

2 VAC 5-20, STANDARDS FOR CLASSIFICATION OF REAL ESTATE AS DEVOTED TO AGRICULTURAL USE AND HORTICULTURAL USE UNDER THE VIRGINIA LAND USE ASSESSMENT LAW

Statutory Authority: Section 58.1-3230 of the Code of Virginia and Acts 2001, Chapter 705.

This amended regulation supersedes a final regulation on the same subject that took effect November 23, 1988.

2VAC5-20-10. ~~Authority~~ Preamble.

~~Under the authority of §58.1-3229 of the Code of Virginia, the~~ The Commissioner of Agriculture and Consumer Services adopts these Standards for Classification of Real Estate As Devoted to Agricultural Use and to Horticultural Use Under the Virginia Land Use Assessment Law to:

1. Encourage the proper use of real estate in order to assure a readily available source of agricultural, horticultural, and forest products, and of open space within reach of concentrations of population.
2. Conserve natural resources in forms that will prevent erosion.
3. Protect adequate and safe water supplies.
4. Preserve scenic natural beauties and open spaces.
5. Promote proper land-use planning and the orderly development of real estate for the accommodation of an expanding population.
6. Promote a balanced economy and ease pressures which force the conversion of real estate to more intensive uses.

~~According to the specific authority and responsibility conveyed by §§58.1-3230, 58.1-3233, and 58.1-3240, the Commissioner of Agriculture and Consumer Services is directed to provide a statement of the standards which shall be applied uniformly throughout the Commonwealth to determine if real estate is devoted to agricultural or horticultural uses. After holding public hearings, the statement shall be sent to the Commissioner of the Revenue and a duly appointed assessor of each locality adopting an ordinance in compliance with this article. The area must be a minimum of five acres and The real estate must meet all of the following standards to qualify for agricultural or for horticultural use.~~

2VAC5-20-20. Previous and current use, and exceptions.

A. Previous use.

1. Qualifying uses, five-year history of previous use.

2 VAC 5-20, STANDARDS FOR CLASSIFICATION OF REAL ESTATE AS
DEVOTED TO AGRICULTURAL USE AND HORTICULTURAL
USE UNDER THE VIRGINIA LAND USE ASSESSMENT LAW

~~The~~ Except as provided in 2VAC5-20-20(A)(2), "Exceptions to the five-year-history-of-previous-use requirement, 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 including, but not limited to:

- 1 a. Aquaculture
- 2 b. Forage crops
- 3 c. Commercial sod and seed
- 4 d. Grains and feed crops
- 5 e. Tobacco, cotton, and peanuts
- 6 f. Dairy animals and dairy products
- 7 g. Poultry and poultry products
- 8 h. Livestock, including beef cattle, sheep, swine, horses, ponies, mules, or goats, including the breeding and grazing of any or all such animals
- 9 i. Bees and apiary products
- 10 j. Commercial game animals or birds
- 11 k. 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 20 acres, and produced incidental to other farm operations
- 12 l. Fruits and nuts
- 13 m. Vegetables
- 14 n. Nursery products and floral products.

~~If a tract of real estate is converted from nonproduction to agricultural or horticultural production, the tract may qualify without a five year history of agricultural or horticultural use only if the change expands or replaces production enterprises existing on other tracts of real estate owned by the applicant.~~

Nothing in 2VAC5-20-20(A)(1) requiring production on real estate shall be deemed to deny that the real estate has been devoted to a qualifying use merely because the real estate participated in a governmental program that encourages the conservation of the real estate, even if no commodity was produced on the real estate.

2 VAC 5-20, STANDARDS FOR CLASSIFICATION OF REAL ESTATE AS DEVOTED TO AGRICULTURAL USE AND HORTICULTURAL USE UNDER THE VIRGINIA LAND USE ASSESSMENT LAW

2. Exceptions to the five-year-history-of-previous-use requirement.

Any real estate owned by the applicant shall be exempt from the five-year history-of-previous-use requirement contained in 2VAC5-20-20(A)(1) if:

- a. The real estate is converted to agricultural or horticultural use to expand or replace agricultural or horticultural production on any other real estate owned by the applicant, even if the converted real estate is in a different jurisdiction in Virginia; or
- b. The real estate is devoted to the production of any agricultural or horticultural crop that requires more than two years from initial planting until commercially feasible harvesting, and the locality in which the real estate is located has waived, pursuant to Section 58.1-3231 of the Code of Virginia with respect to such real estate, the five-year-history-of-previous-use requirement of 2VAC5-20-20(A)(1).

