

TAX COURT CASE UPDATE

Citation:

James M. Pollard v. Commissioner, T.C. Memo 2013-38, February 6, 2013.

Overview:

The Tax Court concluded that the taxpayer could not claim a charitable contribution for a conservation easement that he granted to a county as the easement was given in exchange for the county approving an subdivision exemption.

The Facts:

In 1998, Mr. Pollard purchased property in Boulder County, Colorado with two houses on it. He demolished one of the houses with the intention of building a new home on the site. When he applied for a building permit, he was informed that because his property consisted of less than 70 acres, he would have to obtain approval from Boulder County to increase the property's building density.

A land use consultant that the taxpayer engaged advised that he had two options: (1) to renew a Nonurban Planned Unit Development (NUPUD) proposal which had been denied the property's previous owner (apparently because the acreage of the property was not sufficient to qualify for the NUPUD program); or (2) to apply for approval to split the property into two lots and obtain a subdivision exemption from the Board of County Commissioners.

The taxpayer (through his agent) raised the idea of placing a conservation easement on his property following a meeting with Boulder County officials on his subdivision exemption request. When the land use staff issued its report, it recommended against granting the exemption request. However, the report stated that approval could be justified if the taxpayer granted a conservation easement to the county. At a hearing before the Boulder County Board of Commissioners, the taxpayer initially declined to grant a conservation easement over his entire property, but eventually agreed to do so when the Commissioners insisted on it. The taxpayer inquired as to whether by granting a conservation easement, the County Board might be more agreeable to permitting a larger house to be built on the property, and they eventually indicated that they had no objections to this.

One Commissioner stated that the taxpayer's request would be worth approving only if the conservation easement encumbered the entire property. He noted that the grant of the request would give the taxpayer a benefit that had not been granted to other county residents. At a follow-up hearing, the Commissioners reemphasized their view that the granting of a conservation easement was a critical factor for their granting the taxpayer's exemption request.

Ultimately, Boulder County approved the taxpayer's subdivision exemption to split his property into two parcels, and granted his permission to construct a single residential family home on one of the lots. The taxpayer granted a conservation easement on each of the parcels.

On audit, the IRS disallowed the charitable contribution deduction (and carryforwards) that the taxpayer claimed for granting a conservation easement to Boulder County on the property on which he built his house (referred to in the decision as the second conservation easement). The IRS did not challenge the other conservation easement.

Discussion:

The taxpayer argued that no quid pro quo arrangement existed. He asserted that the approval of his subdivision exemption request was "virtually guaranteed" and so there was no need for any such arrangement. He also argued that the property previously had two residences on it and the County Board had previously given preliminary approval to the property's previous owner for a sketch plan for four building lots on the property under the NUPUD program. Further, he pointed out that the Land Use Code sections governing subdivision exemptions did not require an applicant to grant a conservation easement. Finally, he noted that all of the documents relating to the granting of the second conservation easement refer to it as a "gift."

The Tax Court concluded that the granting of the second conservation easement to Boulder County was not a charitable contribution. Rather, it was part of a quid pro quo exchange for Boulder County's approving the taxpayer's subdivision exemption request. The taxpayer did not convey the second conservation easement for the detached and disinterested motives that characterize a charitable gift. Instead, he did so to secure a personal benefit.

Rather than being persuaded by the taxpayer's claim that the subdivision exemption request was "virtually guaranteed," The Court determined that the request had little chance of being granted without his promise to grant a conservation easement. The land use staff recommended that the subdivision exemption request be rejected unless the taxpayer granted a conservation easement. The Commissioners were unanimous in their insistence that he grant a conservation easement before they would consider granting his exemption request. When the subdivision exemption was granted, it contained a requirement that the taxpayer grant Boulder County the two conservation easements.

Although the property the taxpayer had purchased previously had two dwellings on it, he was not entitled to construct two residences on the property as a matter of right. That is why he attempted to acquire the subdivision exemption from Boulder County. The Court also noted that he did not qualify for the NUPUD program, and so that option was closed to him. Further, not only had the approval of the sketch plan under the NUPUD program expired, but it had been based on the mistaken assumption that the land consisted of 70 acres.

The Court found that the taxpayer appeared to have treated the granting of a conservation easement as a bargaining chip. At first, he offered a conservation easement over part of the property. When that offer was not accepted, he agreed, in principle, to grant an easement to Boulder County encumbering the whole property. He then offered to grant a conservation easement, but asked the County Board whether they would consider permitting him to construct a larger house.

While the Land Use Code does not require the grant of a conservation easement before a subdivision exemption request was granted and at least one Commissioner stated that (to the best of his recollection) he did not require such, The Court found that the Commissioners' statements of the County Board at two public hearings indicated that the Commissioners would not have otherwise granted the taxpayer's request. In addition, the County did not complete the

granting of the exemption by recording the necessary documentation until after the taxpayer executed the gift agreement, in which he granted the second conservation easement.

Conclusion:

The Court determined that part of the conservation easement granted to the county was not a charitable contribution as it was granted in exchange for permission to build a personal residence on part of the property.