

# Article VIII. – Land Preservation Assessment

## CHAPTER 58 – TAXATION

### Sec. 58-381. – Findings.

The county finds that, because of the proliferation of development activities, a valid public interest exists in the preservation of real estate devoted to agricultural, forest and horticultural uses within its boundaries and ordains that such real estate shall be taxed in accordance with the provisions of Code of Virginia, § 58.1-3230 et seq.

*(Ord. of 6-27-2006)*

### Sec. 58-382. – Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*“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 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.

*(Ord. of 6-27-2006; Ord. of 10-13-2009(1); Ord. 07-10-12)*

**Sec. 58-383. – Application for classification; deadline.**

(a) The owner of any real estate meeting the criteria set forth in Code of Virginia, §§ 58.1-3230 and 58.1-3233(2), may apply to the local assessing officer for the classification, assessment and taxation of such property for the next succeeding tax year on the basis of its use under the procedure set forth in Code of Virginia, § 58.1-3236.

(b) Such application shall be filed not later than 60 days prior to the tax year in which such assessment is sought. If such application is sought in the year in which there is a general reassessment, this deadline shall be extended to 30 days after the assessment notice is mailed. Such application may be filed any time within such 60-day period immediately preceding the beginning of the next tax year in which such assessment is

sought upon the payment of a late filing fee as provided in subsection 58-386(b).

(c) Such application shall be on forms provided by the state department of taxation and supplied by the local assessing officer and shall include such additional information, including but not limited to schedules, photographs, soil maps, geological surveys, soil conservation plans and the like as may be required by the local assessing officer and available to the applicant.

*(Ord. of 6-27-2006)*

**Sec. 58-384. – Method of evaluating.**

(a) In valuing real estate for purposes of taxation by the county pursuant to this article, the commissioner of the revenue or a duly appointed assessor shall consider only those indicia of value which such real estate has for agricultural, forest and horticultural 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, forest and horticultural use, he shall, in arriving at the value of such land, consider available evidence of agricultural, forest and horticultural 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, forest and horticultural 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.

(c) All structures which are located on real estate in agricultural, forest and horticultural 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.

(d) In addition, such real estate in agricultural, forest and horticultural 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.

*(Ord. of 6-27-2006)*

**Sec. 58-385. – Judgment of local officer.**

In the absence of the data referred to in section 58-383, the local assessing officer shall use his personal knowledge, judgment and experience as to the value of real estate and agricultural, forest and horticultural use and may request an opinion from either the commissioner of agriculture and consumer services, the director of the state department of conservation and recreation, or the state forester, as may be directed in the Code of Virginia, § 58.1-3233. Upon the refusal of such officers to issue an opinion or in the event of an unfavorable opinion which does not comport with standards set forth by the respective director, the party aggrieved may seek relief from any court of record wherein the real estate in question is located. If the court finds in his favor, it may issue an order which shall serve in lieu of an opinion for the purpose of this

article.

*(Ord. of 6-27-2006)*

**Sec. 58-386. – Filing of application.**

(a) A separate application shall be filed for each parcel on the land book. No application shall be accepted or approved if, at the time of the filing of such application, there are delinquent real estate taxes owed to the county on such land.

(b) Each such application filed more than 60 days prior to the beginning of the tax year in which the assessment is sought shall be accompanied by a fee of \$15.00 or \$0.15 an acre, whichever is more; and each such application filed 60 or less days before the beginning of the tax year in which such assessment is sought shall be accompanied by a fee of \$15.00 or \$0.15 an acre, whichever is more, plus a late filing fee of \$15.00 or \$0.15, whichever is more.

