

City of Alexandria, Virginia

MEMORANDUM

DATE: DECEMBER 9, 2004

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER *ps*

SUBJECT: ORDINANCE TO AMEND THE MINIMUM ACREAGE REQUIRED FOR OPEN SPACE USE VALUE ASSESSMENT

ISSUE: Consideration of an ordinance to amend the minimum acreage devoted to open space use that is required to qualify for open space use value assessment.

RECOMMENDATIONS: That City Council pass on first reading, and schedule a public hearing, second reading and final passage on December 18, 2004, an ordinance to amend the minimum acreage that is required to qualify for open space use value assessment, from five acres to two acres, using a tiered-acreage and binding easement/covenant mechanism.

BACKGROUND: Currently, property owners in the City of Alexandria must have a minimum of five acres to apply and qualify for an open space use value assessment. The purpose of the open space use value assessment program is to encourage the preservation of open space, by reducing the assessed value of the property from its fair market value (the value if the property were put to its most economically valuable legal use), to its value based solely on its use as open space. The real estate tax rate remains unchanged, but the assessed value may be substantially reduced, thus reducing the real estate tax burden on the property, and encouraging the owner to forego development of the property.

Open space in general is defined as land which lacks any buildings or major physical structures (like swimming pools, parking lots, etc.). Although technically eligible for the open space use value assessment program, a vacant parcel whose density has been transferred to an adjacent parcel would not benefit from the program, since its fair market value already reflects the restriction on future use. The same is true for areas of open space on a developed parcel, where all of the parcel's allowed density is being used.

Participation in the City's current open space use value assessment program does not require a permanent open space easement, and thus may be attractive to owners who, though willing to forego development of the property for a discrete period of time, are uncomfortable with a perpetual restriction on the use of their property. In the event that the property changes to an active use (such as construction of a dwelling), or the owner seeks to rezone the property to a more remunerative zone, the current program allows the open space assessment to be terminated, in which case the property owner is required to remit "rollback taxes" to the City, i.e., the

difference in taxes between the fair market value based assessment and the open space use value assessment, plus interest, for the prior five years.

The typical lots in the City, and our remaining open space areas, are significantly smaller than the five acre minimum required under the current City Code. (The five acre minimum was required by state law at the time the City's Code provisions were adopted in 1979). Only one parcel (the Winkler Preserve) has ever qualified for an open space assessment in the City, but that parcel later qualified for tax exemption under a different state law. Subsequent to 1979, the minimum requirement under state law for dense localities like Alexandria was reduced to two acres, but the City never adopted this change. During the Virginia General Assembly in 2002, the City successfully sought a change to the Virginia Code that allows Alexandria and other densely developed jurisdictions to reduce the minimum area required for open space use value assessment to one-quarter of an acre. A locality is free to specify a larger size threshold than this new state minimum.

On June 14, 2003, City Council considered the adoption of an ordinance reducing the minimum size parcel from five acres to one-quarter acre. This ordinance was deferred by Council due to questions regarding the utility and revenue effect of reducing the minimum acreage requirement. At the time of the deferral, Council requested the Parks and Recreation Commission and the Budget and Fiscal Affairs Advisory Committee to review the open space use value assessment program in the City and make recommendations to Council regarding the appropriate minimum acreage.

On July 27, 2004, the Park and Recreation Commission recommended that the City Council consider amending the minimum acreage of properties qualifying for the open space use tax assessment from the current five acre level to a lower level, but not less than one acre. The Park and Recreation Commission concluded that open space use taxation could be a useful tool, in appropriate cases, to help preserve the City's dwindling supply of open space. The Commission also acknowledged a concern, which had been expressed by some of the public comments, that some owners might use the program as a "loop hole" to avoid fair market value taxation while achieving market appreciation and awaiting market conditions favorable for development (Attachment 1).

On October 1, 2004, the Budget and Fiscal Affairs Advisory Committee recommended that the current five acre threshold not be changed, because the City is dependent on real property revenues and that revenue source should be "preserved and maintained." The Committee also noted, "It is also conceivable that many properties that would otherwise qualify for the special assessment rate based on the minimum acreage threshold might not be improvable lots due to zoning, set-back requirements or other statutory limitations." Further, the Committee noted that "the administrative costs of such a program would not be insignificant. Site visits, assessment costs, and monitoring of qualifying properties for compliance would result in additional administrative costs." In conclusion BFAAC said, "the City has a number of tools it can use to achieve its open space objectives that it did not have in the past. The preservation of the tax base that funds the purchase and maintenance of desired open space could be significantly affected by

the reduction of the threshold.” Even if the City were to consider alternative exemption thresholds, BFAAC recommends that the City consider imposing fees to cover the administrative costs associated with the program (Attachment 2).

DISCUSSION: After reviewing the recommendations and concerns of the Park and Recreation Commission and the Budget and Fiscal Affairs Advisory Committee, staff recommends and the proposed ordinance provides that the qualifying property size for the City’s open space use value assessment program be reduced from five acres to two acres. (As to parcels less than two acres, Docket Item # 17 proposes that those parcels be eligible for tax exemption or deferral under the real estate tax relief program for senior citizens and the disabled.) I recommend that the following protective “tiered” measures be adopted:

- To qualify for an open space assessment covering two or more but less than three acres, the property owner would be required to pledge a 10-year time frame to keep the area in the open space use.
- To qualify for an open space assessment covering three or more but less than five acres, the property owner would be required to pledge a 15-year time frame to keep the area in the open space use.
- To qualify for an open space assessment covering five or more acres, the property owner would be required to pledge a 20-year time frame to keep the area in the open space use.

The rationale for this proposal is that requiring a longer commitment for larger areas, which typically have greater development and appreciation potential and thus a greater disparity between fair market value and open space use value, assures that this tax reduction benefit is available only to those owners who are willing to make a substantial commitment to open space preservation, and not to those who might be speculatively awaiting more favorable market conditions. This mechanism serves both to assure that the tax benefit is narrowly focused to serve its intended purpose of promoting the preservation of open space which might otherwise remain unprotected, and to minimize the potential loss of annual tax revenue to the City.

Under the proposed ordinance, every open space easement executed by a property owner would require that the property in question be maintained as open space for the applicable period. The easement also would allow the property owner to terminate the easement prior to that applicable period, but only with Council’s approval. In the event early termination were approved, rollback taxes for the entire period of open space use assessment, plus interest at the delinquent real estate tax rate, would be due and payable within 30 days. If unpaid after 30 days, the full tax delinquency, together with penalty and interest retroactive to the first year of use value assessment, would attach. In addition, Council could require, as a condition of approving the early termination of an easement other reasonable measures to mitigate the early loss of open space, as appropriate in each case.

