



ALL ABOUT APPRAISALS AND CONSERVATION EASEMENTS

Easement Valuation Rules: In order for a donated conservation easement or a bargain sale of a conservation easement to be considered for a Federal income tax deduction, a “qualified appraisal” must be prepared by a “qualified appraiser.” For conservation easements valued above \$500,000, a copy of the entire appraisal must be submitted with the easement donor’s tax return. A qualified easement appraisal determines the value of a donated easement by calculating the fair market value of the property “before” and “after” the easement takes effect. The difference between the two values is the easement value. The “before” value of the property is based on the property’s highest and best use prior to being encumbered by an easement. This “before” value typically includes the value of the unencumbered land’s development potential. The “after” value shows the effect of removing some of the development potential of the parcel after it is encumbered by the conservation easement. Therefore, the more restrictive the easement is, the greater the reduction in value – and the greater the easement value or amount of the potential charitable donation. If available, appraisals should include a record of the sale of similar conservation easements within the area to determine the “after” value. Since most conservation easements are not sold at fair market value, the appraiser will usually have to rely on sales of comparable properties that are encumbered with similar restrictions instead to determine the “after” value.

Eastern Shore Easement Values: While Eastern Shore Land Conservancy makes no claims regarding the value of any particular donated conservation easement, we often see easements valued in the range of 25%-50% of the “before” easement value of the land. Easement values have been as high as 75% (e.g. where high-density zoning exists) and as low as 10% (e.g. where there is little development potential) of the “before” easement value.

Properties Held Less than One Year: If a landowner donates a conservation easement on land owned less than one year, the deduction is limited to up to fifty percent of the landowner’s cost basis of the donated property. The cost basis is the landowner’s original purchase price instead of the current market value of the property. For example, if a landowner bought a property for \$250,000 less than a year prior to the easement donation and an appraiser valued the property at the time of the easement gift at \$500,000 “before” and \$250,000 “after” (\$250,000 appraised easement value), then the potential deduction amount will be no more than \$125,000 or 50% of the appraised easement value.

Timing of an Appraisal: The “effective date” of an appraisal must be no earlier than 60 days prior to the date of contribution of the easement (the date the Deed of Conservation Easement is recorded) and no later than the due date of the income tax return on which a deduction for the gift is first claimed or reported.

Cost of an Appraisal: The cost of a conservation easement appraisal on the Eastern Shore generally ranges from \$2,500-\$5,000. This cost can be higher or lower depending on the complexity of the project and property size. *Appraisal costs are the sole responsibility of the landowners.* The fee arrangement for the appraisal cannot be based on a percentage of the appraised value of the property.

Contiguous Parcels & the Enhancement Rule: If an easement donor or a member of the easement donor's family owns a property contiguous to the easement property, that property must be included in the before and after appraisal valuation as if they were a single property. If the easement donor grants a perpetual conservation easement and it increases the value of any other property owned by the donor or a "Related Person", whether or not it is contiguous, the amount of the deduction for the donation will be reduced by the amount of the value increase, or "the enhancement" of the other property. "Related Person" has a broader meaning than "Family." The Internal Revenue Code definition includes not only "Family" but also corporations, trusts, and partnerships where the donor and/or "Related Persons" control the entity.

Appraiser Penalties for Overvaluation of a Donation: Appraisers must be aware that the IRS can attach penalties to the overvaluation of a conservation easement donation on an income tax return or the undervaluation of land subject to a conservation easement on a gift or estate tax return. Congress recently increased the penalties for such abuses. The Eastern Shore Land Conservancy highly recommends using experienced appraisers to reduce the possibility of such penalties.

The information contained in this document is only an overview of the major Internal Revenue Code requirements, Treasury Regulations, and associated guidance documents as they relate to easement valuations and appraisals. This is not a comprehensive listing or explanation of all requirements for obtaining a Federal Income tax deduction. The explanation of complex tax issues provided in this fact sheet has been greatly simplified. For more detailed information, you should seek professional council from your attorney and accountant. ESLC cannot assure the deductibility of a conservation easement donation.

For more information, additional resources, or a confidential consultation, please contact Eastern Shore Land Conservancy at 410-690-4603.