

United States Tax Court

T.C. Memo. 2026-106

WATSON LAKE INVESTMENTS, LLC,
TERRY J. HEATH, TAX MATTERS PARTNER,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

MEADOW LAKE INVESTMENTS, LLC,
TERRY J. HEATH, TAX MATTERS PARTNER,
Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket Nos. 13696-20, 24239-22.

Filed October 19, 2026.

Samuel F. Little, Jr., for petitioner.

Olivia H. Rembach, Ka (Matt) Tam, Scott A. Hovey, Stephen C. Welker,
and *Debora Ruiz*, for respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

LAUBER, *Judge*: These syndicated conservation easement (SCE) cases have a familiar fact pattern, and this Opinion will have a familiar denouement. In December 2015 Watson Lake Investments, LLC (Watson Lake), acquired 144 acres of undeveloped land in rural Georgia for

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[*2] \$325,000, or \$2,257 per acre.¹ In April 2016 Meadow Lake Investments, LLC (Meadow Lake), acquired 189 acres of undeveloped land, just two miles away, for \$320,000, or \$1,693 per acre.

Having granted conservation easements over the parcels, Watson Lake and Meadow Lake claimed, on their 2016 and 2017 Federal income tax returns, charitable contribution deductions predicated on the theory that the “before values” of the two parcels—that is, their values before being encumbered by the easements—were \$8,371,000 (or \$58,132 per acre) and \$11,456,000 (or \$60,614 per acre), respectively. They thus took the position that the land had appreciated by more than 2,000% from the time they acquired it.

Petitioner’s appraiser calculated these values on the assumption that the highest and best use (HBU) of each tract was mixed-use development, supposedly including 66 to 69 single-family lots, 35 to 45 acres of multifamily and senior housing, and numerous commercial and office sites. These back-of-the-envelope development schemes were wholly unrealistic in a rural county with a total population of roughly 22,000. We conclude that the HBU of each tract was its current use—for low-density, single-family residences, with agriculture, recreation, and timber harvesting as complementary uses.

Employing the comparable sales method—backstopped by the actual prices paid to acquire the tracts 12 to 21 months before the easements were granted—we hold that the “before values” of the two tracts were \$331,000 and \$435,000, respectively, as concluded by respondent’s expert. Subtracting from those figures the “after values” we have determined, we hold that Watson Lake and Meadow Lake are entitled to charitable contribution deductions of \$115,300 and \$208,500, respectively. Given the large disparity between those values and the values claimed on the tax returns, a 40% penalty for a gross valuation misstatement applies in each case, as determined by the Internal Revenue Service (IRS or respondent). *See* § 6662(a), (b)(3), (h).

¹ Unless otherwise indicated, statutory references are to the Internal Revenue Code, Title 26 U.S.C. (Code), in effect at all relevant times; regulation references are to the Code of Federal Regulations, Title 26 (Treas. Reg.), in effect at all relevant times; and Rule references are to the Tax Court Rules of Practice and Procedure. We round monetary amounts to the nearest dollar, and we generally round land parcel sizes to the nearest acre.

[*3]

FINDINGS OF FACT

The following facts are derived from the Pleadings, three Stipulations of Facts with attached Exhibits, a Stipulation of Settled Issues, numerous trial Exhibits, and the testimony of fact and expert witnesses admitted into evidence at trial. Watson Lake and Meadow Lake are Georgia limited liability companies (LLCs) classified as TEFRA partnerships for their taxable years ending December 31, 2016 and 2017, respectively.²

Each partnership had its principal place of business in Georgia when its Petition was timely filed. Terry J. Heath, the tax matters partner (TMP) of each entity and the petitioner in each case, likewise resided in Georgia.³ Absent stipulation to the contrary, these cases would be appealable to the U.S. Court of Appeals for the Eleventh Circuit, and we thus follow its precedent. *See* § 7482(b)(1)(E); *Golsen v. Commissioner*, 54 T.C. 742, 757 (1970), *aff'd*, 445 F.2d 985 (10th Cir. 1971).

Several fact witnesses called by petitioner were the principal actors in the SCE transactions, their agents, or their associates. They thus had a direct or indirect stake in the outcome of these cases. While generally showing good recall of many facts from the 2015–2017 period, they sometimes expressed inability to recall certain facts about matters that might be regarded as unhelpful to petitioner’s position. Because of some witnesses’ selective inability to recall pertinent facts, the Court has been required to make credibility determinations.

I. *Emanuel County, Georgia*

The conservation easements were placed on land in Emanuel County, Georgia. Emanuel County lies in the southeastern portion of the State, halfway between Macon and Savannah. Its population in 2010 was 22,598. By 2020 its population had grown by 170 residents, to 22,768. Its average annual population growth during the decade was thus less than 0.1%. Its county seat, Swainsboro, had a population of

² Before its repeal, the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Pub. L. No. 97-248, §§ 401–407, 96 Stat. 324, 648–71, governed the tax treatment and audit process for many partnerships, including Watson Lake and Meadow Lake.

³ Although there are two consolidated cases, we will refer to Mr. Heath as “petitioner” because he is the TMP of each partnership.

[*4] 7,425 in 2020. The size of Emanuel County’s labor force decreased by 7.7% from 2010 to 2016.

During 2016 and 2017 Emanuel County and its surrounding counties had median household income of roughly \$33,000 (compared to \$49,000 for Georgia as a whole). Between 2010 and 2016, only 167 new single-family homes were built in Emanuel County and the seven counties that surround it. The average sale price of those 167 homes was \$146,770. Of those 167 homes, only 10 were built in Emanuel County. The average sale price of those 10 homes was about \$68,800. Between 2010 and 2016, the number of new building permits issued in Emanuel County ranged from 5 to 9 per year. Three permits (on average) were issued each year for single-family residences.

The Emanuel County Board of Assessors maintains comprehensive records of sales for purposes of assessing annual real property taxes. According to its records, no property comprising between 50 and 250 acres sold for more than \$1 million between 2015 and 2018.

II. *Planning for Conservation Easements*

Arthur Goolsby, originally trained as a geologist, is an experienced real estate investor and developer. During a long career he has focused his efforts on real estate projects in the Southeastern States and Montana. As best he could recall, he engaged in his first SCE transaction in 2013 or 2014 using property in Tennessee.

Terry Heath got into real estate development in 2006, about a generation after Mr. Goolsby. Although they had known each other for a long time, they first became business partners in 2010/2011. Mr. Goolsby introduced Mr. Heath to conservation easements and to Forever Forests, which had assisted Mr. Goolsby with the Tennessee SCE transaction mentioned above. Forever Forests was a promoter of SCE transactions.⁴ It was owned by Nancy Zak.⁵

⁴ “Promoter” is sometimes viewed as a loaded term in the tax world because of the penalty imposed by section 6700(a) for “[p]romoting abusive tax shelters.” In this Opinion we use the term “promoter” in its ordinary sense, making no determination as to whether the activities of Forever Forests or others would subject them to risk of a civil penalty under section 6700(a), a question that is not before us.

⁵ On December 18, 2018, the United States filed a complaint against Ms. Zak and other defendants seeking an order enjoining them from organizing, promoting, or selling abusive SCE transactions. The complaint alleged that Ms. Zak, acting through Forever Forests and other entities, assisted in the organization, promotion, and

[*5] Forever Forests offered its clients what might be called “turn-key service.” It charged the landholder a flat fee to handle all steps necessary to syndicate a conservation easement on his or her property. It employed three project managers who were responsible for shepherding the deals to completion. Brian Sullivan was one of the project managers.

To implement an SCE transaction, Forever Forests and its affiliates worked with attorneys to draft legal documents and promotional materials, facilitated discussions between the property owner and the land trust that would receive the easement donation, arranged for an appraiser to place a very high value on the proposed easement, and recruited investors seeking tax deductions. After the SCE offering closed, Forever Forests worked with the partnership and its accountants to prepare tax documents to ensure that the investors were allocated the deductions for which they had paid.

Mr. Goolsby became acquainted with Mr. Sullivan during 2014, when the latter served as the project manager for the Tennessee SCE transaction mentioned above. After discussing that deal with Mr. Goolsby, Mr. Heath contacted Forever Forests in 2015 to express interest in similar transactions. Messrs. Heath and Goolsby then commenced a search for inexpensive land that could be used for SCE transactions in Georgia. Land in Emanuel County fit the bill.

III. *Watson Lake Property*

In December 2015 Messrs. Heath and Goolsby created Watson Lake as the vehicle for acquiring their first parcel, a 144-acre tract of raw land in Emanuel County (Watson Lake Property or 144-acre tract). Watson Lake is an LLC of which Messrs. Heath and Goolsby initially owned 100%. It acquired the 144-acre tract from a fiduciary—the investment manager of an individual retirement account—on December 28, 2015. Petitioner does not dispute that this was an arm’s-length

execution of conservation easement donations and SCEs, resulting in her customers’ claiming improper and outsized charitable contribution tax deductions. *See* Complaint at 12–18, *United States v. EcoVest Cap. Inc.*, No. 18-cv-05774 (N.D. Ga. Dec. 18, 2018), Dkt. No. 1. On March 25, 2021, Ms. Zak consented to the entry of an injunction barring her from organizing, promoting, selling, or participating in any plan, arrangement, or sale that involves a deduction for a qualified conservation contribution within the meaning of section 170(h). *See* Final Judgment of Permanent Injunction Against Defendant Nancy Zak at 1–2, *EcoVest Cap. Inc.*, No. 18-cv-05774 (N.D. Ga. Apr. 12, 2021), Dkt. No. 271.

[*6] transaction. Watson Lake paid \$325,000, or \$2,257 per acre, for the land.

The Watson Lake Property is on the west side of Swainsboro. Roughly half of the 144-acre tract lies inside the city limits. The map below shows how the Watson Lake Property is situated:



As shown on the map, a single-runway airstrip lies directly across a local road to the south of the Watson Lake Property. A state prison lies about 500 yards north of the Property, and a low-income housing project lies less than a mile to the east. The 144-acre tract includes a lake and related flood plain, and roughly 25% of the Property is occasionally or frequently flooded.

In February 2016 Messrs. Heath and Goolsby engaged Dennis Benson to prepare an appraisal of the conservation easement they intended to place on the Watson Lake Property.⁶ During 2016 and 2017 Mr. Benson worked on 8 to 10 conservation easement appraisals, most involving properties owned by Messrs. Heath and Goolsby. Each easement transaction was syndicated by Forever Forests.

On April 19, 2016, Mr. Heath and Forever Forests executed a Consulting Service agreement, in which Forever Forests agreed to facilitate syndication of an easement on the 144-acre tract. Brian Sullivan was designated the project manager. The agreement stated that

⁶ Although Mr. Goolsby had known Mr. Benson for 30+ years and was principally responsible for securing his services, Dolph Winders, an attorney representing Forever Forests, was ultimately shown as “the client” in the engagement agreement.

[*7] Forever Forests would receive for its services a flat fee of \$150,000, payable in stages as the project progressed toward closing.

The services contemplated by this agreement were in fact performed by two entities, both controlled by Ms. Zak. Forever Forests worked principally on the negotiations and documentation required to effect the conservation easement. Its affiliate, Green Earth Reserve, LLC, served as the “sponsor” of the SCE transaction. In that capacity it prepared the offering statement, identified investors, prepared marketing materials, and shepherded the deal to closing.

On April 7, 2016, the Atlantic Coast Conservancy (ACC) sent Mr. Heath its proposal “for preparing and holding a conservation easement on your . . . property.” ACC explained that its fees for doing this would total \$57,923: \$11,590 for preparing the easement documents and a recommended payment of \$46,333 for “stewardship fees.” The latter would cover its services in monitoring and defending the easement in perpetuity. That same day Mr. Heath sent ACC the parcel numbers for the tracts constituting the Watson Lake Property, explaining: “This is the one we are putting the conservation easement on this year.”

IV. *Meadow Lake Property*

While the transaction described above was in process, Messrs. Heath and Goolsby went to work acquiring a second property for a substantially identical SCE transaction they planned to complete the following year. In April 2016 they created Meadow Lake as the vehicle for acquiring the second parcel. Meadow Lake is an LLC of which Messrs. Heath and Goolsby initially owned 100%.

The second parcel was a 189-acre tract of raw land in Emanuel County (Meadow Lake Property or 189-acre tract). It is located on the east side of Swainsboro, roughly two miles from the Watson Lake Property. Like the Watson Lake Property, it included a lake and a related flood plain.

Meadow Lake acquired the Meadow Lake Property on April 29, 2016, for \$320,000, or roughly \$1,693 per acre. The seller was JJM Developments, LLC (JJM), an unrelated party. JJM had acquired the Meadow Lake Property in 2006 for \$483,200, planning to develop it into a residential subdivision. The 2008 and 2009 financial crisis, which devastated the regional real estate market, dashed those hopes. Concluding that a subdivision was not financially feasible, JJM planned to hold the property for future sale to a developer. Believing that the local market

[*8] had not much improved by April 2016, JJM's principals decided to sell the 189-acre tract. They listed it for \$375,000 with a local broker.

JJM's attorney negotiated the purchase price at arm's length with an attorney representing Messrs. Heath and Goolsby. During the negotiations JJM's principals learned that Messrs. Heath and Goolsby intended to use the Meadow Lake Property for an SCE transaction. This caused JJM to insist that the "[b]uyer will be responsible for all legal work in setting up the conservation easement." Neither JJM nor its principals, both of whom were successful lawyers, were under any compulsion to sell. One of them testified that he regarded \$320,000, the ultimate sale price, as a "fair price."