The proposed ordinance also includes other changes to the City Code which are required or intended to bring the City's open space use assessment program into conformity with state law changes adopted subsequent to 1979, when the City's current provisions were adopted. The proposed ordinance also includes a new \$100 application fee, which applies to the initial application, and any subsequent amendments thereto. The fee does not apply to the annual re-certification that the property continues to qualify for inclusion in the program (Attachment 3).

FISCAL IMPACT: How many property owners will take advantage of the open space use assessment is difficult to quantify. However, given the easement which will be required, it is likely that only a small number of property owners will want to give up their development rights for a 10-, 15- or a 20-year period in exchange for lower real estate taxes. This would be particularly true for the owners of the largest vacant parcels who likely own them as speculative real estate investments. The eventual annual tax revenue loss, which would likely start out small and grow gradually over time, is estimated roughly at \$200,000 per year. If Council adopts this new open space use assessment policy, staff will closely monitor its impact and bring back to Council recommended changes if warranted.

ATTACHMENTS:

Attachment 1. Parks and Recreation Commission Letter dated July 27, 2004

Attachment 2. Budget and Fiscal Affairs Advisory Committee Report dated October 1, 2004
City Council Docket item

Attachment 3. Proposed Open Space Use Value Assessment Ordinance

STAFF:

Mark Jinks, Assistant City Manager

Bruce Johnson, Director, Office of Management and Budget

Cindy Smith-Page, Director, Real Estate Assessments

Kirk Kincannon, Director, Recreation, Parks and Cultural Activities



DEPARTMENT OF RECREATION, PARKS
AND CULTURAL ACTIVITIES

Kirk Kincannon
Director

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Park and Recreation Commission

July 27, 2004

The Honorable Bill Euille
Vice Mayor Redella Pepper
Councilman Ludwig Gaines
Councilman K. Rob Krupicka
Councilman Andrew Macdonald
Councilman Paul Smedberg
Councilwoman Joyce Woodson

Re: ORDINANCE TO AMEND THE MINIMUM ACREAGE THAT MAY BE DEDICATED TO
OPEN SPACE USE FROM FIVE ACRES TO ONE-QUARTER ACRE

Dear Mayor and Council Members:

In 2003 you remanded for further examination to the Park and Recreation Commission and the Budget and Fiscal Affairs Advisory Committee (BFAAC) an ordinance under consideration to amend the minimum acreage in Alexandria that could apply for an open space use assessment. After some additional information and a presentation to the Commission by Ignacio Pessoa and Cindy Smith-Page we have reached several conclusions we wish to share with you.

First, the state law from which this authority is derived has been in place for many years and always allowed for local jurisdictions to adopt and implement its provisions down to a two-acre level. The provision was crafted and aimed primarily at preservation of open space in rural and suburban areas in the State. When Alexandria adopted it we placed a five-acre limit on the eligible parcel size. Other jurisdictions in Virginia presumably adopted it long ago at a two-acre size limit. The only parcel in the City currently large enough to qualify for an open space use-assessment and the temporary tax benefits afforded under the provision is the Winkler property.

Several years ago as open space concerns began to be a real issue in Alexandria the City Council backed an effort as a part of our State legislative package to lower the eligible acreage to as little as one quarter acre. This was well ahead of the initiation of the Open Space Master Plan and allocation of dedicated funding for open space in Alexandria. There were few tools available to preserve open land that was disappearing at a rapid rate. The request made sense at the time.

Now, with the Open Space Master Plan in place, dedicated funds, a working Open Space Steering Committee, this provision seems to have less urgency. The City is now systematically prioritizing properties with open space values and working to either purchase them or to get permanent easements in place. While this provision under consideration would expand the number of properties that would qualify for a temporary incentive to landowners to keep their land open, it is not a permanent solution for land protection. It is a tool that landowners can use when property taxes become too high to bear and

might otherwise force consideration of sale and development. We think that having a wide range of options for landowners to consider, including this one that is in fact not permanent, is a worthy goal. It is a tool that certainly should not be taken away.

As we delved deeper into the nuances of the underlying law we felt increasingly comfortable with the safeguarding provisions it contained. We also began to understand what it would take for a landowner to participate, including an application with a survey, and we thought that few properties would actually use this tool, though it might be important for some. We were also told by the City Attorney that the City Council could not alter the qualifying or monitoring aspects of the underlying law, but could elect at what acreage to apply it, so that this remains the only question in front of you.

