How Do Conservation Easements Impact Farm Finances?

March 1, 2023 | The Whallonsburg Grange Hall, Essex, New York

This free informational session for farmland owners discussed how farmland conservation easements can affect land values, property taxes, borrowing ability, and other financial matters. The following panelists shared their experiences and knowledge:

Greg Fetters, Financial Advisor & Conservation Easement Landowner

James Graves, Owner/Operator, Full and By Farm, Essex, NY

Rob Guay, Owner/Real Estate Appraiser, Viewpoint Ag Evaluation & Consulting

Chris Jage, Conservation Program Director, Adirondack Land Trust

Jill Robinson, Enrolled Agent, Farm Credit East

This event was supported by a Farmland Access Outreach Grant through the New York State Department of Agriculture and Markets and offered in partnership with Cornell Cooperative Extension of Essex County. These organizations also supported the free informational session "How Do Conservation Easements Impact Farm Operations?" in December 2022. A recording of that event is available on YouTube here.

Questions about the event or conservation easements can be directed to Adirondack Land Trust Land Protection Manager Megan Zack Stevenson at (518) 576-2400 or megan.stevenson@adirondacklandtrust.org.

Transcript begins:

Aaron Thomas, Farmland & Stewardship Specialist for Adirondack Land Trust:

All right. Good evening everyone, and welcome. This is a second of a two-part series that we're doing on conservation easements. Tonight is about the financial side of that. My name's Aaron Thomas. I'm the Farmland Specialist at the Adirondack Land Trust. A little bit about the Land Trust. We've been around since 1984. We protect forest, farms and wildlands throughout the Adirondacks and currently hold about 7,000 acres of ag easements, primarily in the Champlain Valley. From the Land Trust, we also have Chris Jage, our program director, and our executive director, Mike Carr.

A little bit about conservation easements. We understand that they're confusing and that there are misconceptions around them and, really, that's due to each conservation easement is as different as the land that it's held on. Hopefully, tonight we can give you a better sense of those easements and the financial side and give you the tools to decide whether this is the right plan for you and your farm.

First, I'd like to thank Ag and Markets for allowing us to have the Farm and Access Outreach grant to make this possible, as well as partnership with Carly Summers of Cooperative Extension, and the Grange for allowing us to hold it here. Just a couple about housekeeping stuff. We have a table over here with a bunch of information and business cards and stickers, if you'd like. There's also a sign-in in the back that you can be registered for our newsletter and hat raffle.

And then, I'd just like to introduce the panelists. First, we have Chris Jage, our Conservation Program Director at the Land Trust. Rob Guay, he's the owner and real estate assessor at Viewpoint Ag. Jill Robinson, she's with Farm Credit East. Greg Fetters is a financial advisor and a conservation easement landowner, and James Graves. He's just down the road. He's the owner at Full and By Farm. If there aren't any questions, we can get started. Thank you.

00:02:18 What is a conservation easement?

Chris Jage:

All right. Well, I think I'll begin. Thank you Aaron, and welcome everybody. Nice to see everybody here on this kind of ugh night. But, as Aaron said, I work in conservation easements from the Land Trust perspective. We've been doing this for about going on 25 years now. Drafting them, working with appraisers to value them, and then working with landowners once they have them on their land. The session that we had before talked about the easements and about how they affect the operations of the farm. A lot of that has to do with the restrictions, what you can do, what you can't do, or where you can do certain things. Won't get into that so much tonight. It's going to be about the impact of the money side of things, from taxes to getting paid for easements or if you donate them, that sort of thing, and that's what I get into?

In talking about those restrictions, the easement, the restrictions you put in the easement, are one of the main drivers of how much that easement's worth.

00:03:14 How is the value of a conservation easement determined?

Chris Jage:

That's a question I get often, how much would you pay me for my easement? Well, there's 1000 questions I need to answer before I can get even close to providing you with one. When we make decisions about easements, there are three main areas that I would think drive a lot of the value and that is subdivisions. How many times can you subdivide the property? There'd be residential rights, how many residences can ultimately go on that property? Lastly, structures. How many structures can be on that property?

