improvement of the Commonwealth's agricultural and forestal lands for the production of food and other agricultural and forestal products. It is also the policy of the Commonwealth to conserve and protect agricultural and forestal lands as valued natural and ecological resources which provide essential open spaces for clean air sheds, watershed protection, wildlife habitat, as well as for aesthetic purposes. It is the purpose of this chapter to provide a means for a mutual undertaking by landowners and localities to protect and enhance agricultural and forestal land as a viable segment of the Commonwealth's economy and as an economic and environmental resource of major importance.

**§ 15.2-4302. Definitions**

As used in this chapter, unless the context requires a different meaning:

***Advisory committee*** means the agricultural and forestal districts advisory committee.

***Agricultural products*** means crops, livestock and livestock products, including but not limited to: field crops, fruits, vegetables, horticultural specialties, cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs and furs.

***Agricultural production*** means the production for commercial purposes of crops, livestock and livestock products, and includes the processing or retail sales by the producer of crops, livestock or livestock products which are produced on the parcel or in the district.

***Agriculturally and forestally significant land*** means land that has recently or historically produced agricultural and forestal products, is suitable for agricultural or forestal production or is considered appropriate to be retained for agricultural and forestal production as determined by such factors as soil quality, topography, climate, markets, farm structures, and other relevant factors.

***Application*** means the set of items a landowner or landowners must submit to the local governing body when

**Policy:**

< *A declaration that the preservation of agricultural and forestal lands is in the public interest and that the purpose of this law is to give landowners and localities the tools to protect and enhance these lands.*

**Definitions:**

*This section provides definitions for the various terms used throughout the act.*

applying for the creation of a district or an addition to an existing district.

**District** means an agricultural, forestal, or agricultural and forestal district.

**Forestal production** means the production for commercial purposes of forestal products and includes the processing or retail sales, by the producer, of forestal products which are produced on the parcel or in the district. "Forestal products" includes, but is not limited to, saw timber, pulpwood, posts, firewood, Christmas trees and other tree and wood products for sale or for farm use.

**Landowner or owner of land** means any person holding a fee simple interest in property but does not mean the holder of an easement.

**Program administrator** means the local governing body or local official appointed by the local governing body to administer the agricultural and forestal districts program.

**§ 15.2-4303. Power of localities to enact ordinances; application form and fees; maps; sample form.**

- A. Each locality shall have the authority to promulgate forms and to enact ordinances to effectuate this chapter. The locality may charge a reasonable fee for each application submitted pursuant to this chapter; such fee shall not exceed \$500 or the costs of processing and reviewing an application, whichever is less.
- B. The locality shall prescribe application forms for districts that include but need not be limited to the following information:
  - 1. The general location of the district;
  - 2. The total acreage in the district or acreage to be added to an existing district;
  - 3. The name, address, and signature of each landowner applying for creation of a district or an addition to an existing district and the acreage each owner owns within the district or addition;
  - 4. The conditions proposed by the applicant pursuant to § 15.2-4309;
  - 5. The period before first review proposed by the applicant pursuant to § 15.2-4309; and
  - 6. The date of application, date of final action by the local governing body and whether approved, modified or rejected.
- C. The application form shall be accompanied by maps or aerial photographs, or both, prescribed by the locality that clearly show the boundaries of the proposed district and each addition and boundaries of properties owned by each applicant, and any other features as prescribed by the locality.

**Additional information for § 15.2-4303:**

- < *Locality has the authority to require application forms and to enact ordinances to enforce the law set forth in this chapter. A reasonable application fee must be charged (less than \$500 or the cost of processing an application, whichever is less).*
- < *Applications forms required by a locality must include at least the following information:*
  - < *General location*
  - < *Total acreage or acreage to be added.*
  - < *Signatures of all landowners in a district or in the portion to be added including the acreage owned by each individual.*
  - < *Proposed conditions for creation and continuation of district*
  - < *Applicants' proposed period before first review.*
  - < *All dates of the process must be recorded*
- < *Map or aerial photograph, or both, must accompany the applications that show the boundaries of the district or the proposed addition.*

D. For each notice required by this chapter to be sent to a landowner, notice shall be sent by first-class mail to the last known address of such owner as shown on the application hereunder or on the current real estate tax assessment books or maps. A representative of the local planning commission or local governing body shall make affidavit that such mailing has been made and file such affidavit with the papers in the case.

