TAXATION: REAL PROPERTY TAX – SPECIAL ASSESSMENT FOR LAND PRESERVATION.

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.

The Honorable Charles L. Campbell
Commissioner of the Revenue for Page County
October 30, 2002

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

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.” Any doubt as to the existence of a power must be resolved against the locality. The Dillon Rule recognizes that localities are political subdivisions of the Commonwealth, which, in turn, rests on the foundation of Article I, § 14 of the Constitution of Virginia.

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 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. 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" 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." The phrase "or such greater minimum acreage as may be prescribed by local ordinance" applies solely to "open-space use."

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. "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."

In that case, "[r]eferential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent." "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.


3“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).

4Article 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.


9Section 58.1-3233(2)(iii).


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