

MEMORANDUM

TO: Minnehaha Creek Watershed District Board of Managers
FROM: Michael Welch
RE: **Tax-law treatment of conservation easements**
DATE: October 7, 2016

At its September 22 regular meeting the managers directed counsel to prepare a memo describing recent changes in state tax law that have diminished the financial incentive for property owners to grant conservation easements over their lands. The impetus for the query came from a report on a development on property on Mooney Lake in Orono formerly owned by Doug and Wendy Dayton. Wendy Dayton sold the 93 acres for (limited) development after reportedly finding that a 2013 change in state law made a planned donation of a conservation easement over 83 acres financial untenable. (See attached Star Tribune article.)

State tax law was amended in the 2013 legislative session to preclude county tax assessors from taking a conservation easement on land into account when setting the taxable value of a property. Prior to the change, Minnesota Statutes section 273.117 gave assessors the discretion to reduce the taxable value of a property based on the fact that a recorded conservation easement constrained how the property could be used.¹

Notably, though, the amendment included an exception for lands where the easement covers “riparian buffers along lakes, rivers, and streams that are used for water quantity or quality control... .” *Id.* “Riparian buffer” is not defined for purposes of the tax code, so it is unclear why a conservation easement on the Dayton property – adjacent to Mooney Lake – would not have qualified in whole or part for a value reduction under the exception. Further, because of the lack of a definition – e.g., a set of particular criteria an assessor would analyze to determine whether or not a particular easement qualifies as a riparian buffer to which the exception would apply – an individual assessor has no clear methodology for applying the exception, likely making him or her less inclined to accept a diminish valuation. Minnesota Revenue endeavors to be helpful in guidance provided to property tax administrators, but has no definitive framework for valuations:

[V]alue reductions in the case of riparian buffers[] may cause some confusion that is best addressed on a case-by-case basis. We recommend you use the following guidelines:

- For water quality- or quantity-control easements along a lake, river, stream, or – in some cases – a ditch, you may reduce the value of the property if the market indicates a reduction. All acres encumbered by the easement may be eligible for a value reduction.

¹ 2013 Minn. Laws ch. 143, art. 4, sec. 17. A copy of the relevant section is attached.

- On rare occasions, an easement may not specifically identify water quality or quantity control as its purpose. If the covered lands are close enough to a body of water that it appears likely the easement was granted for water quality or quantity control, you should contact the entity holding the easement to determine its purpose. Review the easement to determine which entity to contact – the Board of Water and Soil Resources (BWSR), Department of Natural Resources (DNR), or a private non-profit organization.²

The constraint on assessors’ discretion now in section 273.117 runs contrary to the basic policy undergirding state law, which is that “[i]n determining market value for taxation, an assessor must ‘consider and give due weight to every element and factor affecting the market value.’”³ As a usual and practical matter, a conservation easement certainly is an element affecting market value.

While the statute when amended applied on its terms prospectively and retroactively, it was amended again in 2014 to clarify that it did not apply to easements granted before May 23, 2013.⁴ Conservation easements granted on MCWD property or to MCWD prior to that date may still be considered, when relevant, in determining property value. But future easement transactions will need to account for the uncertainty of establishing whether or not a county assessor can take an easement into account in valuing the property.

Options for Actions

Should the managers wish to address the uncertainty and negative affect on potential donors of the 2013 amendment, especially with regard to easements that would provide protection of water resources, the following conceptual options are offered for consideration:

- A legislative initiative (in collaboration with other conservation-minded organizations) to restore assessors’ discretionary authority to consider conservation easements.⁵
- A legislative initiative to define “riparian buffer” for purposes of state tax code.
- A legislative initiative to establish an administrative procedure whereby a watershed organization would certify, for purposes of section 273.117, a conservation easement or restriction as meeting the water quantity and quality purposes cited in the tax law.

² Minnesota Property Tax Administrator’s Manual, July 2015, p. 19. Available at http://www.revenue.state.mn.us/local_gov/prop_tax_admin/education/ptamanual_module2.pdf (last visited October 6, 2016).

³ *Tax Court – County of Aitkin, et al v Blandin Paper Co.*, 883 N.W.2d 803 (Minn. 2016) (citing Minn. Stat. § 273.12).

⁴ 2014 Minn. Laws ch. 150, art. 4, sec. 5.

⁵ Note that a 2014 effort to reinstate the law did not succeed. See H.F. 2102, S.F. 1933, 88th Legislature (2013-2014).