< *All notices required by the chapter must be sent via first class mail.*

**§ 15.2-4304. Agricultural and forestal districts advisory committee.**

**Additional information for § 15.2-4304:**

A. Upon receipt of the first agricultural and forestal districts application, the local governing body shall establish an advisory committee which shall consist of four landowners who are engaged in agricultural or forestal production, four other landowners of the locality, the commissioner of revenue or the local government's chief property assessment officer, and a member of the local governing body. The members of the committee shall be appointed by and serve at the pleasure of the local governing body. The advisory committee shall elect a chairman and a vice-chairman and elect or appoint a secretary who need not be a member of the committee. The advisory committee shall serve without pay but the locality may reimburse each member for actual and necessary expenses incurred in the performance of his duties. Any expenditures of the committee shall be within the amounts appropriated for such purpose by the local governing body. The committee shall advise the local planning commission and the local governing body and assist in creating, reviewing, modifying, continuing or terminating districts within the locality. In particular, the committee shall render expert advice as to the nature of farming and forestry and agricultural and forestal resources within the district and their relation to the entire locality.

B. The local governing body may designate the planning commission to act for and in lieu of an agricultural and forestal districts advisory committee if the membership of the planning commission includes at least four landowners who are engaged in agricultural or forestal production.

< *The planning commission of a locality may be used in place of an advisory committee if it includes at least four landowners who are involved in agricultural and forestal production.*

**§ 15.2-4305. Application for creation of district in one or more localities; size and location of parcels.**

**Additional information for § 15.2-4305:**

On or before November 1 of each year or any other annual date selected by the locality, any owner or owners of land may submit an application to the locality for the creation of a district or addition of land to an existing district within the locality. Each district shall have a core of no less than 200 acres in one parcel or in contiguous parcels. A parcel not part of the core may be included in a district

(i) if the nearest boundary of the parcel is within one

< *Applications for new districts or additions to districts must be submitted on or before Nov. 1<sup>st</sup> each year (unless another annual date is established by locality). Each district must have a core of 200 acres in one parcel or contiguous parcels. Additional parcels may be included:*

1. *if nearest boundary is within one mile of core boundary*

- mile of the boundary of the core,
- (ii) if it is contiguous to a parcel in the district the nearest boundary of which is within one mile of the boundary of the core, or
- (iii) if the local governing body finds, in consultation with the advisory committee or planning commission, that the parcel not part of the core or within one mile of the boundary of the core contains agriculturally and forestally significant land.

No land shall be included in any district without the signature on the application, or the written approval of all owners thereof. A district may be located in more than one locality, provided that (i) separate application is made to each locality involved, (ii) each local governing body approves the district, and (iii) the district meets the size requirements of this section. In the event that one of the local governing bodies disapproves the creation of a district within its boundaries, the creation of the district within the adjacent localities' boundaries shall not be affected, provided that the district otherwise meets the requirements set out in this chapter. In no event shall the act of creating a single district located in two localities pursuant to this subsection be construed to create two districts.

**§ 15.2-4306. Criteria for evaluating application.**

Land being considered for inclusion in a district may be evaluated by the advisory committee and the planning commission through the Virginia Land Evaluation and Site Assessment (LESA) System or, if one has been developed, a local LESA System. The following factors should be considered by the local planning commission and the advisory committee, and at any public hearing at which an application that has been filed pursuant to § 15.2-4303 is being considered:

1. The agricultural and forestal significance of land within the district or addition and in areas adjacent thereto;
2. The presence of any significant agricultural lands or significant forestal lands within the district and in areas adjacent thereto that are not now in active agricultural or forestal production;
3. The nature and extent of land uses other than active farming or forestry within the district and in areas adjacent thereto;
4. Local developmental patterns and needs;
5. The comprehensive plan and, if applicable, the zoning regulations;
6. The environmental benefits of retaining the lands in the district for agricultural and forestal uses; and

2. *if it is contiguous to a parcel in the district that is within one mile of core boundary or*
3. *if the parcel not within core or within one mile of the core is deemed to contain agriculturally and forestally significant land*

- < *No land can be included without signature or written approval of all owners. A district can be located in more than one locality, provided that:*
  1. *separate applications are submitted to each locality*
  2. *each locality approves the district and*
  3. *the district meets the size requirements*
- < *If one locality disapproves of the district, the creation of the district within the adjacent localities' boundaries won't be affected as long as the district still meets requirements. Creating a single district located in two localities cannot be construed as creating two districts.*

**Additional information for § 15.2-4306:**

*The following should be considered when reviewing an application:*

- < *Agricultural and forestal significance of land*
- < *The presence of significant agricultural or forestal lands in or adjacent to district that are not in active production.*
- < *Nature and extent to land uses other than farming and forestry within or adjacent to the district.*
- < *Local development patterns and needs*
- < *Comprehensive plans and zoning regulations*
- < *Environmental benefits of the district*



7. Any other matter which may be relevant.

In judging the agricultural and forestal significance of land, any relevant agricultural or forestal maps may be considered, as well as soil, climate, topography, other natural factors, markets for agricultural and forestal products, the extent and nature of farm structures, the present status of agriculture and forestry, anticipated trends in agricultural economic conditions and such other factors as may be relevant.

