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When is a conservation easement too much?

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I saw a Virginia real-estate ad for several hundred acres of mixed timber and open land recently, priced at \$875/acre. It caught my attention for several reasons. First, it was priced below asking prices for similar properties, way below. Second, the ad included language about "mature timber." Third, it was in a reasonably desirable area.

I emailed a request for more information.

The broker faxed me materials related to the property's features, boundaries, topography, deed and a...conservation easement.

I read through the 12-page easement.

The seller's easement had stripped out almost all of the land's intrinsic (economic) value. The woods could not be "commercially harvested" under any circumstances. This included salvage sales in the event of a hurricane or gypsy-moth mortality; firewood sales from broken trees or single blow downs; sale of timber that could arise from a power-line easement being forced on the landowner; or sale of timber from improving wildlife forage opportunities. Trees could not be cut to control fire on the property. It appeared to me that the easement prohibited the owner from paying a caretaker/watchman in downed firewood, since that arrangement could be converted into dollars and, hence, amount to a commercial sale.

The easement did not prohibit having a chainsaw on the property, but it essentially eliminated its use for anything other than gathering personal firewood. It was questionable whether an owner could use a chainsaw to remove downed trees over the property's interior roads, even though removal would facilitate low-impact recreation like hiking and bird-watching, not to mention making the property safer in terms of fire suppression and emergency rescue.

The easement allowed one division of the property. It also allowed one small house to be erected on one -- but not both -- of the parcels. It did not say whether a utility easement could be cut through the woods for an overhead line. It did not say whether trees taken down to develop a new road or power-line easement could be sold. It did not say whether a new road or power line could be installed at all. The easement neither authorized a sale of road/utility easement timber nor prohibited it. In that event, the conservation organization that held this easement in perpetuity would make the call in the spirit and text of the easement as a whole. I'd interpret that as a future NO.

All commercial uses of the property were prohibited, including agriculture of any kind. The owner could not sell a mushroom or ginseng root. He could not plant an organic herb garden on 100 square feet and sell the herbs. He could not lease the stream for fishing or the trails for horseback riding. Hunting, of course, was also prohibited.

The seller undoubtedly believed that he had conserved the property forever as he saw it in 2005. Easements can't stop the inevitable changes in land that work sometimes for the better, but sometimes for the worse. An easement doesn't lock land in a time capsule.

The seller had burdened the land with over-the-top use prohibitions and taken the maximum amount of easement tax benefit against his then-current income. Maybe it made sense to him when he did it, but I expect he might have second and third thoughts about it today.

I heard that he had tried marketing the property at about \$1,750/a, then dropped the price in painful steps down to \$875. I might have been a buyer at \$100/a, but I would have stretched my judgment to get even there.

This seller had, in my opinion, taken a preservation-type conservation easement beyond where it needed to be to preserve the environmental health and integrity of his property. The seller bought into the idea that if some restrictions are good, a ton of them are better. Proof of this proposition is debatable.

A less restrictive easement would have retained considerably more sale value in the dirt.

If you're planning to sell land, I advise that you be very careful in designing a conservation easement. Balancing your short-term tax benefits, environmental values and sale expectations is the goal. Imbalance brings its own penalties.