We trust the above addresses, at a macro level, the managers' questions from the September 22 meeting. Counsel will be prepared to answer questions on the subject or take further direction at the October 13 meeting.

c/ Lars Erdahl, James Wisker, Joel Carlson

CHAPTER 143—H.F.No. 677

An act relating to financing and operation of state and local government; making changes to individual income, corporate franchise, property, sales and use, estate, mineral, tobacco, alcohol, special, local, and other taxes and tax-related provisions modifying the property tax refund; changing property tax aids and credits; modifying the Sustainable Forest Incentive Act; modifying education aids and levies; providing additional pension funding; modifying definitions and distributions for property taxes; providing for property tax exemptions; modifying the payment in lieu of tax provisions; modifying education aids and levies; modifying tobacco tax provisions; making changes to additions and subtractions from federal taxable income; providing for federal conformity; changing income tax rates for individuals, estates, and trusts; providing income tax credits; modifying estate tax provisions; providing for a state gift tax; expanding the sales tax base; modifying the duty to collect and remit sales taxes for certain sellers; imposing the sales tax on digital products and selected services; modifying the definition of sale and purchase; modifying provisions for the rental motor vehicle tax rate; providing for multiple points of use certificates; modifying sales tax exemptions; authorizing local sales taxes; authorizing economic development powers; modifying tax increment financing rules; providing authority, organization, powers, duties, and requiring a prevailing wage for development of a Destination Medical Center; authorizing state infrastructure aid; modifying the distribution of taconite production taxes; authorizing taconite production tax bonds for grants to school districts; modifying and providing provisions for public finance; providing funding for legislative office facilities; modifying the definition of market value for tax, debt, and other purposes; making conforming, policy, and technical changes to tax provisions; requiring studies and reports; appropriating money; amending Minnesota Statutes 2012, sections 13.792; 16A.46; 16A.727; 38.18; 40A.15, subdivision 2; 69.011, subdivision 1; 69.021, subdivisions 7, 8; 88.51, subdivision 3; 103B.102, subdivision 3; 103B.245, subdivision 3; 103B.251, subdivision 8; 103B.335; 103B.3369, subdivision 5; 103B.635, subdivision 2; 103B.691, subdivision 2; 103C.501, subdivision 4; 103D.905, subdivisions 2, 3, 8; 103F.405, subdivision 1; 116J.8737, subdivisions 1, 2, 8; 117.025, subdivision 7; 118A.04, subdivision 3; 118A.05, subdivision 5; 123A.455, subdivision 1; 126C.10, subdivision 1, by adding a subdivision; 126C.13, subdivision 4; 126C.17; 126C.48, subdivision 8; 127A.48, subdivision 1; 138.053; 144F.01, subdivision 4; 162.07, subdivisions 3, 4; 163.04, subdivision 3; 163.06, subdivision 6; 165.10, subdivision 1; 168.012, subdivision 9, by adding a subdivision; 216C.436, subdivision 7; 237.52, subdivision 3, by adding a subdivision; 270.077; 270.41, subdivisions 3, 5, by adding a subdivision; 270.45; 270B.01, subdivision 8; 270B.03, subdivision 1; 270B.12, subdivision 4; 270C.03, subdivision 1; 270C.34, subdivision 1; 270C.38, subdivision 1; 270C.42, subdivision 2; 270C.56, subdivision 1; 271.06, subdivision 2a, as added; 272.01, subdivision 2; 272.02, subdivisions 39, 97, by adding subdivisions; 272.03, subdivision 9, by adding subdivisions; 273.032; 273.061, subdivision 2; 273.0645; 273.11, subdivision 1; 273.114, subdivision 6; 273.117;

* * *

Sec. 17. Minnesota Statutes 2012, section 273.117, is amended to read:

273.117 CONSERVATION PROPERTY TAX VALUATION.

The value of real property which is subject to a conservation restriction or easement may be adjusted shall not be reduced by the assessor if:

- (a) the restriction or easement is for a conservation purpose as defined in section 84.64, subdivision 2, and is recorded on the property; and
- (b) the property is being used in accordance with the terms of the conservation restriction or easement.

This section does not apply to (1) conservation restrictions or easements covering riparian buffers along lakes, rivers, and streams that are used for water quantity or quality control; or (2) to easements in a county that has adopted, by referendum, a program to protect farmland and natural areas since 1999.

EFFECTIVE DATE. This section is effective for assessment year 2013 and thereafter, and for taxes payable in 2014 and thereafter.

WEST METRO

Dayton land in Orono now slated for a housing subdivision

Nearly half of the property, expected to be preserved, is now slated to be developed.

By Kelly Smith (<http://www.startribune.com/kelly-smith/101372379/>) Star Tribune |

JULY 25, 2015 — 1:00PM

Coveted prairie grasslands, dense woods and quiet lakeshore in northeast Orono are now slated to be subdivided into high-end homes.

