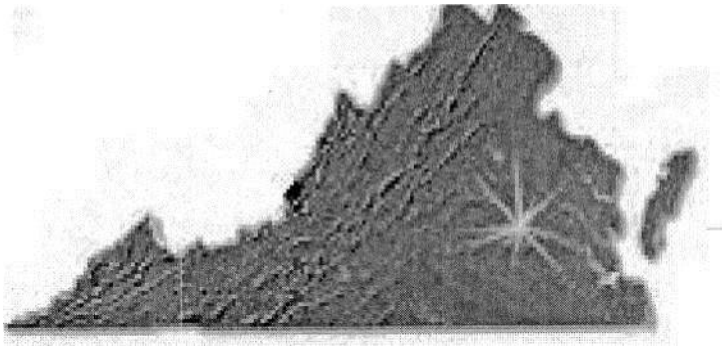

Virginia's

SPECIAL ASSESSMENT PROGRAM

for Land Preservation

USER MANUAL

Created to offer Land Use Administrators descriptive explanations of the State Code of Virginia as it pertains to Land Use Law.

compiled by
The VAAO Land Use Committee
August, 2013

Introduction

In 1997, Tom Morelli, Virginia Association of Assessing Officer's incoming president, appointed an ad hoc committee (VAAO Land Use Committee) to look at the Use Value Taxation Program to see if there were areas needing review or change. The Committee spent the next year reviewing the SLEAC Manual and subsequently made a number of recommendations to the VAAO Board of Directors.

It became readily apparent to the committee members that there were widespread differences in the way the program was being administered around the Commonwealth. Part of this problem, the Committee felt, is due to the way the Code of Virginia is written. There are a number of areas where interpretation could vary due to the wording within the section.

The following year, the Committee was re-appointed. The goal for this term was to write a training syllabus from which to train Land Use Administrators around the Commonwealth. The idea is the training would bring uniformity across the State. The result of many hours of work was not a training syllabus as such, but in fact a user's manual, formatted in such a way to include all information available and to be very user friendly.

The VAAO Land Use Committee is proud to present the VAAO Use Value User Manual.

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Table of Contents

This manual should present a user friendly version of all information to date regarding the Land Use Program. This manual contains opinions from the Office of the Attorney General and from staff of the State Land Evaluation and Advisory Council. The italicized quotes are taken directly from the State Code of Virginia (with section reference) and SLEAC Manual quotes (with page reference).

Special Assessment Program

PURPOSE

In 1971, the Virginia General Assembly enacted a law permitting localities to adopt a program of special assessments for agricultural, horticultural, forest, and open-space lands (§58.1-3229 through §58.1-3244 of the Code of Virginia). While the language originally outlined in §58.1-3229 has since been removed, the purpose of the program was stated as the following:

- Encourage the preservation and proper use of real estate to assure available sources of agricultural, horticultural and forest products and of open spaces within the reach of concentrations of population,
- To conserve natural resources which will prevent erosion and to protect water supplies,
- To preserve scenic natural beauty and open spaces,
- To promote proper land - use planning and the orderly development of real estate for the accommodation of an expanding population, and
- To promote a balanced economy and ease pressures which force the conversion of real estate to more intensive uses.

ATTORNEY GENERAL OPINION:

10/29/79	Both tax relief for the elderly and use value taxation can be applied to a parcel of land.

LOCAL ORDINANCE

(Reference §58.1-3231)

The General Assembly authorized localities to adopt any or all of the classifications (Forest, Agriculture, Horticulture, and Open-Space) for the Special Assessment Program. Localities are also given the authority to deem land in specified zoning districts ineligible. (See your local ordinance to determine the specifics for your locality).

ATTORNEY GENERAL OPINIONS:

8/21/72	Addresses questions regarding a locality establishing a use value ordinance. (Ed. Note: See amendments of the Code of Virginia since this opinion.)
9/13/72	A land use plan must be adopted before a use value ordinance can be passed.
6/01/73	The Board of Supervisors cannot change the effective date of the ordinance. The Board of Supervisors cannot make the new 1973 standards retroactive. Those parcels removed due to the 1973 standards would not be subject to roll-back taxes.
3/25/74	A county must wait until it has adopted a completed comprehensive land use plan before it adopts an ordinance under §58.1-3231.
3/18/75	Localities do not have to reenact use value ordinances annually. (Ed. Note: See amendments of the Code of Virginia since this opinion.)
6/10/83	If a classification is removed as an eligible category, the roll-back tax would still apply when a change in use has occurred.
7/10/87	A change in assessment notice is required by §58.1-3330 when land use assessment values are adjusted in conjunction with a general reassessment.
9/21/90	The Board of Supervisors may not order assessments of real estate at less than fair market value. The Board of Supervisors may not classify certain areas as Agricultural to make properties eligible for land use.
12/7/76	Property owned by a public service corporation is not eligible for land use.

APPLICATIONS

(Reference §58.1-3234)

ATTORNEY GENERAL OPINIONS:

4/09/75	Separate applications should be made for parcels separately assessed on the land book.
5/16/75	A person who has entered a contract to buy property prior to November 1 of the year may apply for special land use assessment if he/she becomes an owner before January 1 of the following year.
4/2/79	Landowners may not obtain preferable land use tax treatment on less than the full acreage of a parcel of real estate, as such parcel is described upon the land book.
3/10/83	Addresses administration involving newly annexed parcels and the combination of contiguous parcels.
4/3/85	Applications can be voided due to misstatement of fact.
2/15/02	A split off of land doesn't make it ineligible if it still meets all requirements for the program.

Deadline: *Applications must be submitted at least sixty days preceding the tax year for which such taxation is sought; or in any year in which a general reassessment is being made, the property owner may submit such application until thirty days have elapsed after his notice of increase in assessment is mailed in accordance with §58.1-3330, or sixty days preceding the tax year, whichever is later. (§58.1-3234)*

ATTORNEY GENERAL OPINION:

3/30/73	A locality cannot accept land use applications after the November 1st deadline. (Ed. Note: See amendments to the Code of Virginia since this opinion.)

Form: *Forms shall be prepared by the State Tax Commissioner and supplied to the locality for use of the applicants and applications shall be submitted on such forms. (§58.1-3234)*

Fees: Local ordinance may require application fees and require revalidation fees every six years.

ATTORNEY GENERAL OPINION:

6/7/78	A locality cannot charge an annual revalidation fee. (Ed. Note: See amendments to the Code of Virginia since this opinion.)