On March 23, 2017, Mr. Heath and Forever Forests executed a second Consulting Service agreement, whereby Forever Forests agreed to facilitate syndication of a conservation easement on the Meadow Lake Property. Once again, Mr. Sullivan was designated the project manager, Mr. Benson was retained to appraise the easement, Mr. Winders was recruited to provide legal services, and ACC was selected as the grantee.

The agreement stated that Forever Forests would again be paid a flat fee of \$150,000 for its services. These services were performed by two entities. As before, Forever Forests worked principally on the documentation required to effect the conservation easement. But Red Oak Reserve, LLC, owned by Mr. Sullivan, replaced Green Earth Reserve as the "sponsor" of the SCE transaction.

V. *The Alleged Development Plans*

Mr. Benson's appraisals relied on "mixed-use development" plans created by Messrs. Heath and Goolsby and drawn up by Philip Chivers, a land surveyor. These were not serious development plans. They were conceptual site plans created solely for use in Mr. Benson's appraisals of the proposed conservation easements.

Mr. Heath dictated the components of each hypothetical development: single-family residences, multifamily housing, senior living facilities, and commercial/office lots. Mr. Heath also determined how many lots (or how many acres) each component of the development would contain. He then asked Mr. Chivers to draw up a site plan incorporating these specifications.

Using computer software, Mr. Chivers created site plans and sent them to Christopher Adamson, who worked for a civil engineering firm.

[*9] Mr. Adamson prepared preliminary cost estimates for the infrastructure that would be required for the single-family portions of each site plan. He did not address the infrastructure costs required for the multifamily or senior living portions of the site plans. The infrastructure costs he addressed related principally to road construction, grading and soil removal, drainage, and sanitary/sewer. He ignored any costs related to wetlands remediation or environmental impacts.

The site plan for the Watson Lake Property included 66 single-family lots, 525 units of senior and multifamily housing on 45 acres, and numerous commercial/office lots, as shown below:



The site plan for the Meadow Lake Property included 69 single-family lots, an unspecified number of units of multifamily and senior housing on 35 acres, and numerous commercial/office lots, as shown below:

[*10]



Forever Forests, Messrs. Heath and Goolsby, and the consultants took no steps to implement these site plans. No action was taken to prepare the properties for subdivision, e.g., by grading the land, building roads, or installing utilities. No studies were undertaken regarding soil quality, flood zone hazards, or environmental impacts. Roughly 30% of the Watson Lake Property consisted of wetlands, but no studies were undertaken to ascertain how these areas would affect development (e.g., by necessitating the purchase of wetlands remediation credits). No marketing studies were performed to assess whether demand existed in Emanuel County (or its neighboring counties) for single-family and multifamily housing on the scale contemplated by the site plans.

VI. *Zoning Matters*

Both properties would have had to be rezoned to permit mixed-use development. For the Watson Lake Property, the only step Messrs. Heath and Goolsby took to address the need for rezoning was to secure a letter from Bruce Kirby, the director of Swainsboro's Building, Planning, and Zoning Department. Mr. Kirby did not draft this letter himself as part of his regular duties as a city employee. Rather, Mr. Heath drafted the letter and asked Mr. Kirby to sign it, which he did. In the letter, dated May 18, 2016, Mr. Kirby said that the Swainsboro planning and zoning commission would "look very favorable [sic]" on a request to

[*11] rezone the portion of the Watson Lake Property (roughly 52.5%) that lay within the Swainsboro City limits.

Mr. Kirby testified credibly at trial and explained the Swainsboro rezoning process. When an application for rezoning is submitted to his office, his job is to make sure the application package is complete, then send it to the planning and zoning commission for its consideration. He makes no recommendation, one way or the other, as to whether the application should be approved.

Upon receiving an application, the commission notifies the public via the city newspaper and signage on the property. After a public hearing, the commission votes on whether to recommend (or not recommend) that the city council approve rezoning. The city council has the final say, subject to judicial review. Mr. Kirby explained that, in stating that the commission would look favorably on Watson Lake's application, he was expressing his opinion. He confirmed that no application to rezone the Watson Lake Property was ever submitted to his office.

The record contains no credible evidence that Messrs. Heath and Goolsby made any effort whatsoever to investigate the possibility of rezoning the Meadow Lake Property. On May 10, 2017, Mr. Heath sent to Mr. Benson and Mr. Sullivan (the project manager for Forever Forests) an email captioned "Zoning letter for Meadow Lake." Mr. Heath attached a proposed draft letter that was prepared for Mr. Kirby's signature. But the letter was not dated, and it was not signed.

Mr. Heath later supplied Mr. Benson with what purported to be a letter signed by Mr. Kirby on May 19, 2017. This letter was a forgery. It has substantially the same text as the draft letter created by Mr. Heath, referenced above. But Mr. Kirby credibly testified that the letterhead appearing on this document was not the letterhead used by his department; that the phone number shown on this document was not his department's phone number; and that the signature appearing on this document was not his signature. A visual comparison between the authentic 2016 letter and the forged 2017 letter confirms the correctness of Mr. Kirby's testimony.

The forged letter referenced above was the sole evidence on which Mr. Benson relied for his conclusion that "it is reasonably probable that a request to re-zone the [Meadow Lake Property] for a mixed-use development will be approved." Apart from the forged letter, petitioner adduced no documentary or factual evidence, and no other expert opinion,

[*12] that addressed the likelihood of rezoning the Meadow Lake Property.

VII. *Valuing the Watson Lake and Meadow Lake Properties*

The evidence at trial established that Mr. Benson’s appraisals were heavily influenced by directions he received from Mr. Heath. A conceptual site plan for the Watson Lake Property, drawn up by Mr. Chivers, was dated February 9, 2016. One week later, Mr. Heath emailed Mr. Benson and asked him “to put these numbers in a spreadsheet” for the Watson Lake Property:

- Multifamily: 33.267 acres @ \$70,000 per acre;
- Senior apartments: 10.459 acres @ \$75,000 per acre;
- Office: 11 lots @ \$185,000 per lot;
- Commercial corner lots: 6 lots totaling 10.133 acres @ \$163,000 per acre;
- Residential subdivision: 28 waterfront lots totaling 30.542 acres @ \$85,000 per acre, plus 38 interior lots totaling 28.062 acres @ \$65,000 per acre;
- 3 year absorption with \$1.5 million development cost.

On February 17, 2016—the following day—Mr. Benson emailed Mr. Heath a discounted cashflow (DCF) spreadsheet, which he had constructed using the numbers and values shown above, as directed by Mr. Heath. Applying a discount rate of 9%, the spreadsheet determined a net present value (NPV) of \$6,658,000 for the hypothetical Watson Lake mixed-use development.

On February 18, 2016—the following day—Mr. Benson prepared and sent to Mr. Heath an engagement letter in which he proposed “to assist the client in asset valuation for a conservation easement.” Mr. Benson described the type of opinion requested as follows: “Market value ‘before’ and ‘after’ establishment of a conservation easement.”

Mr. Heath later decided to change the configuration of the commercial lots for the Watson Lake Property. On May 4, 2016, he emailed Mr. Benson with his “updated changes to the subdivision lot breakdown.” In an attachment he stated that the Watson Lake Property

[*13] development was now to include “10 commercial corner lots,” with specified acreage for each, and a 9-acre “commercial park.” Mr. Heath told Mr. Benson to revise his DCF spreadsheet by inputting these new specifications. That same day Mr. Benson sent Mr. Heath—and Mr. Heath forwarded to Mr. Sullivan at Forever Forests—a revised spreadsheet showing an NPV of \$8,286,000 for the hypothetical Watson Lake development. This figure was \$1,628,000 higher than the valuation Mr. Benson had calculated back in February.

On May 17, 2016, Mr. Heath made what appear to have been the final changes to the hypothetical Watson Lake development plan. On that date he told Mr. Chivers, the land surveyor, that he wanted to add two one-acre lots to the “commercial park” and to subdivide two of the larger commercial corner lots. Two days later Mr. Chivers replied that he had drawn the two new lots “so you can see the size” and had “made those other changes you requested.”

In an appraisal dated January 16, 2017, Mr. Benson determined that the Watson Lake Property had a “before value” of \$8,371,000—\$85,000 higher than the NPV he had calculated in the previous spreadsheet. The difference appears traceable to increased values assigned to the commercial lots and multifamily units. He thus valued the Watson Lake Property at \$58,132 per acre.

At trial Mr. Benson admitted that no property in Emanuel County had ever sold for anything approaching \$58,132 per acre. In determining this value he ignored sales of similarly sized parcels in Emanuel County and its environs, asserting that none of these properties was “comparable.” As his rationale for doing this he asserted that the Watson Lake Property “is considered ‘unique’ due to its physical features, immediate access to roadways, location within the Swainsboro City Limits and the ability to re-zone the tract for development.”

The Watson Lake Property was not “unique,” in the sense of being markedly different from nearby property in Emanuel County. In terms of its physical features, it resembled the land around it—undeveloped forest land punctuated by numerous small lakes and ponds. Plenty of other vacant land in Emanuel County lay near roadways and in or near the Swainsboro city limits. And there was nothing special about the Watson Lake Property that rendered it uniquely susceptible to rezoning. George Frix, who has served for many years as the director of Building, Planning, and Code Enforcement for Emanuel County, credibly testified

[*14] that the Watson Lake Property is “pretty similar to other undeveloped tracts in the county.”

Rejecting the comparable sales approach, Mr. Benson calculated a “before value” for the Watson Lake Property under the income approach, employing the DCF methodology shown in the spreadsheets he had sent Mr. Heath previously. This analysis relied on wildly unrealistic assumptions about the local real estate market. He assumed a market absorption rate for the residential lots that outpaced any absorption rate that could rationally be expected for Emanuel County, which had issued an average of three single-family building permits annually during the previous five years. *See supra* p. 4. He then used sales transactions involving land in more populous and economically prosperous parts of Georgia to create unrealistic per-acre values for both the residential and the commercial elements hypothesized by the site plan.

In an appraisal dated December 22, 2017, Mr. Benson employed substantially the same methodology to determine that the Meadow Lake Property had a “before value” of \$11,456,000. He again ignored sales of similarly sized parcels in Emanuel County and its environs, asserting that none of these properties was comparable because the Meadow Lake Property “is considered ‘unique.’” That was supposedly so “due to its physical features, immediate access to roadways, location within the Swainsboro City Limits and the ability to re-zone the tract for development.”

In the appraisal he prepared earlier that year, Mr. Benson had asserted that the Watson Lake Property—two miles away on the other side of Swainsboro—was “unique” for precisely the same reasons. *See supra* p. 13. The Watson Lake and the Meadow Lake Properties in fact resembled each other in several respects: Both were large (140+ acre) parcels, both contained a lake or a pond, both were near major roadways, and both were wholly or partially within the Swainsboro city limits. The record established that numerous other tracts in the vicinity shared the same characteristics. Mr. Frix credibly testified that the Watson Lake and Meadow Lake Properties were “just undeveloped tracts” that were similar to each other and “pretty similar to other undeveloped land tracts” in Emanuel County.

These facts by themselves show that neither property was “unique” in any sense relevant to valuation. And Mr. Benson’s characterization of *both properties* as unique undermines his analysis in another respect. If the Watson Lake Property had the same salient

[*15] features as the Meadow Lake Property, and if both properties (as Mr. Benson surmised) had the same HBU of mixed-use development, why did he not consider the 2015 sale of the Watson Lake Property, for \$2,257 per acre, a persuasive comparable sale in determining the “before value” of the Meadow Lake Property?

VIII. *Structuring the Transactions*

Forever Forests recommended an ownership structure that is common to many SCE transactions. Watson Lake and Meadow Lake would each serve as the property company or “PropCo” holding the land on which the easement would be placed. An investment company or “InvestCo” would be formed to raise funds from investors and use that money to purchase the PropCo units held by Messrs. Heath and Goolsby. The PropCo, now owned largely by the InvestCo, would place a conservation easement on the property. The investors would then receive, through each InvestCo, pro rata shares of the tax deduction that each PropCo claimed for the easement.

Both deals were marketed to prospective investors using a deduction-to-investment ratio. This ratio specified the dollar amount of the charitable contribution deduction investors would receive for every dollar invested. For both deals, the ratio ultimately selected was 4.5:1. As one financial planner explained to her client: “For every dollar [invested] you get \$4.50 in deductions.” Referring to the Watson Lake offering, another financial planner told her client: “This specific project has a 4.5 ratio which is reflected above.” Thus, if that investor paid \$465,000 for his LLC interest, he would receive a tax deduction of “\$465,000 * 4.5,” or \$2,092,500.

In August 2016 Watson Lake Partners, LLC (WL Partners), was formed as the first InvestCo, with Ms. Zak as its managing member. Later that month, Messrs. Heath and Goolsby agreed to sell 97% of their interest in Watson Lake to WL Partners. This 97% interest would subsequently be offered to investors in a confidential private offering (CPO) issued on August 15, 2016.

According to the CPO summary, WL Partners would pay \$1,033,127 to acquire a 97% interest in Watson Lake. At that time, Watson Lake’s only asset was the 144-acre tract, which it had purchased a year previously for \$325,000. On the basis of a “preliminary appraisal” of the easement prepared by Mr. Benson, the CPO summary estimated

[*16] that investors would receive a charitable contribution tax deduction of \$8,109,000.

On June 16, 2017, Meadow Lake Partners, LLC (ML Partners), was formed as the second InvestCo, with Ms. Zak as its managing member. Later that month, Messrs. Heath and Goolsby agreed to sell 96% of their interest in Meadow Lake to ML Partners. This 96% interest would subsequently be offered to investors in a CPO issued July 17, 2017.