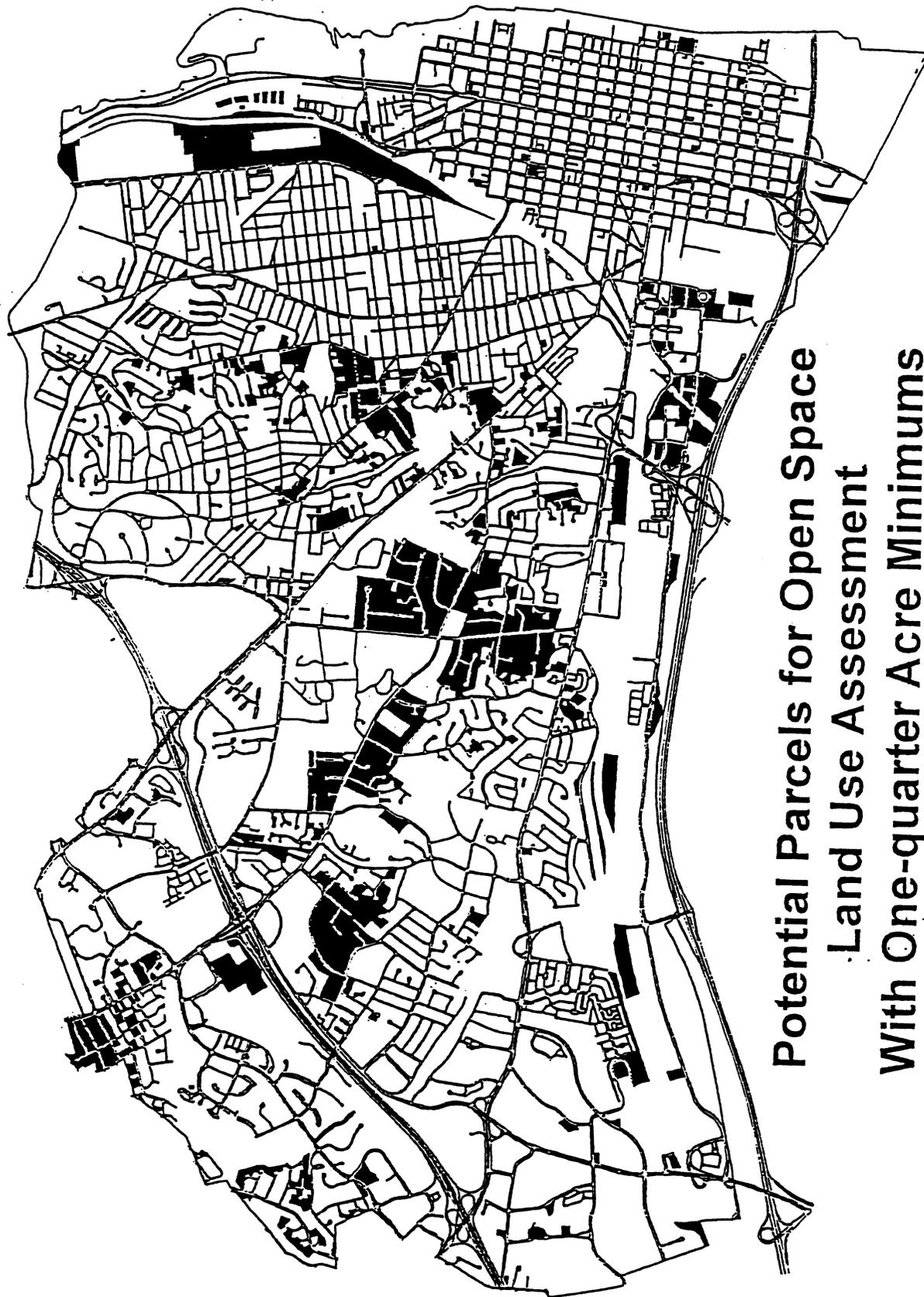
With that in mind, we asked staff to produce parcel maps showing what properties might qualify for the open space use assessment at a two-acre level, a one-acre level, a one half-acre level and the one quarter acre level, presumably all viable options for Council to consider. Those maps are attached and BFAAC can tell you the tax implications of each of each.

The Commission had a wide-ranging discussion on several occasions and some members felt quite strongly that the ordinance should be left unchanged at the five-acre qualifying level. Never the less, the majority of the Park and Recreation Commission felt some change was justified and might prove to be useful in a limited number of cases. Therefore we would like to pass on our recommendation that City Council consider amending our local ordinance to lower the acreage of properties qualifying for the open space use assessment from the current five-acre level to a lower level, but not less than one-acre. We felt that there are now a variety of tools in place to deal with open space preservation that were not available when we asked the State Legislature to change the statute. We think there may be a few important properties in the City that could benefit from lowering the qualifying acreage and that there might well be public benefit from having this particular option available. We believe we have given you some well-considered options, which is what you asked us to do.

