



COMMONWEALTH OF VIRGINIA

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December 10, 2009

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The Honorable Deborah F. Williams
Spotsylvania County Commissioner of the Revenue
P.O. Box 175
Spotsylvania, Virginia 22553-0175

Dear Ms. Williams:

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 ask whether contiguous parcels of real estate with identical ownership may be combined to form tracts that contain at least twenty acres devoted to forest use and five acres devoted to agricultural use to be eligible for use value assessment. You also ask whether a parcel that has a mixed use such as part forest and part agriculture can qualify for use value assessment when the use acreage does not meet the minimum requirement.

Response

It is my opinion that contiguous parcels of real estate that are titled in the same owner may be combined to form tracts of at least twenty acres devoted to forest use and at least five acres devoted to agricultural use and are eligible for use value assessment. It further is my opinion that a parcel with mixed use may qualify for a land use assessment provided the use acreage meets the required minimum acreage for each land use.

Background

You relate that Spotsylvania County allows contiguous parcels with identical ownership to receive the deferral as long as the total acreage of all parcels meets or exceeds the five acre minimum for agricultural use and twenty acre minimum for forestal use.

Applicable Law and Discussion

Article 4, Chapter 32 of Title 58.1, § 58.1-3229 (not set out), §§ 58.1-3230 through 58.1-3244, provides for the special assessment of real property for land preservation. In general, to qualify for land use assessment and taxation: (1) agricultural or horticultural property must consist of a minimum of five acres; (2) forest property must consist of a minimum of twenty acres; and (3) open-space property must consist "of a minimum of five acres or such greater minimum acreage as may be prescribed" by the

locality.¹ Section 58.1-3233(2) provides that “[t]he 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.”

A 2004 opinion of the Attorney General concludes that the aggregation of parcels does not defeat the purposes underlying the land use program as long as the real estate that is divided into parcels remains under common ownership and is large enough that the division is not subject to the locality’s subdivision ordinance.² Further, as long as the aggregated parcels otherwise satisfy § 58.1-3233(2), the purpose of the land use program is satisfied.³ Therefore, it is my opinion that parcels may be aggregated for purposes of meeting minimum acreage requirements for land use taxation established by § 58.1-3233(2). Furthermore, other opinions of the Attorney General conclude that § 58.1-3233(2) authorizes the combination of contiguous parcels of real estate for the purpose of satisfying the minimum acreage requirement of the statute only when the contiguous parcels are titled in the same ownership.⁴ I concur in these prior opinions. It also is my opinion that contiguous parcels of real estate being titled in the same ownership may be combined to form tracts that contain at least twenty acres devoted to forest use and five acres devoted to agricultural use to be eligible for use value assessment.

Prior opinions of the Attorney General tangentially answer your second inquiry.⁵ A commissioner of the revenue should make the factual determination regarding whether a parcel meets the criteria for participation in the land use taxation and assessment program.⁶ To qualify for the special assessment, the land must be devoted to agricultural, horticultural, forest or open-space uses, and must satisfy the minimum acreage requirement specified in § 58.1-3233.⁷ In addition, I note that the separation of lots that do not meet the minimum acreage requirements triggers the application of roll-back taxes.⁸ Therefore, it is my opinion that a parcel with mixed use, *i.e.*, part forest and part agriculture, cannot qualify for use value assessment unless each such use acreage meets the required acreage by itself.

Conclusion

Accordingly, it is my opinion that contiguous parcels of real estate that are titled in the same owner may be combined to form tracts of at least twenty acres devoted to forest use and at least five acres devoted to agricultural use and are eligible for use value assessment. It further is my opinion that a parcel with mixed use may qualify for a land use assessment provided the use acreage meets the required minimum acreage for each land use.

¹ VA. CODE ANN. § 58.1-3233(2) (2009).

² See 2004 Op. Va. Att’y Gen. 201, 203.

³ *Id.*

⁴ See Op. Va. Att’y Gen.: 1989 at 325, 326; 1987-1988 at 138, 140.

⁵ See *infra* notes 6-8 and accompanying text.

⁶ See 2008 Op. Va. Att’y Gen. 141, 143.

⁷ See Op. Va. Att’y Gen.: 2002 at 318, 319; *id.* at 315, 316; 1997 at 193, 194.

⁸ See Op. Va. Att’y Gen.: 1990 at 245, 246; 1986-1987 at 306, 306-07; 1985-1986 at 305, 306; 1982-1983 at 545, 545; 1979-1980 at 339, 340.

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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