One thing that's commonly used is what we call an impervious cover restriction. Only a certain percentage of the property can have a building or asphalt or something like that on it because, basically, what we're trying to do is we're trying to keep open field, ag, open field. That's what a lot of easements try to do. That's the first thing to keep in mind when you're thinking about these

easements and what restrictions you want to put in there or not. Subdivisions, residential rights and structures are going to be a pretty big driver of how much that easement is worth or is not.

The second thing that we also get asked, I had a phone call about this recently, that folks didn't realize that we also buy easements. Easements have value. It's an interest in real property. When they have value, we can buy them, they can be donated to us, and we've done all these. Or something in the middle, what we call a bargain sale. Let's say that the easement's worth $300,000 and you sell it for $150, so you get $150 in cash and the rest of that you can use as a tax deduction. It's important to know that the tax deductions associated with conservation easements, and I'll let the experts get into more of this, is different than cash. And so, that's important, understanding how that's going to impact your taxes, your finances and all that sort of thing.

But it's important to know that, because these can be donated, it also doesn't mean they can be done quickly. A lot of times people are sitting there at the end of the year and they said, "I'm going to get all my donations in so I can get my tax deductions." You really can't do that with an easement because easements take a long time to figure out what's right for you, what's right for the land. There's a lot of thought that needs to go into a good easement before, quite frankly, an organization like us would accept that.

We actually had a situation last year in about September, large piece of land, very important piece of farm land and the landowner decided, "Okay, I'll do this, but I need to close by the end of the year." It would be a tremendous conservation easement, and we said no. There was no way that our staff could direct enough energy to do an easement that would be good for the land, good for the landowner, and good for the Land Trust. The only thing we could do was say no, because if we don't do it well, we just don't do it. That's another thing is you got to plan the time that it takes to do these.

The third thing I wanted to mention was on the payment side of things. When we buy easements, we can pay for them. A lot of times, we're using either state grant sources, federal grant sources and, in some cases, private grant sources. Like a regular real estate transaction, you can just get paid all up front. But there's also other instruments like annuities and other ways to structure payments. If that was more preferable, at closing, the Land Trust would purchase a fixed annuity or something like that so you would get fixed payments over time as opposed to that one lump sum. Because, again, when you put the numbers with your taxes, there might be a capital gains thing and you want to say, "Okay, maybe this is a better solution for us than other things."

Lastly, getting to the advisor thing, is that strongly encourage that everyone who does this have good advisors, starting with a good attorney and a good financial advisor. Even if you have those already, I'd start talking to them about conservation easements because if you have someone who knows land or they're a real estate agent, conservation easements, they are real estate, but they're different. Understanding this specific type of work is really important. We can't provide real advice on this. We don't provide legal advice. We don't provide tax advice, but we have a lot of good resources.

There's a series of books called Preserving Family Lands by an attorney Stephen Small. He actually wrote the tax code at the federal level on conservation easements. Some other tax guides for conservation easements that we can at least give your professionals the direction to say, "Okay, here's the information I need to learn about," or learn more about and provide you with

the information you need. Again, those are the points. Understand the restrictions in the easement. Easements can be donated, purchased or something in between. We can structure payments and, lastly, get good advisors. The Land Trust is always open to talk and we will talk and visit your farm and have as many cups of coffee as it takes until we figure out is it right, and then how do we get it right? Thanks.

00:08:33 How is my property appraised?

Rob Guay:

Okay. I guess my job, as the appraiser, is to develop a conservation easement appraisal that determines the impact of the easement on the value of the land as indicated by market data. Any of the conclusions, opinions, that we come up with, anything in the report, necessarily has to be supported by market data that's local to that area, that's relevant, that is representative of the market. To set the stage, that's kind of how we're bound in an easement appraisal.