**§ 15.2-4307. Review of application; notice; hearing.**

Upon the receipt of an application for a district or for an addition to an existing district, the program administrator shall refer such application to the advisory committee.

The advisory committee shall review and make recommendations concerning the application or modification thereof to the local planning commission, which shall:

1. Notify, by first-class mail, adjacent property owners, as shown on the maps of the locality used for tax assessment purposes, and where applicable, any political subdivision whose territory encompasses or is part of the district, of the application. The notice shall contain (i) a statement that an application for a district has been filed with the program administrator pursuant to this chapter; (ii) a statement that the application will be on file open to public inspection in the office of the clerk of the local governing body; (iii) where applicable a statement that any political subdivision whose territory encompasses or is part of the district may propose a modification which must be filed with the local planning commission within thirty days of the date of the notice; (iv) a statement that any owner of additional qualifying land may join the application within thirty days from the date of the notice or, with the consent of the local governing body, at any time before the public hearing the local governing body must hold on the application; (v) a statement that any owner who joined in the application may withdraw his land, in whole or in part, by written notice filed with the local governing body, at any time before the local governing body acts pursuant to § 15.2-4309; and (vi) a statement that additional qualifying lands may be added to an already created district at any time upon separate application pursuant to this chapter;
2. Hold a public hearing as prescribed by law; and
3. Report its recommendations to the local governing body including but not limited to the potential effect of the district and proposed modifications upon the

< *And anything else of relevance.*

< *Maps, soil, climate, topography, other natural factors, markets for farming and forestry products, farm structures, present status of agriculture and forestry, anticipated trends in agricultural economic conditions, and other relevant factors may be considered in judging agricultural and forestal significance of land.*

**Additional information for § 15.2-4307:**

*All applications must go through the advisory committee. The committee will then review and make recommendations to the local planning commission, which must:*

- < *Notify adjacent property owners that:*
1. *an application has been filed*
  2. *application will be open to public viewing*
  3. *if political territory is part of district, they can propose modifications*
  4. *any owner of additional qualifying land may join application within 30 days*
  5. *any owner who joined the application may withdraw before the creation of the district and*
  6. *additional lands may be added to an existing district with a separate application*

< *Hold a public hearing*

< *Report recommendations to local governing body*

locality's planning policies and objectives.

**§ 15.2-4309. Hearing; creation of district; conditions; notice.**

- A. The local governing body, after receiving the report of the local planning commission and the advisory committee, shall hold a public hearing as provided by law, and after such public hearing, may by ordinance create the district or add land to an existing district as applied for, or with any modifications it deems appropriate.
  
- B. The governing body may require, as a condition to creation of the district, that any parcel in the district shall not, without the prior approval of the governing body, be developed to any more intensive use or to certain more intensive uses, other than uses resulting in more intensive agricultural or forestal production, during the period which the parcel remains within the district. Local governing bodies shall not prohibit as a more intensive use, construction and placement of dwellings for persons who earn a substantial part of their livelihood from a farm or forestry operation on the same property, or for members of the immediate family of the owner, or divisions of parcels for such family members, unless the governing body finds that such use in the particular case would be incompatible with farming or forestry in the district. To further the purposes of this chapter and to promote agriculture and forestry and the creation of districts, the local governing body may adopt programs offering incentives to landowners to impose land use and conservation restrictions on their land within the district. Programs offering such incentives shall not be permitted unless authorized by law. Any conditions to creation of the district and the period before the review of the district shall be described, either in the application or in a notice sent by first-class mail to all landowners in the district and published in a newspaper having a general circulation within the district at least two weeks prior to adoption of the ordinance creating the district. The ordinance shall state any conditions to creation of the district and shall prescribe the period before the first review of the district, which shall be no less than four years but not more than ten years from the date of its creation. In prescribing the period before the first review, the local governing body shall consider the period proposed in the application. The ordinance shall remain in effect at least until such time as the district is to be reviewed. In the event of annexation by a city or town of any land within a district, the district shall continue until the time prescribed for review.
  