According to the CPO summary, ML Partners would pay \$1,028,659 to acquire a 96% interest in Meadow Lake. At that time, Meadow Lake's only asset was the 189-acre tract, which it had purchased a year previously for \$320,000. On the basis of a "preliminary appraisal" of the easement prepared by Mr. Benson, the CPO summary estimated that investors would receive a charitable contribution tax deduction of \$11,116,000.

IX. *Closing the Deals*

The Watson Lake offering closed on November 29, 2016, with 12 investors purchasing a 97% interest in WL Partners for \$1,768,258. Of the capital thus raised, WL Partners used \$1,028,835 to purchase from Messrs. Heath and Goolsby a 97% interest in Watson Lake. Of that sum, \$665,064 was paid to them in cash; \$299,341 was paid to discharge their mortgage liability on the property; and \$64,430 was paid to reimburse them for expenses Watson Lake had incurred. As far as the record reveals, the investors voted unanimously to place a conservation easement on the property. On December 26, 2016, Watson Lake recorded an easement over the Watson Lake Property in favor of ACC, a "qualified organization" described in section 170(h)(1)(B).

The Meadow Lake offering closed on November 10, 2017, with 29 investors purchasing a 98% interest in ML Partners for \$2,276,976. Of the capital thus raised, ML Partners used \$1,378,288 to purchase from Messrs. Heath and Goolsby a 96% interest in Meadow Lake. Of that sum, \$1,035,307 was paid to them in cash; \$288,968 was paid to discharge their mortgage liability on the property; and \$54,013 was paid to reimburse them for expenses Meadow Lake had incurred. As far as the record reveals, the investors voted unanimously to place a conservation easement on the Meadow Lake Property. On December 20, 2017, Meadow Lake recorded an easement over the Meadow Lake Property in favor of ACC.

[*17] X. *Tax Returns and IRS Examination*

Watson Lake filed Form 1065, U.S. Return of Partnership Income, for the short tax period beginning November 29 and ending December 31, 2016. The return claimed a charitable contribution deduction of \$8,158,473, of which \$8,109,000 was claimed for the conservation easement. The balance of the deduction, which the IRS allowed, appears to have been claimed for the “stewardship fees” paid to ACC. *See supra* p. 7.

On August 21, 2020, the IRS issued to Mr. Heath, Watson Lake’s TMP, a Notice of Final Partnership Administrative Adjustment (FPAA) that denied in full the \$8,109,000 deduction claimed for the easement. The IRS determined that Watson Lake had failed to establish that it satisfied the statutory and regulatory requirements for claiming a non-cash charitable contribution. Alternatively, it determined that Watson Lake had failed to establish that the value of any deductible contribution exceeded zero. The FPAA determined a 40% penalty for a gross valuation misstatement under section 6662(a), (b)(3), and (h) and (in the alternative) a 20% penalty under other provisions of section 6662.

Meadow Lake filed Form 1065 for the short tax period beginning November 10 and ending December 31, 2017. The return claimed a charitable contribution deduction of \$11,458,803, of which \$11,116,000 was claimed for the conservation easement.

On September 16, 2022, the IRS issued to Mr. Heath, as Meadow Lake’s TMP, an FPAA that denied in full the \$11,116,000 deduction claimed for the easement. The IRS determined that Meadow Lake had failed to establish that it satisfied the statutory and regulatory requirements for claiming a noncash charitable contribution. Alternatively, it determined that Meadow Lake had failed to establish that the value of any deductible contribution exceeded zero. The FPAA determined a 40% penalty for a gross valuation misstatement under section 6662(a), (b)(3), and (h) and (in the alternative) a 20% penalty under other provisions of section 6662.

XI. *Tax Court Proceedings*

Mr. Heath timely petitioned for readjustment of partnership items in both cases. By Order served August 15, 2024, we consolidated the cases for trial, which we held in Atlanta beginning October 6, 2025. After concessions by the parties, the sole issues that remain for decision are the valuation of the easements and the applicability of penalties.

[*18] Both parties offered expert reports focusing exclusively on valuation.

A. *Petitioner's Experts*

1. *Dennis Benson*

We recognized Dennis Benson as an expert in real estate appraisal. Petitioner submitted, as Mr. Benson's opening reports, the appraisals he had prepared on January 16, 2017, for Watson Lake and on December 22, 2017, for Meadow Lake. In those appraisals Mr. Benson calculated "before values" of \$8,371,000 and \$11,456,000, respectively. *See supra* pp. 13–14.

According to Mr. Benson, his analysis of the Emanuel County market "show[ed] a strong demand for lots targeting homes in the \$300,000 to \$1,000,000 range." He posited that both hypothetical subdivisions would "appeal to high-end residential users" who desired to live in "gated communities." He assumed that each property would thus be "marketed as a high-end upper-income development, which does not compete with the typical subdivision in Emanuel County." Finding no transactions in Emanuel County involving property that he deemed comparable, he looked to sales of lots in "high-end subdivisions" elsewhere in Georgia.

Mr. Benson selected as his comparables three subdivisions in the Macon metropolitan area and two subdivisions in the Savannah metropolitan area. All five were "gated communities" offering numerous amenities. Adjusting the lot prices achieved in those subdivisions, he determined that the 66 single-family lots hypothesized for the Watson Lake subdivision would sell for an average price of \$84,697 per lot, and that the 69 single-family lots hypothesized for the Meadow Lake subdivision would sell for an average price of \$75,000 per lot. The average size of the residential lots shown in the two site plans averaged just over one acre. Mr. Benson thus posited that the land would sell for \$70,000 to \$80,000 per acre.

The Watson Lake site plan envisioned 10 commercial lots, and the Meadow Lake site plan envisioned 17 commercial lots. Mr. Benson posited that all these lots would be sold within two years. The evidence established that only three commercial lots were sold in Swainsboro during 2013–2017—one each year during 2013–2015 and none in 2016 or 2017. Mr. Benson offered no explanation—apart from a generalized assertion that "the market is improving"—to support his conclusion that

[*19] Swainsboro could absorb within two years the number of commercial lots he hypothesized.

The Watson Lake site plan envisioned 525 multifamily and senior living units on 45 acres, and the Meadow Lake site plan envisioned an unspecified number of multifamily and senior living units on 35 acres. In neither of his reports did Mr. Benson analyze (or even address) the demand within Emanuel County for multifamily or senior housing. And he offered no data or analysis to suggest that senior citizens residing in other counties would choose to move to Emanuel County to reside in a facility located there.

2. *Larry G. Singleton*

Larry G. Singleton is a licensed real estate appraiser in Georgia and has decades of experience in valuing land. He holds the Certified Commercial Investment Member designation for commercial real estate. We recognized him as an expert in real estate appraisal.⁷

Mr. Singleton determined a “before value” for the Watson Lake Property under the comparable sales method, using two alternative approaches. First, he assumed that the 144-acre tract would be offered for sale as a single parcel. Second, he assumed that the 144-acre tract would be sold in pieces as components of a mixed-use development.

In the first scenario Mr. Singleton looked at land sales in Emanuel County during 2014–2017. Of the 28 sales he listed, all but one occurred at prices below \$2,500 per acre. He asserted that none of these properties was comparable. That was supposedly so because none of the properties “could be put to the same use as the subject property.”

Mr. Singleton then expanded his search to the rest of southern Georgia. He selected five sales, two near Macon and the others close to Savannah, Columbus, and Albany. Each city dwarfs Swainsboro in size, and each is at least 93 miles from Emanuel County. Adjusting the five sale prices, he concluded a value of \$10,000 per acre for the Watson Lake

⁷ Mr. Singleton previously testified before this Court in *Leo v. Commissioner*, T.C. Memo. 2025-9. The Court found his testimony unpersuasive in several respects. See *id.* at *21–25; see also Transcript of Bench Opinion, *Mize Farm, LLC v. Commissioner*, No. 8979-23 (T.C. Dec. 1, 2025).

[*20] Property, which would yield a “before value” of \$1,436,430 for the 144-acre tract.⁸

In his second scenario for the Watson Lake Property, Mr. Singleton employed a version of the subdivision method. Concluding that the site plan used by Mr. Benson was “too dense for the Swainsboro/Emanuel County market,” he retained a land planner to “provide a design that would be a better fit.” This new design hypothesized 48 acres of single-family housing comprising 90 lots, 30 acres of multifamily housing, 2 acres of commercial use, and 28 acres of industrial use. It did not hypothesize a use for the remaining 38 acres.

Relying on allegedly comparable sales in Emanuel County, he concluded that the single-family and commercial parcels would sell for \$8,050 per acre and \$100,000 per acre, respectively. Relying on allegedly comparable sales from other counties, he concluded that the multifamily and industrial parcels would sell for \$80,000 per acre. Assuming that all the parcels would sell within a year, he concluded that “there is no discounting needed for this alternative.” On these assumptions he derived a “before value” of \$5,460,500 for the Watson Lake Property.

For the Meadow Lake Property Mr. Singleton again offered two alternative approaches. The first was the same as for the Watson Lake Property—sale of the 189-acre tract as a single parcel. Using the same five comparable sales from other counties, he concluded a value of \$10,000 per acre for the Meadow Lake Property, which would yield a “before value” of \$1,887,900.

As his preferred alternative for the Meadow Lake Property, Mr. Singleton employed the income approach, using the subdivision method. He posited that the Meadow Lake Property could be subdivided into 130 single-family lots, all of which could supposedly be sold within three years. He asserted that “the most comparable subdivision to the subject property is Bay Meadows Estates in Douglas, Coffee County,” 88 miles southwest of Emanuel County. Noting that lots in the Coffee County development sold “in the \$10,000 to \$54,000 range,” he asserted (citing no evidence) that a price of “\$30,000 per lot is competitive for the

⁸ In his report Mr. Singleton actually calculated a value of \$1,887,900 for the Watson Lake Property, identical to the value he calculated for the Meadow Lake Property. See *infra* p. 20. That mistake was evidently attributable to careless cutting and pasting.

[*21] [Emanuel County] market.” He assumed a discount rate of 16% for purposes of discounting future cashflows to present value.

Mr. Singleton made a serious error in his implementation of the subdivision method. Assuming a three-year sell-out period, he hypothesized that the developer would sell zero lots in 2018, 65 lots in 2019, and 65 lots in 2020, yielding revenues of \$1.95 million in each of the latter two years. He posited expenses of \$1,232,061 in 2018, \$1,349,061 in 2019 and \$1,118,061 in 2020. But when calculating the NPV of the hypothetical development, he neglected to carry down the expenses as an offset to the revenues. He thus applied his discount factor to the *gross* revenues for 2019 and 2020. He agreed that this was “a fatal error on the appraisal.”

If we correct this error, Mr. Singleton’s subdivision methodology produces a *negative* NPV (“before value”) for the Meadow Lake Property, as shown below:

Item	2018	2019	2020	NPV
Revenues	-0-	\$1,950,000	\$1,950,000	
Expenses	(\$1,232,061)	(1,349,061)	(1,118,061)	
Net revenues	(1,232,061)	600,939	831,939	
Discount factor	0.86207	0.74316	0.64066	
Discounted net revenues	(1,062,123)	446,594	532,990	(\$82,539)

B. *Respondent’s Experts*

1. *Leslie P. Sellers*

Leslie P. Sellers has almost 50 years of experience as a certified real estate appraiser in Georgia and other Southern States. He holds the MAI designation (among others) from the Appraisal Institute, in which he has occupied numerous leadership positions. These include national president in 2010 and chair of the Professional Standards and Guidance Committee during 2013 and 2014. He has significant practical experience as a developer of single-family subdivisions, low-density rural tract developments, apartments, offices, and industrial properties. We recognized him as an expert in real estate appraisal.

Marshaling numerous economic indicators, Mr. Sellers concluded that, as of 2016 and 2017, “the current housing supply [in Emanuel County] adequately [met] the existing demand, with little impetus for

[*22] expansion through new construction.” During 2010–2020 Emanuel County’s population was virtually unchanged, growing by less than 0.1% annually. Median family income likewise showed little growth, increasing at an annual rate of roughly 0.8% during 2010–2017. And the number of new building permits issued each year was minuscule, ranging from five in 2010 to nine in 2017. Mr. Sellers concluded: “The confluence of a stagnant home price index and persistently low new building permit numbers, further corroborated by minimal population growth and fluctuating median household income, strongly indicates a market characterized by subdued demand for new residential construction.”

To illustrate the sluggish nature of the local housing market, Mr. Sellers cited the Deer Creek development, a 51-lot single-family subdivision not far from the Watson Lake Property. Begun in 1997, this development sited lots around an 18-hole golf course featuring several small lakes. Despite its appealing amenities, market demand was weak. By December 2016, only 24 lots had been sold, averaging 1.3 lots annually since sales began in 1997. One additional lot sold in 2020, leaving the developer with 26 unsold lots. Mr. Sellers concluded: “A knowledgeable buyer would not invest significant funds in land and development costs with such stagnant residential growth indicators.”

Mr. Sellers concluded that, as of 2016 and 2017, the HBU of the Watson Lake and Meadow Lake Properties was for “rural, low-density single-family residential home sites, with complementary uses including agriculture, recreation, and timber.” Given this HBU, he concluded that the comparable sales method was the most reliable approach for determining the “before value” of each property. Concluding that “the [relevant] market area comprises the greater Emanuel County area,” he searched for comparable sales within that region.