I should probably start with introducing myself. My name's Rob Guay. I work as a real estate appraiser across the northeast. I work with a couple other appraisers out of Vermont and Maine. We do agricultural properties only and we do easements in three states now. We're working for four or five different land trusts doing this kind of work. We're seeing a lot of different types of easements and impacts on different markets and measuring easement impact across various markets, which is an interesting perspective in that there's some differences from area to area, but there's a lot of consistency in how easements are applied across that broad area as well as impact on value in more rural areas versus more urban areas.

This presentation is going to stay at 30,000 feet. I'm not going to get into the weeds too far. I just want to provide a broad overview of what we're doing and why, and what drives that. Back to what I was talking about, all the conclusions of value opinions, anything in the report, needs to be supported by market data. Either it's a fact that we can support with the zoning regulations or it's an opinion that's supported by interpretation of market data. What's driving differences in value in the... Well, back up a step.

In an easement appraisal, you're actually appraising the property twice. You're doing it as is before the easement's applied. If you were to put this on the open market with a realtor with proper marketing in a long enough period of time with the right price, what would this thing sell for? I'm going to the multiple listing service and I'm pulling down realtor brokered transactions that are representative of the market. I'm trying to steer away from the deals that never got proper market exposure or family to family type deals or a situation where someone allocated more to real estate for some tax purposes or something. I'm trying to weed those out and get to real true market sales, and I'm doing it before an easement as is type value. And then, I'm doing a hypothetical theoretical after the easement's applied, what would that value be?

00:11:25 What impact does an easement have on the value of my land?

Rob Guay:

Again, it's the same process. We're going to go back to the market and we're going to look at transactions that happened in the market within a very close period of time that are as similar as possible so that we can come up with a opinion of what the after value would be. Of course, the

difference between the before and the after is the at value of the easement. Really, it's the impact of the easement on the value of the property as determined by the market.

What's driving that impact? As Chris was saying, it's going to be residential rights, ability to build structures, ability to subdivide. When you read through these easement documents, it really very clearly states, for the most part, what you can and can't do with the property. Beforehand, you're only subject to maybe APA zoning, town zoning, state waste and water regulations, those kind of things. In the after, you're now bounded by what it says in the easement. You might not be able to subdivide. You could probably only build in defined areas. You can probably only build certain types of buildings and you probably can't subdivide your road frontage to sell off a lot to a neighbor or whatever, or to a family member who might want to build a house. Maybe you do, you don't have a second housing right.

These are all the finer details that are going to have more impact on a piece of property. In general, a piece of property that's got better access, maybe more road frontage, road frontage that's more at grade versus steep road frontage, better perkable soils probably brings more value than something that's got wet clay that probably can't build houses anyway. Floodplain doesn't have development potential to begin with, even if it's got aesthetic and agricultural value, it doesn't really have a lot of development potential to begin with. Too much floodplain on a property may have some impact on its easement valuation.

Of course, location near development is going to have a big impact. If you've got a piece of property with a lot of road frontage, three phase power, paved road in an area that's already being developed, and we can see that parcels are being purchased in that neighborhood for development purposes. That's clearly going to have more value in the before than a more remote farmland parcel that doesn't have that same development pressure.

What we're looking at really is a snapshot in time. I'm doing this appraisal before and after as of a certain date. Now, five years from now, we could have a major change in the market and I can't reflect that. All I can do is say that, right now, people are buying properties without easements that are similar to this property for this kind of money, and after this is what folks are paying in the market. That's really what you're getting is a before and after based on those easement terms.

I'll mention the IRS donation versus a straight conservation easement sale while we're on the reporting format type thing. It might be a slightly different project if you're going to be donating versus if you're going to be selling an easement. Just keep that in mind that you might actually need to do some additional appraisal work if you're going to be donating. But the concept is all the same. It's just that the IRS requires some different things from a donation type situation.