- C. The local governing body shall act to adopt or reject the application, or any modification of it, no later than

**Additional information for § 15.2-4309:**

- < *After receiving recommendations from the local planning commission or advisory committee, the governing body must hold a public hearing. Afterwards, the locality may create a district or add to an existing one.*
  
- < *Local governing body may require that parcels in the district cannot be developed to a more intensive use without prior approval.*
  
- < *Programs may be adopted to give incentives to landowners for land use and conservation restrictions on land in the district.*
  
- < *All landowners within a district must be notified of the conditions to the creation of the district two weeks prior to adoption.*
  
- < *Ordinance must set the period before the first review (no less than four years, no more than ten years from creation of the district). Ordinance remains in effect until district review.*
  
- < *Governing body must adopt or reject an application or modification no later than 180 days from November 1<sup>st</sup>.*

180 days from (i) November 1 or (ii) the other date selected by the locality as provided in § 15.2-4305. Upon the adoption of an ordinance creating a district or adding land to an existing district, the local governing body shall submit a copy of the ordinance with maps to the local commissioner of the revenue, and the State Forester, and the Commissioner of Agriculture and Consumer Services for information purposes. The commissioner of the revenue shall identify the parcels of land in the district in the land book and on the tax map, and the local governing body shall identify such parcels on the zoning map, where applicable and shall designate the districts on the official comprehensive plan map each time the comprehensive plan map is updated.

*Upon adoption, locality must submit a copy of the ordinance with maps to the local commissioner of the revenue, the State Forester, and the Commissioner of Agriculture and Consumer Services.*

**§ 15.2-4310. Additions to a district.**

Additional parcels of land may be added to an existing district at any time by following the process and application deadlines prescribed for the creation of a new district.

< *Parcels may be added to a district at any time after creation if the application process is followed.*

**§ 15.2-4311. Review of districts.**

The local governing body may complete a review of any district created under this section, together with additions to such district, no less than four years but no more than ten years after the date of its creation and every four to ten years thereafter. If the local governing body determines that a review is necessary, it shall begin such review at least ninety days before the expiration date of the period established when the district was created. In conducting such review, the local governing body shall ask for the recommendations of the local advisory committee and the planning commission in order to determine whether to terminate, modify or continue the district. When each district is reviewed, land within the district may be withdrawn at the owner's discretion by filing a written notice with the local governing body at any time before it acts to continue, modify or terminate the district. The local planning commission or the advisory committee shall schedule as part of the review a public meeting with the owners of land within the district, and shall send by first-class mail a written notice of the meeting and review to all such owners. The notice shall state the time and place for the meeting; that the district is being reviewed by the local governing body; that the local governing body may continue, modify, or terminate the district; and that land may be withdrawn from the district at the owner's discretion by filing a written notice with the local governing body at any time before it acts to continue, modify or terminate the district. The local governing body shall hold a public hearing as provided by law. The governing body may stipulate conditions to continuation of the district and may establish a period before the next review of the district, which may be different from the conditions or period established when the district was created. Any such different conditions or period shall be described in a notice

**Additional information for § 15.2-4311:**

< *If a review is deemed necessary, the local governing body must begin review at least 90 days prior to the expiration date of the period established upon creation of the districts. The locality must ask for recommendations from the local advisory committee and the planning commission to determine whether to terminate, modify, or continue the district.*

< *An owner may withdraw land during the review as long as a written notice is filed before the local governing body reaches a decision.*

< *A public meeting with the owners of land within a district must be part of the review process.*

< *A locality must hold a public hearing. They may change conditions for continuation of the district and*

sent by first-class mail to all owners of land within the district and published in a newspaper having a general circulation within the district at least two weeks prior to adoption of the ordinance continuing the district. Unless the district is modified or terminated by the local governing body, the district shall continue as originally constituted, with the same conditions and period before the next review as that established when the district was created.

If the local governing body determines that a review is unnecessary, it shall set the year in which the next review shall occur.

**§ 15.2-4312. Effects of districts.**

- A. Land lying within a district and used in agricultural or forestal production shall automatically qualify for an agricultural or forestal use-value assessment pursuant to Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1, if the requirements for such assessment contained therein are satisfied. Any ordinance adopted pursuant to § 15.2-4303 shall extend such use-value assessment and taxation to eligible real property within such district whether or not a local ordinance pursuant to § 58.1-3231 has been adopted.
  
