



MEMORANDUM

To: Board of Supervisors' Rural Areas Subcommittee

CC: Board of Supervisors and Planning Commissioners
John R. Riley, Jr. County Administrator

From: Eric R. Lawrence, AICP, Planning Director

Subject: RA Subcommittee Meeting and Agenda

Date: September 30, 2008

The Board of Supervisors Rural Areas Subcommittee (RA Subcommittee) will be meeting on **Thursday, October 2, 2008 at 7:30 p.m.** in the first floor conference room (purple room) of the County Administration Building, 107 North Kent Street, Winchester, Virginia. The RA Subcommittee will discuss the following agenda items:

AGENDA

1. **Continue Review of State-Enabled Use Value Assessment and Taxation ("Land Use")**
 - a. Guest Speaker: Rod Williams, County Attorney
2. **Continue Review of Virginia Department of Health Regulations applicable to Private On-Site Health Systems**
 - a. Guest Speaker: Bob Marshall, Cloverleaf Environmental Consulting
 - b. Guest Speaker: Mike Lynn, Onsite Solutions
Bob and Mike will discuss soil conditions in Frederick County, and the health systems that are appropriate for these soils.
3. **Next Meeting Topic, Date, and Time**
 - a. First and Third Thursday of the month @ 7:30 P.M.
 - b. Next meeting: tentatively October 16, 2008
4. **Adjourn by 9 P.M.**

Please contact this office if you will not be able to attend the meeting. Thank you.

Agenda Item #1: Continue Review of State Enabled Use Value Assessment and Taxation (“Land Use”)

During the Subcommittee’s September 25, 2008 meeting, Ms. Ellen Murphy, County Commissioner of the Revenue, presented an overview of the County’s current Land Use assessment program. Ms. Murphy delineated current program procedures, applicability, and status in terms of acres within the Land Use program. The handout from that discussion is attached.

The Subcommittee expressed interest in further discussion of the potential for implementing a sliding-scale of deferral land use tax. Rod Williams, County Attorney, has evaluated such a program, and will be presenting his findings during the RA Subcommittee’s October 2 meeting. Attached are materials that Mr. Williams prepared earlier this summer after conducting research into the applicability of such a land use deferral program for the county.

Support information to follow:

- 1) Frederick County’s Land Use Program overview.
- 2) County Attorney memos regarding Sliding-Scale land use assessment programs



GENERAL OVERVIEW OF LAND USE PROGRAM – Agriculture, Horticulture, Forestry, and Open Space

Neil R. Thorne

Land Use Coordinator, Assessor, Forester

Frederick County Virginia

The key to the Land Use program is "land in use" for commercial or profitable purposes. Parcels to be eligible for the Land Use Program must have a minimum of 5 acres in actual production for Agriculture or Horticulture, or 20 acres for Forestry. Properties must be producing a commercial crop or product for profit, however barter and trade are acceptable. Forested parcels must have a forest management plan and be producing a commercial timber crop or be leased hunting ground for profit. Adjoining or smaller parcels that do not meet minimum acreage in use qualifications may be combined and accepted under certain conditions. A 5 year income history is required on new parcels, with the exception of commercial forestry (requiring a Forest Management Plan). Revalidations of income are reviewed during reassessment years. No minimum required amount of profit for a parcel has been adopted for Frederick County. A one time application fee of \$100 per parcel is charged to sign up a new Land Use parcel, and each parcel must be renewed annually at no cost, unless it is filed late, where a \$25 fee is assessed. "Open Space" is also a form of land use considered in Frederick County. Open Space must have a minimum of 5 acres, and shall be real estate used as, or preserved for, parks or recreational purposes (golf courses), conservation of land or other natural resources (conservation easements), floodways, wetlands as defined in 58.1-3666, riparian buffers as defined in 58.1-3666, historic or scenic purposes, or land assisting in the shaping of the character, direction, and timing of community development or for the public interest and consistent with the local land use plan, under uniform standards prescribed by the Director of the Department of Conservation and Recreation pursuant to the authority set out in Section 58.1-3240, and in accordance with the Administrative Process Act and the local ordinance.

ROLLBACKS

Rollback taxes are the deferred taxes going back to 5 years plus the current tax year, with 10% annual interest on the 5 years. Parcels that receive a Rollback Tax are those that no longer qualify for the land use program. Most commonly they have been owner rezoned or subdivided into parcels that are too small to meet the minimum acreage requirements. Land that is owner rezoned to a more intensive use is subject to rollback taxes regardless of the current use.

CURRENT LAND USE STATUS 9/22/2008

Currently there are 2,314 parcels containing 130,543.83 acres (49% of total acreage) in the Frederick County Land Use Program. The Mean parcel size is 56.41 acres, the Median parcel size is 37.5 acres, with a Standard Deviation of 74.23 acres.

