

ARTICLE 4. - SPECIAL ASSESSMENTS FOR AGRICULTURAL, HORTICULTURAL, FOREST AND OPEN SPACE REAL ESTATE

Footnotes:

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State Law reference— *Special assessments for land preservation, see Code of Va., § 58.1-3230 et seq.*

Sec. 20-4-1. - Statement of purpose; authority.

The Board of Supervisors hereby finds and declares that the preservation of real estate devoted to agricultural, horticultural, forest and open space uses within the boundaries of the county is in the public interest, in order to:

- (A) Assure a readily available source of agricultural, horticultural, and forest products and of open spaces within reach of concentrations of populations;
- (B) Conserve natural resources in forms which will prevent erosion;
- (C) Protect adequate and safe water supplies;
- (D) Preserve scenic natural beauty and open spaces;
- (E) Promote proper land use planning and the orderly development of real estate for the accommodation of an expanding population; and
- (F) Promote a balanced economy and ameliorate pressures which force the conversion of such real estate to more intensive uses.

Such real estate shall be taxed in accordance with the provisions of article 4 of chapter 32 of title 58.1 of the Code of Virginia, and of this article.

(Comp. 1974, ch. 23; Ord. eff. 1-1-78)

Sec. 20-4-2. - Special classifications established and defined.

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

- (A) *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 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. 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. In order to qualify under the provisions of this article, a tract shall consist of a minimum of five (5) acres, excluding any dwelling site and the two (2) acres surrounding the dwelling.

- (B) *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; nursery and floral products 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. Real estate upon which recreational activities are conducted for a 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 meet the uniform standards prescribed by the commissioner. In order to qualify under the provisions of this article, a tract shall consist of a minimum of five (5) acres, excluding any dwelling site and the two (2) acres surrounding the dwelling.
- (C) *Real estate devoted to forest use* shall mean land, 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 section 58.1-3240 of the Code of Virginia. Real estate upon which recreational activities are conducted for a profit or otherwise, shall 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 section 58.1-3240 of the Code of Virginia. In order to qualify under the provisions of this article, a tract shall consist of a minimum of twenty (20) acres, excluding any dwelling site and the two (2) acres surrounding the dwelling.
- (D) *Real estate devoted to open-space use* shall mean 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 assist 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 section 58.1-3240 of the Code of Virginia, and in this article. In order to qualify under the provisions of this article, a tract shall consist of a minimum of ten (10) acres, excluding any dwelling site and the two (2) acres surrounding the dwelling.
- (E)

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. For purposes of this section, properties separated only by a public right-of-way are considered contiguous.*

***State law reference**—See Code of Va., § 58.1-3233.

- (F) For the purpose of determining whether real estate qualifies as a special classification as defined hereinabove, prior, discontinued use of property shall not be considered in determining its current use.
- (G) Real property that has been designated as devoted to a special classification use, as defined hereinabove, 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 as 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 as 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 a special classification use. In determining whether real property is devoted to a special classification use, zoning designations and special use permits for the property shall not be the sole considerations.

(Comp. 1974, ch. 23; Ord. eff. 1-1-78; Ord. 11-18-15)

State Law reference— See Code of Va., § 58.1-3230.

Sec. 20-4-3. - Applications generally; fee.

- (A) The owner of any real estate meeting the criteria of one or more of the special classifications of real estate as defined in Section 20-4-2 of this chapter may, on or before November 1 of each year, apply to the Commissioner of Revenue of the county for the classification, assessment and taxation of such property for the next succeeding tax year on the basis of its use, under the procedures set forth in section 58.1-3236 of the Code of Virginia. In any year in which a general reassessment is being made, such application may be submitted until thirty (30) days have elapsed after notice of increase in assessment is mailed in accordance with section 58.1-3330 of the Code of Virginia. Such application shall be on forms provided by the state department of taxation and supplied by the Commissioner of Revenue of the county and shall include such additional schedules, photographs, and drawings as may be required by the Commissioner of Revenue. An application fee of twenty-five dollars plus ten cents per acre for each acre included in the tract at issue shall accompany the application; however, no application fee may be 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.

- (B) A separate application shall be filed for each parcel on the land book; provided, that when applications are submitted by one owner for contiguous parcels, only one application fee shall be required.
- (C) Applications required by subsection (A) hereof may be filed within no more than sixty (60) days after the filing deadline specified herein, upon the payment of a late filing fee of \$50.00, and upon a showing that the failure to file the application with the time provided in subsection (A) was occasioned by reasons beyond the control of the applicant.