In Table 10 of his report Mr. Sellers lists 13 sales of larger properties in Emanuel County during 2016–2018. These parcels ranged in size from 76 to 307 acres. All 13 parcels were purchased for residential and/or agricultural use. These properties sold for \$2,000 to \$2,822 per acre. In Table 9 of his report he lists 13 sales of smaller properties in Emanuel County during 2011–2017. These parcels ranged in size from 5.53 to 15.24 acres, and all were purchased for single-family residential use. These parcels sold for \$2,003 to \$3,476 per acre.

For the Watson Lake Property, Mr. Sellers found that three transactions involved the best comparable properties. Making several

[*23] adjustments and giving greatest weight to Comparable No. 1, he determined a “before value” of \$331,000, or \$2,300 per acre, for the Watson Lake Property. For the Meadow Lake Property, he found that the transactions listed above, plus three other transactions, involved the best comparable properties. After making several adjustments he determined a “before value” of \$435,000, or \$2,300 per acre, for the Meadow Lake Property. His value conclusion for the Watson Lake Property was roughly equal to the price (\$2,257 per acre) that the PropCo had paid to purchase the Watson Lake Property 12 months before the valuation date. His value conclusion for the Meadow Lake Property was higher than the price (\$1,693 per acre) that the PropCo had paid to purchase the Meadow Lake Property 21 months before the valuation date.

2. *Laura J. Smith*

Laura J. Smith serves as the urban analytics director of GAI Consultants’ community solutions group. In that capacity she conducts and oversees research and analysis of market and demographic data relating to economic development plans. These projects include housing needs studies, neighborhood development plans, citywide master plans, and economic feasibility studies. She worked as a professional municipal planner for six years and currently serves on the Planning and Zoning Board of Lake County, Florida, and on the board of directors of the Florida Redevelopment Association. We recognized her as an expert in market demand and feasibility.

Ms. Smith evaluated the development proposals reflected in the site plans on which Mr. Benson relied for his appraisals. As noted earlier, these site plans proposed between 66 and 69 single-family lots, between 35 and 45 acres of multifamily and senior housing, and between 10 and 17 commercial/office lots. *See supra* pp. 9–10. In assessing the feasibility of these plans, Ms. Smith considered a variety of factors affecting Emanuel County and its environs, including expected population growth, employment growth, housing vacancies, and the existence of competing development projects. She concluded that the site plans used by Mr. Benson “reflect assumptions that are overly optimistic and unlikely to be realized within a timeframe that would be justified as market feasible.” While the site plans might be feasible in more populous and economically prosperous parts of Georgia, Ms. Smith concluded that Emanuel County “shows virtually none of the social, economic, or locational attributes supportive of the [development] concept or the targeted market segments.”

[*24] Ms. Smith also submitted rebuttal reports directed to Mr. Singleton’s opening report. She identified several deficiencies in his analysis, one of which strikes the Court as particularly egregious. His Watson Lake appraisal assumes a subdivision including 90 single-family lots, with all lots being sold within one year, and his Meadow Lake appraisal assumes a development with 130 single-family lots, with all lots being sold within three years. These assumptions cannot possibly be squared with the historical track record for building permits in Emanuel County. During the eight-year period beginning in 2010 and ending in 2017, Emanuel County issued an average of three single-family building permits per year. Mr. Singleton provided no data suggesting that this trend was expected to change dramatically any time soon.

3. *Zac Ryan*

Zac Ryan is a certified appraiser and licensed real estate broker in Georgia and other Southern States. He has 40 years of experience as an appraiser and in the residential and commercial construction fields. He holds the MAI and AI-GRS designations from the Appraisal Institute. We recognized him as an expert in real estate appraisal.⁹

Mr. Ryan submitted rebuttal reports in which he offered an “appraisal review” of each appraisal prepared by Mr. Benson. He did not offer his own conclusion as to the fair market value (FMV) of the Watson Lake Property or the Meadow Lake Property. Rather, he critiqued the market data Mr. Benson used and the analysis he employed. For numerous reasons he concluded that mixed-use development on the scale hypothesized by Mr. Benson was not the HBU of either the Watson Lake Property or the Meadow Lake Property.

Among many questionable assumptions adopted by Mr. Benson, Mr. Ryan highlighted the absorption rate Mr. Benson hypothesized for the single-family lots. Using data from distant, more populous, counties, Mr. Benson assumed that the Emanuel County market could absorb 2.71 new single-family lots *per month*. As Mr. Ryan showed, this assumption was implausible: During 2010–2017, Emanuel County had

⁹ Mr. Ryan previously testified before this Court in *Bucklew Farm, LLC v. Commissioner*, T.C. Memo. 2024-52, *aff’d*, No. 24-13268, 2025 WL 2502669 (11th Cir. Sep. 2, 2025). The Court found his HBU determination compelling and his “before” and “after” values proper. *See id.* at *53, *56; *see also Carter v. Commissioner*, T.C. Memo. 2023-133, at *41, *45 (finding Mr. Ryan’s report credible and his conclusions sound), *supplementing* T.C. Memo. 2021-21, *aff’d sub nom. Evans v. Commissioner*, Nos. 24-11882, et al., 2026 WL 2350241 (11th Cir. Aug. 13, 2026).

[*25] issued (on average) only 3 single-family building permits *per year*. In the Deer Creek development referenced by Mr. Sellers, only 25 lots had been sold since 1997, averaging 1.3 lots annually. As Mr. Ryan noted, the same pattern was true at The Oaks subdivision, located roughly 4 miles northeast of the Watson Lake Property. Between 2007 and 2016, only 5 lots had been sold, leaving the developer with 17 unsold lots. The absorption rate there was 0.5 lots per year.

OPINION

The IRS's determinations in a notice of deficiency or an FPAA are generally presumed correct, though the taxpayer can rebut this presumption. *See* Rule 142(a); *Welch v. Helvering*, 290 U.S. 111, 115 (1933); *Republic Plaza Props. P'ship v. Commissioner*, 107 T.C. 94, 104 (1996). Deductions are a matter of legislative grace, and taxpayers generally bear the burden of proving their entitlement to the deductions claimed. *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79, 84 (1992).

Section 7491 provides that the burden of proof on a factual issue may shift to the Commissioner if the taxpayer satisfies specified conditions. Among these conditions are that the taxpayer must have “introduce[d] credible evidence with respect [that] factual issue,” § 7491(a)(1), and must have “complied with the requirements under this title to substantiate any item,” § 7491(a)(2)(A). Petitioner has not satisfied these requirements with respect to any factual issue that has salience in deciding the questions presented. The burden of proof thus remains on petitioner.¹⁰

I. *Charitable Contribution Deduction*

Section 170(a)(1) allows a deduction for any charitable contribution made within the taxable year. If the taxpayer makes a gift of property other than money, the amount of the contribution is generally equal to the FMV of the property at the time of the gift. *See* Treas. Reg. § 1.170A-1(a), (c)(1). The regulations provide that the FMV of property for charitable contribution purposes is “the price at which the property would change hands between a willing buyer and a willing seller,

¹⁰ In his Posttrial Brief petitioner lists among the questions presented “whether the court erred in switching the burden from the IRS to the taxpayer.” This formulation has it backwards. The taxpayer bears the burden of proof, and he retains that burden unless he meets the statutory standards for shifting it to the Commissioner as to a specific factual issue. As explained in the text, petitioner did not satisfy these requirements.

[*26] neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts.” *Id.* para. (c)(2). Valuation is not a precise science, and the FMV of property on a given date is a question of fact to be resolved on the basis of the entire record. *See Kaplan v. Commissioner*, 43 T.C. 663, 665 (1965).

The FMV of real property should reflect its HBU on the valuation date. *See Mitchell v. United States*, 267 U.S. 341, 344–45 (1925); *Stanley Works & Subs. v. Commissioner*, 87 T.C. 389, 400 (1986); Treas. Reg. § 1.170A-14(h)(3)(i) and (ii). A property’s HBU is the most profitable, legally permissible, use for which the property is adaptable and needed, or likely to be needed in the reasonably near future. *Olson v. United States*, 292 U.S. 246, 255 (1934); *Symington v. Commissioner*, 87 T.C. 892, 897 (1986). If different from the current use, a proposed HBU thus requires both “closeness in time” and “reasonable probability.” *Hilborn v. Commissioner*, 85 T.C. 677, 689 (1985).

To support their positions regarding valuation the parties retained experts who testified at trial. We assess an expert’s opinion in the light of his or her qualifications and the evidence in the record. *See Parker v. Commissioner*, 86 T.C. 547, 561 (1986). When experts offer competing opinions, we weigh them by examining the factors the experts considered in reaching their conclusions. *See Casey v. Commissioner*, 38 T.C. 357, 381 (1962).

We are not bound by an expert opinion that we find contrary to our judgment. *Parker*, 86 T.C. at 561. We may accept an expert’s opinion in toto or accept aspects of his or her testimony that we find reliable. *See Helvering v. Nat’l Grocery Co.*, 304 U.S. 282, 295 (1938); *Boltar, L.L.C. v. Commissioner*, 136 T.C. 326, 333–40 (2011) (rejecting expert opinion that disregards relevant facts). And we may determine FMV from our own examination of the record evidence. *See Silverman v. Commissioner*, 538 F.2d 927, 933 (2d Cir. 1976), *aff’g* T.C. Memo. 1974-285.

“Market prices” typically do not exist for conservation easements. *See Symington*, 87 T.C. at 895; *Excelsior Aggregates, LLC v. Commissioner*, T.C. Memo. 2024-60, at *30. For that reason, courts usually value easements indirectly using a “before and after” approach, seeking to determine the reduction in property value attributable to the easement. *See* Treas. Reg. § 1.170A-14(h)(3)(i); *cf. Browning v. Commissioner*, 109 T.C. 303, 320–24 (1997). Under that approach, the value of the easement is deemed equal to the FMV of the real estate before the

[*27] easement was granted (“before value”), minus the FMV of the real estate as encumbered by the easement (“after value”).

A. *“Before Value” of the Properties*

1. *Prior Transactions Involving the Properties*

“The best evidence of a property’s FMV is the price at which it changed hands in an arm’s-length transaction reasonably close in time to the valuation date.” *Excelsior Aggregates*, T.C. Memo. 2024-60, at *31; see *Estate of Spruill v. Commissioner*, 88 T.C. 1197, 1233 (1987) (“[T]he price set by a freely negotiated agreement made reasonably close to the valuation date is persuasive evidence of fair market value”); *Estate of Newberger v. Commissioner*, T.C. Memo. 2015-246, 110 T.C.M. (CCH) 615, 616–17 (observing that no evidence is more probative of a donated property’s FMV than its direct sale price). For example, in *Corning Place Ohio, LLC v. Commissioner*, T.C. Memo. 2024-72, at *28–29, *aff’d*, 158 F.4th 715 (6th Cir. 2025), we found that the most persuasive evidence of a property’s FMV was its actual sale price 15 months before the contribution. *Accord*, e.g., *Ranch Springs, LLC v. Commissioner*, 164 T.C. 93, 134 (2025); *Wortmann v. Commissioner*, T.C. Memo. 2005-227, 90 T.C.M. (CCH) 336, 339–40 (finding that the most persuasive evidence of the property’s FMV was its actual sale price 17 months before the contribution).

The record in these cases includes persuasive evidence of this sort. Watson Lake purchased the Watson Lake Property from a fiduciary—the investment manager of an individual retirement account—on December 28, 2015. Watson Lake paid \$325,000, or about \$2,257 per acre, for the land. Petitioner does not dispute that this was an arm’s-length transaction. The transaction occurred roughly a year before the easement was granted (on December 26, 2016), and petitioner offered no evidence that market conditions in Emanuel County had meaningfully changed in the interim.

Meadow Lake purchased the Meadow Lake Property from JJM—a real estate development partnership—on April 29, 2016. It paid \$320,000, or about \$1,693 per acre, for the land. Petitioner does not dispute that this was an arm’s-length transaction. The transaction occurred about 20 months before the easement was granted (on December 20, 2017), and petitioner offered no evidence that local market conditions had meaningfully changed in between.

[*28] These actual sale prices—\$1,693 to \$2,257 per acre—dovetail quite neatly with the going rate for land in Emanuel County generally. The Watson Lake and Meadow Lake Properties comprised 144 and 189 acres, respectively. In Table 10 of his report Mr. Sellers lists 13 sales of larger properties (comprising 76 to 307 acres) in Emanuel County during 2016–2018. These 13 parcels, which were purchased for residential and/or agricultural use, sold for \$2,000 to \$2,822 per acre. In Table 9 of his report he lists 13 sales of smaller properties (comprising 5.53 to 15.24 acres) in Emanuel County during 2011–2017. These smaller parcels, all purchased for residential use, sold for \$2,003 to \$3,476 per acre, consistently with the general rule that smaller tracts usually sell for slightly higher per-acre prices than larger tracts. *See Schwarz v. Commissioner*, T.C. Memo. 2025-122, at *15 (citing *Estate of Giovacchini v. Commissioner*, T.C. Memo. 2013-27, 105 T.C.M. (CCH) 1179, 1201), *supplementing* T.C. Memo. 2024-55; *Esgar Corp. v. Commissioner*, T.C. Memo. 2012-35, 103 T.C.M. (CCH) 1185, 1199, *aff'd*, 744 F.3d 648 (10th Cir. 2014).

As the Eleventh Circuit recently reaffirmed: “We have considered . . . a recent arm’s-length sale ‘overwhelmingly significant’ evidence of the value of an easement . . .” *Savannah Shoals, LLC v. Commissioner*, 182 F.4th 1314, 1332 n.15 (11th Cir. 2026) (quoting *TOT Prop. Holdings, LLC v. Commissioner*, 1 F.4th 1354, 1371 (11th Cir. 2021)), *aff’g* T.C. Memo. 2024-35. The prevailing prices for land in Emanuel County during 2011–2018 show that the prices the PropCos paid for the Watson Lake and Meadow Lake Properties were not outliers. We find that those sales, for \$2,257 and \$1,693 per acre, supply very strong evidence as to the FMVs of the Watson Lake and Meadow Lake Properties on their respective valuation dates.