- B. No local government shall exercise any of its powers to enact local laws or ordinances within a district in a manner which would unreasonably restrict or regulate farm structures or farming and forestry practices in contravention of the purposes of this chapter unless such restrictions or regulations bear a direct relationship to public health and safety. The comprehensive plan and zoning and subdivision ordinances shall be applicable within said districts, to the extent that such ordinances are not in conflict with the conditions to creation or continuation of the district set forth in the ordinance creating or continuing the district or the purposes of this chapter. Nothing in this chapter shall affect the authority of the locality to regulate the processing or retail sales of agricultural or forestal products, or structures therefore, in accordance with the local comprehensive plan or any local ordinances. Local ordinances, comprehensive plans, land use planning decisions, administrative decisions and procedures affecting parcels of land adjacent to any district shall take into account the existence of such district and the purposes of this chapter.
  
- C. It shall be the policy of all agencies of the Commonwealth to encourage the maintenance of farming and forestry in districts and all administrative regulations and procedures of such agencies shall be modified to this end insofar as is consistent with the promotion of public health and safety and with the provisions of any federal statutes, standards, criteria, rules, regulations, or policies, and any other

*may establish a different period before review than was put in place upon creation.*

- < *Unless modified or terminated, the district continues as originally created, with the same conditions and period before the next review.*
  
- < *If a review is deemed unnecessary, then the local governing body must set the year for the next review.*

**Additional information for § 15.2-4312:**

- < *Land within a district that is used in agricultural or forestal production automatically qualifies for agricultural or forestal use-value assessment if requirements are satisfied. This applies whether or not a locality has adopted a use-value ordinance.*
  
- < *A locality cannot enact local laws or ordinances within a district that could restrict farm structures or farming and forestry practices unless restrictions are directly related to public health and safety.*
  
- < *The comprehensive plan, zoning, and subdivision ordinances are applicable within a district as long as they do not conflict with the conditions for creation or continuation of the district.*
  
- < *This law does not affect the power of a locality to regulate the processing or retail sales of agricultural or forestal products.*
  
- < *The locality must consider the existence of a district when enacting land use policy or law for lands adjacent to said district.*
  
- < *It must be the policy of Virginia agencies to encourage the maintenance of farming and forestry in districts (while keeping with other laws and requirements).*

requirements of federal agencies, including provisions applicable only to obtaining federal grants, loans or other funding.

- D. No special district for sewer, water or electricity or for nonfarm or nonforest drainage may impose benefit assessments or special tax levies on the basis of frontage, acreage or value on land used for primarily agricultural or forestal production within a district, except a lot not exceeding one-half acre surrounding any dwelling or nonfarm structure located on such land. However, such benefit assessment or special ad valorem levies may continue if imposed prior to the formation of the district.

**§ 15.2-4313. Proposals as to land acquisition or construction within district.**

- A. Any agency of the Commonwealth or any political subdivision which intends to acquire land or any interest therein other than by gift, devise, bequest or grant, or any public service corporation which intends to: (i) acquire land or any interest therein for public utility facilities not subject to approval by the State Corporation Commission, provided that the proposed acquisition from any one farm or forestry operation within the district is in excess of one acre or that the total proposed acquisition within the district is in excess of ten acres or (ii) advance a grant, loan, interest subsidy or other funds within a district for the construction of dwellings, commercial or industrial facilities, or water or sewer facilities to serve nonfarm structures, shall at least ninety days prior to such action notify the local governing body and all of the owners of land within the district. Notice to landowners shall be sent by first-class or registered mail and shall state that further information on the proposed action is on file with the local governing body. Notice to the local governing body shall be filed in the form of a report containing the following information:

1. A detailed description of the proposed action, including a proposed construction schedule;
2. All the reasons for the proposed action;
3. A map indicating the land proposed to be acquired or on which the proposed dwellings, commercial or industrial facilities, or water or sewer facilities to serve nonfarm structures are to be constructed;
4. An evaluation of anticipated short-term and long-term adverse impacts on agricultural and forestal operations within the district and how such impacts are proposed to be minimized;
5. An evaluation of alternatives which would not require action within the district; and
6. Any other relevant information required by the local governing body.

