

## Daily Tax Report®

February 08, 2016

### Charitable Contributions

## Florida Landowner Wins on Conservation Easement Deduction

### BNA Snapshot

**Development:** Highest, best use valuation based on reasonably, probable future use, not current zoning.

**Takeaway:** Decision brings clarity to real property valuation, increases likelihood of professional land planners in future conservation easement valuations.



By [Erin McManus](#)

Feb. 5 — A Florida landowner successfully defeated the IRS's low-ball valuation of a conservation easement and may get an even larger valuation when the case is returned to the U.S. Tax Court ( [Palmer Ranch Holdings Ltd. v. Commissioner](#) , 11th Cir., No. 14-14167, 2/5/16 ).

A federal appeals court ruled Feb. 5 that Palmer Ranch Holdings Ltd. was entitled to at least the \$21 million pre-easement value determined by the Tax Court for an 82-acre tract near Sarasota, Fla., that included a bald eagle nest, because the rezoning history of the property left open the reasonable probability that the local land use authority would approve a 360-dwelling development.

In rejecting the Internal Revenue Service's valuation that was based on the existing zoning at the time of the donation, Judge Richard W. Goldberg said the highest-and-best-use test to value real property "includes within it an analysis of whether the proposed use is 'needed or likely to be needed in the reasonably near future.' "

### Reasonable Probability

Goldberg was sitting by designation on a panel of the U.S. Court of Appeals for the Eleventh Circuit that affirmed the Tax Court's decision that the highest-and-best-use valuation of the property should be based on the reasonable probability of land use law changes that would allow more development than that of existing law ([88 DTR K-2, 5/7/14](#)).

"The Tax Court took serious consideration of the valuation," Anson Asbury, a tax attorney at the Asbury Law Firm in Atlanta, told Bloomberg BNA Feb. 5. "The IRS's position was based on speculation, not valuation, and the Eleventh Circuit saw through it," he said.

Ronald Levitt, a shareholder in the tax and business practice at Sirote & Permutt PC in Birmingham, Ala., told Bloomberg BNA Feb. 5 that the decision was especially helpful in the Eleventh Circuit, "because it provides some clarity about the reasonable probability standard and gives some good detail about how to corroborate and substantiate reasonable probability."

"Clarity is important. The first step is to come up with the highest and best use. It's a hypothetical determination, because property is frequently not used to its best use," David Wooldridge, also a shareholder in Sirote & Permutt's Birmingham office, told Bloomberg BNA Feb. 5.

### 'Colorful' Opinion

Asbury, Levitt and Wooldridge commended both Goldberg's decision and colorful writing, which described the Palmer Ranch property near Sarasota Bay—where the eagles would fly to hunt—as sporting "a nest-to-coast flyway in the form of a 'wildlife corridor.' The wildlife corridor also provided a habitat to small urban animals of considerably less patriotic interest."

Palmer Ranch, which was managed by Hugh F. Culverhouse Jr., son of the former owner of the Tampa Bay Buccaneers, donated the property after two failed attempts to obtain desired development approval and deducted the value of the easement. "But Palmer Ranch's backup plan fell prey to a sharp-eyed IRS, who disallowed the deduction on grounds that Palmer Ranch had overvalued" the property in calculating the easement's worth, Goldberg said.

Palmer Ranch reported the pre-easement value of the property as \$25.2 million when it claimed a charitable contribution deduction for the conservation easement. The IRS argued that the local government was unlikely to allow more than 100 units and valued the property at \$7.75 million before the easement. The Tax Court determined a \$21 million value.

"The Eleventh Circuit recognized the real world attitude toward zoning rather than the IRS's theoretical take on development," Asbury said.

### **It's About Valuation**

All the practitioners who commented on the case to Bloomberg BNA said it was good to see a conservation easement case that was about valuation and not a misstep in the process.

Levitt said that "when coming up with the highest and best use, an appraiser needs to consider the future and that doesn't always mean tomorrow. The reasonably near future can be several years in the future, and you're not looking back in time with 20-20 hindsight."

Wooldridge said the 2008 real estate crash gives appraisers problems when determining a value prior to the crash, because "it's hard to filter out of the subconscious what happened, but it's what an appraiser and court are required to do. They have to ask what was known or reasonably knowable."

### **Going Forward**

Wooldridge said the case would be relevant to valuation issues in gift and estate tax valuations. Levitt pointed out that "the IRS is always trying to argue for lower valuations in conservation easement cases. If it was arguing an estate case, it would have argued differently."

Wooldridge noted that Palmer Ranch used a land planner to determine what was a feasible highest and best use and that it was reasonably probable the zoning could be changed.

Levitt said the appraisal community will give the case a hard look and consider getting real estate market specialists to come up with a highest and best use and then give it to an appraiser.

Asbury noted that the case follows on the heels of the Protecting Americans From Tax Hikes Act, which made permanent the provision that allows taxpayers to claim a deduction for a conservation donation of up to 50 percent of their adjusted gross income, as opposed to the 30 percent of AGI allowed for other charitable contributions of property.

### **Remand to Reconsider**

The court remanded the case to the Tax Court to "at minimum explain why it departed from the comparable-sales method" that it had used up to that point but departed from in reaching the value of the property at the time of the easement grant in 2006.

Goldberg said the \$21 million valuation was derived entirely from Palmer Ranch's appraiser's cross-check reconciliation with another case. "In other words, the tax court's valuation was premised on an old appraisal as modified by monthly appreciation rates, instead of on comparable sales."

No one was sure whether Tax Court Judge Joseph Robert Goeke would adopt Palmer Ranch's \$25.2 million valuation or follow Goldberg's instructions but come up with a lower valuation.

"Goeke thought the taxpayer's appraisal was a little high and that the property hadn't appreciated that much, but the previous appraisal Goeke referenced wasn't actually in the record," Wooldridge said.

Asbury said, "the challenge for any judge is to lay his hands on enough evidence to get close to the right answer."

Goldberg, of the U.S. Court of International Trade, was sitting by designation and was joined by Judges Robin S. Rosenbaum

and Julie E. Carnes in the decision.

Palmer Ranch was represented by Debra J. Albin-Riley of Arent Fox LLP in Los Angeles and Meghan Sue Largent and Mark F. Hearne II of Arent Fox in Clatyon, Mo. The commissioner was represented by Patrick J. Urda, Francesca Ugolini and Gilbert S. Rothenberg of the Department of Justice Tax Division in Washington.

To contact the reporter on this story: Erin McManus in Washington at [emcmanus@bna.com](mailto:emcmanus@bna.com)

To contact the editor responsible for this story: Brett Ferguson at [bferguson@bna.com](mailto:bferguson@bna.com)

**For More Information**

Text of the [decision](#) is in TaxCore.