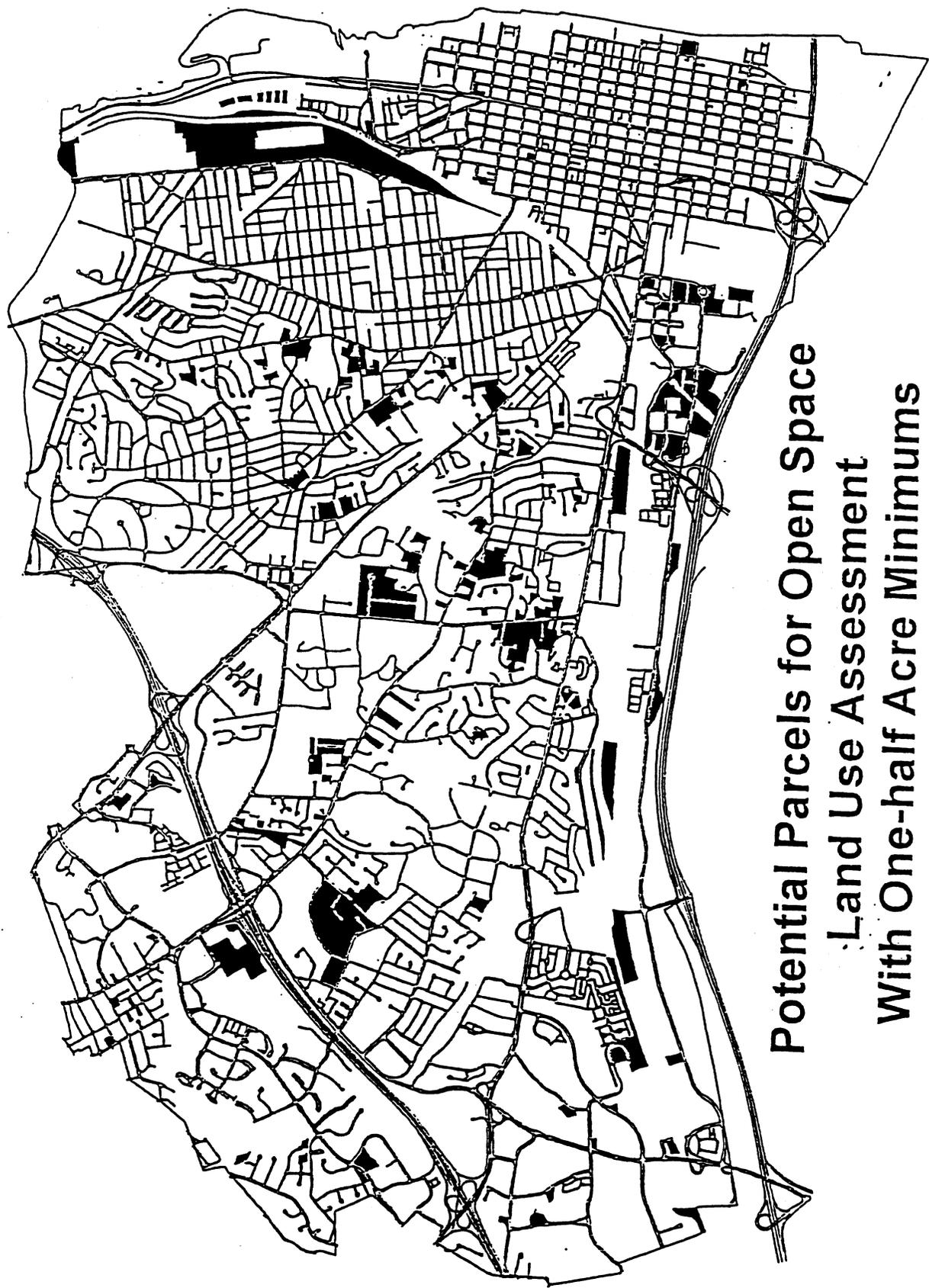
Sincerely,


Judy R. Guse-Noritake, Chair
Park and Recreation Commission

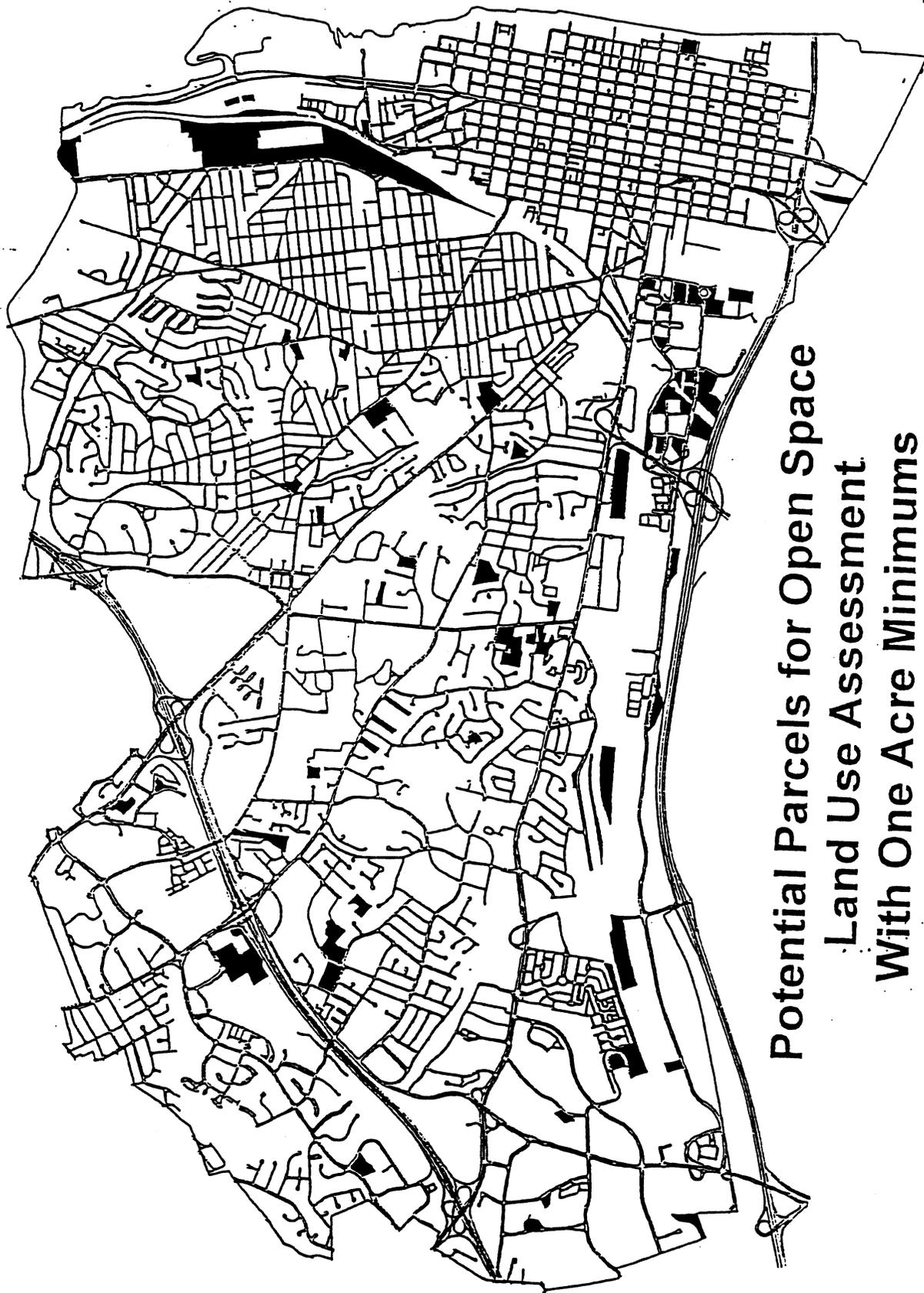
Cc: Lisa Chimento, Chair, BFAAC
Philip Sunderland, City Manager
Kirk Kincannon Director, RPCA
Park and Recreation Commissioners