2. Other Valuation Methods

Courts typically consider one or more of three approaches to determine a property’s FMV: (1) the market approach, (2) the income approach, and (3) an asset-based approach. *See Bank One Corp. v. Commissioner*, 120 T.C. 174, 306 (2003), *aff’d in part, vacated in part, and remanded on another issue sub nom. JPMorgan Chase & Co. v. Commissioner*, 458 F.3d 564 (7th Cir. 2006). We consider these valuation methods as providing a check on (or confirmation of) the values indicated by the actual sale prices referenced above.

In the case of vacant, unimproved land, the market approach—often called the “comparable sales” or “sales comparison” method—is

[*29] “generally the most reliable method of valuation.” *Estate of Spruill*, 88 T.C. at 1229 n.24 (quoting *Estate of Rabe v. Commissioner*, T.C. Memo. 1975-26, 34 T.C.M. (CCH) 117, 119, *aff’d*, 566 F.2d 1183 (9th Cir. 1977) (unpublished table decision)). The comparable sales method determines FMV by considering the sale prices realized for similar properties sold in arm’s-length transactions near the valuation date. *See ibid.*; *Wolfsen Land & Cattle Co. v. Commissioner*, 72 T.C. 1, 19 (1979). Because no two properties are ever identical, the appraiser must make adjustments to account for differences between the properties (e.g., parcel size and location) and terms of the respective transactions (e.g., proximity to valuation date and conditions of sale). *Wolfsen Land & Cattle Co.*, 72 T.C. at 19.

The income method determines FMV by discounting to present value the expected future cashflows from the property. *See, e.g., Chapman Glen Ltd. v. Commissioner*, 140 T.C. 294, 327 (2013). Income-based methods are generally disfavored when valuing vacant land that has no income-producing history. *See, e.g., Whitehouse Hotel Ltd. P’ship v. Commissioner*, 139 T.C. 304, 324–25 (2012), *supplementing* 131 T.C. 112 (2008), *aff’d in part, vacated in part and remanded*, 755 F.3d 236 (5th Cir. 2014). “That is because the absence of a financial track record makes an income-based method inherently speculative and unreliable.” *Ranch Springs*, 164 T.C. at 135.

3. *Highest and Best Use*

The choice of valuation method is influenced in part by the HBU of the subject property. We have defined HBU as “[t]he reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, and financially feasible and that results in the highest value.” *Whitehouse Hotel Ltd. P’ship*, 139 T.C. at 331 (quoting Appraisal Institute, *The Appraisal of Real Estate* 277–78 (13th ed. 2008)). Because property owners have an economic incentive to put their land to its most productive use, a property’s HBU is presumed to be its current use absent proof to the contrary. *United States v. Buhler*, 305 F.2d 319, 328 (5th Cir. 1962); *Mountanos v. Commissioner*, T.C. Memo. 2013-138, 105 T.C.M. (CCH) 1818, 1819, *supplemented by* T.C. Memo. 2014-38, *aff’d*, 651 F. App’x 592 (9th Cir. 2016).

To establish an HBU different from the current use, a taxpayer must demonstrate both the “closeness in time” and the “reasonable probability” of the proposed use. *Hilborn*, 85 T.C. at 689. Our inquiry entails “an objective assessment of how immediate or remote the likelihood is

[*30] that the property, absent the [conservation] restriction, would in fact be developed, as well as any effect from zoning . . . laws that already restrict the property’s potential highest and best use.” Treas. Reg. § 1.170A-14(h)(3)(ii). “Any proposed uses that ‘depend upon events or combinations of occurrences which, while within the realm of possibility, are not fairly shown to be reasonably probable’ are to be excluded from consideration.” *J L Mins., LLC v. Commissioner*, T.C. Memo. 2024-93, at *41 (quoting *Olson*, 292 U.S. at 257); accord *TOT Prop. Holdings, LLC v. Commissioner*, 1 F.4th at 1369 (citing *Palmer Ranch Holdings Ltd. v. Commissioner*, 812 F.3d 982, 987 (11th Cir. 2016), *aff’g in part, rev’g in part and remanding* T.C. Memo. 2014-79).

As the Eleventh Circuit recently explained, the HBU concept originates from the Supreme Court’s decision in *Olson*, an eminent domain case, and the concept has been extended to valuation of conservation easements through regulation and caselaw. See *Savannah Shoals, LLC v. Commissioner*, 182 F.4th at 1328 (discussing Treasury Regulation § 1.170A-14(h)(3)(ii) and circuit caselaw). The HBU of a particular property is “not itself ‘the measure of value.’” *Id.* (quoting *Olson*, 292 U.S. at 255). But it is “relevant to the ‘extent that the prospect for such use affects the market value.’” *Ibid.*

To illustrate the interaction between the concepts of HBU and FMV, imagine property used as farmland in an area undergoing rapid development and construction of “big box” stores. When determining the FMV of the land, one would consider not just its current use (farmland) but all other reasonable potential uses, including the property’s HBU, e.g., construction of a big box store. But the FMV of the land would not be the value of the big box store built on the land. Rather, the FMV of the land would be the price the market would pay to acquire the land and unlock the right to develop it as a big box store (or any other possible use). Obviously, the more lucrative and more realistic the HBU, the greater the impact that HBU will have on the amount a prospective buyer would pay for the land.

Applying the “combined framework” of Treasury Regulation § 1.170A-14(h)(3)(ii) and caselaw, the Eleventh Circuit has considered “whether it was ‘reasonably probable’ that a zoning body would approve a proposed use; whether a proposed use was ‘needed or likely to be needed in the reasonably near future’ (a ‘market-demand’ inquiry); and whether the physical features and location of a property made the proposed use likely.” *Savannah Shoals, LLC v. Commissioner*, 182 F.4th at 1328 (first quoting *Palmer Ranch Holdings Ltd. v. Commissioner*, 812

[*31] F.3d at 996, 998 & n.12; and then citing *TOT Prop. Holdings, LLC v. Commissioner*, 1 F.4th at 1369). The Eleventh Circuit had previously observed that “[d]etermining the [property’s] highest and best use necessitate[s] a look at market demand,” *Palmer Ranch Holdings Ltd. v. Commissioner*, 812 F.3d at 998 n.12, which “ties directly to the financial feasibility of a proposed use,” *Lake Jordan Holdings, LLC v. Commissioner*, T.C. Memo. 2025-123, at *33 n.14; accord *Savannah Shoals, LLC v. Commissioner*, 182 F.4th at 1329–30. The Eleventh Circuit explained that “[s]uch inquiries assist the court in determining whether the evidence demonstrates a proposed use is ‘reasonable and probable’ or instead is ‘too risky to qualify.’” *Savannah Shoals, LLC v. Commissioner*, 182 F.4th at 1328–29 (quoting *TOT Prop. Holdings, LLC v. Commissioner*, 1 F.4th at 1369).

In evaluating the HBU of property, we often have focused on whether a proposed use is physically possible, legally permissible, financially feasible, and maximally productive. See, e.g., *Buckelew Farm*, T.C. Memo. 2024-52, at *52; *Paul-Adams Quarry Tr., LLC v. Commissioner*, T.C. Memo. 2025-112, at *49; *J L Mins*, T.C. Memo. 2024-93, at *41–42. As the Eleventh Circuit recently noted, “strict application” of these factors is not required. See *Savannah Shoals, LLC v. Commissioner*, 182 F.4th at 1329.

We will assume *arguendo* that the development schemes hypothesized by Messrs. Benson and Singleton were physically possible and would (in theory anyway) be maximally productive. We thus focus on whether mixed-use development on the scale they imagined was a legally permissible use or a financially feasible use of either the Watson Lake Property or the Meadow Lake Property.

a. “Legally Permissible”

Petitioner contends that the HBU of both Properties was mixed-use development, including single-family residences, multifamily housing, senior living facilities, commercial parcels, and (in Mr. Singleton’s view) industrial use. Mixed-use development was not a legally permissible use of either Property on its respective valuation date. To effect the proposed development schemes, both Properties would have had to be rezoned. Petitioner has failed to carry his burden to prove that rezoning of either Property was “reasonably probable.”

For the Meadow Lake Property, the sole evidence about rezoning petitioner provided—to Mr. Benson for use in his appraisal or at trial—

[*32] was the forged letter from Mr. Kirby, the director of Swainsboro's Building, Planning, and Zoning Department. *See supra* pp. 11–12. Needless to say, a forged document has no probative value. Petitioner has thus supplied no credible evidence whatsoever to support his argument that rezoning of the Meadow Lake Property was likely.

For the Watson Lake Property, the sole evidence about rezoning petitioner provided was an actual letter signed by Mr. Kirby. In that letter Mr. Kirby offered his opinion that the Swainsboro planning and zoning commission would “look favorable [sic]” on a request to rezone the portion of the Watson Lake Property (roughly 52.5%) that lay within the Swainsboro City limits. At trial Mr. Kirby credibly testified that his job was to ensure that a rezoning application package was complete before it was sent to the zoning commission and city council. He makes no recommendation, one way or the other, as to whether the application should be approved. He confirmed that no application to rezone the Watson Lake Property was ever submitted to his office.

For four reasons, we think this letter is too thin a reed to support petitioner's position. First, the persuasive force of Mr. Kirby's letter is diminished by the circumstances of its creation. He did not draft this letter himself as part of his regular duties as a city employee. Rather, Mr. Heath drafted the letter and persuaded Mr. Kirby to sign it.

Second, the principal actors in a Swainsboro rezoning proceeding would be the zoning commission, the city council, and the residents who might express support or opposition to the plan. Petitioner offered no evidence whatsoever about the views those principals would likely have expressed. If Watson Lake were serious about rezoning the Watson Lake Property, it would have been simple to submit a rezoning application and see what happened. But the PropCo declined to take that seemingly obvious step.

Third, Mr. Kirby's letter addressed only the portion of the Watson Lake Property (slightly over half) that lay within the Swainsboro City limits. Petitioner offered no evidence regarding the likelihood of rezoning the balance of the Watson Lake Property, which was under Emanuel County's jurisdiction. Indeed, petitioner did not even address the procedures that would govern Emanuel County's consideration of the matter.

Finally, Mr. Kirby's letter assumed a rezoning request embodying the site plan used in Mr. Benson's appraisal. But Mr. Singleton—

[*33] petitioner’s other expert witness—concluded that the site plan Mr. Benson used was “too dense for the Swainsboro/Emanuel County market.” Instead, Mr. Singleton proposed a site plan that included more single-family housing, plus 28 acres of industrial use. Petitioner offered no evidence that either the City of Swainsboro or Emanuel County was likely to approve a rezoning request that called for 28 acres of industrial use close to a large residential subdivision.

In sum, we find that petitioner has failed to carry his burden of proving that rezoning of either the Watson Lake Property or the Meadow Lake Property was “reasonably probable.” *Olson*, 292 U.S. at 257. Because mixed-use development on the scale proposed by Messrs. Benson and Singleton was not a legally permissible use, mixed-use development was not the HBU of either Property.

b. *“Financially Feasible”*

Even if rezoning could have been achieved, we agree with respondent’s experts that the mixed-use development schemes hypothesized by petitioner’s experts were wholly unfeasible from a financial perspective. The evidence firmly supports Mr. Sellers’s conclusion that, as of 2016 and 2017, “the current housing supply [in Emanuel County] adequately [met] the existing demand, with little impetus for expansion through new construction.” During 2010–2020 Emanuel County’s population was virtually unchanged, growing by less than 0.1% annually. And the number of new building permits issued each year was minuscule. As Mr. Sellers concluded: “The confluence of a stagnant home price index and persistently low new building permit numbers, further corroborated by minimal population growth and fluctuating median household income, strongly indicates a market characterized by subdued demand for new residential construction.”

We start with the residential components of the site plans. Mr. Benson hypothesized 66 single-family lots for the Watson Lake Property and 69 single-family lots for the Meadow Lake Property, with all lots being sold in 3 years. Mr. Singleton hypothesized 90 single-family lots for the Watson Lake Property (with all lots being sold in one year) and 130 single-family lots for the Meadow Lake Property (with all lots being sold within 3 years).

These assumptions were wholly untethered from reality. Between 2010 and 2016, only 10 new homes were built in Emanuel County.

[*34] That equates to about 1.5 new homes per year. Petitioners' experts assumed an absorption rate 28 to 60 times faster than that.

The issuance of building permits tells the same story. During the eight-year period beginning in 2010 and ending in 2017, Emanuel County issued an annual average of three single-family building permits. Petitioner's experts adduced no data suggesting that this trend was expected to change dramatically any time soon.

The price points Mr. Benson imagined for his single-family residences likewise blinked at reality. He posited that the Watson Lake and Meadow Lake Properties would each be "marketed as a high-end development" that would appeal to residential users who desired to live in "gated communities." His analysis of the Emanuel County market supposedly "show[ed] a strong demand for lots targeting homes in the \$300,000 to \$1,000,000 range."

Mr. Benson's assumptions cannot be squared with the facts. During 2016 and 2017 Emanuel County and its surrounding counties had median annual household income of roughly \$33,000. Median family income showed little growth, increasing at an annual rate of roughly 0.8% during 2010–2017. Only ten new homes were built in Emanuel County between 2010 and 2016, and the average sale price of those ten homes was \$68,800. This demographic evidence does not suggest a robust local demand "for homes in the \$300,000 to \$1,000,000 range." And Mr. Benson offered no reason to believe that a developer of gated communities would choose property located (as was the Watson Lake Property) close to an airstrip, a prison, and a low-income housing project. *See supra* p. 6.