**Additional information for § 15.2-4313:**

- < *Any Virginia Agency or any political subdivision that intends to buy land, or any public service corporation which intends to:*
  1. *acquire land for public utility facilities from any one farm or forestry operation greater than one acre or from the entire district greater than ten acres, or*
  2. *fund infrastructure to support nonfarm structures must notify the local governing body and the district landowners 90 days prior to action.*

**Notice to the local governing body must include the following information:**

- < *A detailed description of proposed action*
- < *The reasons for the proposed actions*
- < *Map of land to be acquired or constructed on*
- < *Evaluation of short-term and long-term negative impacts on agriculture or forestal operations and how they will be minimized.*
- < *Evaluation of alternatives to actions*
- < *Any other relevant information*

B. Upon receipt of a notice filed pursuant to subsection A, the local governing body, in consultation with the local planning commission and the advisory committee, shall review the proposed action and make written findings as to: (i) the effect the action would have upon the preservation and enhancement of agriculture and forestry and agricultural and forestal resources within the district and the policy of this chapter; (ii) the necessity of the proposed action to provide service to the public in the most economical and practical manner; and (iii) whether reasonable alternatives to the proposed action are available that would minimize or avoid any adverse impacts on agricultural and forestal resources within the district. If requested to do so by any owner of land that will be directly affected by the proposed action of the agency, corporation, or political subdivision, the Director of the Department of Conservation and Recreation, or his designee, may advise the local governing body on the issues listed in clauses (i), (ii) and (iii) of this subsection.

C. If the local governing body finds that the proposed action might have an unreasonably adverse effect upon either state or local policy, it shall (i) issue an order within ninety days from the date the notice was filed directing the agency, corporation or political subdivision not to take the proposed action for a period of 150 days from the date the notice was filed and (ii) hold a public hearing, as prescribed by law, concerning the proposed action. The hearing shall be held where the local governing body usually meets or at a place otherwise easily accessible to the district. The locality shall publish notice in a newspaper having a general circulation within the district, and mail individual notice of the hearing to the political subdivisions whose territory encompasses or is part of the district, and the agency, corporation or political subdivision proposing to take the action. Before the conclusion of the 150-day period, the local governing body shall issue a final order on the proposed action. Unless the local governing body, by an affirmative vote of a majority of all the members elected to it, determines that the proposed action is necessary to provide service to the public in the most economic and practical manner and will not have an unreasonably adverse effect upon state or local policy, the order shall prohibit the agency, corporation or political subdivision from proceeding with the proposed action. If the agency, corporation or political subdivision is aggrieved by the final order of the local governing body, an appeal shall lie to the circuit court having jurisdiction of the territory wherein a majority of the land affected by the acquisition is located. However, if such public service corporation is regulated by the State Corporation Commission, an appeal shall be to the State

**Review of purposed action:**

- < *Upon receipt of a notice, the local governing body must review the proposed action and make written findings regarding:*
  1. *The effect the action would have on the preservation and enhancement of agricultural and forestal lands and resources;*
  2. *The necessity of the proposed action; and*
  3. *The existence of reasonable alternatives.*
  
- < *A district landowner that would be affected by the proposed action may request that the Director of the Department of Conservation and Recreation advise the local governing body.*

**Unreasonable adverse effect of purposed action:**

- < *If the local governing body finds that the proposed action would have an unreasonably negative effect on state or local policy, it must*
  1. *issue an order within 90 days from the date of notice for the agency, corporation, or political subdivision not to take action for 150 days and*
  2. *hold a public hearing regarding the proposed action*
  
- < *The locality must publish notice of the public hearing in a newspaper and mail individual notices to the agency, corporation, or political subdivision proposing to take action.*
  
- < *Before the 150 day period ends, the local governing body must issue a final order on the proposed action*
- < *Unless the action is determined necessary and without negative impacts on state or local policy, the order must prohibit the agency, corporation, or political subdivision from carrying out the proposed action.*
  
- < *If agency, corporation, or political subdivision is aggrieved, the issue may be taken up with the circuit court that has jurisdiction of the territory.*

Corporation Commission.

**§ 15.2-4314. Withdrawal of land from a district; termination of a district.**

- A. At any time after the creation of a district within any locality, any owner of land lying in such district may file with the program administrator a written request to withdraw all or part of his land from the district for good and reasonable cause. The program administrator shall refer the request to the advisory committee for its recommendation. The advisory committee shall make recommendations concerning the request to withdraw to the local planning commission, which shall hold a public hearing and make recommendations to the local governing body. Land proposed to be withdrawn may be reevaluated through the Virginia or local Land Evaluation and Site Assessment (LESA) System. The landowner seeking to withdraw land from a district, if denied favorable action by the governing body, shall have an immediate right of appeal de novo to the circuit court serving the territory wherein the district is located. This section shall in no way affect the ability of an owner to withdraw an application for a proposed district or withdraw from a district pursuant to clause (v) of subdivision 1 of § 15.2-4307 or § 15.2-4311.
- B. Upon termination of a district or withdrawal or removal of any land from a district created pursuant to this chapter, land that is no longer part of a district shall be subject to and liable for roll-back taxes as are provided in § 58.1-3237. Sale or gift of a portion of land in a district to a member of the immediate family as defined in § 15.2-2244 shall not in and of itself constitute a withdrawal or removal of any of the land from a district.
- C. Upon termination of a district or upon withdrawal or removal of any land from a district, land that is no longer part of a district shall be subject to those local laws and ordinances prohibited by the provisions of subsection B of § 15.2-4312.
- D. Upon the death of a property owner, any heir at law, devisee, surviving cotenant or personal representative of a sole owner of any fee simple interest in land lying within a district shall, as a matter of right, be entitled to withdraw such land from such district upon the inheritance or descent of such land provided that such heir at law, devisee, surviving cotenant or personal representative files written notice of withdrawal with the local governing body and the local commissioner of the revenue within two years of the date of death of the owner.