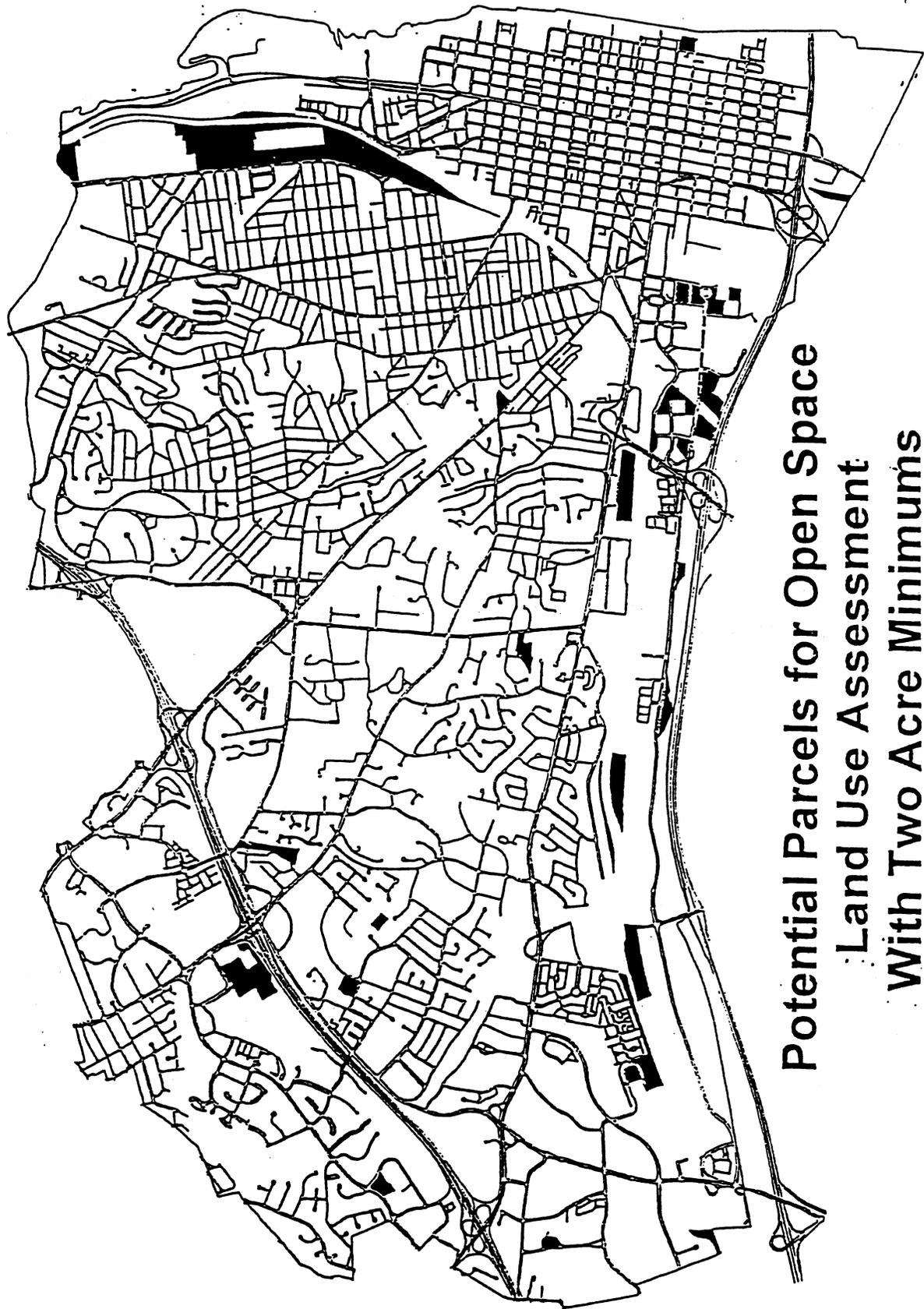
**Potential Parcels for Open Space
Land Use Assessment
With One-quarter Acre Minimums**



**Potential Parcels for Open Space
Land Use Assessment
With One-half Acre Minimums**



**Potential Parcels for Open Space
Land Use Assessment
With One Acre Minimums**



**Potential Parcels for Open Space
Land Use Assessment
With Two Acre Minimums**

**City of Alexandria
Budget and Fiscal Affairs Advisory Committee**

**REPORT ON PROPOSED ORDINANCE TO AMEND
THE MINIMUM ACREAGE THAT MAY
BE DEDICATED TO OPEN SPACE USE
FROM FIVE ACRES TO ONE-QUARTER ACRE**

Lisa Chimento, Chair
Dennis Auld
James Butler
Mark Feldheim
Paul Friedman
Margaret Gullen
Holly Hemphill, Vice Chair
Anna Leider, Secretary
Tim Lovain, Vice Chair
Matthew Natale
Tracy Rickett
Matt Tallmer
Boyd Walker

October 1, 2004

SUMMARY

City Council referred this matter for review by the Budget and Fiscal Affairs Advisory Committee (BFAAC) and the Parks and Recreation Commission. This matter was reviewed by Council as an Ordinance for first reading in June 2003 to be followed by a public hearing. In addition to the involvement of BFAAC and the Parks and Recreation Commission in this issue, the Open Space Steering Committee has been in the process of preparing its draft report on the evaluation of priority of open space acquisition and protection by other means over the last 12 months. Much of the information that has been developed during this review is relevant to the evaluation of the fiscal impact of reducing the dedication to one-quarter acre.

BACKGROUND

Pursuant to Va. Code § 58.1-3233(2) a local governing body has the authority to change the minimum acreage for land classified as "open-space use" for the purpose of applying a special land use taxation. The City's proposed Ordinance initiative provides the office of Real Estate Assessments with the authority to change the current eligible minimum of five acres to one-quarter acre. Thus, instead of a zoning, market based assessment, the parcel is taxed at the reduced open space assessment rate. The effect of this initiative is to reduce the assessed value of a qualifying property at the request of the property owner in exchange for a non-binding promise to keep the identified parcel as unimproved open space. Unlike open space easements that run with the land, the owner can change the use consistent with applicable zoning requirements. However, if the owner changes the parcel to an active use, the land is assessed at the market-based rate and the owner must remit back the difference for the prior five years.

The original intent of the applicable Code provision was to maintain large tracts of land for agricultural, horticultural, forest uses and real estate devoted to open-space use.¹

RECOMMENDATION

BFACC recommends that the current five-acre threshold not be changed for reasons set forth in the discussion that follows.

DISCUSSION

While the special tax treatment is offered as a tool to preserve needed open space, City residents do not necessarily have access to what is essentially private property. The true beneficiary of such a policy is the property owner. Moreover, such a fiscal policy actually reduces the revenues that would be otherwise available for open space acquisition.

In the past, BFAAC has repeatedly observed that in light of the City's dependence on real property revenues, that revenue source should be preserved and maintained. Staff initially

¹ June 9, 2004 Memo from OMB to Budget and Fiscal Affairs Advisory Committee

estimated the annual fiscal impact at \$140,000 based on an assumption that owners of approximately 50 of the qualifying parcels would take advantage of the reduced threshold. But a subsequent staff GIS database search identified a potential of 1,044 qualifying properties and an estimated “worst-case” fiscal impact of \$2.6 million annually. Similarly, any threshold reduction between five acres and one-quarter acre would have a proportionate fiscal impact. Additionally, without an actual physical survey of all potential qualifying properties, it would be difficult to estimate the true number of qualifying properties

It is also conceivable that many properties that would otherwise qualify for the special assessment rate based on the minimum acreage threshold might not be improvable lots due to zoning, set-back requirements or other statutory limitations.²

In addition to the immediate cost of loss of tax revenues, the administrative costs of such a program would not be insignificant. Site visits, assessment costs, and monitoring of qualifying properties for compliance would result in additional administrative costs.

CONCLUSIONS

As a result of the work of the Open Space Steering Committee’s report identifying priority sites for preservation and acquisition, and other City initiatives to locate, fund and purchase desired open-space sites, the City has a number of tools it can use to achieve its open space objectives that it did not have in the past. The preservation of the tax base that funds the purchase and maintenance of desired open-space could be significantly affected by the reduction of the threshold. Even if the City were to consider a higher exemption threshold, e.g., two acres, the same concerns would remain. If Council wants to consider alternative exemption thresholds, BFAAC recommends that the City consider imposing fees to cover the administrative costs associated with the program.