Late Fees: *The governing body may also provide for late filing of revalidation forms on or before the effective date of the assessment, on payment of a late filing fee. (§58.1-3234)*

Fee Exception: *No application fee may be required when a change in acreage occurs solely as a result of a conveyance necessitated by governmental action or condemnation of a portion of any land previously approved for taxation on the basis of use assessment. (§58.1-3234)*

When to File: An application must be filed for any new parcels entering the land use program, or whenever the use or acreage of such land previously approved changes.

New Parcel: Applications must be submitted at least sixty days preceding the tax year for which such taxation is sought; or in any year in which a general reassessment is being made, the property owner may submit such application until thirty days have elapsed after his notice of increase in assessment.

Change in Use: An application shall be submitted whenever the use of such land previously approved changes.

Rezoning: Any change to acreage previously approved requires a new application.

Change In Acreage: Recording a new plat changing the acreage will void out the current application since the acreage previously approved has been changed. (This acreage change is effective for the following tax year - no change to the current year's assessment is made). A new application will need to be submitted for the following year.

ATTORNEY GENERAL OPINION:

10/8/85 Failure to report a split of .601ac from a 150ac farm would not prevent the remainder from qualifying following the failure of the landowner to report the conveyance since the parent/remaining parcel is large enough to qualify.

Change in Ownership: There is no need to submit an application solely due to change in ownership, since continuation in the land use program is based on a qualifying use and continued payment of taxes.

- Those localities who do not revalidate should submit a letter to the new owner seeking their desire to continue in the land use program.

Signatures: All individuals who have an interest in the property must sign.
An individual who is owner of an undivided interest in a parcel may apply on behalf of himself and the other owners of such parcel upon submitting an affidavit that such other owners are minors or cannot be located. (§58.1-3234)

ATTORNEY GENERAL OPINION:

6/7/73 "Property owners" should be interpreted to mean all owners of the property, and therefore all owners of any property for which an application is filed should be accounted for in the application.

Delinquent Taxes: *Except as provided by local ordinance, no application for assessment based on use shall be accepted or approved if, at the time the application is filed, the tax on the land affected is delinquent. Upon the payment of all delinquent taxes, including penalties and interest, the application shall be treated in accordance with the provisions of this section. (§58.1-3234)*

Minimum Acreage: *Add together the total acreage of all contiguous real estate, titled in the same ownership, and recorded before July 1, 1983. (§58.1-3233)*

ATTORNEY GENERAL OPINION:

10/30/2002 A locality may increase the minimum acreage for land classified as 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.

Same Ownership: § 58.1-3233 Add together the total acreage of all contiguous real estate, titled in the same ownership… The same ownership to mean same individuals listed on deed as owner.
Example: Husband and wife - if only one spouse is listed as owner on one of four parcels, a new deed would need to be drawn up and recorded, conveying interest in the property to include both individuals, if all four parcels are to be considered contiguous. Do not assume same ownership simply because they are husband and wife.
Example: Corporations - A parcel titled in the name of two different corporation names, yet the ownership interest in those companies is owned by same individuals. These parcels would not be considered contiguous until the deeded owner on both parcels is titled the same. (If you do not use the same recorded name, you could get into percentage of interest, conveyance of one individual of a portion of his interest, etc...)

ATTORNEY GENERAL OPINION:

1/8/93 A tract of land titled in the name of a trustee and held for a sole beneficiary can be considered "in the same ownership" as the contiguous tract titled only in the name of the sole beneficiary for purposes of combining the acreage of contiguous parcels under §58.1-3233.

Subdivision Lots: Subdivision lots recorded before July 1, 1983, can be used as contiguous property. Any subdivision lot recorded prior to July 1, 1983, would still require an agricultural zoning unless rezoned by locality.

ATTORNEY GENERAL OPINIONS:

3/16/87 Addresses the combination of subdivision lots in order to qualify for land use assessment. (Ed. Note: See amendments to the Code of VA since this opinion.)

3/16/89 Parcels resulting from a plat not subject to the local subdivision ordinance may be combined to satisfy the minimum acreage requirements if the resulting parcels remain under common ownership.

12/23/04 The use-value program applies to property if it is not subject to a subdivision ordinance.

12/10/09 Contiguous parcels with common ownership can be combined. Also addresses mixed use.

Contiguous Properties: *Properties separated only by a public right of way are considered contiguous. (§58.1-3233)*
Examples: roads, train tracks, pipelines, watercourses

QUALIFYING LAND/BUILDINGS

(Reference State Code 58.1-3236)

Use of Land: All land actively devoted to agricultural, horticultural, forest or open-space use. If used in connection with the qualifying use, land under barns, sheds, silos, greenhouses, lakes, dams, ponds, streams, irrigation ditches and like facilities is also considered qualifying. Land under the home (including the yard) or any structure not related to the special use shall be considered ineligible land and taxed at its fair market value. However, land under a home occupied by a farm hand/worker would qualify for special assessment. A home site value should only be applied when there is a livable structure (or mobile home) on the property. Ability of the land to perk is irrelevant. The non-qualifying home site area may be larger or smaller than the home site area defined in the market value assessment.

ATTORNEY GENERAL OPINION:

5/16/79 For purposes of administrative convenience, the assessor does not have the discretion to apply a standard "three-acre" rule to determine the area of a home site.

AGRICULTURAL/FORESTAL DISTRICT

Requirements: *Land used in agricultural and forestal production within an agricultural district, a forestal district or an agricultural and forestal district that has been established under Chapter 43 (§ 15.2-4300 et seq.) of Title 15.2, shall be eligible for the use value assessment and taxation whether or not a local land-use plan or local ordinance pursuant to this section has been adopted. § 58.1-3231*

Benefit: Agricultural/forestal districts can provide land use values in localities which have not adopted the Land Use Ordinance. ...it is my opinion that a locality may implement the AFDA without regard to whether the same locality has adopted the Land Use Act". (See Attorney General Opinion below).

ATTORNEY GENERAL OPINION:

1/3/78 Forest and agriculture districts can qualify for land use if the requirements for land use are satisfied. (Ed. Note: See amendments to the Code of VA since this opinion.)

AGRICULTURE

ATTORNEY GENERAL OPINION:

5/23/83 A sludge lagoon built by a private firm on land leased to it by a farmer does not qualify for special assessment for land devoted to agricultural use.

Minimum Acreage: §58-1-3233 requires that real estate devoted solely to agricultural use consists of a minimum of five acres. The five acre minimum excludes the home site.
Exception: Only contiguous parcels may have less than the 5 acre minimum.
(See Minimum Acreage and Contiguous Property listed above under APPLICATIONS.)

