Conservation Easement/Golf Course: Federal Appellate Court Addresses Deductibility

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The United States Court of Appeals for the Eleventh Circuit ("Court") addressed in a May 13th Opinion a conservation easement issue. See Champions Retreat Golf Founders, LLC v. Commissioner of IRS, 2020 WL 2462534.

The question considered was whether a conservation easement that included a private golf course and undeveloped land could qualify for a charitable deduction.

A conservation easement is a voluntary, legal agreement that permanently limits uses of the land in order to protect conservation values. They are also sometimes denominated a conservation restriction or conservation agreement. These arrangements are either sold or donated by a property owner to a qualified conservation organization (i.e., land trust, government agency, etc.) and constitute a voluntary legal agreement that limits or conditions certain types of uses of the land, in perpetuity, in order to fulfill the conservation purposes of the easement.

Champions Retreat Golf Founders, LLC ("Champions") acquired in 2002 463 acres of land in Augusta, Georgia. It subsequently built a private golf course in 2005. It occupies roughly two-thirds of the 463 acres. Champions sold 66 homesites on 95 acres. The golf course and homesites are accessible only through a gate that is staffed 24 hours a day.

Fifty-seven acres remain undeveloped. They consist primarily of bottomland forest and wetlands. Included within the 57 acres is riparian land on an offshoot of the Savannah River. Between the Little River and Savannah River lies an island consisting of both undeveloped land and six holes of the golf course.

Champions in 2010 contributed a conservation easement to the North American Land Trust ("Trust"). The Trust is described as an entity that holds and enforces conservation easements for the purpose of preserving natural habitats in environmentally sensitive areas. Champions is stated to have undertaken this donation because of a Tax Court decision allowing a charitable deduction for a conservation easement over golf course property. See Kiva Dunes Conservation, LLC v. Commissioner, T.P. Memo. 2009-145 (2009).

The conservation easement is stated to cover 348 acres consisting of the undeveloped land and the golf course. This includes the driving range. It does not include golf course buildings and a parking lot. Further, the easement does not include the homesites.

The easement property is described as a habitat for:

. . . abundant species of birds, some rare, to the regionally declining southern fox squirrel, and to a rare plant species, the denseflower knotweed.

While not accessible to the public, the property is described as readily observable to the members of the public who kayak or canoe on the Savannah and Little Rivers.

Champions subsequently claimed a charitable deduction for the previously referenced contribution. The Commissioner of the Internal Revenue Service ("IRS") disallowed the deduction. The Tax Court upheld the denial and Champions appealed to the Court.

The Internal Revenue Code provides a deduction for a "qualified conservation contribution." A qualified conservation contribution is a contribution:

1. of a qualified real property interest,
2. to a qualified organization,
3. exclusively for conservation purposes.

The Court notes that the easement Champions conveyed to the Trust met the requirement for constituting a qualified real property interest. Further, the Trust is a qualified organization. As a result, the only issue remaining was whether the contribution was made "exclusively for conservation purposes."

The Internal Revenue Code defines "conservation purpose" to mean:

(i) the preservation of land areas for outdoor recreation by, or the education of, the general public,

(ii*) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,*

(iii) *the preservation of open space* (including farmland and forest land) where such preservation is--

(I) *for the scenic enjoyment of the general public, or*

(II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy,

and will yield a significant public benefit, or

(iv) the preservation of an historically important land area or a certified historic structure.

Consequently, the sole key issue was whether Champions contributed the easement for:

. . . the protection of a relatively natural habitat of fish, wildlife, or plants or similar ecosystems, or for the preservation of open space. . . for the scenic enjoyment of the general public [that] will yield a significant public benefit.

The Court first considers how the Internal Revenue Code Regulations address:

- Habitat or ecosystem
- Support of a national forest
- Scenic enjoyment

As to the regulations requirement of "significant habitats and ecosystems," these are noted to include (but not be limited to):

- Habitats for rare, endangered or threatened species of animal, fish or plants
- Natural areas which are included in, or which contribute to, the ecological viability of a local, state, or national park, nature preserve, wildlife refuge, wilderness area, or other similar conservation area
- Natural areas that represent high quality examples of a terrestrial community of aquatic community, such as islands that are undeveloped or not intensely developed where the coastal system is relatively intact

Two of the three are deemed relevant to the Champions' easement. The Court notes:

Champions is entitled to a deduction if its easement includes habitat for “rare, endangered or threatened species of animal, fish, or plants” or if the easement contributes to the “ecological viability” of the adjacent national forest.

The Court deems the standards potentially applicable regardless of whether a golf course is present on the easement. It states the land itself does not have to be relatively “natural” and the fact that it has been altered to some extent by human activity does not disqualify as long as:

. . . the fish, wildlife, or plants continue to exist there in a relatively natural state (siting the Internal Revenue Code regulations).

The Court then reviews the record and determines that there is no dispute that the easement is home to an abundance of species of birds (including some rare). It determines that the property is a significant habitat for “rare, endangered, or threatened species.” The Court finds that the easement is such a habitat. Further, the Court notes that what matters under the Internal Revenue Code and regulation is:

. . . not so much whether all the land is natural, but whether the habitat is natural.

The Court also rejects the Commissioner’s argument that part of the golf course drains toward an area where the knotweed is located which is argued to be threatened because of chemicals used on the golf course. The conservation easement includes provisions that require Champions to follow best environmental practices prevailing in the golf industry. The Trust is required to enforce this provision. In addition, it is deemed important that the easement, as a practical matter, enhances the likelihood that the knotweed will be preserved.

The Court also finds relevant that a national forest is across the river. This is important because it contributes to “scenic enjoyment” and prevents development of the easement property.

In terms of enjoyment by the general public, the Court states that the record establishes that members of the public are able to canoe and kayak on the Savannah River alongside the easement and on the Little River as it runs through the easement. The view, therefore, includes the easement’s natural areas as well as the golf course. While the view of the golf course is admittedly a matter of taste, the Court contrasts that to the possibility that but for the easement a condominium building or private homes may be built. Consequently, the Court concludes that:

. . . were it not for the presence of a golf course on part of this property, the assertion that preserving open space alongside rivers with three- to-ten-foot banks cannot be “for the scenic enjoyment of the general public” and provide a public benefit would be a nonstarter.

The Court concludes that Champions is entitled to a deduction in an amount to be determined.

A copy of the opinion can be downloaded here.