

**AN ORDINANCE AMENDING, CHAPTER 15, TAXATION
OF THE CODE OF THE COUNTY OF ESSEX
BY THE ADDITION OF NEW ARTICLE XV
TO ESTABLISH A SPECIAL ASSESSMENT FOR LAND PRESERVATION
BASED ON THE USE OF THE LAND**

WHEREAS, Sections 58.1-3229 et seq. of the Code of Virginia (1950), as amended (the “State Code”) allow the County to provide for use value assessment and taxation of real estate devoted to agricultural use, horticultural use, forest use, and open-space use as those terms are defined in Section 58.1-3230 of the State Code; and

WHEREAS, a public hearing duly noticed and advertised as required by Section 15.2-1427 of the State Code was held on June 19, 2007, regarding this ordinance; and

WHEREAS, Board of Supervisors for the County of Essex (the “Board”) finds that the preservation of real estate for agricultural, horticultural, forest of open-space uses is in the public interest; and

WHEREAS, use value, assessment and taxation can ameliorate pressures that force conversion of real estate to more intensive uses, which are attributable, in part, to the assessment of such real estate at values incompatible with its use and preservation; and

WHEREAS, Essex County has heretofore adopted a land use plan, also referred to as the Comprehensive Plan; and

WHEREAS, the Board of Supervisors of County of Essex believes it is in the best interests of the County of Essex to provide for the special assessment of real estate based on its use as permitted by the State Code;

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of Essex County that Chapter 15, Taxation, of the Code of the Essex County is hereby amended to add Article XV, Special Assessment for Land Use Preservation as follows:

ARTICLE XV Special Assessment for Land Preservation

Section 15-600. Findings.

The county finds that the preservation of real estate devoted to agricultural, horticultural, forest and open space uses is in the public interest and, having previously adopted a land use plan, hereby ordains that such real estate shall be taxed in accordance with the provisions of this Article and Title 58.1, Chapter 32, Article 4 [Section 58.1-3229 et seq.] of the State Code.

Section 15-601. Application procedure; fee.

A. The owner of any real estate meeting the criteria set forth in Section 58.1-3230 of State Code as to real estate devoted to agricultural, horticultural, forest or open-space use may, at least 60 days preceding the tax year for which such taxation is sought, or in any year in which a general reassessment is being made until 30 days have elapsed after his or her notice of increase in assessment is mailed in accordance with Section 58.1-3330 of the State Code, apply to the Commissioner of the Revenue for the classification, assessment and taxation of such property for the next succeeding tax year on the basis of its use, under the procedures set forth in Section 58.1-3234 of the Code of Virginia.

B. Such application shall be on forms provided by the State Department of Taxation and supplied by the county Commissioner of the Revenue and shall include such additional schedules, photographs and drawings as may be required by the Commissioner of the Revenue.

C. An individual who is the owner of an undivided interest in a parcel may apply on behalf of himself or herself and the other owners of such parcel upon submitting an affidavit that such other owners are minors or cannot be located.

D. An application shall be submitted whenever the use of acreage of such land previously approved changes; however, no application fee shall 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.

E. An application fee of \$25.00 plus \$0.25 per acre shall accompany each application. A separate application shall be filed for each parcel on the land book.

F. In addition to the other obligation imposed by law, every owner of property for which an application has been approved under this Article shall revalidate the application annually, on forms provided by the county Commissioner of the Revenue no later than December 5 of each year. Failure to revalidate an application as provided in this provision will invalidate the application and will cause the real property to described in the application to be assessed at its fair market value for the following tax year and subsequent tax years. Owner of such real property may submit a new application for the following year in accordance with the provision set forth above in this section.

G. No application shall be accepted or approved if, at the time the application is filed, the tax on the affected land is delinquent. Upon payment of all delinquent taxes, including penalties and interest, the application shall be treated in accordance with the provisions of this article.

Section 15-602. Evaluation and determination of use.

A. Promptly upon receipt of any application, the Commissioner of the Revenue shall determine whether the subject property meets the criteria for taxation hereunder and as set forth in Sections 58.1-3230 and 3233 of the State Code. If the Commissioner of the

Revenue determines that the subject property does meet such criteria, he or she shall determine the value of such property for its qualifying use, as well as its fair market value.

B. In determining whether the subject property meets the criteria for agricultural, horticultural, forest or open-space use, the Commissioner of the Revenue may request an opinion from the Director of the Department of Conservation and Historic Resources or the Commissioner of Agriculture and Consumer Services.

Section 15-603. Use value and fair market value.

The use value and fair market value of any qualifying property shall be placed on the land book before delivery to the Treasurer, and the tax for the next succeeding tax year shall be extended from the use value.

Section 15-604. Roll-back tax.

The county Commissioner of the Revenue shall assess roll-back taxes in accordance with State Code. There are hereby imposed roll-back taxes in an amount equal to the amount, if any, by which the taxes paid or payable on the basis of the valuation, assessment and taxation under this article are exceeded by the taxes that would have been paid or payable on the basis of the valuation, assessment or taxation of other real estate in the county in the year of the change and in each of the five years immediately preceding the year of the change, plus ten-percent (10%) interest. Such additional taxes shall only be assessed against that portion of real estate which no longer qualifies for assessment and taxation on the basis of use.

Section 15-605. Notification of change in use; assessment and payment of roll-back taxes; violations and penalties.

A. The owner of any real estate changed to a nonqualifying use at the request of the owner or his or her agent or liable for roll-back taxes shall, within 60 days following a change in use, report such change to the Commissioner of the Revenue on such forms as may be prescribed. 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, and it shall be paid to the Treasurer within 30 days of the assessment unless the amount of the tax due does not exceed ten dollars. Any person failing to report within 60 days following such change in use and/or failing to pay such roll-back taxes within 30 days of assessment shall be liable for an additional penalty of ten percent (10%) of the amount of roll-back taxes and interest, which penalty will be collected as part of the tax. In addition to such penalty, there is hereby imposed interest of ½ percent (0.5%) of the amount of the roll-back tax, interest and penalty, for each month or fraction thereof during which the failure continues.

B. Any person making a material misstatement of fact in any application filed pursuant hereto shall be liable for all taxes, in such amounts and at such times as if such 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, and he or she shall be further assessed with an additional penalty of one hundred percent (100%) of such unpaid taxes.

The provisions of Title 58.1 of the Code of Virginia applicable to local levies and real estate assessment and taxation shall be applicable to assessments and taxation hereunder mutatis mutandis, including, without limitation to, provisions relating to tax liens and the correction of erroneous assessments, and for such purposes the roll-back taxes shall be considered to be deferred real estate taxes.

Section 12-607. When effective.

This Article shall be effective for the tax year beginning January 1, 2008, and all subsequent tax years.

BE IT FURTHER ORDAINED THAT

In all other respects, the provisions of Chapter 15, Taxation, of the Code of the County of Essex remain the same.

ADOPTED THIS 29TH day of June 2007.