- There is no allowance in the SLEAC Manual for agricultural acreage less than 5 acres to qualify as a piggy back to forest use.
- There is an allowance in the SLEAC Manual for forest acreage less than 20 acres to qualify if incidental to farm operations. (see SLEAC Manual 29-B-2)

ATTORNEY GENERAL OPINIONS:

9/12/72 A locality may not increase the minimum acreage requirements.
(Ed. Note: See amendments of the Code of VA since this opinion.)

2/7/90 A locality should correct the acreage taxed if a plat is recorded.

Federal Compensation: §58.1-3230 Land qualifies if it is 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.

- This applies to federal programs only, not state or local.

Recreational Activities: §58.1-3230 Recreational use is permitted in the Standards of Classification so long as it does not change the character of the of the real estate so that it does not meet the uniform standards prescribed by the Commissioner.

Five Year History: The real estate sought to be qualified must have been devoted, for at least five consecutive years previous, to the production for sale of plants or animals, or to the production for sale of plant or animal products useful to man, or devoted to another qualifying use. (SLEAC Manual 28-§1-A)
Exceptions: See SLEAC Manual page 29-C-1 through 4 for further explanation of…

1. Conversions by farm operator – non-qualifying real estate
2. Conversions by farm operator – qualifying real estate
3. Government Action
4. Crops that require more than two years

Sales Verification: Verification for sale of crop should be submitted to establish a bona fide commercial production. See SLEAC Manual 30-A for a detailed list of documents that may be helpful in making a determination of qualifying status related to income.

Idle Property: On page 29 of the SLEAC manual in §2-B, management and production is discussed in detail. Specific requirements are given as to crop yields, minimum livestock production, as well as horticulture and timber production. Property that is not used in qualifying production cannot receive land use assistance.

ATTORNEY GENERAL OPINION:

12/2/97 References property left idle for a short period of time.

Horses: This section is not as clearly defined and requires decisions to be made once familiar with the actual use of the horses and property. The references below where taken from opinions by Paxton Marshall, a former SLEAC staff member.

Land Management: To qualify, land must be used in a planned program of conservation practices. (See SLEAC Manual 29-§2-A).

Field Crops Use: Crops used for the owner's personal consumption or use or the lessee's personal consumption or use do NOT qualify for the Special Assessment Program.
§58.1-3230 defines agricultural use as bona fide production for sale and 29-§2-B-1 of the SLEAC manual also states that field crop production shall be primarily for commercial uses.
Example: 20 acres of land is leased to grow hay. Simply leasing the property does not justify a qualifying use. To qualify for land use taxation, the lessee must sell the hay or provide as feed to livestock which in turn are sold for the public benefit.

Yields: Page 29-§2-B-1 of the SLEAC manual discusses crop yields. The crop yield for each crop must be at least half of the county average on each crop during the immediate three years.
Exception: The local government may reduce the requirements when low crop yield is due to unusual circumstances.

Livestock Use: Livestock used for the owner's personal consumption or use or the lessee's personal consumption or use does NOT qualify for the Special Assessment Program.
§58.1-3230 defines agricultural use as bona fide production for sale and 29-§2-B-1 of the SLEAC manual also states that livestock, dairy, poultry, or aquaculture production shall be primarily for commercial uses.
Personal use is allowed in minimal proportion. A commercial operation should be the basis of the agriculture activity.

Animal Units: Livestock shall have a minimum of twelve animal unit-months of commercial livestock or poultry per five acres of open land in the previous year; one animal unit to be one cow, one horse, five sheep, five swine, 100 chickens, 66 turkeys, or 100 other fowl. An animal unit month means one mature cow or the equivalent on five acres of land for one month times twelve months. (See SLEAC Manual 29-§2-B-2).

LETTER FROM THE ATTORNEY GENERAL:

6/20/96 Land that is grazed by both pleasure horses and livestock can qualify for land use so long as there is a sufficient amount of livestock in production for sale to meet the qualification requirements.

Horses owned and used for personal use, do not qualify. "Horses maintained for the owner's personal use only do not qualify under the standards. When horses are the only animals kept on property, they must qualify under Section 2-B of the Standards for Classification of Real Estate Devoted to Agricultural Use. Horses must be kept for commercial purposes. Horses owned and used for recreational purposes meet the standards for agricultural classifications if the horses are maintained for breeding purposes or the services of the horses such as riding academies, etc., are sold. *Examples*: boarding, breeding, riding academies, sale of manure, and training. Horses, which are infrequently bought and sold, must be other reasons for commercial use in order to qualify.

"Where horses are infrequently bought and sold, there must be other reasons for commercial use of the horses in order to qualify. If the primary operation is for boarding horses owned by someone else, being paid for board and/or training appears to make it a commercial operation. Also, riding lessons that are paid for appears to be a commercial operation. If riding lessons are only incidental to other uses, it would NOT appear to be a commercial operation. Also, a combination of any of the above including selling manure may be considered commercial if total payment received from such operation more than covers the cost of keeping the animals".

HORTICULTURE

(Reference: Manual of the State Land Evaluation and Advisory Council)

ATTORNEY GENERAL OPINION:

12/12/77 It is not necessary to decide if orchard trees, vineyards, and nursery stock are considered real property since it is assessed under land use.
The "add on" method (applied in proper circumstances) is permitted by law.

Minimum Acreage: §58-1-3233 requires that real estate devoted solely to horticultural use consists of a minimum of five acres. The five acre minimum excludes the home site.
Exception: Only contiguous parcels may have less than the 5 acre minimum.
(See Minimum Acreage and Contiguous Property listed above under APPLICATIONS.)

- There is no allowance in the SLEAC Manual for horticultural acreage less than 5 acres to qualify as a piggy back to forest use.
- There is an allowance in the SLEAC Manual for forest acreage less than 20 acres to qualify if incidental to farm operations. (see SLEAC Manual 28-A-11)

Recreational Activities: §58.1-3230 Recreational use is permitted in the Standards of Classification so long as it does not change the character of the of the real estate so that it does not meet the uniform standards prescribed by the Commissioner.

Five Year History: The real estate sought to be qualified must have been devoted, for at least five consecutive years previous, to the production for sale of plants or animals, or to the production for sale of plant or animal products useful to man, or devoted to another qualifying use. (SLEAC Manual 28-§1-A)
Exceptions: See SLEAC Manual page 31-C-1 through 4 for further explanation of…

1. Conversions by farm operator – non-qualifying real estate
2. Conversions by farm operator – qualifying real estate
3. Government Action
4. Crops that require more than two years

Sales Verification: Verification for sale of crop should be submitted to establish a bona fide commercial production. See SLEAC Manual 30-A for a detailed list of documents that may be helpful in making a determination of qualifying status related to income.