² E.g., 100 foot buffer required for “water bodies with perennial flow” designated as Resource Protection Areas (RPA) pursuant to Chesapeake Bay Regulations and a 50 foot vegetated buffer are for other bodies of water not protected as RPA’s.

1	Introduction and first reading:	12/14/04
2	Public hearing:	12/18/04
3	Second reading and enactment:	12/18/04

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to amend and reordain Division 2 (TAXATION OF REAL ESTATE DEVOTED TO OPEN SPACE USE), of Article M (LEVY AND COLLECTION OF PROPERTY TAXES), Chapter 2 (TAXATION), Title 3 (FINANCE, TAXATION AND PROCUREMENT) of The Code of the City of Alexandria, Virginia, 1981, as amended.

Summary

In order to encourage the preservation of open space, the City's open space use value assessment program provides that qualifying real property is assessed and taxed at its value as open space, and not at its fair market value. The proposed ordinance amends the program requirements to establish tiered qualifications for eligibility: 2-3 acres open space assessment requires a minimum 10 year commitment to keep the area in open space use, 3-5 acres requires a 15 year commitment, and 5 acres or more requires a 20 year commitment. Current law requires a minimum of 5 acres, and a 4 year commitment.

Sponsor

Staff

- Mark Jinks, Assistant City Manager
- Bruce Johnson, Director OMB
- Cindy Smith-Page, Director, Real Estate Assessments
- Kirk Kincannon, Director, Recreation, Parks and Cultural Activities
- Ignacio B. Pessoa, City Attorney

Authority

§ 58.1-3230, *et seq.*, Code of Virginia, 1950, as amended

Estimated Costs of Implementation

As stated in memorandum from the city manager.

Attachments in Addition to Proposed Ordinance and its Attachments (if any)

None

ORDINANCE NO. _____

AN ORDINANCE to amend and reordain Division 2 (TAXATION OF REAL ESTATE DEVOTED TO OPEN SPACE USE), of Article M (LEVY AND COLLECTION OF PROPERTY TAXES), Chapter 2 (TAXATION), Title 3 (FINANCE, TAXATION AND PROCUREMENT) of The Code of the City of Alexandria, Virginia, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Division 2, of Article M, Chapter 2, Title 3 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

DIVISION 2 Taxation of Real Estate Devoted to Open Space Use

Sec. 3-2-201 Open-space land use taxation.

~~Beginning January 1, 1981,~~ Real estate devoted to open space use shall be taxed in the manner provided in this division. Real estate shall be considered to be devoted to open space use when it is so used as to be provided or preserved for park or recreational purposes, conservation of land or other natural resources, floodways, wetlands, riparian buffers, historic or scenic purposes, or assisting in the shaping of the character, direction and timing of community development, under uniform standards prescribed by the state ~~director of the commission of outdoor recreation~~ director of the department of conservation and recreation, and serves the public interest as determined pursuant to section 3-2-215.

Sec. 3-2-202 Application for open-space land use taxation.

- (a) ~~At least 60 days preceding each~~ Within 30 days after notices of assessment have been mailed for the tax year for which open-space land use taxation is sought, property owners seeking such taxation must submit an application to the real estate assessor. Applications shall be submitted on forms supplied ~~to~~ by the city ~~by the state tax commissioner.~~
- (b) ~~In any year in which a general reassessment is being made, the property owner may submit an application until 30 days have elapsed after his notice of assessment has been mailed, or 60 days preceding the tax year, whichever is later.~~
- (c) A person who is the owner of an undivided interest in a parcel may apply on behalf of himself and the other owners of the parcel upon submitting an affidavit that such other owners are minors or cannot be located.
- (c) An application shall be submitted whenever the use or acreage of such land previously approved changes, except when a change in acreage occurs solely as a

1 result of a conveyance necessitated by governmental action or condemnation of a
2 portion of any land previously approved for taxation on the basis of use assessment;,
3

- 4 (d) ~~provided, however, that any such~~ Each property owner must revalidate annually, on
5 or before the date on which the last installment of property tax prior to the effective
6 date of the assessment is due, on forms prepared by the real estate assessor, any
7 application previously approved.
8

9 **Sec. 3-2-203 Filing of approved application by clerk.**

10
11 The real estate assessor shall prepare and transmit to the Clerk of the Circuit Court of the
12 City of Alexandria a list of all applications filed and approved for open space land use
13 taxation. The clerk shall index the names in a book entitled "Land Use Tax Assessment
14 Book" and file the applications in the clerk's office. The city shall compensate the clerk at
15 the rate of \$1 per application filed and indexed.
16

17 **Sec. 3-2-204 Material misstatement of facts; material change in facts, delinquent taxes.**

- 18
19 (a) In the event of a material misstatement of facts in the application or a material
20 change in the facts prior to the date of assessment, the application for taxation based
21 on use assessment granted hereunder shall be void and the tax for such year extended
22 on the basis of value determined under section 3-2-209. No application for
23 assessment based on use shall be accepted or approved if at the time the application
24 is filed, the tax on the land affected is delinquent. Upon the payment of all delinquent
25 taxes, including penalties and interest, the application shall be treated in accordance
26 with the provisions of this division.
27
28 (b) Continuation of use valuation, assessment and taxation shall depend on continuance
29 of the real estate in the use for which classification is granted and compliance with
30 the other requirements of this division and not upon continuance in the same owner
31 of title to the land.
32
33 (c) If on April 1 of any year the taxes for any prior year on any parcel assessed under this
34 division are delinquent, the director of finance shall forthwith send notice of that fact
35 to the property owner by first class mail. If, after the notice has been sent, such taxes
36 remain unpaid on June 1, the director of finance shall notify the assessor, who shall
37 remove such parcel from the land use assessment program, effective for the then
38 current tax year.
39

40 **Sec. 3-2-205 Duties of real estate assessor; rights of aggrieved parties.**

41
42 Upon the receipt of an application, and prior to assessment of any parcel of real estate under
43 the provisions of this division, the real estate assessor shall determine that the real estate
44 devoted to open space use ~~consists of a minimum of five acres and that such real estate~~