The track record of the Deer Creek development illustrates the sluggish nature of the local housing market. Deer Creek was a 51-lot single-family subdivision not far from the Watson Lake Property. Begun in 1997, this development sited lots around an 18-hole golf course featuring several small lakes. Despite its amenities, market demand was weak. By December 2016, only 24 lots had been sold, averaging 1.3 lots annually since sales began in 1997. One additional lot sold in 2020, leaving the developer with 26 unsold lots after 23 years of marketing effort.

As Mr. Ryan noted, the same pattern was replicated at The Oaks subdivision, located roughly 4 miles northeast of the Watson Lake Property. Between 2007 and 2016, only 5 lots had been sold, leaving the

[*35] developer with 17 unsold lots. The absorption rate there was 0.5 lots per year. As Mr. Sellers properly concluded: “A knowledgeable buyer would not invest significant funds in land and development costs with such stagnant residential growth indicators.” *See TOT Prop. Holdings, LLC v. Commissioner*, 1 F.4th at 1370–72 (affirming rejection of residential development as a property’s HBU when there “were no population centers within a distance that might suggest residential development” and nearby developments had been unsuccessful despite having “superior attributes” such as scenic views or nearby lakes); *see also Savannah Shoals, LLC v. Commissioner*, 182 F.4th at 1331 (quoting *TOT Prop. Holdings, LLC v. Commissioner*, 1 F.4th at 1370–72).

The development schemes hypothesized by petitioner’s experts were equally unrealistic on the commercial front. Mr. Benson’s final site plan for the Watson Lake Property appears to have proposed ten “commercial corner lots” and a nine-acre “commercial park.” *See supra* pp. 12–13. His site plan for the Meadow Lake Property envisioned 17 commercial lots, and in each case he posited that all lots would be sold within two years. Defying these optimistic projections, the evidence established that *only three* commercial lots were sold in Swainsboro during 2013–2017—one each year during 2013–2015 and none in 2016 or 2017. Mr. Benson offered no explanation—apart from a generalized assertion that “the market is improving”—to support his conclusion that Swainsboro could absorb within two years the number of commercial lots he hypothesized.

Mr. Benson’s site plan for the Watson Lake Property included 525 units of senior and multifamily housing on 45 acres, and his site plan for the Meadow Lake Property included an unspecified number of units of senior and multifamily housing on 35 acres. In neither of his reports did Mr. Benson analyze (or even address) the demand within Emanuel County for senior housing. He offered no data or analysis to suggest that senior citizens residing in other counties would choose to move to Emanuel County to reside in a senior facility located there. And in neither of his reports did he address the demand for multifamily housing in Emanuel County or its neighbors. Indeed, his reports are bereft of evidence that multifamily housing on the scale he proposed *even existed* in the Swainsboro area.

As the Eleventh Circuit recently confirmed, the HBU determination “necessarily involve[s] consideration of market demand for such a use.” *Savannah Shoals, LLC v. Commissioner*, 182 F.4th at 1327. Petitioner presented no plausible evidence that there existed in the Emanuel

[*36] County market demand for single-family housing, multifamily housing, senior living facilities, or commercial space on the scale (or at the price points) his experts imagined. We accordingly find that the mixed-use development schemes they proposed were not financially feasible.

c. *Conclusion as to HBU*

Because property owners have an economic incentive to put their land to its most productive use, a property's HBU is presumed to be its current use absent proof to the contrary. *See, e.g., Buhler*, 305 F.2d at 328. Petitioner has failed to rebut this presumption: He has failed to prove that the mixed-use development schemes posited by his experts were legally permissible or financially feasible. We accordingly agree with Mr. Sellers that, as of 2016 and 2017, the HBU of both the Watson Lake and Meadow Lake Properties was a continuation of their existing use, i.e., for “rural, low-density single-family residential home sites, with complementary uses including agriculture, recreation, and timber.”

4. *Applicable Valuation Method*

Given his HBU conclusion, Mr. Sellers opined that the comparable sales method was the most reliable approach for determining the “before value” of the Watson Lake and the Meadow Lake Properties. We agree.

The comparable sales method “values property by comparing it to similar properties sold in arm’s-length transactions around the valuation date.” *Savannah Shoals*, T.C. Memo. 2024-35, at *36. This method is based on the “principle of substitution.” It stands for the proposition that “the value of a property can be estimated at the cost of acquiring an equally desirable substitute.” *Mill Road 36 Henry, LLC v. Commissioner*, T.C. Memo. 2023-129, at *51, *aff’d*, No. 24-11334, 2026 WL 2443948 (11th Cir. Aug. 20, 2026); *see Rising Rock Partners, LLC v. Commissioner*, T.C. Memo. 2026-45, at *26; *Hancock Cnty. Land Acquisitions, LLC v. Commissioner*, T.C. Memo. 2026-28, at *28; *N. Donald LA Prop., LLC v. Commissioner*, T.C. Memo. 2026-19, at *50–51; *Buckelew Farm*, T.C. Memo. 2024-52, at *50 n.25, *55 (“[T]he principle of substitution . . . stands for the proposition that a hypothetical buyer will not pay more for a given property when an alternative property is available for less.”); *Estate of Rabe*, 34 T.C.M. (CCH) at 119 (“[A] prudent man will pay no more for a given property than he would for a similar property.”).

[*37] The Watson Lake and Meadow Lake Properties both consisted of raw land with no improvements whatsoever. “In the case of vacant, unimproved property . . . the comparable sales approach is ‘generally the most reliable method of valuation’” *Oconee Landing Prop., LLC v. Commissioner*, T.C. Memo. 2024-25, at *67 (quoting *Estate of Spruill*, 88 T.C. at 1229 n.24), *supplemented by* T.C. Memo. 2024-73; *see United States v. 320.0 Acres of Land*, 605 F.2d 762, 798 (5th Cir. 1979) (“Courts have consistently recognized that, in general, comparable sales constitute the best evidence of market value.”). That is because “the market place is the best indicator of value, based on the conflicting interests of many buyers and sellers.” *Estate of Spruill*, 88 T.C. at 1229 n.24 (quoting *Estate of Rabe*, 34 T.C.M. at 119).

Properly concluding that “the [relevant] market area comprises the greater Emanuel County area,” Mr. Sellers searched for comparable sales within that region. For the 144-acre Watson Lake Property, he found that three transactions offered the best comparables. Comparable No. 1 was the sale of a 118-acre tract in February 2016 for \$2,332 per acre. Comparable No. 2 was the sale of a 197-acre tract in August 2016 for \$2,123 per acre. Comparable No. 3 was the sale of a 119-acre tract in March 2016 for \$2,164 per acre. All three tracts were in Emanuel County, roughly 7, 4, and 13 miles, respectively, from the Watson Lake Property. Making several adjustments and giving greatest weight to Comparable No. 1, Mr. Sellers determined a “before value” of \$331,000, or \$2,300 per acre, for the Watson Lake Property. He noted that this value was roughly equal to the price (\$2,257 per acre) Watson Lake had paid to purchase that Property 12 months before the valuation date.

For the 189-acre Meadow Lake Property, Mr. Sellers found that the transactions listed above, plus three other transactions, offered the best comparables. Comparables Nos. 4 through 6 involved sales of slightly smaller tracts (76 to 119 acres) in mid-2017 at prices ranging from \$2,000 per acre to \$3,612 per acre. All three of those tracts were in Emanuel County, between 7 and 18 miles from the Meadow Lake Property. After making several adjustments, he determined a “before value” of \$435,000, or \$2,300 per acre, for the Meadow Lake Property. He noted that this value was higher than the price (\$1,693 per acre) Meadow Lake had paid to purchase that Property 21 months before the valuation date.

Only one of petitioner’s experts, Mr. Singleton, offered a value conclusion based on the comparable sales method. Under his first valuation scenario, he assumed that the 144-acre Watson Lake Property and

[*38] the 189-acre Meadow Lake Property would each be offered for sale as a single tract. He then looked at land sales in Emanuel County during 2014–2017. Of the 28 sales he listed, all but one occurred at prices below \$2,500 per acre. He asserted that none of these sales involved a comparable property. That was supposedly so because none of the properties “could be put to the same use as the subject property.”

Mr. Singleton then expanded his search to the rest of southern Georgia. He selected five sales, two near Macon and the others close to Savannah, Columbus, and Albany. Adjusting the five sale prices, he concluded a value of \$10,000 per acre for the Watson Lake Property, which would yield a “before value” of approximately \$1,440,000. Using the same five comparable sales, he concluded an identical value of \$10,000 per acre for the Meadow Lake Property, which would yield a “before value” of roughly \$1,890,000.

We assign no credibility to Mr. Singleton’s testimony. First, he offered no logic or evidence to support his assertion that none of the 28 properties sold in Emanuel County during 2014–2017 “could be put to the same use as the subject property.” As far as the record reveals, all 28 of the properties consisted of undeveloped land. And each of the 28 properties would have had to be rezoned to permit mixed-use development. In both respects these properties—like the properties Mr. Sellers used in his analysis—were comparable to the Watson Lake and Meadow Lake Properties. Mr. Singleton’s assertion that none of the 28 “could be put to the same use as the subject property” is simply wrong.

Second, the transactions Mr. Singleton chose instead as “comparable” occurred in markets radically different from Emanuel County. During 2016 and 2017 Emanuel County was a rural county with a population of about 22,000, virtually no population growth, median household income of roughly \$33,000 (compared to \$49,000 for Georgia as a whole), and a history of issuing very few building permits (ranging between five and nine annually from 2010 through 2017). Mr. Singleton used sales transactions that occurred in or near Macon, Savannah, Columbus, and Albany. Each of these cities is 93 miles or more from Emanuel County. Each has a population that dwarfs Swainsboro’s, and each is in a high-growth metropolitan area. Mr. Singleton thus committed an error that we encounter regularly in SCE cases: experts’ cherry-picking allegedly “comparable sales” from distant, more economically prosperous markets to generate inflated values for conservation easements in less-populated rural areas. See *Lake Jordan Holdings, LLC*, T.C. Memo. 2025-123, at *42–43; *Seabrook Prop., LLC v. Commissioner*, T.C. Memo.

[*39] 2025-6, at *48–51; *Plateau Holdings, LLC v. Commissioner*, T.C. Memo. 2020-93, 119 T.C.M. (CCH) 1619, 1627.

In short, we find that Mr. Sellers performed his comparable sales analysis in an appropriate manner. His approach generated results consistent with the historical record of land sales in Emanuel County and with the actual prices Watson Lake and Meadow Lake paid for the Properties. Mr. Singleton’s approach, by contrast, was wholly unpersuasive. We accordingly find that the “before value” of each Property was \$2,300 per acre, as determined by Mr. Sellers, yielding aggregate “before values” of \$331,000 for the Watson Lake Property and \$435,000 for the Meadow Lake Property.

5. *Petitioner’s Income Approach*

Dismissing the sales comparison approach, Mr. Benson employed the income approach—often called the “income capitalization” method—to determine the “before value” of the two Properties. The income method determines FMV by discounting to present value the expected future cashflows from the property. *See, e.g., Chapman Glen Ltd.*, 140 T.C. at 327; *Marine v. Commissioner*, 92 T.C. 958, 983 (1989), *aff’d*, 921 F.2d 280 (9th Cir. 1991) (unpublished table decision).

As noted earlier, income-based methods are generally disfavored when valuing vacant land that has no income-producing history. *See supra* p. 29. We have often noted “the folly of trying to estimate the value of undeveloped property by looking to its anticipated earnings.” *Pittsburgh Terminal Corp. v. Commissioner*, 60 T.C. 80, 89 (1973), *aff’d*, 500 F.2d 1400 (3d Cir. 1974) (unpublished table decision). “A historical track record provides real-world inputs that supply a plausible basis for projecting future revenue.” *Excelsior Aggregates*, T.C. Memo. 2024-60, at *43–44. Lacking reliable data about revenues, expenses, capital requirements, and the like, “the appraiser inevitably must rely on a lengthy series of assumptions, estimates, and guesstimates.” *Ranch Springs*, 164 T.C. at 152.

Mr. Benson deployed the income method on the assumption that the HBU of the Watson Lake and Meadow Lake Properties was development as a mixed-use community including single-family residences, multifamily housing, senior living facilities, and commercial space. We have rejected that assumption because petitioner failed to establish that mixed-use development was a financially feasible use or a legally permissible use (or was reasonably likely, by virtue of a zoning change, to

[*40] become a legally permissible use in the near future). The DCF analysis employed by Mr. Benson thus falls of its own weight.

Mr. Singleton employed a version of the income method in his alternative valuation scenario for each property. We will start with his proposal for the Meadow Lake Property because the results are telling.

As his preferred alternative for the Meadow Lake Property, Mr. Singleton employed the subdivision method. He posited that the Property could be subdivided into 130 single-family lots, all of which could supposedly be sold within three years. Relying on lot sales in far-away counties, he asserted that a price of “\$30,000 per lot is competitive for the [Emanuel County] market.”

Mr. Singleton made a serious error in his implementation of the subdivision method. Assuming a three-year sellout period, he hypothesized that the developer would sell zero lots in 2018, 65 lots in 2019, and 65 lots in 2020, yielding revenues of \$1.95 million in each of the latter two years. He posited expenses of \$1,232,061 in 2018, \$1,349,061 in 2019, and \$1,118,061 in 2020. But when calculating the NPV of the hypothetical development, he neglected to carry down the expenses as an offset to the revenues. He thus applied his discount factor to the *gross* revenues for 2019 and 2020. He agreed that this was “a fatal error on the appraisal.”