Land Management: To qualify, land must be used in a planned program of conservation practices. (SLEAC Manual 29-§2-A).

Qualifying Uses: Horticultural production includes nursery, greenhouse, cut flowers, plant materials, orchards, vineyards and small fruit products for sale. (SLEAC Manual 30-§2-B-3).

FOREST

(Reference: Manual of the State Land Evaluation and Advisory Council)

Minimum Acreage: *"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.). (§58.1-3230)*

Determine further that real estate devoted solely to forest use consists of a minimum of 20 acres. (§58.1-3233)

Exception: Trees or timber products of such quantity and so spaced as to constitute a forest area meeting standards prescribed by the State Forester, *if less than twenty acres, and produced incidental to other farm operations* (SLEAC manual, 28-A-11)

ATTORNEY GENERAL OPINIONS:

1/27/75	Property qualifying for agricultural or horticultural use value assessment includes forest property of less than twenty acres, when devoted to the production for sale of trees or timber products incidental to other farm operation…
7/9/85	A parcel of 21.25acres, being 17.32ac forest land, a .51ac pond, a 1ac home site, and 2.42ac of open land does not meet the minimum acreage requirement and does not qualify under forestry.
9/21/79	A 5 acre tract (previously conveyed), does not meet the minimum acreage requirement for forest land, but the parcel can qualify in the future, if, after being combined with another contiguous tract(s) owned by the same person, the total acreage of the parcel meets the minimum size requirement.

Qualifying Use: To be qualified the land must be growing a commercial forest crop that is physically accessible for harvesting when mature. (SLEAC Manual 21-§1-B)

If the timber is fenced in and livestock are allowed to graze (used in addition to other pasture land), then agricultural values would be applied.

ATTORNEY GENERAL OPINION:

5/21/75	A special use assessment of forest land applies to both the land and the standing timber thereon.

Stocking: The real estate sought to be qualified shall be devoted to forest use which has existent on it, and well distributed, commercially valuable trees of any size sufficient to compose at least 40% normal stocking of forest trees, as shown in Table I (SLEAC Manual 21-§1-B, table on page 22). This would include land that has recently been cleared and is being regenerated into a new forest.

Exception: Nonproductive Forest Land (See SLEAC Manual 21-§1-C)

ATTORNEY GENERAL OPINION:

2/23/76	The value of the standing timber is a part of the SLEAC values.

Non-Productive: The land sought to be qualified is land devoted to forest use but which is not capable of growing a crop of industrial wood because of inaccessibility or adverse site conditions such as steep outcrops of rock, shallow soil on steep mountain sides, excessive steepness, heavily eroded areas, coastal beach sand, tidal marsh and other conditions which prohibit the growth and harvesting of a crop of trees suitable for commercial use. (SLEAC Manual 21-§1-C)

Certification: The owner shall certify that the land is used in a planned program of timber management. (SLEAC Manual 23-§2-A)
Certification of intent by the owner can be shown by a signed commitment or a submission of a plan prepared by a professional forester. (SLEAC Manual 23-§2-B)

OPEN-SPACE

(Reference: Manual of the State Land Evaluation and Advisory Council)
*(Must have an identifiable public interest)

Minimum Acreage: *A minimum of five acres or such greater minimum acreage as may be prescribed by local ordinance is required to qualify for open-space; except that for real estate adjacent to a scenic river, a scenic highway, a Virginia Byway or public property in the Virginia Outdoors Plan or for any real estate in any city, county or town having a density of population greater than 5,000 per square mile, for any real estate in any county operating under the urban county executive form of government, or the unincorporated Town of Yorktown chartered in 1691, the governing body may by ordinance prescribe that land devoted to open-space uses consist of a minimum of one quarter of an acre (§58.1-3230).*

Can it be Denied: According to a court ruling in Stafford County, 9/10/96, Case No. (Law) 95000597 - An offer by a landowner to maintain the property as open-space for a period of years in return for reduced tax rate can be rejected by the county. Ruling: The County has the choice of accepting or rejecting the same.

Qualifying Use: *Real estate devoted to open-space use must be:*

(i) *Within an agricultural, a forestal, or an agricultural and forestal district entered into pursuant to Chapter 43 (§ 15.2-4300 et seq.) of Title 15.2, or*

(ii) *Subject to a recorded perpetual easement that is held by a public body, and promotes the open-space use classification, as defined in § 58.1-3230, or*

(iii) *Subject to a recorded commitment entered into by the landowners with the local governing body, or its authorized designee, not to change the use to a nonqualifying use for a time period stated in the commitment of not less than four years nor more than 10 years. Such commitment shall be subject to uniform standards prescribed by the Director of the Department of Conservation and Recreation pursuant to the authority set out in § 58.1-3240. Such commitment shall run with the land for the applicable period, and may be terminated in the manner provided in § 15.2-4314 for withdrawal of land from an agricultural, a forestal or an agricultural and forestal district. (§58.1-3233-3)*

Also reference SLEAC 23-§1-General Standards

Actual Uses: Any use which offers use to the public, see examples of qualifying uses below, shall qualify if the intended operation is not for profit. (SLEAC Manual 24-2-A).
Examples of qualifying uses: Parks, play areas, athletic fields, botanical gardens, fishing ponds and skating ponds, *golf clubs, country clubs, swimming clubs, beach clubs, yacht clubs, scout camps and fairgrounds. (*Golf clubs which operate for profit but provide service to the general public and have a park like setting qualify. Any Golf Club which has restricted membership DOES NOT qualify).

Other qualifying uses: Conservation of land or other natural resources, Floodways, Historic areas, Scenic areas, and assisting in community development. (SLEAC 23-§2-B through E)
Land that is currently not being farmed but could be used as farmland in the future also qualifies. "...lands that are suitable for agricultural, horticultural, or forest use, REGARDLESS OF WHETHER PRODUCTION HISTORY, PRODUCTION STANDARDS OR FOREST STOCKING STANDARDS ARE MET". (See Suggested Ranges of Use-Values as provided by SLEAC, Open-Space values http://usevalue.agecon.vt.edu/myweb3/Estimates/TY%202013/TY2013%20OpenSpace.pdf).

Non-qualifying uses: (Commercial recreational or amusement places) Driving ranges, miniature golf courses, pony rides, trap shoots, marinas, motor speedways, drag strips and amusement parks. (See SLEAC Manual 24-2-A-4).