AGRICULTURE	57,988.32 acres
HORTICULTURE	8,484.11 acres
FORESTRY	63,178.22 acres
OPENSACE	893.18 acres

LAND USE STATISTICS OVER THE PAST 10 YEARS

LAND USE YEAR	LAND USE DEFERRED TAXES	RECEIVED ROLLBACK	# ROLLBACK PARCELS
2008*	\$1,530,567.00	\$74,571.06	6
2007	\$1,539,944.38	\$120,853.31	31
2006	\$1,508,839.07	\$235,713.52	31
2005	\$1,550,341.90	\$583,234.42	66
2004	\$1,425,252.93	\$458,557.04	49
2003	\$1,363,547.11	\$254,437.63	59
2002	\$1,127,924.64	\$144,773.60	73
2001	\$1,126,504.83	\$138,987.09	58
2000	\$1,325,517.54	\$43,547.77	38
1999	\$1,191,373.86	\$194,933.56	41
1998	\$1,186,460.21	\$58,347.49	24
MEAN	\$1,352,388.50	\$209,814.23	43
MEDIAN	\$1,363,547.11	\$144,773.60	41
STDEV	\$170,765.42	\$170,363.53	20
COV	13%	81%	46%

*to date



COUNTY OF FREDERICK

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MEMORANDUM

TO: John R. Riley, Jr.
County Administrator

FROM: Roderick B. Williams
County Attorney

DATE: August 4, 2008

RE: Deferral of or Exemption from Rollback Taxes for Certain Real Property Owners

You had asked me to look into whether the Board of Supervisors, at its discretion, would have the authority to exempt a certain class (or classes) of real property owners from rollback taxes for a certain time period. Based upon my review of the applicable law, I find that the Board would not have such authority.

The Constitution of Virginia generally requires that each class of property be assessed on a uniform basis for taxation purposes. Va. Const. art. X, § 1. The Constitution of Virginia does provide, however, that the General Assembly may define and classify real property devoted to agricultural, forestal, and similar uses, and authorize localities to allow the deferral of or exemption from a portion of the taxes payable on such property, subject to such limits as the General Assembly may provide. Va. Const. art. X, § 2.

The General Assembly has so classified real property devoted to such uses and has authorized the deferral of or exemption from a portion of the otherwise applicable taxes. Va. Code §§ 58.1-3229 *et seq.* The General Assembly has not, however, provided for any further classifications of real property within or beyond the overall classifications of real estate devoted to "agricultural use", "horticultural use", "forest use", and "open-space use". See Va. Code § 58.1-3230. Furthermore, with respect to rollback taxes, state law provides that, when a real estate use changes to a nonqualifying use, the property "shall" be subject to rollback taxes in the amount of the deferred tax for the five most recent complete tax years. Va. Code § 58.1-3237. In fact, in an inquiry regarding whether a locality could grant a tax credit for agricultural or forestal land use or conservation easements, the Attorney General of Virginia opined that

localities do not have such authority. Opinion of the Attorney General of Virginia to Delegate R. Steven Landes, 2000 Op. Va. Att'y Gen. 210 (Sep. 25, 2000).

The Attorney General Opinion reflects that, under the Dillon Rule, localities in Virginia have only those powers expressly granted by the General Assembly or necessarily implied. Taking together the effect of the Dillon Rule and the narrow confines within which the Constitution of Virginia and the Code of Virginia allow reduced real estate taxation, based on land use assessments, as well as the mandatory language of the state law regarding rollback taxes, the Board would not have the authority to exempt or defer rollback taxes for any class (or classes) of real property.



COUNTY OF FREDERICK

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MEMORANDUM

TO: John R. Riley, Jr.
County Administrator

FROM: Roderick B. Williams
County Attorney

DATE: August 13, 2008

RE: Rollback Taxes

ISSUES

At my meeting with you and Chairman Shickle on August 7, you asked that I look further into the means available to the County, under the land use taxation and roll-back taxation provisions of state law, to maintain land in the County as undeveloped. Specifically, you asked:

- how the County might maximize use of the open-space classification under the last paragraph of Va. Code § 58.1-3230, in particular under category (ii) therein – “real estate used as, or preserved for, ... conservation of land or other natural resources”; and
- whether roll-back taxes can be imposed for periods extending back more than five years.

CONCLUSIONS

- In response to the first question, the use of the open-space classification is in fact limited in all respects to those uses that meet the standards prescribed by the Director of the Virginia Department of Conservation and Recreation (“DCR”).
- In response to the second question, state law does allow localities to adopt sliding scale arrangements, in addition to a typical land use assessment program, which sliding scale arrangements establish further lower assessments for eligible land use properties held for periods of time not to exceed twenty years, and corresponding roll-back taxes on such properties.