(c) Each year the applicant shall file, if he wishes his land to be assessed under this article, a revalidation application on forms provided, which application shall be filed not later than 60 days prior to the beginning of the year for which assessment is sought or with the 60-day period upon the payment of a late filing fee. If such application is sought in a year in which there is a general reassessment, this deadline shall be extended to 30 days after the assessment notice is mailed. The revalidation application shall require no revalidation fee if filed not later than 60 days prior to the year in which the assessment is sought; however, if such revalidation application is filed less than 60 days prior to the year for which assessment is sought, the application shall be accompanied by a late revalidation fee of \$15.00 or \$0.15 per acre, whichever is more. A revalidation fee equal to the fee required with the filing of an initial application as provided by subsection (b)

of this section shall accompany the revalidation application filed every sixth year.

*(Ord. of 6-27-2006)*

**Sec. 58-387. – Determination of eligibility.**

Promptly upon receipt of any application under this article, the local assessing officer shall determine whether the subject property meets the criteria for taxation under this article. If the local assessing officer determines that the subject property does not meet such criteria, he shall determine the value of such property for its qualifying use, as well as its fair market value.

*(Ord. of 6-27-2006)*

**Sec. 58-388. – Determination of applicability.**

In determining whether the subject property meets the criteria for agricultural use, forest use or horticultural use, the local assessing officer may request an opinion from the commissioner of agriculture and consumer services, the director of the department of conservation and recreation, and the state forester. Upon the refusal of any of these individuals to issue an opinion, or in the event of an unfavorable opinion which does not comport with standards set forth by the commissioner, the party aggrieved may seek relief from any court of record wherein the real estate in question is located. If 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.

*(Ord. of 6-27-2006)*

**Sec. 58-389. – Placement of value on land book.**

The use value and fair market value of any qualifying property



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. Such use value shall be reassessed from time to time in accordance with the policies and recommendations of the state land evaluation advisory council, and to comport with more accurate information as it becomes available regarding each piece of land.

*(Ord. of 6-27-2006)*

**Sec. 58-390. – Roll-back tax imposed.**

There is imposed a roll-back tax, with interest, in such amounts as may be determined under Code of Virginia, § 58.1-3237, upon any property as to which the use changes to a nonqualifying use.

*(Ord. of 6-27-2006)*

**Sec. 58-391. – Change in use or zoning of real estate assessed under article; roll-back taxes.**

(a) When real estate qualifies for assessment and taxation on the basis of use under 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, referred to in this section as roll-back taxes. Such additional taxes shall only be assessed against that portion 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 due exceeds \$10.00.

(b) 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 board of supervisors, no greater than the rate applicable to delinquent taxes in the county pursuant to Code of Virginia, § 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.

(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. 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 and 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 which has been zoned to more intensive use at the request of the owner or his agent as provided in subsection (d) of this section, or otherwise subject to or liable for roll-back taxes, shall, within 60 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 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 Code of Virginia, §§ 58.1-3915 and 58.1-3916.

(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. The roll-back tax shall be levied and collected from the owner of the real estate in accordance with subsection (c). 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. The 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 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; but 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 50 percent of the roll-back taxes due as determined under subsection (b).

(e) 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-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.

*(Ord. of 6-27-2006)*

**Sec. 58-392. – Change in use; penalty for failure to report.**

(a) The owner of any real estate liable for roll-back taxes shall report to the commissioner of the revenue on forms to be prescribed by the commissioner any change in the use of such property to non-qualifying use and shall pay the roll-back tax then due. On failure so to report and pay within 60 days following such change in use, such owner 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 a part of the tax. In addition to such penalty, there is imposed

interest on such roll-back taxes at the same interest rate applicable to delinquent taxes in the county at the time such failure occurs for each month or fraction during which the failure continues.

(b) Any person making material misstatement of fact in any application filed pursuant to this article shall be liable for all taxes, in such amounts and at such time 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. If such material misstatement was made with the intent to defraud the county, he shall be further assessed with an additional penalty of 100 percent of such unpaid taxes.

*(Ord. of 6-27-2006)*

**Sec. 58-393. – Applicability of state law.**

The provisions of Code of Virginia, title 58.1 applicable to local levies and real estate assessment and taxation shall be applicable to assessments and taxation under this article, 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.

*(Ord. of 6-27-2006)*

**Secs. 58-394–58-415. – Reserved.**