

ORDINANCE NO. 2413

AN ORDINANCE to amend Article XIV, Chapter 36 of The Code of the City of Alexandria, Virginia, 1963, as amended, by adding a new division numbered 1A, new sections numbered 36-83.3, 36-83.4, 36-83.5, 36-83.6, 36-83.7, 36-83.8, 36-83.9, 36-83.10, 36-83.11, 36-83.12, 36-83.13, 36-83.14, 36-83.15 and 36-83.16; which Chapter 36 relates to TAXATION, which Article XIV relates to LEVY AND COLLECTION OF PROPERTY TAXES, which new Division 1A relates to TAXATION OF REAL ESTATE DEVOTED TO OPEN-SPACE USE, which new Section 36-83.3 relates to OPEN-SPACE LAND USE TAXATION, which new Section 36-83.4 relates to APPLICATION FOR OPEN-SPACE LAND USE TAXATION, which new Section 36-83.5 relates to FILING OF APPROVED APPLICATION BY CLERK, which new Section 36-83.6 relates to MATERIAL MISSTATEMENT OF FACTS; MATERIAL CHANGE IN FACTS, which new Section 36-83.7 relates to DUTIES OF REAL ESTATE ASSESSOR; RIGHTS OF AGGRIEVED PARTIES, which new Section 36-83.8 relates to VALUATION OF REAL ESTATE DEVOTED TO OPEN-SPACE USE, which new Section 36-83.9 relates to DETERMINATION OF TOTAL AREA DEVOTED TO OPEN-SPACE USE, which new Section 36-83.10 relates to VALUATION OF STRUCTURES NOT RELATED TO OPEN-SPACE USE, which new Section 36-83.11 relates to MAINTENANCE OF RECORDS OF FAIR MARKET VALUE OF OPEN-SPACE LAND, which new Section 36-83.12 relates to CHANGE IN USE OF REAL ESTATE DEVOTED TO OPEN-SPACE USE, which new Section 36-83.13 relates to FAILURE TO REPORT CHANGE IN USE; MISSTATEMENT IN APPLICATION, which new Section 36-83.14 relates to SEPARATION OF PART OF REAL ESTATE DEVOTED TO OPEN-SPACE USE, which new Section 36-83.15 relates to TAKING OF REAL ESTATE BY EMINENT DOMAIN and which new Section 36-83.16 relates to APPLICATION OF OTHER PROVISIONS OF CHAPTER 36.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Article XIV, Chapter 36 of The Code of the City of Alexandria, Virginia, 1963, as amended, be and the same hereby is amended by adding a new division numbered 1A to read as follows:

DIVISION 1A. TAXATION OF REAL
ESTATE DEVOTED TO OPEN-SPACE USE.

Sec. 36-83.3. 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, 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.

Sec. 36-83.4. Application for open-space land use taxation.

At least sixty (60) days preceding each 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 the city by the state tax commissioner.

In any year in which a general reassessment is being made, the property owner may submit an application until thirty (30) days have elapsed after his notice of assessment has been mailed, or sixty (60) days preceding the tax year, whichever is later.

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. 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 result of a conveyance necessitated by governmental action or condemnation of a portion of any land previously approved for taxation on the basis of use assessment; provided, however, that any such property owner must revalidate annually, on or before the date on which the last installment of property tax prior to the effective date of the assessment is due, on forms prepared by the real estate assessor, any application previously approved.

Sec. 36-83.5. Filing of approved application by clerk.

The real estate assessor shall prepare and transmit to the clerk of the Circuit Court of the City of Alexandria a list of all applications filed and approved for open-space land use taxation. The clerk shall index the names in a book entitled "Land Use Tax Assessment Book" and file the applications in the clerk's office. The city shall compensate the clerk at the rate of one dollar (\$1.00) per application filed and indexed.

Sec. 36-83.6. Material misstatement of facts; material change in facts.

In the event of a material misstatement of facts in the application or a material change in such facts prior to the date of assessment, such application for taxation based on use assessment granted hereunder shall be void and the tax for such year extended on the basis of value determined under section 36-83.11. No application for assessment based on use shall be accepted or approved if at the time the application is filed, the tax on the land affected is delinquent. Upon the payment of all delinquent taxes, including penalties and interest, the application shall be treated in accordance with the provisions of this division.

Continuation of use valuation, assessment and taxation shall depend on continuance of the real estate in the use for which classification is granted and compliance with the other requirements of this division and not upon continuance in the same owner of title to the land.

Sec. 36-83.7. Duties of real estate assessor; rights of aggrieved parties.

Upon the receipt of an application, and prior to assessment of any parcel of real estate under the provisions of this division, the real estate assessor shall determine that the real estate devoted to open-space use consists of a minimum of five (5) acres and that such real estate meets the criteria set forth in section 36-83.3 and the standards prescribed thereunder to qualify for open-space use; he may request an opinion from the state director of the department of conservation and economic development, state commission of outdoor recreation or state commissioner of agriculture and commerce. Upon the refusal of the commissioner

of agriculture and commerce, the director of the department of conservation and economic development or the director of the commission of outdoor recreation to issue an opinion, or in the event of an unfavorable opinion which does not comport with standards set forth in the statements filed pursuant to this section, the party aggrieved may seek relief from the Circuit Court of the City of Alexandria, and in the event that the court finds in his favor, it may issue an order which shall serve in lieu of an opinion for the purposes of this section.