B. Current use. The real estate sought to be qualified must currently be devoted 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 including, but not limited to, the items in ~~subsection A of this section above~~ 2VAC5-20-20(A)(1); except that no real estate devoted to the production of trees or timber products may qualify unless:

1. The real estate is less than 20 acres.
2. The real estate meets the technical standards prescribed by the State Forester, and
3. The real estate is producing tree or timber products incidental to other farm operations.

Nothing in 2VAC5-20-20(B) requiring production on real estate shall be deemed to deny that the real estate is being devoted to a qualifying use merely because the real estate participates in a governmental program that encourages the conservation of the real estate, even if no commodity is being produced on the real estate.

~~C. Exceptions.~~

- ~~1. Conversions by farm operator — nonqualifying real estate. If a tract of real estate is converted from other uses or nonproduction to agricultural or horticultural production, the tract may qualify without the five year history of agricultural or horticultural use when the change expands or replaces production enterprises existing on other tracts of real estate owned by the applicant, regardless of location.~~

2 VAC 5-20, STANDARDS FOR CLASSIFICATION OF REAL ESTATE AS DEVOTED TO AGRICULTURAL USE AND HORTICULTURAL USE UNDER THE VIRGINIA LAND USE ASSESSMENT LAW

~~2. Conversions by farm operator — qualifying real estate. If a tract of real estate is converted from a qualifying use (forestry or open space) to agricultural or horticultural production, the tract may qualify without the five year history of agricultural or horticultural use.~~

~~3. Government action. If a tract of real estate which has previously qualified for agricultural use taxation is not devoted to agricultural or horticultural production because of governmental actions, the tract or portions shall be considered productive for that period of time.~~

2VAC5-20-30. Conservation of land resources; management and production.

A. Conservation of land resources. To qualify for agricultural or horticultural use, the applicant shall certify that the real estate is being used in a planned program of soil management and soil conservation practices which is intended to:

1. Reduce or prevent soil erosion by best management practices such as terracing, cover cropping, strip cropping, no-till planting, sodding waterways, diversions, water impoundments, and other best management practices which prevent soil erosion and improve water quality.

2. Maintain soil nutrients by the application of soil nutrients (organic and inorganic) needed to produce average yields of agricultural crops or as recommended by soil tests.

3. Control brush, woody growth, and noxious weeds on row crops, hay, and pasture by the use of herbicides, biological controls, cultivation, mowing, or other normal cultural practices.

B. Management and production. To qualify for agricultural and horticultural use, the applicant shall certify that the real estate is being used in a planned program of management and production of field crops, livestock, livestock products, poultry, poultry products, dairy, dairy products, aquaculture products, and horticultural products for sale.

Field crop production shall be primarily for commercial uses and the average crop yield per acre on each crop grown on the real estate during the immediate three years previous, shall be equal to at least one-half of the county (city) average for the past three years; except that the local government may prescribe lesser requirements when unusual circumstances prevail and such requirements are not realistic.

Livestock, dairy, poultry, or aquaculture production shall be primarily for commercial sale of livestock, dairy, poultry and aquaculture products.

2 VAC 5-20, STANDARDS FOR CLASSIFICATION OF REAL ESTATE AS DEVOTED TO AGRICULTURAL USE AND HORTICULTURAL USE UNDER THE VIRGINIA LAND USE ASSESSMENT LAW

Livestock, dairy and poultry shall have a minimum of 12 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, 100 other fowl. (An animal unit-month means one mature cow or the equivalent on five acres of land for one month; therefore, 12 animal unit-months means the maintenance of one mature animal on each five acres for 12 months, or any combination of mature animals and months that would equal 12 animal unit-months such as three mature animals for four months, four mature animals for three months, two mature animals for six months, etc.).