Value According To Use: When valuing land for open-space use, if there is no identifiable market for such land because it is not in use as a golf course, swim club or racket club, then either:

a) value the land the same as productive land in agricultural, horticultural, or forest use, as the case dictates (examples include lands that are suitable for agricultural, horticultural, or forest use, regardless of whether production history, production standards, or forest stocking standards are met); or,

b) value the land as unproductive land in agricultural, horticultural, or forestal use, as the case dictates (examples include areas provided for the conservation of land or other natural resources, floodways and those lands which are officially planned or approved by the local governing body to be left in a relatively natural and undeveloped state, such as stream valleys, mountaintops, and mountainsides).

Perpetual Easements: For properties subject to a perpetual easement under the Virginia Conservation Easement Act or the Open-Space Land Act, see §10.1-1011 of the Code of Virginia, and the Attorney General's Opinion of November 19, 1993, to the Honorable Joyce L. Clark, Commissioner of the Revenue for Orange County, Virginia.

ATTORNEY GENERAL OPINIONS:

11/19/93	References perpetual easements and open-space classification.
9/25/00	Law gives a locality the power to reduce assessed value to be taxed, but not to give tax credits.

REVALIDATION

(Reference State Code §58.1-3234)

ATTORNEY GENERAL OPINION:

8/27/79 Revalidation forms do not need to be recorded.

Filing: *The governing body of any county, city or town may, however, require any such property owner to revalidate annually with such locality, on or before the date on which the last installment of property tax prior to the effective date of the assessment is due, on forms prepared by the locality, any applications previously approved. (§58.1-3234)*

Deadline: *The governing body of any county, city or town may, however, require any such property owner to revalidate annually with such locality, on or before the date on which the last installment of property tax prior to the effective date of the assessment is due, on forms prepared by the locality, any applications previously approved. (§58.1-3234)*

ATTORNEY GENERAL OPINION:

7/19/85 There is no provision for acceptance of revalidation forms outside of the statutory deadlines, regardless of the reason for noncompliance.
Where a revalidation form is not filed within statutory deadlines, land use assessment may not continue, and assessment at the fair market value is proper.

Form: *The governing body of any county, city or town may, however, require any such property owner to revalidate annually with such locality, on or before the date on which the last installment of property tax prior to the effective date of the assessment is due, on forms prepared by the locality, any applications previously approved. (§58.1-3234)*

Fees: *Each locality which has adopted an ordinance hereunder may provide for the imposition of a revalidation fee every sixth year. Such revalidation fee shall not, however, exceed the application fee currently charged by the locality. (§58.1-3234)*

ATTORNEY GENERAL OPINION:

7/13/82 A locality may not collect a $10 fee on each annual revalidation. *Each locality which has adopted an ordinance hereunder may provide for the imposition of a revalidation every sixth year. (§58.1-3234)*

Late Fees: *The governing body may also provide for late filing of revalidation forms on or before the effective date of the assessment, on payment of a late filing fee. (§58.1-3234)*

Why file: Each locality may determine whether or not they will require annual revalidation, however an application shall be submitted whenever the use of such land previously approved changes.

ROLL-BACK TAXES

(Reference State Code §58.1-3237)

Roll-back Applies if: *When real estate qualifies for assessment and taxation on the basis of use under an ordinance adopted pursuant to 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, hereinafter referred to as roll-back taxes. (§ 58.1-3237)*

ATTORNEY GENERAL OPINION:

4/8/96 Answers questions regarding zoning and the roll-back tax liability.

When to Levy RB: *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. (§58.1-3237, 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. (§58.1-3237, E)
Grandfather Clause - 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.

Qualifying Zoning: *Agriculture zoning is the only zoning which qualifies for the Special Assessment Program. 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, provided that these provisions shall not be applicable to any rezoning which is required for the establishment, continuation, or expansion of a qualifying use. (§58.1-3237, D)*
Exceptions: If rezoned by governmental action (the property owner had no decision in the re-zoning of the property). If rezoned prior to July 1, 1988, and the qualifying use still exists. (Should the property owner cease farming or change the qualifying use, a roll-back should be levied at that time).

ATTORNEY GENERAL OPINIONS:

12/19/75 A county wide rezoning, without the request of a property owner, does not disqualify a property. (Ed. Note: See amendments to the Code of VA since this opinion.)

11/7/83 Answers questions regarding zoning, roll-back, and the ability to qualify.

Property Rezoned: *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. (§58.1-3237, E)*

Grandfather Clause - Property rezoned prior to 1980 may be eligible for the land use assessment for the year following a less intense zoning. However, roll-back taxes would be levied for 5 years if the property were again to be rezoned to a more intensive use within the next five years with a 50% penalty applied.

"...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 agriculture, 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 fifty percent of the roll-back taxes due ..." (§58.1-3237, E)

ATTORNEY GENERAL OPINIONS:

10/11/88	The three-year waiting period described in §58.1-3237 (D) applies only if the original rezoning was requested by the owner or his agent.
2/10/83	A parcel may continue in a use value assessment program despite a complete change in ownership, so long as the actual use of the land does not change and the other prerequisites of §58.1-3234 are satisfied (no roll-back).
12/22/87	Roll-back taxes are not assessed when the owner who makes the change in use is a state agency.
11/2/01	A change in ownership does not lead to roll-back taxes. (Court case)

Change In Use: *When real estate qualifies for assessment and taxation on the basis of use under an ordinance adopted pursuant to 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, hereinafter referred to as roll-back taxes. Such additional taxes shall only be assessed against that portion of such real estate which no longer qualifies for assessment and taxation on the basis of use or zoning. (§58.1-3237, A)*

- This includes ceasing farming activity - farming operation is no longer productive.

ATTORNEY GENERAL OPINIONS:

12/2/97	Addresses property left idle for a short period of time.
5/1/80	A church is liable for roll-back taxes. The fact that the church changes the use of the property does not change the fact that the church acquired the property subject to such lien.

Dollar Amount: *Liability for roll-back taxes shall attach and be paid to the treasurer only if the amount of tax due exceeds ten dollars. (§58.1-3237, A)*

Inactive Status: The only way to be removed from the program without having the roll-back tax levied: the property owner may elect to be removed from the land use program while continuing with a qualified use for the next consecutive five years (until all tax liens are clear). "A land owner is allowed to withdraw from the program without paying roll-back taxes as long as he continued to use the land for a qualifying use. This would allow a land owner to work his way out of the program without paying roll-back taxes." (Opinion from a former SLEAC staff member - hand out from land use seminar).