1 meets the criteria set forth in section 3-2-201 and the standards prescribed thereunder to
2 qualify for open-space use; he may request an opinion from the state director of the
3 department of conservation and ~~recreation economic development, state commission of~~
4 ~~outdoor recreation or state commissioner of agriculture and commerce.~~ Upon the refusal of
5 ~~the commissioner of agriculture and commerce,~~ the director of the department of
6 conservation and ~~recreation economic development or the director of the commission of~~
7 ~~outdoor recreation~~ to issue an opinion, or in the event of an unfavorable opinion which does
8 not comport with standards set forth in the statements filed pursuant to this section, the party
9 aggrieved may seek relief from the Circuit Court of the City of Alexandria, and in the event
10 that the court finds in his favor, it may issue an order which shall serve in lieu of an opinion
11 for the purposes of this section. The real estate assessor shall, in addition, determine that the
12 real estate devoted to open space use serves the public interest as determined under section
13 3-2-215.
14

15 **Sec. 3-2-206 Valuation of real estate devoted to open-space use.**
16

17 In valuing, for the purposes of taxation, real estate devoted to open space use, the real estate
18 assessor shall consider only those indicia of value which such real estate has for open space
19 use and real estate taxes shall be extended upon the value so determined. In addition to use
20 of his personal knowledge, judgment and experience as to the value of real estate in open
21 space use, he shall, in arriving at the value of such land, consider available evidence of open
22 space capability, and the recommendations of value of such real estate as made by the state
23 land evaluation advisory ~~committee~~ council.
24

25 **Sec. 3-2-207 Determination of total area devoted to open-space use.**
26

- 27 (a) In determining the total area of real estate actively devoted to open space use there
28 shall be included the area of all real estate under ~~barns, sheds and accessory other~~
29 outbuildings, silos, cribs, greenhouses, public recreation facilities and like structures,
30 lakes, dams, ponds, streams, irrigation ditches and like facilities, including garden
31 and naturally landscaped areas. but real
32
33 (b) Real estate under, and such additional real estate as may be actually used in
34 connection with a dwelling or any other structure not related to open space use,
35 including private road, driveway, parking and recreation facilities, shall be excluded
36 in determining such total area.
37

38 **Sec. 3-2-208 Valuation of real estate and structures not related to open-space use.**
39

40 All structures which are located on real estate in open space use and the real estate on which
41 any structure not related to open-space use is located, together with the additional real estate
42 used in connection therewith, shall be valued, assessed and taxed by the same standards,
43 methods and procedures as other taxable structures and other real estate in the city.
44

1
2 **Sec. 3-2-209 Maintenance of records of fair market value of open-space land.**
3

4 Real estate devoted to open space use shall be evaluated on the basis of fair market value as
5 applied to other real estate in the city, and land book records shall be maintained to show
6 both the use value and the fair market value of such real estate.
7

8 **Sec. 3-2-210 Change in use or zoning of real estate devoted to open-space use, roll back tax.**
9

10 (a) When real estate qualifies for assessment and taxation on the basis of use, and the
11 use by which it qualified changes to a nonqualifying use, or the zoning of the real
12 estate is changed to a more intensive use at the request of the owner or the owner's
13 agent, it shall be subject to additional taxes, hereinafter referred to as rollback taxes.
14 Such additional taxes shall only be assessed against the portion of such real estate
15 which no longer qualifies for use value assessment. Liability for roll back taxes shall
16 attach only if the amount due exceeds \$10.00. , in an amount equal to the amount, if
17 any, by which the tax paid or payable on the basis of the valuation, assessment and
18 taxation under this division were exceeded by the taxes that would have been paid or
19 payable on the basis of the valuation, assessment or taxation of real estate in the city
20 in the year of the change and in each of the five years immediately preceding the year
21 of the change, plus simple interest on such rollback taxes at the same interest rate
22 applicable to delinquent taxes in the city. If in the tax year in which the change of use
23 occurs, the real estate was not valued, assessed and taxed under this division, the real
24 estate shall be subject to rollback taxes for such of the five years immediately
25 preceding in which the real estate was valued, assessed and taxed under this division.
26

27 (b) In determining rollback taxes chargeable on real estate which has changed in use, the
28 real estate assessor shall extend the real estate tax rates for the current and next
29 preceding five (5) years, or such lesser number of years as the property has been
30 taxed on its use value, upon the difference between the value determined under
31 section 3-2-209 and the use value determined under section 3-2-206 for each such
32 year. The roll back tax shall be equal to the sum of the deferred tax from the
33 effective date of the written agreement, including simple interest on such roll back
34 taxes at the rate applicable to delinquent taxes pursuant to section 3-2- 183 for each
35 of the tax years. The deferred tax for each year shall be equal to the difference
36 between the tax levied under use value assessment and the tax that would have been
37 levied based on the fair market value assessment of the real estate for that year, at the
38 tax rate applicable to real estate for that year, had it not been subject to use value
39 assessment. In addition, the taxes for the current year shall be assessed and levied on
40 the basis of fair market value, which shall be accomplished by means of a
41 supplemental assessment based upon the difference between the use value and the
42 fair market value, at the tax rate applicable to real estate for that year.
43

44 (c) Liability to the rollback taxes shall attach when a change in use occurs, or a change

1 in zoning to a more intensive use at the request of the owner or owner's agent.
2 Liability to the roll back taxes shall not attach but not when a change in ownership of
3 the title takes place if the new owner does not rezone the real estate to a more
4 intensive use and continues the real estate in the use for which it is classified under
5 the conditions prescribed in this division. The owner of any real estate liable for
6 rollback taxes shall within 60 days following a change in use or zoning, report the
7 change to the real estate assessor on forms prescribed by him. The assessor shall
8 forthwith determine and assess the rollback tax, which shall be assessed against and
9 paid by the owner of the property at the time the change in use or zoning which no
10 longer qualifies occurs and shall be paid to the treasurer director of finance within 30
11 days of the assessment. If the amount due is not paid by the due date, the director of
12 finance shall impose a penalty and interest on the amount of the roll back tax,
13 including interest for prior years, at the rates of penalty and interest specified under
14 section 3-2-183.
15

16 **Sec. 3-2-211 Failure to report change in use; misstatement in application.**
17

18 (a) Any person failing to report properly any change in use or zoning of property for
19 which an application for use value taxation has been filed shall be liable for all such
20 taxes, in such amounts and at such times as if he had complied herewith and
21 assessments had been properly made, and he shall be liable for a penalty equal to one
22 percent of the tax which would have been assessed on the property had it been
23 properly valued. Should the tax and penalty not be paid within 30 days of the date the
24 assessor director of finance informs the person that he is liable for the tax and
25 penalty, an interest penalty on the total amount owned shall be levied at ~~a rate equal~~
26 to the rate applicable to other delinquent taxes in the city at the rate of interest
27 specified under section 3-2-183.
28

