



# COMMONWEALTH OF VIRGINIA

*Office of the Attorney General*

William C. Mims  
Attorney General

900 East Main Street  
Richmond, Virginia 23219  
804-786-2071  
FAX 804-786-1991  
Virginia Relay Services  
800-828-1120  
7-1-1

August 27, 2009

The Honorable Lori K. Stevens  
Dinwiddie County Commissioner of the Revenue  
P.O. Box 104  
Dinwiddie, Virginia 23841

Dear Senator Stevens:

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 inquire concerning ownership for purposes of real property taxation of a boat pier constructed by a private land owner on land owned by a political subdivision. Further, should the private landowner be determined to be the owner of the boat pier for purposes of real property taxation, you ask whether the pier may be assessed and taxed separately from the adjoining land of such private landowner.

## **Response**

It is my opinion, based on the facts you present,<sup>1</sup> that a private landowner who constructs a boat pier on land owned by a political subdivision is the owner for purposes of real property taxation. Further, it is my opinion that the pier may be assessed and taxed separately from the adjoining land of such private landowner.

## **Background**

You advise that Lake Chesdin constitutes the northern boundary of Dinwiddie County. The Lake is owned by the Appomattox River Water Authority ("ARWA"), a political subdivision of the Commonwealth of Virginia, to the 164th degree contour of the body of water.

You note that ARWA provides a construction and use permit agreement that allows for the construction and use of certain types of facilities on ARWA-owned property. You relate that a taxpayer living in the Lake Chesdin area entered into an agreement with ARWA to construct a boat pier. Further, you state that the boat pier is attached to the property located below the 164th degree contour, which is wholly owned by ARWA. You relate that your office has assessed the pier as real property, and the taxes on the pier are assessed against the taxpayer. You consider the taxpayer to be the owner of the boat pier since you interpret the agreement between the taxpayer and ARWA as a lease for the pier as contemplated by § 58.1-3282. However, the taxpayer contends that since the property on which the pier is located is wholly owned by ARWA, he should not be assessed for the real estate taxes on the structure.

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<sup>1</sup>See *infra* "Background."

You provide a copy of a “Construction and Use Permit Agreement” that outlines the agreement between the taxpayer and ARWA (the “Agreement”), which provides, in part, that:

8. All structures erected by you on [ARWA] property shall constitute structures appurtenant to your real property. You shall be exclusively responsible for their maintenance, proper repair and upkeep....

9. The structure constructed pursuant to this agreement, shall not be sold separate from the real property to which it is appurtenant. In the event your property is sold, the purchaser shall assume in writing, all conditions and responsibilities of this agreement. This will be done by the purchaser completing a new agreement with [ARWA]. In the event a subsequent purchaser [sic] should not accept the terms of this agreement, [ARWA] may elect to remove any structure erected pursuant to this agreement, and/or restore [ARWA] property to its approximate original condition at your expense.

### **Applicable Law and Discussion**

Section 58.1-3282 provides that:

When a public service corporation or a political subdivision of the Commonwealth does not own both a tract, piece or parcel of land and the improvements thereon, including leasehold improvements owned by the lessee which are to be removed by the lessee at the end of the lease term, the land and such improvements may be assessed separately.

Statutory language is ambiguous when it may be understood in more than one way.<sup>2</sup> An ambiguity also exists when statutory language lacks clarity and precision, or is difficult to comprehend.<sup>3</sup> “The province of [statutory] construction lies wholly within the domain of ambiguity, and that which is plain needs no interpretation.”<sup>4</sup> But when statutory language is “clear and unambiguous,” “the plain meaning and intent of the enactment will be given to it.”<sup>5</sup> It is my opinion that § 58.1-3282 is free of any ambiguity. The General Assembly unambiguously provides that when a political subdivision does not own both a tract of land and the improvements on that tract of land, the improvements may be separately assessed. Furthermore, the Agreement with ARWA clearly provides that any structure erected by the taxpayer on ARWA property “shall constitute structures appurtenant to [the taxpayer’s] property.” The term “appurtenant” is commonly understood to mean “[a]nnexed to a more important thing.”<sup>6</sup> Therefore, under the terms of the Agreement, the taxpayer has voluntarily agreed that the boat pier is annexed to his property.

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<sup>2</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>3</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>4</sup>Winston v. City of Richmond, 196 Va. 403, 408, 83 S.E.2d 728, 731 (1954).

<sup>5</sup>Brown v. Lukhard, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985).

<sup>6</sup>BLACK’S LAW DICTIONARY 118 (9th ed. 2009).

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### **Conclusion**

Accordingly, it is my opinion, based on the facts you present,<sup>7</sup> that a private landowner who constructs a boat pier on land owned by a political subdivision is the owner for purposes of real property taxation. Further, it is my opinion that the pier may be assessed and taxed separately from the adjoining land of such private landowner.

Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, appearing to read 'W C Mims', with a stylized flourish at the end.

William C. Mims

1:213; 1:941/09-042

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<sup>7</sup>See *supra* "Background."