

00-050

TAXATION: REAL PROPERTY TAX – SPECIAL ASSESSMENT FOR LAND PRESERVATION.

CONSTITUTION OF VIRGINIA: TAXATION AND FINANCE (ASSESSMENTS).

CONSERVATION: VIRGINIA CONSERVATION EASEMENT ACT.

No authority for locality to issue tax credits for property devoted to agricultural and forestal production within agricultural and forestal districts or subject to conservation easements.

The Honorable R. Steven Landes
Member, House of Delegates

September 25, 2000

You ask whether a county has the authority to issue tax credits to taxpayers whose land is used in agricultural and forestal production within agricultural and forestal districts or whose property is subject to conservation easements.

Pursuant to Article X, § 2 of the Constitution of Virginia (1971)¹ and Article 4, Chapter 32 of Title 58.1, §§ 58.1-3229 through 58.1-3244 of the *Code of Virginia*,² localities may adopt an ordinance providing that land devoted to agricultural, horticultural, forest and open-space use be assessed at a lower value, based on its use.³ The purpose of the land use assessment statutes is to create a financial incentive to encourage the preservation of land for preferred uses.⁴ These statutes authorize localities to grant a tax preference in the form of a reduction in the assessed value of qualifying real estate,⁵ however, they do not provide for a credit against taxes owed on such property.

Virginia adheres to the Dillon Rule of strict construction, which provides that local governing bodies have only those powers that are expressly granted, or those necessarily or fairly implied from expressly granted powers.⁶ Section 58.1-3220.01, for example, allows localities to grant tax credits for rehabilitated residential structures. I am unaware, however, of any statutes authorizing a locality to grant a tax credit for the land use or conservation easements described in your inquiry. Accordingly, it is my opinion that a county does not have the authority to issue such a tax credit.⁷

¹Article X, § 2 provides: "The General Assembly may define and classify real estate devoted to agricultural, horticultural, forest, or open space uses, and may by general law authorize any county, city, town, or regional government to allow deferral of, or relief from, portions of taxes otherwise payable on such real estate[.]"

²Article 4, Chapter 32 of Title 58.1 was enacted under the constitutional authority of Article X, § 2. Article 4 authorizes localities to enact ordinances providing for the use value assessment and taxation of constitutionally permitted classes of property and details the procedures for the assessment and taxation of such property.

³*See* 1997 Op. Va. Att’y Gen. 199 (stating that General Assembly intended use value to be lower than fair market value).

⁴*See id.* at 200.

⁵*See also* §§ 10.1-1009 to 10.1-1016 (regarding tax preferences applicable to conservation easements).

⁶*See* *City of Chesapeake v. Gardner Enterprises*, 253 Va. 243, 482 S.E.2d 812 (1997); *City of Richmond v. Confrere Club of Richmond*, 239 Va. 77, 387 S.E.2d 471 (1990).

⁷The General Assembly, however, has authorized localities to adopt ordinances providing that land devoted to agricultural, horticultural, forest, and open-space use be assessed at a lower value upon application of the landowner. *See* §§ 58.1-3231, 58.1-3234; *see also* § 10.1-1011 (relating to taxation of conservation easements).