ANALYSIS

Use of the Open-Space Classification

With respect to the classification of open-space real estate in the last paragraph of Va. Code § 58.1-3230, the paragraph contains seven categories of real estate eligible for the classification and contains language referring to consistency of the local plan with standards prescribed by the DCR Director. The immediate question concerns whether the reference to standards prescribed by the DCR Director applies to all seven categories listed or just the last category listed.

Va. Code § 58.1-3240 authorizes the DCR Director (and other state officials, relevant to the other classifications in § 58.1-3230) to provide “a statement of the standards referred to in § 58.1-3230 and subdivision 1 of § 58.1-3233, which shall be applied uniformly throughout the Commonwealth in determining whether real estate is devoted to agricultural use, horticultural use, forest use or open-space use for the purposes of this article”. In light of the broad language of § 58.1-3240, it strongly appears that the General Assembly meant for the respective state officials (relevant to the current issue, the DCR Director) to set standards for all classifications and categories in § 58.1-3230.

The DCR Director has in fact acted consistent with this interpretation, by promulgating regulations that cover all of the categories set forth in the last paragraph of Va. Code § 58.1-3230. 4 VAC 5-20-10 et seq. For the category of “real estate used as, or preserved for, ... conservation of land or other natural resources”, in addition to the general standards applicable to all open-space uses seeking land use tax status, 4 VAC 5-20-10, the real estate must also be “provided or preserved for forest preserves, bird or wildlife sanctuaries, watershed preserves, nature preserves, arboretums, marshes, swamps and similar natural areas”, 4 VAC 5-20-20(B). Using a property for residential purposes, for instance, would appear to be inconsistent with this particular designation. Attached hereto is a complete copy of the DCR Director’s Standards for Classification of Real Estate as Devoted to Open-Space Use under the Virginia Land Use Assessment Law, 4 VAC 5-20-10 et seq.

Imposition of Roll-Back Taxes for Periods Greater Than Five Years

With respect to whether roll-back taxes can be imposed for periods extending back more than five years, an option exists that allows for the adoption of a sliding scale arrangement. Va. Code § 58.1-3231, ¶ 4. A sliding scale arrangement allows a locality to establish a lower assessment for eligible land use properties held for longer periods of time. Id.

The locality must set forth any such sliding scale in an ordinance. Id. In addition, each property owner seeking a sliding scale arrangement must enter into a written agreement with the locality, setting forth the period of time that the property shall remain subject to a land use assessment, and the agreement must be recorded in the land records. § 58.1-3234. Like with the ordinary roll-back tax provisions, the property becomes subject to the full sum of the additional deferred taxes if the use changes to a nonqualifying use during the sliding scale agreement period. § 58.1-3237. Beyond the sliding scale provision, however, state law does not permit any other relaxation of roll-back taxes.

By way of example, Loudoun County has adopted a sliding scale ordinance. Loudoun County Code § 848.036. Under the Loudoun ordinance, the County defers 99% of the use value taxes on any property for which the owner agrees to hold the property in its qualifying use for more than ten years, but not exceeding twenty years, and 50% of the use value taxes on any property for which the owner agrees to hold the property in its qualifying use for more than five years, but not exceeding ten years. Loudoun County Code § 848.036(a). Attached hereto is a complete copy of the Loudoun County ordinance concerning land use taxation (the section concerning sliding scale deferral is at pages 72B and 72C) and a copy of Loudoun County's form agreement for the program.

Agenda Item #2: Continue Review of VDH Regulations applicable to Private On-Site Health Systems

During the Subcommittee's September 25, 2008 meeting, Scott Fincham, Virginia Department of Health, discussed the current state regulations pertaining to private on-site health systems. Mr. Fincham offered an overview of the three types of health system permitting allowed by the VDH: general approval; provisional; and experimental. The Subcommittee also learned about a few examples of alternative systems, and their operational and maintenance requirements.

It was noted that the VDH establishes baseline regulations, and that localities may adopt more stringent regulations as deemed appropriate. Staff has compiled a table depicting some of the adopted health regulations from our neighboring jurisdictions. That information is included on the next few pages of the agenda, pages 10-14.

It was noted that the VDH has enabled Authorized Onsite Soil Evaluators (AOSE) to conduct soil evaluations and health system design. Two AOSEs attended the last subcommittee meeting and offered to assist in the effort to better understand the soil characteristics in our county, and the types of private on-site health systems that could be safely and readily accommodated by those soils. At the October 2 subcommittee meeting, AOSEs Bob Marshall and Mike Lynn will present their experiences working with properties in the County.