Zoning: *When real estate qualifies for assessment and taxation on the basis of use under an ordinance adopted pursuant to 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, hereinafter referred to as roll-back taxes. (§58.1-3237, A)*

- Roll-backs are not levied when change in ownership (FULL transfer) occurs. "Liability to the roll-back taxes shall not attach when a change in ownership of the title takes place..."

ATTORNEY GENERAL OPINIONS:

10/29/99	If a locality rezones a property to a more intensive use, it is not liable for roll-back taxes.
8/5/08	If land is rezoned to a more intensive use per the owner's request, it becomes ineligible.
8/25/93	The granting of a special exception is not the same as a change in zoning. (Court case)

Roll-back Acreage: *Such additional taxes shall only be assessed against that portion of such real estate which no longer qualifies for assessment and taxation on the basis of use or zoning. (§58.1-3237, A)*

- Only the acreage which has changed in use was rezoned, or split-off is subject to the roll-back tax, providing there is sufficient acreage remaining to meet the minimum acreage requirements to continue to qualify.

Roll-back Interest: *In localities which have not adopted a sliding scale ordinance, 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 governing body, no greater than the rate applicable to delinquent taxes in such locality pursuant to § 58.1-3916 for each of the tax years. (§58.1-3237, B)*

- The actual rate should be specified in your local county ordinance. (Per letter from the Attorney General's Office - Prince George County, 1998).
- This section is referring to roll-back interest only - to be included in total roll-back levied - not to be confused with interest applied by the Treasurer's Office.

ATTORNEY GENERAL, OPINION:

1/13/78	The commissioner of revenue should assess the roll-back taxes and forward to the treasurer who can then send the bill to the taxpayer, with interest added.

Years In Roll-back: The current and the five previous years are to be included when calculating the roll-back tax.

- *…the roll-back tax shall be equal to the sum of the deferred tax for each of the five most recent complete tax years… (§58.1-3237, B)*
- *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 and use value and the fair market value. (§58.1-3237, B)*

Report Change in Use: *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 E, or otherwise subject to or liable for roll-back taxes, shall, within sixty 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. (§58.1-3237, D)*

Penalty: *Any person failing to report properly any change in use of property for which an application for use value taxation had been filed shall be liable for all such taxes, in such amounts and at such times as if he had complied herewith and assessments had been properly made, and he shall be liable for such penalties and interest thereon as may be provided by ordinance. (§58.1-3238)*

Misstatement of Fact: *Any person making a material misstatement of fact in any such application shall be liable for all such taxes, in such amounts and at such times 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 thereon. If such material misstatement was made with the intent to defraud the locality, he shall be further assessed with an additional penalty of 100 percent of such unpaid taxes. (§58.1-3238)* (The roll-back tax total would be doubled).

ATTORNEY GENERAL OPINION:

4/3/85 A locality can void a use value assessment application when a material change in acreage occurs before the January 1 assessment date if the taxpayer does not submit a new application reflecting the change.

Tax: The roll-back is to be levied on the parcel on which the change was made and to be paid in (30) thirty days.
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 thirty 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 §§ 58.1-3915 and 58.1-3916. (§58.1-3237, D)

ATTORNEY GENERAL OPINIONS:

10/13/76 A new owner is liable for roll-back taxes because he changed the use to a nonqualifying use.

9/28/82 The owner of the land whose action triggered the roll-back tax liability should be billed for such liability.

Roll-back Due Date: The treasurer shall apply additional interest if the roll-back tax is not paid by the thirty day due date.

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 thirty 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 §§ 58.1-3915 and 58.1-3916. (§58.1-3237, D)

DELINQUENT TAXES

(Reference §58.1-3235)

ATTORNEY GENERAL OPINION:

5/26/83 Unless parcels have changed to a nonqualifying use or size, removal from land use valuation because of delinquency of taxes would not subject them to the roll-back tax.

Notification: *If on April 1 of any year the taxes for any prior year on any parcel of real property which has a special assessment as provided for in this article are delinquent, the appropriate county, city or town treasurer shall forthwith send notice of that fact and the general provisions of this section to the property owner by first-class mail. (§58.1-3235)*

Removal: *If, after the notice has been sent, such delinquent taxes remain unpaid on June 1, the treasurer shall notify the appropriate commissioner of the revenue who shall remove such parcel from the land use program. Such removal shall become effective for the current tax year. (§58.1-3235)* A supplemental bill is created on the deferred amount for the current year. Delinquent taxes would include roll-back, supplemental, or annual taxes levied on the qualifying parcel for any prior year.

ATTORNEY GENERAL OPINIONS:

5/17/84 If all the prior delinquent taxes and applicable penalties and interest are paid, a landowner could submit a new application for taxation under a locality's land use program within the time limits established in §58.1-3234.

9/13/85 A local ordinance may not alter those dates established for review of tax delinquent property under §58.1-3235.

11/13/85 If a property has delinquent taxes, a parcel is removed from the program for the current year only and the property owner must reapply for future years after all delinquencies are resolved.

SPLITS/SUBDIVIDED PROPERTY

(Reference §58.1-3241)

Intention: This section of the code addresses roll-back liability when property is subdivided, bringing about repercussions for land that is not kept from development, as intended by the Use Value Program to preserve land. (This provision of the law clearly enables the use-value taxation program to result in outcomes that are directly counter to protecting land from development. - by Paxton Marshall, see excerpt below)

Subject to Roll-back: *Acreage separated or split-off by action of the owner is subject to the roll-back tax. Separation or split-off of lots, pieces or parcels of land from the real estate which is being valued, assessed and taxed under an ordinance adopted pursuant to this article, either by conveyance or other action of the owner of such real estate, shall subject the real estate so separated to liability for the roll-back taxes applicable thereto, but shall not impair the right of each subdivided parcel of such real estate to qualify for such valuation, assessment and taxation in any and all future years, provided it meets the minimum acreage requirements and such other conditions of this article as may be applicable. Such separation or split-off of lots shall not impair the right of the remaining real estate to continuance of such valuation, assessment and taxation without liability for roll-back taxes, provided it meets the minimum acreage requirements and other applicable conditions of this article (§ 58.1-3241,A).*

ATTORNEY GENERAL OPINION:

9/21/79 If a 5 acre split (forest land) is transferred, it is subject to roll-back.
If the 5 acres is re-conveyed back to the original owner, it could qualify.
The parent parcel and the new parcel would need to submit new applications.

