

Mass DOR on Valuation of Conservation Restrictions

Subject: RE: Conservation Restriction Question

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To: (removed)

. . . Apparently, an owner of 253 acres of land classified under G.L. c. 61 is considering placing a conservation restriction on his property and he has asked you whether he may still get the benefits of a reduced valuation as he now has in G.L. c. 61. While a conservation restriction must be taken into consideration in determining the full and fair cash value of a parcel of land and may likely produce a significant reduction in value, such reduction may not be the same as would be provided under G.L. c. 61. This is because many variables come into play when determining the value of land limited in use by a conservation restriction. In a letter opinion (Our File No. 2000-463) regarding the valuation of land subject to a conservation restriction, we explained the considerations as follows"

"As you know, property is valued for local tax purposes at its fair cash valuation (also referred to as full and fair cash valuation). G.L. Ch. 59 §38. This means "fair market value, which is the price an owner willing but not under compulsion to sell ought to receive from one willing but not under compulsion to buy. It means the highest price that a normal purchaser not under peculiar compulsion will pay at the time ... The fair cash value is the value the property would have on January first of any taxable in the hands of any owner, including the present owner." (Emphasis added). *Boston Gas Co. v. Assessors of Boston*, 334 Mass. 549, 566 (1956).

In determining fair cash value, therefore, the assessors are to consider the many factors that would influence potential buyers of the property, including all the uses to which the property is or may be reasonably adapted in the hands of any owner. *Tremont & Suffolk Mills v. City of Lowell*, 163 Mass. 383(1895); *Massachusetts General Hospital v. Inhabitants of Belmont*, 238 Mass. 396 (1921); *Tigar v. Mystic River Bridge Authority*, 329 Mass. 514, 517-519 (1952). If property is reasonably adapted to a particular use and that use is not prohibited, it may be considered and reflected in the fair market value. *Colonial Acres, Inc. v. North Reading*, 3 Mass. App. Ct. 384, 396 (1975). This is often referred to as the "highest and best use" of the property and that use may be different than the property's actual use. *DSM Realty, Inc. v. Board of Assessors of Andover*, 391 Mass. 1014 (1984)(highest and best use of property being used as a golf course was for residential subdivision).

Conservation restrictions are legally binding covenants by which a property owner agrees to limit the use of his or her land for a variety of reasons, including preservation of wetlands, wildlife habitats or scenic areas. The agreement is usually between the property owner and a public entity or a private non-profit land trust referred to as the holder of the restriction. These restrictions run with the land and are binding on subsequent owners as well as the grantor. The terms of these restrictions vary. They may be temporary or permanent and may encompass all or part of a parcel. Typically, they restrict development, but may permit compatible uses by the grantor and later owners, including for example, the right to build or maintain a residence or farm the land.

In valuing a parcel subject to a conservation restriction, the assessors must consider the restriction's effect on the highest and best use of the property. The impact on value can differ, however, depending on the nature and duration of the restriction and retained usage rights, the geographical area of the parcel covered by the restriction and the nature of the parcel's highest and best use without the restriction. Our appraisal staff advises that the use of a predetermined standard formula is generally insufficient because the variety of restrictions and retained rights make each parcel unique. As a result, assessors must analyze the impact of the specific restriction using accepted mass appraisal techniques and determine the assessed valuation based on market derived adjustments appropriate for the particular characteristics of and restrictions on the subject property. Depending on the terms of the restriction and the previous status of the parcel, the assessment may or may not be adversely affected. Additionally, assessors may find that neighboring properties will tend to appreciate in value more than average over the long term. As neighborhood values appreciate, the basic value of the restricted parcel may also increase."

Finally, we would also note that there is nothing in G.L. c. 61 that would prohibit the classification under G.L. c. 61 of land that is subject to a conservation restriction, provided that the prescribed forestry management practices and cutting activities are permitted by and consistent with the terms of the particular conservation restriction. To the extent the restricted land was classified under G.L. c. 61, the landowner could ensure valuations at the classified c. 61 valuations. In this regard, please see the attached letter opinion 2004-292.

If you have any additional questions after reviewing these materials, please do not hesitate to contact us.

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