29 (b) Any person making a material misstatement of fact in any application shall be liable
30 for all such taxes, in such amounts and at such times as if such property had been
31 assessed on the basis of fair market value as applied to other real estate in the city,
32 together with interest and penalties thereon applicable to other delinquent taxes in the
33 city, and he shall be further assessed with an additional penalty of 100 percent of any
34 unpaid taxes.
35

36 **Sec. 3-2-212 Separation of part of real estate devoted to open-space use.**
37

38 (a) Separation or split-off of lots, pieces or parcels of land from the real estate which is
39 being valued, assessed and taxes under this division, either by conveyance or other
40 action of the owner of the real estate shall subject the real estate so separated to
41 liability for the rollback taxes applicable thereto, but shall not impair the right of
42 each subdivided parcel of such real estate to qualify for such valuation, assessment
43 and taxation in any and all future years, provided it meets the minimum acreage
44 requirements and such other conditions of this division as may be applicable, nor

1 shall it impair the right of the remaining real estate to continuance of such valuation,
2 assessment and taxation without liability for rollback taxes, provided it meets the
3 minimum acreage requirements and other applicable conditions of this division.
4

- 5 (b) No subdivision of property which results in parcels which meet the minimum acreage
6 requirements of this division, and which the owner attests is for open space use, shall
7 be subject to the provisions of this section.
8
9

10 **Sec. 3-2-213 Taking of real estate by eminent domain.**
11

12 The taking of real estate which is being valued, assessed and taxed under this division by
13 right of eminent domain shall not subject the real estate so taken to the rollback taxes herein
14 imposed.
15

16 **Sec. 3-2-214 Application of other provisions of title 3, chapter 2.**
17

18 The provisions of title 3, chapter 2 of The Code of The City of Alexandria, Virginia, 1981,
19 as amended, applicable to real estate assessment and taxation shall be applicable to
20 assessments and taxation hereunder without limitation, provisions relating to tax liens and
21 the correction of erroneous assessments and for such purposes the rollback taxes shall be
22 considered to be deferred real estate taxes.
23

24 **Sec. 3-2-215 Determination of public interest.**
25

26 The Alexandria City Council finds that promoting the preservation of real estate devoted to
27 open space use within the city, by assessing and taxing such real estate on the value of such real
28 estate for open space use, and not on the fair market value of such real estate, serves the public
29 interest of the residents of the City of Alexandria under the following circumstances:
30

- 31 (a) For parcels devoted to open space use of two acres or larger, but less than three acres,
32 the property owner irrevocably commits by easement or covenant to maintain the
33 property in open space use for a period of time not less than 10 years.
34
35 (b) For parcels devoted to open space use of three acres or larger, but less than five
36 acres, the property owner irrevocably commits by easement or covenant to maintain
37 the property in open space use for a period of time not less than 15 years.
38
39 (c) For parcels devoted to open space use of five acres or larger, the property owner
40 irrevocably commits by easement or covenant to maintain the property in open space
41 use for a period of time not less than 20 years.
42
43 (d) Any such easement or covenant shall be approved by the city attorney, run with the
44 land, and be recorded among the land records. Notwithstanding the applicable time

1 periods specified above, the easement or covenant may permit early termination for
2 good cause, consistent with the public interest, and subject to such reasonable
3 conditions as may be determined by the city council, after public hearing.
4

5 **Sec. 3-2-216 What constitutes material misstatement of fact.**
6

- 7 (a) For the purposes of this division, incorrect information on actual use of the property,
8 or on the number and identities of the known owners of the property at that time of
9 application, shall constitute a material misstatement of fact.
10
11 (b) For purposes of this division, intentional misrepresentation of the number acres in
12 the parcel, or of the number of acres to be taxed according to open space use, shall
13 constitute a material misstatement of fact.
14
15 (c) The provisions of this section do not limit or exclude any other act or omission not
16 listed above from constituting a material misstatement of fact.
17

18 **Sec. 3-2-217 Application fee.**
19

20 The filing fee for the initial application for each open space use value assessment under this
21 division, and for each subsequent application for a substantive amendment to an approved
22 application under section 3-2-202(c), including a change in ownership, change in parcel size, or
23 change in qualifying open space use, shall be \$100.00. No filing fee shall be required for the
24 annual revalidation required by section 3-2-202(d).
25

26 Section 2. That this ordinance shall become effective at the time and on the date of final
27 passage.
28

29 WILLIAM D. EUILLE
30 Mayor
31

32 Introduction: 12/14/04
33 First Reading: 12/14/04
34 Publication:
35 Public Hearing:
36 Second Reading:
37 Final Passage:
38
39

16
12-18-04

City of Alexandria, Virginia

MEMORANDUM

DATE: DECEMBER 17, 2004

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER *PS*

SUBJECT: DOCKET ITEM 16: ORDINANCE TO AMEND THE MINIMUM ACREAGE DEVOTED TO OPEN SPACE USE THAT IS REQUIRED TO QUALIFY FOR OPEN SPACE USE VALUE ASSESSMENT

ISSUE: Docket Item 16: Open Space Ordinance.

RECOMMENDATION: I recommend that Council conduct the public hearing on this item tomorrow and, following the hearing, defer a vote on the matter until such time as staff has reviewed the regulations promulgated by the State Land Evaluation Advisory Council. Then staff will be in a position to make a thorough presentation on the proposed ordinance and how it is affected by the State regulations.

BACKGROUND: In preparing for a presentation on this item tomorrow, staff has become aware of a series of regulations promulgated by the State Land Evaluation Advisory Council, which, among other things, define the type and nature of open space that qualify for the open space assessment program. We have been unable to review these regulations to the extent necessary to prepare a solid presentation for you tomorrow. I believe that a good understanding of these regulations, and a presentation to you based upon that understanding, is needed before you will be in a position to take any action.

I recommend, therefore, that you conduct the public hearing on this item tomorrow and, following the hearing, defer a vote on the matter until such time as staff has reviewed the State regulations and is ready to discuss this further with Council.

I apologize for the timing of this recommendation. However, I believe we need to collect further information and do further analysis in order to present a complete picture of this item before Council finally considers the ordinance.

STAFF: Mark Jinks, Assistant City Manager
Cindy Smith-Page, Director, Real Estate Assessments
Kirk Kincannon, Director, Recreation, Parks and Cultural Activities

cc: Ignacio Pessoa, City Attorney