Reapply: Any parcel that has been split-off or subdivided which has the minimum acreage and meets the requirements shall qualify for the land use program.
Such separation or split-off of lots shall not impair the right of the remaining real estate to continuance of such valuation, assessment and taxation without liability for roll-back taxes, provided it meets the minimum acreage requirements and other applicable conditions of this article (§ 58.1-3241,A) .

No Roll-back on Residual/ Remaining Acreage: The remaining/residual real estate may continue in the program without having the roll-back tax levied.
Such separation or split-off of lots shall not impair the right of the remaining real estate to continuance of such valuation, assessment and taxation without liability for roll-back taxes, provided it meets the minimum acreage requirements and other applicable conditions of this article. (§ 58.1-3241, A) (A new application would need to be filed).
The focus here addresses no roll-back on the residual/parent only. This does not address acreage conveyed.

Roll-back Exception: No subdivision, separation, or split-off of property which results in parcels that meet the minimum acreage requirements of this article, and that are used for one or more of the purposes set forth in § 58.1-3230, shall be subject to the provisions of subsection A. (Section 58.1-3230 addresses the four classifications of the Special Assessment Program).
Example: A parcel has 50 acres agriculture and 50 acres in timber. Due to illness or age, a farmer is no longer able to continue a commercial farming operation on the land. If he does not split-off the 50 acres of agriculture land, it will become dormant land or he can split off the agriculture acreage to someone who can continue to keep it agriculturally productive. (Not sold for development or for profit - conveyed simply to remain productive). This small section of the code has brought about numerous interpretations. While some see the attestation by the owner not to change the qualifying use of the land as an exception to the roll-back tax, the Land Use Committee would like to reference this excerpt from Paxton Marshall, former member of SLEAC staff with the Department of Agricultural and Applied Economies, submitted August 31, 1993, see below).

FOR YOUR INFORMATION:

The following is an excerpt from a letter written by Paxton Marshall, former member of SLEAC staff with the Department of Agricultural and Applied Economics, submitted August 31, 1993. "Applicability of roll-back tax at transfer - three cases exist (Full) transfer of a parcel regardless of the means of transfer, does not cause the roll-back tax to become due, except when the purchaser requires the parcel to be transferred free and clear of liens. Such a condition requires the roll-back tax to be paid by the seller. The transfer of a parcel that is separated from a tax tract of origin does not cause the roll-back tax to become due on the remaining portion of the of the tract of origin, provided that such remainder continues to meet the standards for qualification.

However, the transfer of the separated parcel does cause the roll-back tax to become due on the separated acreage. Such a transfer requires a new deed and a new entry in the Land Book. This new entry adds a line to the Land Book. Although both the tract of origin and the tract separated may continue to qualify for use-value taxation, the former continues to qualify for use-value taxation without paying roll-back tax while the latter must re-enter the use-value tax program free and clear of liens, the roll-back tax obligation must have been paid. (Incidentally, this provision of the law clearly enables the use-value taxation program to result in outcomes that are directly counter to protecting land from development.)

Full transfer of a parcel may never cause the roll-back tax to become due if the purchaser does not change the use of the land to a non-qualifying use until an amount of time equal to the full roll-back period has elapsed—a full six years following purchase.

For example, if a parcel that entered the use-value taxation program on 1 January 1985 was transferred on 31 December 1993 and the purchaser removed the tract from the use-value taxation program but continued the tract in a qualifying use through 31 December 1999, the use of the land could be changed to a non-qualifying use on 1 January 2000 without causing the roll-back tax to become due. The reason is there would be neither deferrals or interest remaining due. The Chesterfield County case (Case No.-CL89-557, March 9, 1991) The Circuit Court of the County of Chesterfield recently decided a case in which the roll-back tax became due even though the land at issue was transferred only among family members.

Three tracts of land were involved. The tract had descended through the family to two sisters. Each sister had married. One had become terminally ill. Conditions between some members of the two families caused the sisters to decide to divide the three tracts of land among the two families. The sisters ordered that the three parcels be surveyed, and they ordered that two new parcels be created. These actions resulted in creating two

new parcels by separating them from the parcels of origin. The three existing deeds were no longer effective, because two new deeds describing the new parcels and identifying the new sets of owners were created.

The result caused the roll-back tax to become due for these reasons: There was no "remaining real estate" tract to continue in the use-value program, because the deeds of the three parcels of origin were actually replaced by two new deeds. The action taken by the sisters had actually been a 100 percent separation creating two new tracts and two new deeds. The two new deeds were recorded. The result triggered the roll-back tax on the three parcel of origin. The decision by the court simply conformed with the law in accordance with the clause "either by conveyance or other action of the owner". While the roll-back tax became due as a result of the sisters' actions, each of the two new parcels retained "the right of each subdivided parcel of such real estate to qualify for such valuation, assessment and taxation in any and all future years, provided (that) it meets the minimum acreage requirements and such other conditions of this article as may be applicable."

Summary for Chesterfield Committee: This case meets the test of being "the special case" where the entire parcels of origin are separated into two new parcels.

Overall Summary: There is no reason for concern that every transfer (full transfer included) of land causes the roll-back tax to become due. Only the transfer that separates from the tract of origin., anew tract requiring a new deed triggers the roll-back tax and in such cases only for the separated acreage." Reference - 1997 Report of the Attorney General, dated 7/24/97. Even though the original question in this opinion is not related directly to section 58.1-3241, it does state: "Roth 58.1-3237 and 58.1-3241 contain language indicating that the property owner is subject to roll-back tax liability when the change in use or results from action by the property owner".

Tax Liens: As stated in the Application section, no property seeking Use Value Taxation shall have delinquent taxes on the parcel at the time the application is filed. Parcels entering the Land Use Program must be free and clear of taxes liens. For a newly created parcel, this would include delinquent taxes on a parent parcel. "Although both the tract of origin and the tract separated may continue to qualify for use value taxation the former (parent parcel) continues to qualify for use value taxation without paying roll-back tax while the latter (newly created parcel) must re-enter the use value tax program free and clear of liens, the roll-back tax obligation must have been paid". (Reference excerpt from Paxton Marshall, former member of SLEAC staff with the Department of Agricultural and Applied Economics, submitted August 31, 1993, see above).

Contiguous Acreage in Multiple Localities: *If an individual owns contiguous property in another locality, add together the total number of acres in both localities, titled in the same ownership, to determine the total acreage amount. Where contiguous real estate in agricultural, horticultural, forest or open-space use in one ownership is located in more than one taxing locality, compliance with the minimum acreage shall be determined on the basis of the total area of such real estate and not the area which is located in the particular taxing locality. (§58.1-3241, C).*

ATTORNEY GENERAL OPINION:

10/20/09 Addresses the issue of land in the use-value program that is divided between a county and an incorporated town.