	Clarke	Fauquier	Loudoun	Shenandoah	Warren
GENERAL PERMIT SYSTEMS	Some	Yes	Yes	Yes	Yes
Traditional System Allowed?	Yes	Yes	Yes	Yes	Yes
Routine Inspections Req.?	Not Specified	In Certain Areas	Not Specified	Not Specified	Not Specified
Alternative System Allowed?	Only with a Variance	Yes (conditional permit)	Yes (maintenance contract)	Yes	Yes
Routine Inspections Req.?	Not Specified	Yes	Not Specified	Not Specified	Not Specified
PROVISIONAL PERMIT SYSTEMS	No	Yes	With Limits	Yes	Yes
Routine Inspections Req.?	N/A	Yes	Not Specified	Not Specified	Not Specified
EXPERIMENTAL PERMIT SYSTEMS	No	Yes	Limited*	Yes	Yes
Routine Inspections Req.?	N/A	Yes	Not Specified	Not Specified	Not Specified
OTHER REQUIREMENTS / LIMITS					
Reserve Area Required?	100%	100% - 200%	100%	50%	100%
Community System Allowed?	No	No	Some Districts	No	No
Offsite Drainfields allowed?	No	No	In 80% Open Space & for Hamlets	w/ BoS Approv.	Only in designated Open Space
Pump and Haul Allowed?	No	Not Specified	No	w/ BoS Approv.	Not Specified
Distance Required from Well	100'	100'	50' 2b/ 100' 3c**	State	100'

The above answers are simplified and not comprehensive and only note limitations and additional requirements that are included in a county's ordinance. Many counties have grandfather policies and other conditional requirements which allow for some deviation from the general rules outlined above.

*The Loudoun Health Department has experienced problems related to the higher rates of failure with some experimental systems.

**Wells Info Defined: Class IIIb (2b) wells contain a minimum of 50 feet of casing material and 50 feet of grout; Class IIIc (3c) wells contain a minimum of 20 feet of casing material and 20 feet of grout.

Clarke

In general, the County's standards are more stringent than the State's requirements. Except in specified circumstances, these additional requirements and limitations include the exclusion of alternative septic systems, no offsite system locations and a 100% reserve.

Fauquier

The County has an in-depth ordinance section defining the additional design requirements for individual health system which include larger reserve areas based site conditions and an ordinance that requires alternative system owners to provide evidence of a professional maintenance contract in order to retain county approval.

Loudoun

In general, the county accepts state standards as its own with a limited number of more stringent requirements. In addition to distances between drainfields and the water table, the county's ordinance requires a 100% reserve, and only allows offsite well and septic systems on land designated as an 80% open space set-aside of a planned rural development, or as a solution for existing hamlets. Loudoun is also the only local county to differentiate well spacing based on the design of the well itself.

Shenandoah

In general, the County's requirements are consistent with the state. The code does specify that off-site systems are only allowed with Board of Supervisors approval and are approved only as a last resort. They also specify that offsite systems are not to be community systems.

Warren

As with Shenandoah County, Warren's policies are essentially those of the state. However, they do specify a 100% drainfield area and limit offsite drainfields to designated open space that is free of residential building rights / residences.

Frederick

The county's regulations are, in general, consistent with the state standards but do include some additional limits such as the county's policy of not issuing conditional approvals for septic systems. Frederick County does not currently allow community systems, but is relatively flexible in allowing offsite drainfield sites as compared to neighbors.



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Authorized Onsite Soil Evaluator (AOSE)

An AOSE is an individual who has demonstrated knowledge, skills, and abilities in the practice of siting and designing onsite systems. The acronym stands for Authorized Onsite Soil Evaluator. An AOSE may be a private-sector individual or may be employed by the Department.

An AOSE submits work to the Department and certifies it to be in compliance with the Board of Health's Regulations and sufficient in scope and detail for the Department to grant an approval. After a review of this certified submission, the Department will issue an approval if the work is found to be complete and consistent with state regulations.

The Department may or may not conduct field checks to verify the AOSEs findings. The Department relies on the work of an AOSE to issue approvals and normally only conducts quality assurance reviews on a small percentage of systems. In addition to the AOSE, the Department may also accept work certified in the same manner when submitted by a Professional Engineer provided the work was done in consultation with an AOSE. When the practice of engineering is required, that work must be done by a professional engineer.

A person seeking a construction permit or a certification letter may contract with an AOSE for evaluation and design, or file a "bare" application with the Department. When a certified application package comes from an AOSE there are strict time limits for the Department to process the request.

In order to prevent even the appearance of a conflict of interest, VDH employees who are credentialed AOSEs are not permitted to provide private consulting services as an AOSE.

Areas of Interest
AOSE List
AOSE Forms
AOSE Test Dates & Study Guide
Becoming an AOSE
CEU Opportunities
FAQS
Inspection Guidance
Meeting Minutes- AOSE Advisory Committee

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