



CELEBRATING
55 YEARS

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The conservation restriction: Benefits to spirit and wallet

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One of the great things about owning real estate is your ability to enjoy and utilize the property over time, and potentially (at least historically until recently) benefit from appreciation in value. Another benefit is the potential for income tax shelter, whether from depreciation and/or other methods, one of which is the focus of this article. While appreciation has been severely tested recently, with current values unfortunately similar to 2002 values, the tax benefits remain basically intact. The subject of this article is the conservation restriction, and its tax (and spiritual), benefits.

Among 30 years of real estate consulting efforts, I have had the great opportunity to work in various land conservation efforts for families, land trusts and other non-profits. Of all of the real estate work that we do, commercial, residential, investment and management, walking onto a magnificent parcel of property, and knowing that I can solve a problem that marries good land use and financial feasibility, is still a thrill. I have had the opportunity to help with some of the most beautiful New England farms, woodlands, historic and coastal properties. They are often fraught with complicated land use regulations, family interactions, legal ramifications, and opinions of many people involved, all of which makes finding a solution all the more satisfactory. The ability to conserve parts of these properties, while utilizing other parts, and generating both income and tax shelter in balance, is unique in the ever increasing and aggressive tax structure in this country.

But how does it work? Imagine you buy a lovely 100 acre New England farm or wood lot, with a small New England farm house, for let's say, \$300,000. You use and enjoy the property over the next 10 or 20 years, bringing friends to visit, watching children or grandchildren grow and learn, and generally creating those great memories that are far away from the work-a-day world.

If you're lucky, the property appreciates in value over these years. If you're also entrepreneurial, you add value by improving views, adding water features, gentlemen farming, improving the structures, and so on. In most cases, there comes a time when you need to decide and act on a future for the property. The family can't use it as much, people have moved away, or for whatever reason, you think about change of use. Development is typically an option, but it may be too extreme a step, given the emotion and memories that are tied up in the old place. Fortunately there is one alternative that seems to work every time: sale of some of the property, combined with conservation restriction on other parts.

Here's a typical example: over the years, you recognize that there are parts of the property that are not intrinsic to the "core". These are "outliers" that can be sold without reducing the core value, or upsetting family feelings about the property. The "compromise" is to position the outliers for sale, while placing a conservation restriction on the parts that are core value. You benefit by not seeing nearby development, by improving value of the core which is now buffered by forever restricted land, and by adding value to the "for sale" parcels by also buffering them with conservation.

Assume you sell for a capital gain on the sale of outlier parcels of \$200,000. The conservation

restriction you have created is construed as a loss of your ability to develop land, therefore a monetary loss or gift. It is directly deductible from capital gain, and in some cases on other income. In a perfect world, if the value of the restriction is equal to the capital gain on the sales, there is no net tax. You have sheltered your capital gain, generated revenue, and improved the quality of your life as well as your neighbors.

While this is an over simplification of the process, and there are various other steps to consider, there are many, many situations that fit. This is a purist definition of a win- win. Take advantage of it, while the tax law still allows it.

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