**Additional information for § 15.2-4314:**

- < *At any time after the creation of a district, any owner of land in the district may file with the program administrator a request to withdraw land from the district for good and reasonable cause. The program administrator then must refer the request to the advisory committee which forwards recommendations to the local planning commission. The planning commission then must hold a public hearing and make a recommendation to the local governing body.*
- < *If the landowner does not receive a favorable action by the governing body, he may appeal to the circuit court.*
- < *Land that is no longer part of a district is liable for roll-back taxes.*
- < *Land that is no longer part of a district is subject to local laws and ordinances previously prohibited.*
- < *Upon death the property owner, heir/owner has the right to withdraw land from the district upon inheritance as long as a written notice is filed within two years of the previous owner's death.*

- E. Upon termination or modification of a district, or upon withdrawal or removal of any parcel of land from a district, the local governing body shall submit a copy of the ordinance or notice of withdrawal to the local commissioner of revenue, the State Forester and the State Commissioner of Agriculture and Consumer Services for information purposes. The commissioner of revenue shall delete the identification of such parcel from the land book and the tax map, and the local governing body shall delete the identification of such parcel from the zoning map, where applicable. < *Upon termination, modification, or withdraw/removal of any parcel within a district, the local governing body must submit proof of change to the local commissioner of revenue, the State Forester, and the State Commissioner of Agriculture and Consumer Services.*
  
- F. The withdrawal or removal of any parcel of land from a lawfully constituted district shall not in itself serve to terminate the existence of the district. The district shall continue in effect and be subject to review as to whether it should be terminated, modified or continued pursuant to § 15.2-4311 of this chapter. < *The withdrawal or removal of a parcel from the district does not affect the existence of the district.*



## Appendix B: Chapter 10.1. Virginia Conservation Easement Act

Because of recent requests, this chapter of the Code of Virginia has been included in the SLEAC manual.

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#### **§ 10.1-1009 Definitions**

As used in this chapter, unless the context otherwise requires:

"Conservation easement" means a nonpossessory interest of a holder in real property, whether easement appurtenant or in gross, acquired through gift, purchase, devise, or bequest imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of real property.

"Holder" means a charitable corporation, charitable association, or charitable trust which has been declared exempt from taxation pursuant to 26 U.S.C. § 501(c)(3) and the primary purposes or powers of which include: (i) retaining or protecting the natural or open-space values of real property; (ii) assuring the availability of real property for agricultural, forestal, recreational, or open-space use; (iii) protecting natural resources; (iv) maintaining or enhancing air or water quality; or (v) preserving the historic, architectural or archaeological aspects of real property.

"Public body" means any entity defined in [§ 10.1-1700](#).

"Third party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association or charitable trust which, although eligible to be a holder, is not a holder.

1988, cc. 720, 891.

#### **§ 10.1-1010 Creation, acceptance and duration**

A. A holder may acquire a conservation easement by gift, purchase, devise or bequest.

B. No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

C. A conservation easement shall be perpetual in duration unless the instrument creating it otherwise provides a specific time. For all easements, the holder shall (i) meet the criteria in § 10.1-1009 and (ii) either have had a principal office in the Commonwealth for at least five years, or be a national organization in existence for at least five years which has an office in the Commonwealth and has registered and is in good standing with the State Corporation Commission. Until a holder has met these requirements, the holder may co-hold a conservation easement with another holder that meets the requirements.

D. An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it in writing.

E. No conservation easement shall be valid and enforceable unless the limitations or obligations created thereby conform in all respects to the comprehensive plan at the time the easement is granted for the area in which the real property is located.

