

## Ask an Expert



*Mark S. Weston, a principal in the real estate appraisal and consulting firm of Hunsperger & Weston, Ltd., Greenwood Village, CO, answers questions about appraising conservation easements. Mr. Weston is president of the board of the Colorado Coalition of Land Trusts.*

**Q** I know that some land trusts prepare (or hire someone to prepare) development plans for properties to be eased, presumably to help in establishing the “before” value of the property. Does this really have any impact on the value and should land trusts be doing this as a standard practice for most developable properties?

**A.** In areas where there is demand for development, appraisers often use two separate but interrelated land valuation techniques: sales comparison and subdivision development analysis. Using sales comparison, recent sales similar in size, appeal and location to the “subject” (what a clinical term!) are compared with one another and with the subject in order to estimate its value. It can be a fairly straightforward process and, when there is an adequate selection of truly comparable sales, it is the most persuasive.

To use the subdivision analysis technique, an appraiser must consider a multitude of factors, often including a development plan that details the size, quantity and location of building sites that could be created on the subject. In addition to the plan, it is customary to rely on an engineer who provides development cost information. Also, the appraiser must investigate the legality and financial feasibility of the proposed development. This research enables the appraiser to account for the costs

to rezone, subdivide, plan and finish a development, resulting in a supportable estimate of the market value of the property.

The principal reason to prepare a subdivision development plan for to-be-eased property is to substantiate its market value. A well-conceived development plan can have a very significant impact on value, but it can also lead to abuse of a complex valuation technique, the “discounted cash flow.” Inaccurate valuation analysis could include unrealistically short lot absorption forecasts, very low (or missing) estimates of development costs, and high or too-rapidly increasing lot prices, among other things.

I believe that land trusts rarely should pay for these planning efforts. First, because a good land use plan can help to illustrate why a property is worth more than might be apparent, it may be unwise to participate in a process that increases the cost of land protection. Second, since a good development plan can add value to someone else’s property, it may not be appropriate for a 501(c)(3) to cover the cost. Let the easement donor have the pleasure, as it may increase the value of her charitable contribution! [See Summer 1999 *Exchange*, page 22, for information on the tax deductibility on easement-related services.]

Thorough development plans can cost at least as much as legal or

appraisal services, but all these costs probably vary widely throughout the nation, depending on the availability of experienced consultants. However, if a land trust intends to sell parcels to conservation buyers, it may be prudent to prepare a comprehensive plan. It could be of use to the conservancy in marketing protected parcels and could be used subsequently by buyers as they donate future easements.

**Q** Recently we had an appraiser tell a potential donor that encumbering his rural land (approximately 500 acres near a state park) with a conservation easement would not reduce the value. The appraiser’s rationale was that the highest and best use for the land was agriculture and recreation because it was “remote.” If the landowner placed an easement on the land and subsequently tried to sell it, it is hard to believe that the purchaser would not demand paying a lower price because of a conservation easement. How should a land trust deal with this?

**A.** This situation illustrates the value of preliminary appraisals. There are factors other than development potential (or lack thereof) that influence both rational market participants and appraisers with the curiosity or experience to seek out these factors.

Let’s say that you are offered a choice of two comparable 500-acre parcels. The

only significant difference between them is that Parcel A has all of its rights intact, while Parcel B is encumbered by a perpetual conservation easement permitting non-commercial hunting, construction of one residential compound and a remote hunting cabin. No further development, no subdivision or parceling and no commercial timber harvesting is permitted. You, a rational purchaser exhibiting self-interest, would pay more for Parcel A than Parcel B, even though you don't plan to build a permanent residence. Why?

First, financing would be easier to obtain. Lenders are a cautious lot and may not want to face the specter of owning Parcel B during the next real estate market downturn. However, as the owner of Parcel A, you (the borrower) would have the opportunity to sell pieces of it in the future, if necessary. Even if you never wanted to divide the parcel, you would know you could. This gives you some comfort and makes your lender (or heirs) sleep better.

Second, be aware of the need for a relationship with the easement grantee. By their very nature, conservation easements eliminate some of the potential land uses available to you, and hold you responsible for upholding the obligations included under the easement. Depending on its terms, an easement may require you and your successors to make expenditures on land management (to keep noxious weeds at bay, to update a forest management plan, or to control erosion, for example). At the very least, you must allow the land conservancy's stewardship staff or committee to come onto your property periodically to monitor the easement. You may also worry about disagreeing with the land trust over the interpretation of the easement.

Finally, remember that you still have the opportunity for a tax deduction after granting your own conservation easement if you buy the unencumbered parcel! At the outset, if you decided to purchase Parcel B, you would consider these risks and perhaps calculate the

present value of the tax deduction you could never obtain, then reduce your purchase offer accordingly.

While an easement-caused change in highest and best use is an important factor, it is not necessarily the sole determinant of whether a conservation easement diminishes value. The prospective easement donor may want to get a second opinion from another qualified appraiser, and the land trust may be able to provide the appraiser with market evidence or case law that prompts thinking on an issue like this.



**A landowner is interested in donating a conservation easement to our land trust on a property located in an area where the county is considering more restrictive zoning. If the easement is donated before the new zoning goes into place, will it be worth more for tax deduction purposes?**

**A.** Yes, presuming the existing zoning enhances the market value of the property, and presuming that subdivision reasonably could be approved prior to the imposition of new zoning and any related moratoria. There are probably some rare situations where the local government is so free and easy with its land use approvals that zoning has little influence on property value.



**A landowner wishes to donate a conservation easement on rangeland near the outskirts of a fast-growing metropolitan area, while retaining some building rights on the land. Before entering detailed negotiations on the terms of the easement, she wants assurances that the donation will meet her minimum goals for a charitable income tax deduction. At what point should we involve an appraiser? Our land trust is concerned that if we involve an appraiser before drafting the easement, the financial goals rather than conservation goals, will drive the negotiations and drafting of the easement.**

**A.** In my experience, it is never too early to involve the appraiser. Appraisers can and do prepare preliminary appraisals, often to inform landowners of the potential value of a conservation easement on their land.

Appraisers with appropriate experience can also be useful in identifying potential problems or latent components of market value. Examples of typical problems are impaired access, newly-adopted or proposed local land use regulations, lack of potable water in a particular geographic area, or early knowledge of potential nearby land uses that would have a negative effect on the value of the subject property. Latent components of market value are those typically not recognized by the market, such as the opportunity for wetlands enhancement (mitigation banking), certain recreational uses, or exploitation of natural resources other than minerals and timber.

If your land trust is concerned about conservation goals becoming subordinate to financial goals, what better time to smoke out a too-greedy grantor than early on? It might save you valuable time. 🌿

*A newly revised edition of Appraising Easements is available from LTA for \$24; \$20 for organizational members.*

In the next issue, attorney Emily Morrow will respond to reader questions about planned giving, such as bequests, charitable remainder trusts, gift annuities, and other estate planning matters. Ms. Morrow is a partner in the law firm Dinse, Knapp and McAndrew, P.C., and is head of its trusts, estate and tax department. She has more than 20 years of experience in estate planning and administration, and is currently working on a part time consulting basis with the Vermont Land Trust.

Please submit questions by Sept. 1 to Kendall Slee at LTA by e-mail (kslee@lta.org) or fax (202-638-4730).