(Comp. 1974, ch. 23; Ord. eff. 1-1-78; Ord. 12-15-04; Ord. 11-18-15).

State Law reference— See Code of Va., § 58.1-3234.

Sec. 20-4-4. - Determination of eligibility and value of property.

Promptly upon receipt of any application under this article, the Commissioner of Revenue shall determine whether the subject property meets the criteria for taxation under this article in accordance with sections 58.1-3233 and 58.1-3236 of the Code of Virginia. If the Commissioner of Revenue determines that the subject property does meet such criteria, he shall determine the value of such property for its qualifying use as well as its fair market value. In determining whether the subject property meets the criteria set forth in Section 20-4-2 of this chapter, the Commissioner of Revenue may request an opinion, as provided by section 58.1-3233.1 of the Code of Virginia, from the director of the department of conservation and recreation, the state forester or the commissioner of agriculture and consumer services.

(Comp. 1974, ch. 23; Ord. eff. 1-1-78; Ord. 11-18-15)

Sec. 20-4-5. - Recordation of property values in land book.

The use value and the fair market value of any property qualifying under this article shall be placed on the land book before delivery to the Treasurer and the tax for the next succeeding tax year shall be extended for the use value.

(Comp. 1974, ch. 23; Ord. eff. 1-1-78)

Sec. 20-4-6. - Material misstatements of fact; delinquent taxes at time of application.

In the event of a material misstatement of facts in the application filed pursuant to this article 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 as applied to other real estate in the taxing jurisdiction. 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 article.

(Comp. 1974, ch. 23; Ord. eff. 1-1-78; Ord. 11-18-15)

State Law reference— See Code of Va., § 58.1-3234.

Sec. 20-4-7. - Removal of parcels from program if taxes delinquent; notice to owner.

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 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 June 1, the Treasurer shall notify the commissioner of the revenue who shall remove such parcel from the land use program.

(Comp. 1974, ch. 23; Ord. eff. 1-1-78; Ord. 11-18-15)

State Law reference— See Code of Va., § 58.1-3235.

Sec. 20-4-8. - Roll-back taxes generally.

- (A) When real estate qualifies for assessment and taxation on basis of use under 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 or zoning. Liability for roll-back taxes shall attach and be paid to the Treasurer only if the amount of tax due exceeds \$10.00.
- (B) The roll-back tax shall be equal to the sum of the deferred tax for each of the five (5) most recent complete tax years including simple interest on such roll-back taxes at a rate equal to that applicable to delinquent taxes 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.
- (C) 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. The owner of any real estate rezoned as provided in subsection (D) of this section, or liable for roll-back taxes shall, within sixty (60) days following such change in use or zoning, report such change to the Commissioner of Revenue

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 thirty (30) 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 sections 58.1-3915 and 58.1-3916 of the Code of Virginia.

(D) Except as provided in subsection (E) of this section, 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 (3) years have passed since the rezoning was effective.

(E) Notwithstanding the provisions of subsection (D), above, in the case of property located within the Zion Crossroads Community Planning Area as designated in the then current Comprehensive Plan, (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.

(Comp. 1974, ch. 23; Ord. eff. 1-1-78; Ord. 11-18-15; Ord. 2-21-18)

State Law reference— See Code of Va., § 58.1-3237.

Sec. 20-4-9. - Failure to report change in use; misstatements in applications.

(A) 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 an additional penalty equal to ten percent of the amount of the roll-back tax and

interest, which penalty shall be collected as part of the tax. In addition to such penalty, there shall hereby be imposed interest of one-half percent of the amount of the roll-back tax, interest and penalty for each month, or fraction thereof, during which failure continues.

- (B) Any person making a material misstatement of fact in any application filed pursuant to this article shall be liable for all 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 county, together with interest and penalties thereon. If such material misstatement was made with the intent to defraud the locality, he shall further be assessed with an additional penalty of 100 percent of such unpaid taxes.

For purposes of this section and Section 20-4-6, 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 misrepresentation of fact for the purposes of this section and of Section 20-4-6.

(Comp. 1974, ch. 23; Ord. eff. 1-1-78; Ord. 11-18-15)

State Law reference— See Code of Va., § 58.1-3238.

Sec. 20-4-10. - Applicability of state law.

The provisions of Title 58.1 of the Code of Virginia applicable to local levies and real estate assessment and taxation shall be applicable to assessments and taxation under this article *mutatis mutandis* including, without limitation, provisions relating to tax liens and the correction of erroneous assessments, and for such purposes the roll-back taxes shall be considered to be deferred real estate taxes.

(Comp. 1974, ch. 23; Ord. eff. 1-1-78)