F. This chapter does not affect the power of the court to modify or terminate a conservation easement in accordance with the principles of law and equity, or in any way limit the power of eminent domain as possessed by any public body. In any such proceeding the holder of the conservation easement shall be compensated for the value of the easement.

1988, cc. 720, 891; 2000, c. 182; 2003, c. 1014.

#### **§ 10.1-1011 Taxation**

A. Where an easement held pursuant to this chapter or the Open-Space Land Act (§ 10.1-1700 et seq.) by its terms is perpetual, neither the interest of the holder of a conservation easement nor a third-party right of enforcement of such an easement shall be subject to state or local taxation nor shall the owner of the fee be taxed for the interest of the holder of the easement.

B. Assessments of the fee interest in land that is subject to a perpetual conservation easement held pursuant to this chapter or the Open-Space Land Act (§ 10.1-1700 et seq.) shall reflect the reduction in the fair market value of the land that results from the inability of the owner of the fee to use such property for uses terminated by the easement. To ensure that the owner of the fee is not taxed on the value of the interest of the holder of the easement, the fair market value of such land (i) shall be based only on uses of the land that are permitted under the terms of the easement and (ii) shall not include any value attributable to the uses or potential uses of the land that have been terminated by the easement.

C. Notwithstanding the provisions of subsection B, land which is (i) subject to a perpetual conservation easement held pursuant to this chapter or the Open-Space Land Act (§ 10.1-1700 et seq.), (ii) devoted to open-space use as defined in § 58.1-3230, and (iii) in any county, city or town which has provided for land use assessment and taxation of any class of land within its jurisdiction pursuant to § 58.1-3231 or § 58.1-3232, shall be assessed and taxed at the use value for open space, if the land otherwise qualifies for such assessment at the time the easement is dedicated. If an easement is in existence at the time the locality enacts land use assessment, the easement shall qualify for such assessment. Once the land with the easement qualifies for land use assessment, it shall continue to qualify so long as the locality has land use assessment.

1988, cc. 720, 891; 1993, c. 390; 1998, c. 487.

#### **§ 10.1-1012 Notification**

Whenever any instrument conveying a conservation easement is recorded after July 1, 1988, the party responsible for recording it or his agent shall mail certified copies thereof, together with any attached plats and a notice specifying the date and place of recordation, to the commissioner of revenue for the local jurisdiction in which the real property subject thereto is located, the Director of the Department of Conservation and Recreation, the Virginia Outdoors Foundation, and to any other public body named in such instrument. Whenever any conservation easement is on lands that are part of or contain a historic place or landmark listed on either the National Register of Historic Places or the Virginia Landmarks Register, any notice required by this section shall also be given to the Director of the Department of Historic Resources.

1988, cc. 720, 891; 2011, c. 207.

**§ 10.1-1013 Standing**

An action affecting a conservation easement may be brought by:

1. An owner of an interest in real property burdened by the easement;
  2. A holder of the easement;
  3. A person having an express third-party right of enforcement;
  4. The Attorney General of the Commonwealth;
  5. The Virginia Outdoors Foundation;
  6. The Virginia Historic Landmarks Board;
  7. The local government in which the real property is located; or
  8. Any other governmental agency or person with standing under other statutes or common law.
- 1988, cc. 720, 891.

**§ 10.1-1014 Validity**

A conservation easement is valid even though:

1. It is not appurtenant to an interest in real property;
2. It can be or has been assigned to another holder;
3. It is not of a character that has been recognized traditionally at common law;
4. It imposes a negative burden;
5. It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;
6. The benefit does not touch or concern real property; or
7. There is no privity of estate or of contract.

Except as otherwise provided in this chapter, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements.

1988, cc. 720, 891.

**§ 10.1-1015 Conveyance to the Commonwealth**

Whenever any holder as defined in this chapter, or the successors or assigns thereof, shall cease to exist, any conservation easement and any right of enforcement held by it shall vest in the Virginia Outdoors Foundation, unless the instrument creating the easement otherwise provides for its transfer to some other holder or public body. In an easement vested in the Virginia Outdoors Foundation by operation of the preceding sentence, the Foundation may retain it or thereafter convey it to any other public body or any holder the Foundation deems most appropriate to hold and enforce such interest in accordance with the purpose of the original conveyance of the easement.

1988, cc. 720, 891.

**§ 10.1-1016 Savings clause**

Nothing herein shall in any way affect the power of a public body under any other statute, including without limitation the Virginia Outdoors Foundation and the Virginia Historic Landmarks Board, to acquire and hold conservation easements or affect the terms of any such easement held by any public body.

1988, cc. 720, 891.