

Cone Ranch Statement

On reviewing the Permanent Preservation Plan for Cone Ranch presented by FCEG, (I'll refer to it as FC) one statement stood out. The purpose of FC is to "marry private sector solutions with government." This causes me to ask: Why would a company who is in business to make a profit, participate in the sale of the Cone Ranch where the major selling point seems to be that the property will be protected in perpetuity for the citizens of Hillsborough County and the buyers will be people who will purchase this land with restrictions so burdensome as to make it almost impossible to use. Tax breaks in the form of something called Conservation Easements. Per the IRS Code, Section 170(a)(1) allows as a deduction for certain charitable contributions. Section 170(h)(2)(C) discusses conservation easements. The Code defines the conservation easement as:

1. The preservation of land areas for outdoor recreation by, or the education of the general public.
2. The protection of a relatively natural habitat of fish, wildlife, or plants or similar ecosystem
3. The preservation of open space (including farmland and forest land) where such preservation is
 - a. For the scenic enjoyment of the general public, or
 - b. Pursuant to a clearly delineated Federal, State or local governmental conservation policy

And will yield significant public benefit.

On reading the definition, I would think that the public would have access to any property that is donated for a conservation easement. The thrust of the discussions in front of this panel has always appeared that, at most, only six private owners would have the enjoyment of the conservation easements, not the public. In addition, much discussion has been heard regarding how Cone ranch is broken, it does not even meet the criteria of a natural habitat. So the first question becomes, does Cone Ranch even meet the criteria for a conservation easement.

I have also reviewed the Tax Court Cases whose opinions' have been published. Just as a footnote explanation, when a person has been audited and assessed additional taxes that they do not agree with, they may appeal the assessment. There are several levels of appeal but essentially, the last one is the Tax Court. For lack of a better example, the supreme court for civil tax assessments. I found eight cases. All of the cases, the taxpayers/donors gave the conservation easements to established 501(C), non-profit organizations. As I understand what FC is proposing is to have the easements gifted to a Land Trust that will be established with a nine member board with no assurances, let alone guarantees, that the board will be neutral third parties. And nothing has been said regarding a 501(C) status.

Another item that I discovered while reading these court cases was how the conservation easement is valued. The conservation easement is valued as: The fair market value of the easement should be based on the highest and best use of the owner's property at the valuation date including potential development.

As I was reading the proposal presented, FC also includes a statement that it reserves the right to engage in pine plantation and provided all pine silviculture activities are conducted in accordance with the Management Plan. What Management Plan and who will oversee it?

On reviewing statements made before this panel several items should cause concern

Ken Fountain discussed several methods regarding ensuring that the easements are enforced. Among them were the statutory right of the easement holder to go on the property to ensure that the easements are being enforced. When the owner is not obeying the easements, there are remedies at law. In a perfect world, an enforcement action would be swiftly addressed and the problem remedied. Unfortunately, this is real life. Remedies at law are slow, expensive and may not be successful.

Mr. Fountain also admitted that there is often a provision that allows for the amendment of the easement by agreement of both parties. So allow me to give you a hypothetical example. You are a wealthy, a very wealthy individual. You purchase one of the 2,000 acre parcels of Cone Ranch. The IRS Code allows you to take a deduction valued at the highest and best use of the property. Even in this down economy, would it be unreasonable for you to obtain an appraisal that states you could potentially develop the

property and sell half acre lots for \$50,000 each. A value of \$20 million dollars. If you were lucky enough to obtain an appraisal for a possible commercial use, the potential valuation would be significantly larger. However, you are not an overly greedy person so your valuation is based on half acre lots that would sell at \$50,000. Because of the conservation easement that you have donated to a supposedly independent land trust, your appraiser concludes that you have lost half the value of the property: \$10 million dollars which you are able to deduct from you tax returns. Meanwhile, based on the reserved rights listed in the proposal and remember that Mr. Fountain stated each property could have unique negotiated restrictions, you are able to plant and harvest pine trees. The income from the pine trees really only needs to meet your expenses for the property because you have already made your profit from tax deductions. Now wait seven years from the last time you deducted your donation of the conservation easement. The statutes of limitations have run on your returns. Now, what can you do? Negotiate with the owners of the conservation easements to obtain your rights back to your property. As Mr. Fountain stated, there is a provision that allows for the amendment of the easements. Now you can sell your half acre lots, probably for a lot more than \$50,000 and, thanks to the tax laws, you will only pay the maximum of 15% rate for the capital gains. Remember this is just a hypothetical example but also remember my first question: Why would anyone buy property that contains restrictions that make it almost impossible to use.

Once upon a long time ago, someone told me that the government should conduct their business under the bell, book and candle theory. Bell: Does the proposal sound right?

Book: Is it legal and/or meet the regulations? Candle: If the results of this transaction become public, could you easily defend/support your actions? I submit to you that this proposal from FC, as it stands now, fails all three tests.