EMINENT DOMAIN

(Reference State Code §58.1-3242)

Definition: The right of the government to take private property for public use provided that just compensation is paid.

No Roll-Back: *The taking of real estate which is being valued, assessed and taxed under an ordinance adopted pursuant to this article by right of eminent domain shall not subject the real estate so taken to the roll-back taxes herein imposed (§58.1-3242).*

ATTORNEY GENERAL OPINION:

7/24/97 Land taken by eminent domain is not subject to roll-back taxes.

Highway Takes: No roll-back is to occur when a highway take or Certificate of Deposit is recorded; this would include dedications to the locality.
The taking of real estate which is being valued, assessed and taxed under an ordinance adopted pursuant to this article by right of eminent domain shall not subject the real estate so taken to the roll-back taxes herein imposed (§58.1-3242).

Value Removed: The deferred value should be calculated and removed from any potential or future roll-back.

LAND USE VALUES

(Reference State Code §58.1-3239)

ATTORNEY GENERAL OPINIONS:

12/7/76	Adjustment of use values is to be made only on a year of reassessment.
7/10/87	The notice of change in assessment required by §58.1-3330 is required when land-use assessment values are adjusted in conjunction with a general reassessment. An aggrieved taxpayer may apply to the board of equalization for a review of a land-use assessment as provided by §58.1-3350.
9/11/97	Use-value assessment should not be higher than fair market assessment for a property.

Soil Values: Up to the locality; the SLEAC Committee provides suggested values in determining the land use value.

The Advisory Council shall determine and publish a range of suggested values for each of the several soil conservation service land capability classifications for agricultural, horticultural, forest and open- space uses in the various areas of the Commonwealth as needed to carry out the provisions of this article (§ 58.1-3239).

ATTORNEY GENERAL OPINION:

10/28/97	SLEAC estimates do not have to be used, just considered.

Basis for Values: The values are based on the productive earning power for each classification. "...based on the productive earning power of real estate devoted to agricultural, horticultural, forest and open-space uses... "The Advisory Council, in determining such ranges of values, shall base the determination on productive earning power to be determined by capitalization of warranted cash rents or by the capitalization of incomes of like real estate in the locality...".

OPINIONS REGARDING A QUALIFYING USE

(Reference State Code §58.1-3240)

Who to Ask: Questions regarding agriculture and horticulture qualifications should be submitted to the Commissioner of Agriculture and Consumer Services.
Questions regarding forest qualifications should be submitted to the State Forester.
Open-Space questions should be submitted to the Department of Conservation and Recreation.

No Opinion? Dissatisfied: *In the event of no opinion or an unfavorable opinion which does not comply with the standards, the circuit court can offer its opinion which will serve in lieu of an opinion from SLEAC. Upon the refusal of the Commissioner of Agriculture and Consumer Services, the State Forester or the Director of the Department of Conservation and Recreation to issue an opinion or in the event of an unfavorable opinion which does not comport with standards set forth in the statements filed pursuant to this section, the party aggrieved may seek relief in the circuit court of the county or city wherein the real estate in question is located, and in the event that 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 (§58.1-3240).*

UNIQUE QUALIFYING USES

(Reference - Cases experienced by localities)

Bees: A letter dated 3/19/97, from the Department of Agriculture and Consumer Services, by Carlton Courter, Commissioner states: "...it is my opinion that the entire ten acres qualify for agricultural-use assessment, irrespective of where on the parcel the hives are kept. Presumably the bees forage on the full ten acres of land, including the eight thinly-wooded acres of forest. Thinly wooded land often contains flowering plants and flowering trees from which bees derive the nectar for making honey". Opinion from the Virginia State Apiarist, dated December 8, 1999: The preferred method of verifying that a beekeeper had income of over ,$1,000 per year would be to check production data and sales invoices for the past several years. Please note that there may be additional sources of income from honey bee colonies, such as, sale of beeswax, pollen, nucleus colonies and also income from rental of colonies for crop pollination. I am limiting ray figures solely to honey production and sales for this evaluation; however, these additional sources of income may be reported by the beekeeper to meet the $1,000 gross income.

The chart demonstrates how I arrived at the figure of 15 colonies (bee hives) needed to generate a gross income of $1,000 per year.

Year	Avg Honey Production Per Colony	Average Sales Price Per Pound	Yearly Grass Income Per Colony	Colonies need to Gross
1996	50 lbs.	$1.48	$74.00	13.5
1997	53 lbs.	$1.45	$76.85	13.0
1998	37 lbs.	$1.33	$49.21	20.3
3 Yr Avg	47 lbs.	$1.42	$66.74	14.9

As you can see from the chart, yearly honey production and value of sales can fluctuate depending upon weather conditions, colony strength, and available nectar flows. Also, honey production can be minimal during the first year that colonies are established from package bees or nucleus colonies. Due to the yearly fluctuation in honey production and value, it is necessary to average income data for several years to verify the $1,000 minimum. Of course, a beekeeper's records may prove that the $1,000 minimum can be generated utilizing less than 15 colonies if these colonies are well managed and in a good nectar producing area. Your reference to a 5 acre parcel is irrelevant to the equation since honey bees will usually forage within one mile of the colony but, if necessary, can forage up to six miles to find nectar sources.

Bartering: Bartering is considered a viable option in the Land Use Program. However, the barter for trade is to be made in place of a money exchange. Sale of the crop and/or livestock is still required. In accordance with the code, sale of the product or livestock (whether by money or in trade) is part of the qualification requirements. *Example*: The owner of a 15 acre tract leases his land to his neighbor. If the neighbor sells the crop or livestock raised on the property, this is a qualifying use - the actual leasing of the land was not the issue. If the neighbor puts cattle on 10 acres of the property and harvests 5 acres of hay to feed to the cattle that are strictly for his families personal consumption, this is not a qualifying use. There is no benefit to the public, no sale of produce or livestock. Having horses in this situation, for personal use, also would not qualify. (See Horses under Agriculture Classification).

Arabian Horses/ Miniature Horses: When a property owner sells rare and/or very expensive horses, in which a sale occurs very infrequently, to qualify the property, the owner must show where advertisements for sale are occurring or another qualifying use must be evident to keep this acreage qualifying. (See Horses under Agriculture Classification).

Aquaculture: To qualify under this category, the fish raised must be sold. "Aquaculture production shall be primarily for commercial sale of freshwater fish and shellfish under controlled conditions for food

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