Aquaculture production shall be primarily for commercial sale of freshwater fish and shellfish under controlled conditions for food.

Horticultural production includes nursery, greenhouse, cut flowers, plant materials, orchards, vineyards and small fruit products.

Timber production, in addition to crop, livestock, dairy, poultry, aquaculture, and horticultural production on the real estate must meet the standards prescribed by the Department of Forestry for forest areas and will be assessed at use value for forestry purposes.

2VAC5-20-40. Certification procedures.

A. Documentation. The commissioner of revenue or the local assessing officer may require the applicant to certify that the real estate is devoted to the bona fide production for sale of agricultural and horticultural products being used in a planned program of soil management and a planned program of management and production of field crops, livestock, dairy, poultry, aquaculture, horticultural crops, and timber products. The commissioner of revenue or local assessing officer may find one of the following documents useful in making his determination:

1. The assigned USDA/~~ASCS~~ Farm Service Agency farm number, and evidence of participating in a federal farm program, or
2. Federal tax forms (1040F) Farm Expenses and Income, (4835) Farm Rental Income and Expenses, or (1040E) Cash Rent for Agricultural Land, or
3. A Conservation Farm Management Plan prepared by a professional.~~*~~,or
4. Gross sales averaging more than \$1,000 annually over the previous three years.**

B. Interpretation of standards. In cases of uncertainty on the part of the commissioner of revenue or the local assessing officer, the law authorizes him

2 VAC 5-20, STANDARDS FOR CLASSIFICATION OF REAL ESTATE AS DEVOTED TO AGRICULTURAL USE AND HORTICULTURAL USE UNDER THE VIRGINIA LAND USE ASSESSMENT LAW

to request an opinion from the Commissioner of Agriculture and Consumer Services as to whether a particular property meets the criteria for agricultural or horticultural classification. The procedure for obtaining such an opinion is as follows:

1. The commissioner of revenue or the local assessing officer shall address a letter to the Commissioner, Virginia Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, Virginia ~~23209~~ 23218, describing the use and situation, and requesting an opinion of whether the real estate qualifies as agricultural or horticultural real estate for the purpose of use-value taxation. The letter should include the following:

a. Owner's name and address.

b. Operator's name and address.

c. Total number of acres, acres in crops, acres in pastures, acres in soil conservation programs (~~Agricultural Stabilization and Conservation Service Farm Service Agency~~, Soil Conservation Service, Virginia Department of Conservation and Recreation programs), and acres in forest.

d. If more than one tract of real estate, the number of acres in each tract and whether the tracts are contiguous.

e. A copy of application for land use assessment taxation.

f. In any case involving a question about the applicability of the exception to the five-year-history-of-previous-use requirement contained in 2VAC5-20-20(A)(2)(b)(relating to real estate devoted to the production of an agricultural or horticultural crop that requires more than two years from initial planting until commercially feasible harvesting), a statement as to whether the locality has waived, pursuant to Section 58.1-3231 of the Code of Virginia with respect to such real estate, the five-year-history-of-previous-use requirement contained in 2VAC5-20-20(A)(1).

2. The commissioner may request additional information, if needed, directly from the applicant; or he may hold a hearing at which the applicant and others may present additional information.

3. The commissioner will issue an opinion as soon as possible after all necessary information has been received. ~~An appeal of any opinion which does not comply with these standards may be made as provided by §58.1-3240 of the Code of Virginia.~~

2 VAC 5-20, STANDARDS FOR CLASSIFICATION OF REAL ESTATE AS
DEVOTED TO AGRICULTURAL USE AND HORTICULTURAL
USE UNDER THE VIRGINIA LAND USE ASSESSMENT LAW

~~* The Food Security Act of 1985, P.L. 99-198 (Farm Bill), requires farmers participating in federal farm programs to have a farm conservation plan proposed by the USDA Soil Conservation Service by 1990 and fully implemented by 1995.~~

~~** The Agriculture Census defines a farm as a place where agricultural products were sold or normally would have been sold annually averaging more than \$1,000.~~

"OPPR"
"Larry"
taxdraft.doc

[August 26, 2002]