Sec. 36-83.8. Valuation of real estate devoted to open-space use.

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

Sec. 36-83.9. Determination of total area devoted to open-space use.

In determining the total area of real estate actively devoted to open-space use there shall be included the area of all real estate under barns, sheds, silos, cribs, greenhouses, public recreation facilities and like structures, lakes, dams, ponds, streams, irrigation ditches and like facilities; but real estate under, and such additional real estate as may be actually used in connection with any structure not related to open-space use shall be excluded in determining such total area.

Sec. 36-83.10. Valuation of structures not related to open-space use.

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

Sec. 36-83.11. Maintenance of records of fair market value of open-space land.

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

Sec. 36-83.12. Change in use of real estate devoted to open-space use.

When real estate qualifies for assessment and taxation on the basis of use, and the use by which it qualified changes to a nonqualifying use, it shall be subject to additional taxes, hereinafter referred to as rollback taxes, in an amount equal to the amount, if any, by which the tax paid or payable on the basis of the valuation, assessment and taxation under this division

were exceeded by the taxes that would have been paid or payable on the basis of the valuation, assessment or taxation of real estate in the city in the year of the change and in each of the five (5) years immediately preceding the year of the change, plus simple interest on such rollback taxes at the same interest rate applicable to delinquent taxes in the city. If in the tax year in which the change of use occurs, the real estate was not valued, assessed and taxed under this division, the real estate shall be subject to rollback taxes for such of the five (5) years immediately preceding in which the real estate was valued, assessed and taxed under this division.

In determining rollback taxes chargeable on real estate which has changed in use, the real estate assessor shall extend the real estate tax rates for the current and next preceding five (5) years, or such lesser number of years as the property has been taxed on its use value, upon the difference between the value determined under section 36-83.11 and the use value determined under section 36-83.8 for each such year.

Liability to the rollback taxes shall attach when a change in use occurs but not when a change in ownership of the title takes place if the new owner continues the real estate in the use for which it is classified under the conditions prescribed in this division. The owner of any real estate liable for rollback taxes shall within sixty (60) days following a change in use, report such change to the real estate assessor on forms prescribed by him. The assessor shall forthwith determine and assess the rollback tax, which shall be assessed against and paid by the owner of the property at the time the change in use which no longer qualifies occurs and shall be paid to the treasurer within thirty (30) days of the assessment.

Sec. 36-83.13. Failure to report change in use; misstatement in application.

Any person failing to report properly any change in use of property for which an application for use value taxation has been filed shall be liable for all such taxes, in such amounts and at such times as if he had complied herewith and assessments had been properly made, and he shall be liable for a penalty equal to one percent (1%) of the tax which would have been assessed on the property had it been properly valued. Should the tax and penalty not be paid within thirty (30) days of the date the assessor informs the person that he is liable for such tax and penalty, an interest penalty on the total amount owed shall be levied at a rate equal to the rate applicable to other delinquent taxes in the city. Any person making a material misstatement of fact in any application shall be liable for all such taxes, in such amounts and at such times as if such property had been assessed on the basis of fair market value as applied to other real estate in the city, together with interest and penalties thereon applicable to other delinquent taxes in the city, and he shall be further assessed with an additional penalty of one hundred percent (100%) of such unpaid taxes.

Sec. 36-83.14. Separation of part of real estate devoted to open-space use.

Separation or split-off of lots, pieces or parcels of land from the real estate which is being valued, assessed and taxed under this division, either by conveyance or other action of the owner of such real estate shall subject the real estate so

separated to liability for the rollback taxes applicable thereto, but shall not impair the right of each subdivided parcel of such real estate to qualify for such valuation, assessment and taxation in any and all future years, provided it meets the minimum acreage requirements and such other conditions of this division as may be applicable, nor shall it impair the right of the remaining real estate to continuance of such valuation, assessment and taxation without liability for rollback taxes, provided it meets the minimum acreage requirements and other applicable conditions of this division.

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

Sec. 36-83.15. Taking of real estate by eminent domain.

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

Sec. 36-83.16. Application of other provisions of chapter 36.

The provisions of chapter 36 of The Code of the City of Alexandria, Virginia, 1963, as amended, applicable to real estate assessment and taxation shall be applicable to assessments and taxation hereunder mutatis mutandis including, without limitation, provisions relating to tax liens and the correction of erroneous assessments and for such purposes the rollback taxes shall be considered to be deferred real estate taxes.

Section 2. That the title of and informal memorandum explaining this ordinance shall be published in a newspaper of general circulation published in the city not later than five days following its introduction together with a notice containing the time and place for a public hearing. The city clerk have the full text of this ordinance printed in sufficient numbers to supply copies to meet request. The city clerk shall note the date of introduction and first reading, the date of publication, the date of the public hearing, and the date of the second reading and final passage in the minutes of the meeting. This ordinance shall become effective the date of its final passage.

CHARLES E. BEATLEY, JR.
Mayor

Introduction:	10/23/79	Public Hearing:	11/17/79
First Reading:	10/23/79	Second Reading:	11/27/79
Publication:	10/26/79	Final Passage:	11/27/79

* * * * *