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Conservation restriction - good for everyone

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Most of us know what a conservation restriction is, i.e., an easement or restriction on land, typically preventing future development but allowing for the continued private ownership of the donor. People with "excess land" put restrictions on their own property for a number of reasons, but usually there is some monetary benefit at the outset. This benefit may be an out-right purchase by a conservation group or a tax deduction through a gift. Under both scenarios, the donor is first benefited in a direct financial way.

But there are many other benefits to a conservation restriction. These benefits accrue to both the donor and the general public as well. The first typical benefit is preserving open space for conservation and potential recreation. The second may be simply to preserve open views. And a third might be to enhance privacy for donors on residual property.

Because these "other" benefits are often significant, there has been a growing recognition of the economic value garnered through restriction, above basic financial remuneration. When evaluating a gift, for example, the donor's appraiser must address the issue of "enhancement". If the donor, or even a donor's family, retains property that benefits from the easement through open views or privacy, then the value of the retained land has been benefited or "enhanced". In its simplest form, this benefit must be accounted for, and it essentially reduces the amount of the gift.

This is not just an IRS way of collecting more taxes. It's a real and often significant benefit that needs to be recognized. Typically, the donor or appraiser shows a "before restriction" value which might be a residential development, and an after restriction value which might be a single large house lot. I have consulted on situations where the residential development was in fact less valuable than the single large lot, and thus there was no benefit to the restriction. The reason is that the enhancement of the restricted excess land to the single lot was more valuable than the total development.

I have also consulted on properties whereby the development potential was significant, and the donor restricted or gave away enormous value. However, over time, these restricted properties sold for very large sums even though they were no longer developable. This is typically because these large properties, unsubdivided, become unique over time and people who can, will pay whatever it takes to own it. They want it for its uniqueness.

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In either of these examples, the concept of enhancement through conservation is important. It is not only important to the state and federal taxing authorities, who ensure that the donor is not deducting too much, but also the real estate profession as a whole. As time goes on, and our open spaces are reduced through development, the actual occurrence of open space becomes rarer and therefore more valuable. Conservation groups and individuals are increasing what they pay for open space because of this lessening supply. Individuals are buying excess undevelopable land because they may want it for private recreation, hunting, or simply to say it is theirs. "Enhancement" is not just a taxing authority's concept. Rather it is a significant real estate principle that recognizes the potentially improved value of property through the proximity of preserved lands.

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