If we correct this error, Mr. Singleton’s subdivision methodology produces an NPV (“before value”) for the Meadow Lake Property that is *a negative number*, as shown below:

Item	2018	2019	2020	NPV
Revenues	-0-	\$1,950,000	\$1,950,000	
Expenses	(\$1,232,061)	(1,349,061)	(1,118,061)	
Net revenues	(1,232,061)	600,939	831,939	
Discount factor	0.86207	0.74316	0.64066	
Discounted net revenues	(1,062,123)	446,594	532,990	(\$82,539)

Mr. Singleton employed a different version of the subdivision method for the Watson Lake Property. Concluding that the site plan used by Mr. Benson was “too dense for the Swainsboro/Emanuel County market,” he retained a land planner to “provide a design that would be a better fit.” This new design hypothesized 48 acres of single-family

[*41] housing comprising 90 lots, 30 acres of multifamily housing, 2 acres of commercial use, and 28 acres of industrial use.

Relying on allegedly comparable sales in Emanuel County, Mr. Singleton concluded that the single-family and commercial parcels would sell for \$8,050 per acre and \$100,000 per acre, respectively. Relying on allegedly comparable sales from other counties, he concluded that the multifamily and industrial parcels would sell for \$80,000 per acre. And assuming that all the parcels would sell within a year, he concluded that “there is no discounting needed for this alternative.” On these assumptions he derived a “before value” of \$5,460,500 for the Watson Lake Property.

We discern many flaws in Mr. Singleton’s analysis, including his inappropriate reliance on sale transactions from distant counties. But the most glaring error, which is fatal to his subdivision approach, was his assumption that all of the lots would sell in a single year. This supposedly eliminated the need to discount future cashflows to present value, thus vastly inflating the bottomline result.

During the eight-year period beginning in 2010 and ending in 2017, Emanuel County issued an average of three single-family building permits *per year*. The total number of building permits issued by Emanuel County—including for those for commercial or other use—ranged from five to nine permits *per year*. Mr. Singleton provided no data suggesting that this trend was expected to change dramatically any time soon. Given this historical track record, Mr. Singleton’s assumption that 90 single-family lots, 30 acres of multifamily housing, 2 acres of commercial property, and 28 acres of industrial property could all be absorbed in a single year is nothing short of preposterous.

In sum, petitioner’s experts’ invocation of the income approach is unavailing. Mr. Benson’s DCF method cannot stand because it is based on an erroneous HBU and very aggressive assumptions, such as the short absorption rate. Mr. Singleton’s subdivision method analysis for Meadow Lake, properly implemented, yields a negative “before value.” And his subdivision method analysis for Watson Lake is premised on the untenable assumption that every lot would be sold within one year.

B. *FMVs of the Easements*

The “before and after method” equates the value of a conservation easement to the diminution in value suffered by the property that is encumbered by the easement. To calculate this amount we must subtract

[*42] from the “before value” of the property—here, raw land—the “after value” of that same property. We have determined that the “before values” of the Watson Lake and Meadow Lake Properties were \$331,000 and \$435,000, respectively. *See supra* p. 39.

To determine “after values” for the Watson Lake and Meadow Lake Properties, Mr. Sellers used data regarding sales of encumbered properties with similar reserved rights. After performing qualitative adjustments to the comparable sales, he determined “after values” of \$215,700 (or \$1,500 per acre) for the Watson Lake Property and \$226,500 (or \$1,200 per acre) for the Meadow Lake Property.

The “after values” calculated by Mr. Sellers were lower—i.e., more favorable to petitioner—than the “after values” calculated by Mr. Benson (\$262,497 and \$340,000, respectively). Treating this difference as a concession by respondent, we will adopt the “after values” determined by Mr. Sellers. We accordingly find that, on their respective valuation dates, the FMV of Watson Lake’s easement was \$115,300 ($\$331,000 - \$215,700 = \$115,300$) and the FMV of Meadow Lake’s easement was \$208,500 ($\$435,000 - \$226,500 = \$208,500$).

II. *Penalties*

The Code imposes an accuracy-related penalty for the underpayment of tax required to be shown on a return attributable to “the portion of any underpayment [of tax] which is attributable to . . . [a]ny substantial valuation misstatement.” § 6662(a), (b)(3). A misstatement is “substantial” if the value of the property claimed on a return is 150% or more of the correct amount. § 6662(e)(1)(A). The penalty is increased to 40% in the case of a “gross valuation misstatement.” § 6662(h). A misstatement is “gross” if the value of property claimed on the return exceeds 200% of the correct amount. § 6662(h)(2)(A)(i).¹¹

The values that Watson Lake and Meadow Lake claimed for the easements on their 2016 and 2017 returns were \$8,109,000 and \$11,116,000, respectively. We have determined that the FMVs of the easements on the relevant valuation dates were \$115,300 and \$208,500,

¹¹ Only one accuracy-related penalty may be imposed with respect to any given portion of an underpayment. Treas. Reg. § 1.6662-2(c). We need not consider the alternative 20% penalties determined by the IRS in these cases because (as explained in the text) the 40% penalty under section 6662(h) applies to the entirety of each adjustment. *See, e.g., Beaverdam Creek Holdings, LLC v. Commissioner*, T.C. Memo. 2025-53, at *15 n.16; *Seabrook*, T.C. Memo. 2025-6, at *77 n.60.

[*43] respectively. The claimed values exceeded the correct values by more than 2,000%. The valuation misstatements were thus “gross.”

Generally, an accuracy-related penalty is not imposed if the taxpayer demonstrates “reasonable cause” and shows that he “acted in good faith with respect to [the underpayment].” § 6664(c)(1). This defense may be available where a taxpayer makes a “substantial” valuation overstatement with respect to charitable contribution property. *See* § 6664(c)(3) (second sentence). But this defense is not available where the overstatement is “gross.” *See* § 6664(c)(3) (first sentence). The 40% penalty thus applies to the portions of the underpayments attributable to claiming values for the easements in excess of the amounts we have determined.¹²

III. *Petitioner’s Constitutional Arguments*

Petitioner advances three constitutional arguments that need not detain us long. First, he challenges our determination to sustain the accuracy-related penalties by asserting that, under the Seventh and Eighth Amendments to the U.S. Constitution, the Tax Court lacks jurisdiction to determine penalties. The courts have repeatedly rejected this argument, and we do the same here. *See In re Hirsch*, Nos. 25-10420, et al., slip op. at 3 (11th Cir. May 30, 2025), Dkt. No. 25, *denying mandamus to Hirsch v. Commissioner*, Nos. 28898-10, et al. (T.C. filed Dec. 27, 2010), *cert. denied*, No. 25-739 (U.S. June 22, 2026); *Riddle Aggregates, LLC v. Commissioner*, No. 31104-21, 165 T.C. (Dec. 15, 2025) (holding that the “public rights” exception of the Seventh Amendment to the U.S. Constitution applies to accuracy-related penalties under section 6662(a), (b)(1)–(3), (c), (d), (e), and (h)); *Gorra v. Commissioner*, T.C. Memo. 2013-254, 106 T.C.M. (CCH) 523, 537 (“Section 6662(h) does not violate the Excessive Fines Clause.”); *cf. Mukhi v. Commissioner*, 162 T.C. 177, 195–98 (2024) (noting an “overwhelming volume of precedent holding that civil tax penalties are not fines”), *supplemented by* 163 T.C. 150 (2024) (reviewed).

Petitioner next contends that, by sustaining disallowance of charitable contribution deductions premised on grotesque overvaluations of property, the Court has sanctioned a taking of private property without just compensation, in violation of the Fifth Amendment. Petitioner then

¹² Petitioner contends in his Posttrial Brief that “the partnership had reasonable cause for any alleged underpayment.” As noted in the text, this defense is not available for the gross valuation misstatement penalty, the only penalty that we have sustained.

[*44] argues that the Court violated the Equal Protection Clause of the Fourteenth Amendment “by treating partnerships differently than individuals.” These arguments are incoherent, wholly without judicial support, and frivolous.

IV. *Petitioner’s Contentions Regarding the Trial*

The preceding discussion makes clear that petitioner’s position on the merits of these cases was extremely weak. Perhaps for that reason, he devotes a significant portion of his Posttrial Brief to attacks on the IRS and the Court. He accuses the IRS of waging a “campaign against deductions” claimed for easement contributions. This campaign supposedly entailed “a carte blanche disallowance of the taxpayer’s deduction in full . . . with no explanation of [the] reason through the entire process including . . . trial.” Rather than make “an objective valuation of the case,” the IRS purportedly “doubled down . . . thereby undermining congressional intent.”

This is rhetoric divorced from facts. The IRS has indeed challenged abusive SCE transactions of the sort involved here, where wealthy investors in essence purchase tax deductions premised on absurd overvaluations of property. The Commissioner’s examinations of these schemes could be dubbed “a campaign” only in the sense that the examinations were an inevitable and appropriate response to literally thousands of abusive transactions following the same cookie-cutter pattern. The Commissioner’s track record in this Court—he has handily prevailed in dozens of recent cases—shows that his positions have been justified. And contrary to petitioner’s assertion that the IRS supplied “no explanation of [the] reason through the entire process including . . . trial,” the IRS and its experts comprehensively elaborated the multiple reasons why the deductions claimed in these cases were unjustifiable. Although petitioner pretends to be the victim, the real victims in cases like these are the U.S. Treasury and the countless honest taxpayers who voluntarily pay the tax due on their hard-earned income.

Petitioner likewise attacks the Court, asserting that he was denied a fair trial by the manner in which the Court conducted the proceedings. Petitioner devotes an entire section of his Posttrial Brief to this argument, and his counsel indicated at trial that he would urge this position on appeal. We are generally reluctant to comment on the behavior of lawyers who appear in our Court. Given the nature of petitioner’s arguments, however, we have no alternative but to do so here.

[*45] The attorney who tried these cases for petitioner, S. Fenn Little, has four decades of experience litigating criminal defense and personal injury cases. He now also litigates conservation easement cases. At the start of trial he stated: “This is my second Tax Court trial in my entire life.” It appeared to the Court that Mr. Little was not fully accustomed to Tax Court practice, particularly to the norms governing expert testimony. This problem generated many of the colloquies of which petitioner complains.

A. *The Court’s Questioning of Experts*

Petitioner first criticizes what he calls the Court’s “overzealous interrogation of witnesses.” While finding no fault with questions the Court posed to fact witnesses, petitioner asserts that the Court’s “treatment of Dennis Benson [petitioner’s appraisal expert] was far outside the scope of questioning proper and allowable for a judge.” Petitioner goes so far as to assert that the Court’s questioning of Mr. Benson put him “in fear of personal risk and retaliation.”

These assertions have no basis. The Court questioned Mr. Benson about his opinions that the Watson Lake and Meadow Lake Properties were both “unique.” Trial Tr. vol. 2, 397–401. The Court noted that it had difficulty “see[ing] how these properties are unique in any sense of the word.” *See supra* pp. 13–14. When Mr. Little criticized the Court for “cross-examin[ing] my client,” the Court explained that Mr. Little was free to follow up with further questioning of his own.

On redirect Mr. Little posed a series of leading questions and asked Mr. Benson if he agreed. In response to the Court’s observation that Mr. Little was “testifying and leading the witness,” Mr. Little asserted that “the Court has overstepped its position.” The Court replied:

The Court does not overstep its position by asking questions about a statement in an expert witness’s report. . . . And you are free to redirect him on that, but you are not free to redirect him by making a speech in the form of an extended leading question. . . . That’s the only point. You can ask him whatever you want in the proper form.

Trial Tr. vol. 2, 402–04.

The Court later asked Mr. Benson how he reconciled his opinion that the Watson Lake and Meadow Lake Properties each had a “before value” of more than \$8 million, given that they had recently been

[*46] purchased for \$325,000 or less. After some colloquy on this point the Court asked Mr. Little if he wished to follow up. He said no.

There was nothing inappropriate about either line of questioning. The Court's questions might be deemed challenging, in the sense that they did not have easy answers. But far from being "aggressive" or "overzealous," they are questions at the heart of most SCE cases. These are precisely the types of questions Mr. Benson should have expected and for which he should have been prepared.

During the examination of Mr. Singleton, petitioner's other appraisal expert, the Court noted that his report listed 28 sales of large parcels in Emanuel County between 2014 and 2017, each of which valued the land at less than \$2,500 an acre. When the Court asked why a developer would pay \$52,000 per acre for the Watson Lake Property, Mr. Singleton said that none of the other properties was comparable. When the Court asked him to explain why, Mr. Little raised an "[o]bjection based on Federal Rule of Evidence Rule 611 . . . , the mode and order of examining the witness." Trial Tr. vol. 2, 497, 498. The Court overruled the objection, explaining that, in the Tax Court, "the judge is allowed to ask questions, because there is no jury present [that] could be biased by his questions." *Ibid.* When Mr. Little remarked that "the judge is not allowed to argue with the [witness]," the Court replied, "I'm not arguing. . . . I'm trying to ask the witness questions about his data and how he used his data." *Id.* at 499.

