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Special Tax Assessments for Agricultural and Open-Space Land: The Virginia Statute

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sure on the owners of such land to sell their property for more intensive uses. As a corollary, it has been asserted that the valuation of farm and other "open space" land based on its current use, rather than on its potential for development, would serve to ease some of this pressure and would result in the retention of open space. At least twenty-six states, including Virginia, have enacted some form of statutory provision which permit open space lands to be valued, for tax assessment purposes, at their current use. U.S. Dept. of Agriculture, State Programs for the Differential Assessment of Farm and Open Space Land (1974). This article will briefly explain the provisions of the Virginia statute.

The purpose of the Virginia Land Use Assessment Law is to encourage the use of real estate for agricultural, horticultural, forest and open space uses, so as to conserve natural resources to prevent erosion, to protect water supplies, to protect scenic beauty, to promote proper land use planning and orderly development of real estate, and to promote a balanced economy in the Commonwealth by encouraging the use of land for less intensive uses. Va. Code Ann. §58-767.4 (1974). To meet these ends, the statute enables any county, city or town which has first adopted a land use plan, to enact ordinances to assess certain properties based on their current uses. Va. Code Ann. §58-769.6 (1976). These classifications include agricultural uses (real estate devoted to the production of plants and animals useful to man), horticultural uses (real estate devoted to the production for sale of fruits, vegetables, nursery and floral products), forest uses (land devoted to tree growth) and open space uses (real estate used for park or recreational purposes, conservation, floodways, historic or scenic purposes). Va. Code Ann. §58-769.5 (1974).

When the county, city or town has enacted the requisite ordinance, a property owner may submit an application for use assessment, within certain time limitations stipulated in the statute. Va. Code Ann. §58-769.8 (1976). When such application is made, the assessing officer must conclude that the applicant's parcel meets the criteria established by the statute, and standards prescribed for such determinations by either the Commissioner of Agriculture and Commerce, for agricultural and horticultural uses, or by the Director of the Department of Conservation and Economic Development, for forest and open space uses. Va. Code Ann. §58-769.7 (1974). For standards so established, see, State Land Evaluation Advisory Committee, Classification, Assessment and Taxation According to Use of Real Estate Devoted to Agricultural, Horticultural, Forest and Open Space Purposes (1974). The assessing officer

SPECIAL TAX ASSESSMENTS FOR AGRICULTURAL AND OPEN-SPACE LAND: THE VIRGINIA STATUTE

Ordinarily, property taxes are based on an assessment of the "market value" of property. "Market value" includes not only the value of the property as currently employed, but also the potential for future conversion to the "highest and best" use of the land. It has been claimed that the valuation of farm and other open space land for taxation which is based on a potential use rather than its current use places increased pres-

must also determine that the property meets minimum acreage requirements, i.e. five acres for agricultural, horticultural, and open space uses and twenty acres for forest uses. When these initial determinations have been made, the assessor must value the property on its current use, based on his personal knowledge and judgment and those recommendations on value which are provided by the State Land Advisory Committee. Va. Code Ann. §58-769.9 (1974). This assessment applies only to the land while put to the special use and not to the land while put to unrelated uses. Also, the statute does not relate to buildings or other structures on the land.

One of the most interesting features of the Virginia statute is the "roll back" provision. If the land is changed from a qualifying to a non-qualifying use, the property owner must pay, in addition to his regular property taxes, an amount equal to the amount of tax saved under the statute for the current year and the five preceding years, with six percent interest. Va. Code Ann. §58-769.10 (1970). Other penalties are stipulated in the statute. Va. Code Ann. §58-769.10:1 (1974).

Whether or not such special assessment practices actually aid in the long term retention of agricultural and open space land is questionable. Indeed, if a landowner can sell his open space for development purposes, his gain from the sale almost always appears to outweigh any benefit from keeping his land in open space, even with lesser taxation due to the special assessment. Thus, the special assessment provisions may only decrease the carrying costs of land which would have remained agricultural or open space without the special assessment. In situations, however, where the landowner can derive only a small gain from the development of his land, the special assessment provisions may serve to realize its purpose.