

Statutory authority

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Changes from Chapter 504 of the 2018 Acts of  
Assembly

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Standard three-stage regulatory process

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Proposed changes to 2 VAC 5-20

# Statutory authority

- ▶ Article 4 of Chapter 32 of the Code of Virginia (Va. Code § 58.1-3229 et seq.) (Virginia Land Use Assessment Law)
  - ▶ Authorizes localities that adopt a land-use plan to adopt ordinance to provide use value assessment for four special classifications of real estate
    - ▶ Agricultural use
    - ▶ Horticultural use
    - ▶ Forestal use
    - ▶ Open space use

# Va. Code § 58.1-3230

- ▶ Requires Commissioner of Agriculture and Consumer Services (Commissioner) to prescribe uniform standards in accordance with the Virginia Administrative Process Act for
  - ▶ “real estate devoted to agricultural use”
  - ▶ “real estate devoted to horticultural use”
- ▶ Commissioner promulgated 2 VAC 5-20, *Standards for Classification of Real Estate as Devoted to Agricultural Use and to Horticultural Use under the Virginia Land Use Assessment Law*, effective in 1988; last revised 2004

# Chapter 504 of the 2018 Acts of Assembly

- ▶ Effective July 1, 2018
- ▶ Amended definition of real estate devoted to agricultural use and horticultural use, expanding the scope of the standards
- ▶ Requires that any standards prescribed by the Commissioner that real estate be used for a particular purpose for a minimum length of time before qualifying include:
  - ▶ Use of similar property by a lessee of the owner in calculating the time
  - ▶ A shorter minimum length of time for real estate with no prior qualifying use under certain conditions

# So, what does this mean?

- ▶ Expanded scope of standards that the Commissioner is required to promulgate, thereby requiring changes to 2 VAC 5-20
- ▶ Since 2 VAC 5-20 includes a requirement that real estate devoted to agricultural or horticultural use be devoted to certain uses for at least five years previous, this requires changes to 2 VAC 5-20
- ▶ Until 2 VAC 5-20 is amended, commissioners of the revenue, local assessing officers, landowners, and other stakeholders may wish to contact legal counsel to address any conflicts that may exist between this regulation and the Law

# Standard regulatory process (1)

- ▶ Notice of Intended Regulatory Action
  - ▶ VDACS submitted 6/29/18
  - ▶ DPB finished review 7/12/18
  - ▶ Governor finished review 8/22/18
  - ▶ VDACS submitted to Registrar 8/27/18
  - ▶ Published in Register 9/17/18
  - ▶ Public comment period (30 days) begins 9/17/18
  - ▶ Public comment closes 10/17/18
  - ▶ Proposed stage due 4/15/19 (180 days after closing of public comment period)

# Standard regulatory process (2)

- ▶ Proposed regulation
  - ▶ VDACS submitted 4/12/19 (revised 7/8/19)
  - ▶ OAG reviewed 5/24/19
  - ▶ DPB review due 7/11/19
  - ▶ Secretary review
  - ▶ Governor review
  - ▶ VDACS submits to Registrar
  - ▶ Published in Register
  - ▶ Public comment period (60 days)
  - ▶ Public comment closes
  - ▶ Final stage due 180 days after closing of public comment period

# Standard regulatory process (3)

## ▶ Final regulation

- ▶ VDACS submits
- ▶ OAG review (only necessary if significant changes made to proposed text)
- ▶ DPB review
- ▶ Secretary review
- ▶ Governor review
- ▶ VDACS submits to Registrar
- ▶ Published in Register
- ▶ Public comment period (30 days)
- ▶ Public comment closes
- ▶ Final regulation becomes effective



# Section 10

## Current requirement

- Establishes that real estate must meet all of the “following” standards to qualify for agricultural or horticultural use.

## Proposed changes

- Clarifies that the real estate must meet all of the standards in the regulation to qualify for agricultural or horticultural use.

# Section 20

## Current requirement

- Requires that, except for certain circumstances, real estate that seeks to be qualified as devoted to agricultural use or horticultural use must meet certain production requirements both for the previous five consecutive years prior as well as currently

## Proposed changes

- Removes requirement that real estate that seeks to be qualified as devoted to agricultural use or horticultural use meet certain production requirements for the previous five consecutive years.
- Clarifies that applicant must certify that real estate currently is devoted to the bona fide production for sale of certain plants, animals, fruits, vegetables, or nursery or floral products or devoted to the bona fide production for sale of products produced on the real estate from such plants, animals, fruits, vegetables, or nursery or floral products
- Removes certain exemptions to the five-year history
- Adds provision for certain soil and water conservation program real estate to meet the requirements of this section

# Section 30

## Current requirement

- ▶ Requires that the applicant must certify that real estate that seeks to be qualified as devoted to agricultural use or horticultural use is being used in certain conservation practices and programs and certain management practices and programs
- ▶ Requires that the average crop yield per acre on each field crop grown on the real estate during the immediate three years previous be equal to at least one-half of the county or city average for the past three years
- ▶ Includes a requirement that timber production that is in addition to crop, livestock, dairy, poultry, aquaculture, and horticulture production on the real estate must meet the standards prescribed by the Department of Forestry for forest acres and be assessed at use value for forestry purposes

## Proposed changes

- ▶ Clarifies that applicant must certify that the planned program of management corresponds with the demonstration of one of the “devoted to the bona fide production for sale of” requirements proposed in Section 20
- ▶ Removes requirement that the average crop yield per acre calculation for each field crop grown on the real estate be based on an average of such calculation on the real estate during the immediate three years previous; retains the requirement that average crop yield per acre currently grown on such real estate be equal to at least one-half of the county or city average for the past three years unless the locality prescribes lesser requirements in certain circumstances
- ▶ Removes redundant language regarding timber production

# Section 40

## Current requirement

- ▶ Authorizes a commissioner of the revenue or local assessing officer to require the applicant to document what the applicant must certify
- ▶ Establishes that such documentation may include, in part, gross sales averaging more than \$1,000 annually over the previous three years
- ▶ Requires that a commissioner of the revenue or local assessing officer wishing to request the Commissioner assist with interpreting this regulation include, among other documentation, the total number of acres in soil conservation programs and lists certain federal and state agencies
- ▶ Requires that a statement be included as to whether the locality waived the five-year history requirement in cases where a commissioner of the revenue or local assessing officer requests the Commissioner assist with the interpretation of this regulation and such case involves a question about the applicability of the exemption to the five-year history required in Section 20

## Proposed changes

- ▶ Clarifies that commissioners of the revenue and local assessing officers may require applicant to document what the applicant must certify pursuant to both Section 20 and Section 30
- ▶ Removes the suggestion that a commissioner of the revenue or local assessing officer consider requesting gross sales averaging more than \$1,000 annually over the previous three years, instead suggesting that the commissioners of the revenue or local assessing officers consider requesting documentation that demonstrates that the real estate sought to be qualified currently is devoted to the bona fide production for sale of one of the "devoted to the bona fide production for sale of" requirements in Section 20
- ▶ Adds a suggestion that a commissioner of the revenue or local assessing officer consider requiring documentation that demonstrates that the real estate sought to be qualified currently is devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil and water conservation program under an agreement with a federal or state government agency