Doug Dayton, the grandson of Dayton's department store founder George D. Dayton and the company executive credited with launching Target, bought the 93-acre estate 50 years ago. When he died in 2013, his widow, Wendy Dayton, vowed it wouldn't be sold to developers, but to someone who would preserve property her husband had restored.

New state rules have jeopardized her initial plans, however, and nearly half of the property is now slated to be developed, with preliminary plan approval expected by the Orono City Council on Monday.

The 2013 law change, tucked into a broader state tax package, restricted county assessors from reducing the value of a property enrolled in a conservation easement, with a few exceptions. That meant a landowner with a perpetual conservation easement wouldn't see a dip in property taxes.

"It was a pretty dramatic move and would have a significant impact and unintended consequences," said Kris Larson of the Minnesota Land Trust. "That has made a few landowners say, 'that's not for me.'"

In Orono, the law change has already affected the fate of Dayton's land. Wendy Dayton, the aunt of Gov. Mark Dayton, had planned last year for an 83-acre conservation easement with the Minnesota Land Trust. A year later, that's changed, with Dayton planning to sell the land to a developer, who is still working with the Minnesota Land Trust on preservation of some of the land while subdividing nearly half of it for 11 houses.

Before the law change, it was up to local assessors to determine what impact a conservation easement had on the value of the land. According to the Minnesota Land Trust, there are more than 12,000 landowners who have agreed to conservation easements in which they are paid for restrictions that prevent the land from being developed.

One of the bill's authors said then that the change would make the property tax burden more fair, preventing landowners from "double-dipping" by getting a reduction in property taxes and money from the conservation easement.

Environmental groups countered that it penalized private land conservation, wouldn't give property owners their true market value and would stifle land preservation in Minnesota — the only state in the country to pass such a law. They sought unsuccessfully to repeal it in 2014 and plan to try again in 2016.

A tranquil location

Dayton's property is one of Orono's biggest remaining parcels of open land, located north of Wayzata on Mooney Lake, which includes parts of Plymouth, Medina and Orono. The small, shallow lake is private and quiet, dotted with about 50 homes of some of the Twin Cities' most prominent families — from the Daytons to the MacMillans of Cargill fame. Even Denny Hecker once lived there.

A neighbor of the Daytons, Peter Rechelbacher, whose father started Aveda, is president of the local lake association that works to restore and protect the lake. Years ago, he said, he was interested in buying the Dayton property, but the state law change was one of the deterrents to moving forward.

"With the law change, it made it very restrictive," he said. "Financially, it's not feasible for an individual."



(http://stmedia.startribune.com/images/1437781621_10056241+)
RICHARD SENNOTT, STAR TRIBUNE

Doug Dayton restored nearly 40 acres of native prairie grasslands in the plot he bought in Orono in the 1960s.



(http://stmedia.startribune.com/images/1437781502_1)

RICHARD SENNOTT, STAR TRIBUNE

Doug Dayton standing in his prairie in a full summertime bloom in 2007.

When word leaked that the property was coming to market, developers pounced. It hit the market last year for \$5.9 million, far less than it would be worth as a redevelopment project. The land has a 6,600-square-foot, six-bedroom house tucked into the side of a hill overlooking more than 1,600 feet of shoreline. Nearby, Doug Dayton restored fields to what they may have looked like before it was farmland, cultivating nearly 40 acres of grasslands and trails through a basswood-maple forest.

Contentious proposal

Now, developer George Stickney's Mooney Lake Preserve plans call for leaving nearly 50 of the 90 acres undeveloped in two outlots. Most of the rest of the land would be developed into 11 3-acre lots, some of which will have rules to protect wetlands and trees.

Stickney and Dayton both declined interview requests. But the city says that the developer could have gotten at least 30 homes on the property and choose instead to preserve some of it. If the city gives final approval in August, construction could start this fall.

"I think the big concern is the lake quality," said Wendy Lundsgaard, a resident on the lake. "The runoff from these homes — what is that going to do to the quality?"

The project has been contentious among city leaders, too, with a debate over what's more important — preserving the prairie Doug Dayton restored or the mature forest? Initial plans were revised, moving one lot from the woods to the prairie. In June, the Planning Commission recommended approval and the City Council agreed July 13 in a 4-1 vote to draft a resolution for preliminary plat approval, which will be voted on this Monday.

"It's just so sad; that property is so special. It's a shame it's become this," Mooney Lake resident Anne Healy Shapiro said. "We'll never get this back ... this is one of the most beautiful spots in the whole state."

Staff writer Jim Buchta contributed to this report.

kelly.smith@startribune.com 612-673-4141 kellystrib