At the conclusion of Mr. Sellers's cross-examination, the Court said: "I have one question. So I know you did the comparable sales. . . ." Trial Tr. vol. 4, 905. Mr. Little then cut the Court off in mid-sentence, interjecting, "And I object." *Ibid.* Asked the basis for his objection, Mr. Little replied, "You're testifying and you're becoming the third lawyer in this court case." *Ibid.* The Court advised Mr. Little, once again, that "it is customary for judges in the Tax Court to ask questions of expert witnesses." *Ibid.* We overruled his objection, explaining that we would give him "the chance to do further questioning in light of [the Court's] question." *Ibid.*

The Court's handling of these matters was consistent with Tax Court practice and legal precedent. The Federal Rules of Evidence (Fed. R. Evid.) provide that "[t]he court may call a witness on its own or at a party's request" and that "[t]he court may examine a witness regardless of who calls the witness." Fed. R. Evid. 614(a) and (b). The authority of the judge to question witnesses is "well established." Fed. R. Evid. 614

[*47] advisory committee’s note to 1972 amendment (citing treatises on the law of evidence).

Because jury trials are unavailable in the Tax Court, judges are the triers of fact. As such, they are entitled to probe witnesses’ testimony in search of the truth. As we explained long ago, “[i]t is deeply ingrained in judicial jurisprudence that the presiding judge is ‘the governor of the trial for the purpose of assuring its proper conduct’ and may both question witnesses and comment upon the evidence.” *Charlotte’s Off. Boutique, Inc. v. Commissioner*, 121 T.C. 89, 101 (2003) (citations omitted) (quoting *Logue v. Dore*, 103 F.3d 1040, 1045 (1st Cir. 1997)), supplemented by T.C. Memo. 2004-43, *aff’d*, 425 F.3d 1203 (9th Cir. 2005). Judges in bench trials “have discretion to participate in the trial process, and we may examine a witness so as to unearth the truth, ensure the proper administration of justice, and make certain that there is no misunderstanding of testimony.” *DiDonato v. Commissioner*, T.C. Memo. 2013-11, 105 T.C.M. (CCH) 1067, 1080.

This principle has particular force in the case of expert witnesses. Experts are allowed to testify if their specialized knowledge “will help the trier of fact to understand the evidence or to determine a fact in issue.” Fed. R. Evid. 702(a). As the trier of fact in a Tax Court case, the judge is entitled to ask questions to determine whether the expert’s testimony is indeed helpful in determining facts or understanding evidence.

B. *Cross-Examination of Respondent’s Experts*

Petitioner next contends that the Court put improper limits on his cross-examination of respondent’s experts. Mr. Little asserts that he “was not allowed to thoroughly sift respondent’s experts to bring out deficiencies in said witnesses’ selection of comparables with similar HBU.” In each instance of which he complains, Mr. Little sought to question respondent’s experts about facts not in evidence. When the Court explained that this was improper, Mr. Little moved for a mistrial.

Respondent called Mr. Ryan, an expert rebuttal witness, to supply an “appraisal review” of Mr. Benson’s reports. In this capacity Mr. Ryan was not providing his own opinion regarding the values of the Watson Lake and Meadow Lake Properties. Rather, he was simply offering critiques of Mr. Benson’s methodology. *See supra* pp. 24–25.

Among Mr. Ryan’s critiques was that Mr. Benson drew his allegedly comparable sales from markets very different from Emanuel

[*48] County. On cross-examination Mr. Little asked Mr. Ryan whether he had considered, as a possible comparable sale, a development 30 miles away allegedly called Ohupi Match Club. Mr. Ryan replied that he had no reason to consider such a development because it was not mentioned in Mr. Benson’s report, which he was reviewing.

When Mr. Little persisted in asking Mr. Ryan why he did not consider “Ohupi” a comparable sale, the Court noted that the record contained no evidence (in an expert report or otherwise) that this development even existed. Mr. Little was therefore assuming facts not in evidence. The Court accordingly advised him:

You are not, as lawyer, litigating the case, . . . in a position to propose comparable sales. If none of your experts came up with this development you’re talking about, I’m not going to let you ask [Mr. Ryan] about that. If your experts thought this was comparable, they should have come up with it. You cannot do it in the course of cross-examination. Unless you show you [sic] me somewhere in Mr. Benson’s . . . report that he used this comparable, I’m not going to let you ask [Mr. Ryan] about it.

Trial Tr. vol. 3, 693–94.

During his cross-examination of Ms. Smith, respondent’s expert on the feasibility of developing the Watson Lake and Meadow Lake Properties, Mr. Little asked her about an “intermodal system” that was allegedly “part of the governor’s plan created in 2014, implemented over the last ten years.” Trial Tr. vol. 3, 707–08. The Court again observed:

Counsel, these are facts not in evidence. Where are you getting this information? . . . There’s nothing in the evidence—in the trial record, as far as I know, about this future [inter]modal expansion from Savannah. Unless your experts came up with it, it’s not in the record. And counsel are not free to inject facts into the record. You’re not a witness. You cannot inject facts into the record.

Id. at 708.

During cross-examination of Mr. Sellers, respondent’s appraisal expert, Mr. Little indicated that he intended to ask “if he even considered Ohupi.” Trial Tr. vol. 4, 898. The Court reprised the question it had asked Mr. Little earlier: “Where in the record was there any

[*49] evidence about the Ohupi development?” *Id.* at 899. When Mr. Little did not respond to the question, the Court stated: “[T]hat’s a fact not in the record. And you can’t ask him about facts not in the record.” *Ibid.* Mr. Little replied: “I renew my motion for mistrial based on my personal and reasonable fear of personal risk and retaliation, and I rest.” *Id.* at 900.

The Court’s handling of these matters was consistent with judicial precedent. Under Fed. R. Evid. 611(a), the judge is authorized to exercise reasonable control over the mode of examining witnesses to “avoid wasting time” and to make the process “effective for determining the truth.” In the Tax Court, the judge is “not a mere moderator, but is the governor of the trial for the purpose of assuring its proper conduct.” *DiDonato*, 105 T.C.M. (CCH) at 1087 (quoting *Quercia v. United States*, 289 U.S. 466, 469 (1933)). Mr. Little’s repeated attempts to inject facts into the record were improper, as were his efforts to cross-examine respondent’s experts by assuming nonexistent facts. By curtailing that frolic and detour, the Court put no inappropriate limits on petitioner’s cross-examination of respondent’s experts.

C. *Mr. Little’s Supposed Fear of Sanctions*

Petitioner asserts that the Court denied him a fair trial by “threatening [his] counsel with sanctions.” The threat of sanctions supposedly “put a chilling . . . effect on petitioner’s ability to present his case” and “depriv[ed] [him] of his right to a thorough and sifting Cross.” The Court imposed no sanctions and put no inappropriate limits on petitioner’s cross-examination. And by advising petitioner’s counsel that he risked sanctions for inappropriate behavior, the Court properly exercised its role as “governor of the trial for the purpose of assuring its proper conduct.” *Ibid.*

The Court’s first warning occurred during Mr. Little’s cross-examination of Mr. Ryan, who supplied the appraisal review of Mr. Benson’s reports. *See supra* pp. 47–48. Mr. Little asked Mr. Ryan how he could determine that Mr. Benson’s comparables “are no good if you don’t look at anything other than the ones the IRS tells you to look at.” Trial Tr. vol. 3, 686–87. Mr. Ryan replied: “The IRS did not tell me to look at anything,” and the Court advised Mr. Little: “Counsel, that’s out of line.” *Id.* at 687.

Mr. Little persisted in questioning Mr. Ryan about the supposed Ohupi development, despite the Court’s admonition that no such facts

[*50] were in evidence. *See supra* pp. 48–49. Mr. Little replied: “I can ask him if he looked at places other than just what he was told to look at.” Trial Tr. vol. 3, 693. Mr. Ryan reiterated that nobody told him to look at anything, and the Court advised Mr. Little:

[A]gain, I warned you. I mean, I warned you. You are not to insinuate that opposing counsel behaved unethically by telling [their expert] what to look at. If you continue to do that, there are sanctions I can impose upon [you] under our Tax Court rules. So you must stop this kind of insinuation.

Ibid.

The next episode occurred during respondent’s examination of Corinna Coker, the chief appraiser for the Emanuel County Board of Assessors. She authenticated a spreadsheet showing the sale prices paid for large properties in Emanuel County during 2015–2018. Petitioner did not object to the spreadsheet, and we admitted it into evidence. Respondent then offered into evidence Exhibit 316-R, consisting of the property tax transfer forms underlying the entries on the spreadsheet Ms. Coker had just authenticated. Mr. Little objected to admission of these county records on relevance grounds.

The Court pressed Mr. Little on the grounds for his relevancy objection, noting that Mr. Singleton, his own expert, had valued the 144-acre Watson Lake Property on the assumption that it would be sold as a single large tract. *See supra* pp. 19–20. When we overruled the objection, Mr. Little accused the Court of “testifying” and “moved for a mistrial.” Trial Tr. vol. 4, 854–56. When we explained that we were simply denying an ill-founded relevancy objection, Mr. Little accused the Court of “exceeding its authority . . . under the ethical standards” and again moved for a mistrial. *Id.* at 855–56. The Court noted its view that Mr. Little was “acting extremely unprofessionally” and that, if he “continued these antics, [the Court] may consider suggesting to the committee of our Court that you no longer be allowed to practice in this Court.” *Id.* at 856.

The final episode occurred during Mr. Little’s cross-examination of Mr. Sellers, respondent’s appraisal expert. Mr. Little made clear that he intended to ask Mr. Sellers about the supposed Ohupi development—a fact not in evidence—and said he needed “instruction from the Court because I’ve already been advised that I will face sanctions.” *Id.* at 896.

[*51] “If I ask about Ohupi,” Mr. Little said, “are you going to follow through with your threats?” *Id.* at 899. The Court replied:

No. I’m not going to. I’m going to say that’s a fact not in the record, and you can’t ask him about facts not in the record. . . . I’m not going to sanction you for this. I’m just going to overrule that line of questioning. You’re free to ask a question. . . . Ask him about the comparables in his report. I’m inviting you to do that.

Id. at 899–900.

Mr. Little then persisted in asking Mr. Sellers, “Did you look at Ohupi land?” *Id.* at 901. Respondent objected because the question “assume[d] facts not in evidence,” and the Court sustained the objection. *Ibid.* Instead of pursuing a proper line of cross-examination, Mr. Little stated: “I renew my motion for mistrial based on my personal and reasonable fear of personal risk and retaliation, and I rest.” *Id.* at 900, 904.

There is no basis for petitioner’s assertions that the threat of sanctions “put a chilling . . . effect on [his] ability to present his case” or “depriv[ed] [him] of his right to a thorough and sifting Cross.” The Court’s warnings to Mr. Little concerned what the Court viewed as instances of “unprofessional conduct.” When Mr. Little asked what those instances were, the Court replied:

On two occasions, you accused Respondent’s counsel of feeding comparables to their expert. That was inappropriate. I cautioned you not to do that and then you did it a second time. I thought that was unprofessional. Then you made a relevancy objection, which I explained I was overruling and you demanded a mistrial, and that was unprofessional. That’s all.

Trial Tr. vol. 4, 897.

The Court never suggested that it would sanction Mr. Little for the scope of his cross-examination. The Court simply made clear, repeatedly, that it would overrule a specific line of cross-examination that improperly assumed facts not in evidence. Petitioner objected to the Court’s rulings, the Court overruled his objections, and he is free to pursue that argument on appeal.

[*52] D. *Alleged Deficiencies in Trial Transcript*

Finally, petitioner asserts that he was prejudiced because the Court did not “preserve the recording of the trial.” Trial of these cases concluded on October 9, 2025. On October 8, 2025, petitioner filed a Motion to Preserve Recording, asking the Court to “preserve the audio recording of all proceedings in the court.” By Order served October 16, 2025, we denied this Motion “as premature.”

As we explained in that Order, the Tax Court is a court of record as provided in section 7441. Rule 150(a) provides that our trials “shall be recorded or otherwise reported, and a transcript thereof shall be made.” The transcript may be used and referenced by the parties in their briefs and by the Court in its Orders and Opinions, and may be “admissible in evidence at a later trial or hearing.” Rule 150(b).

The transcript may be corrected after trial only for errors in transcription and not for accurately transcribed testimony that is subsequently alleged or shown to be erroneous. *See Estate of McCampbell v. Commissioner*, 93 T.C. 550, 551–52 (1989). In our Order we explained that the court reporter, eScribers, LLC, “will provide a transcript of the trial testimony in due course to both parties, and it will retain and preserve an oral recording of the proceedings until any disputes about the transcript’s correctness are resolved.” We noted that, if petitioner’s counsel, upon receiving the transcript from eScribers, believed that there were errors in (or omissions from) it, he was free to confer with respondent regarding the necessary changes and bring them to our attention through a Motion to Correct Transcript. The Court would then issue an order directing eScribers to make any necessary revisions to the official transcript. *See, e.g., Order, Ranch Springs, LLC v. Commissioner*, No. 11794-21 (T.C. Sep. 3, 2024).

The four-volume transcript of the trial was received by the Court and served upon the parties on November 5, 2025. Petitioner did not file a Motion to Correct Transcript identifying any errors in (or omissions from) the transcript. Rather, he filed his Posttrial Brief with citations of the transcript as he received it.¹³ In the absence of a Motion to

¹³ In a footnote to his brief petitioner makes the vague assertion that the transcript “is void” of certain testimony and argument. That assertion is incorrect. But if petitioner believed it to be true, it was his obligation to consult with respondent’s counsel and file a Motion to Correct Transcript.

[*53] Correct Transcript, eScribers was under no obligation to retain the audio recording made by the court reporter.

We have considered all of the parties' contentions and arguments that are not discussed herein, and we find them unnecessary to reach, without merit, or irrelevant.

To reflect the foregoing,

Decisions will be entered under Rule 155.