<u>00:14:56 How does the appraisal process work?</u>

Rob Guay:

My physical process that I do is I need to familiarize myself with your farm. We're going to do a physical inspection where I'm going to look at the buildings, we're going to tour the land. I don't need to see all the pins, but I do need to see all the property type, the places in the property that are really driving value. I want to see the road frontage. I want to see the access. I want to see the knoll with the view that's fairly close to power. I want to see the river frontage. The idea is to get the same kind of way that a buyer might inspect a piece of property that they're going to

purchase. You want to see what does this property have to offer? What are the broad range of potential? Where can I build structures?

I'm going to kind of think through beforehand here's how I can subdivide this property. Here's where I could build and, afterwards, here's what that looks like. Beyond physical inspection, I'm going to also look at legal restrictions, zoning, any APA restrictions on the property. Maybe there's deeded restrictions, easements from other uses over time. Sometimes you'll have even mineral rights reserved, and those things can certainly have an impact on the before value.

And then, zooming out again, we're going to research the economics of the area. It's like you're starting at the property and then you're zooming out to get the lay of the land. We're going to research the real estate market, which is something I'm doing ongoing, but that's all part of the process. We're going to go to the MLS, talk to brokers, talk to buyers and sellers. That sale verification process is a big part of what we do. I'm maintaining a database of sales of these types of properties. If I call you, the reason I'm calling you when you buy a piece of property is so that I can get in your head because the whole point of what I'm doing is to reflect buyer behavior. I'm going to ask you, "What do you think the house was worth on this, the overall?" That's what I'm trying to reflect in an appraisal is, really, the buyer motivation for these purchases. How are they allocating the sale into its components and then trying to reflect that in my appraisal work.

Of course, the Land Trust is providing information on the easement. I generally have a call with someone at the Land Trust so I can better understand the easement particular to that property. They're giving me a draft that is not yet executed. There's some interpretation there. I'm going to go through with the Land Trust in the same way that you went at the kitchen table. Ask questions about, "Well, what about this? Can I do this? Can I do that?" And then, I'm going to talk with the landowner about different parts of the property that, obviously, I can't see there. There's certain mechanical things that I'm not going to be able to see. We're going to have a lot of back and forth with the landowner on that as well.

00:17:51 What is highest and best use?

Rob Guay:

The core of the analysis is what we call the highest and best use. There are four tests. Physically possible, legally permissible, financially feasible, and maximally productive. I'll start right at the top. What's physically possible? If it's steep and has one driveway, then does it plateau? Can we do a subdivision at the top? I'm looking at physical capacity of this land to be subdivided, to be developed, to be used for farm uses. What's the soils under the crop land? What's the soils under the woodland? Some of these woodland soils are eight inches to ledge. Clearly, you're not going to build a septic system there. Those are the kind of physical features I'm looking at.

Legally permissible, again, has to do with zoning, APA regs. How many house slots can be put on here just based upon the density requirements of the APA and town zoning and all the things that go into that. Financially feasible is exactly what it sounds like. What are buyers doing with these properties and which of these uses appears to be feasible in the marketplace? Are folks buying these things and subdividing them? Are they keeping them as a big lot and putting a house tucked away behind the hedge row? Are they purchasing them to cut the timber off them to develop for sugarbush? What are the most likely uses of this property?

And so, you can see we're kind of working in a funnel. The top of the funnel is what's physically possible? Anything on this property that physically is possible, we're going to narrow it down to now what will the legal requirements allow and now what are people doing with these properties? And then, of those things that people are commonly doing with these properties, what seems to be bringing the highest value in the marketplace? That's what I'm shooting for is what's bringing the highest value in the marketplace?

If a property's currently being used for periodic timber harvest and recreation, but I see that there's a massive maple resource out there, I'm probably going to lean more toward a maple type highest and best use. If the property's is vacant at a given time and there's good building lots, my conclusion is probably going to be that it's going to be a house lot or an oversized house lot or farmette type situation. I'm looking for, based on the market, who's paying the most and where does this property fit within the market? Again, we're doing that twice. We're doing it before the easement. We're doing it after the easement.

Now, you can see that in that funnel, the easement is going to really draw down the funnel, right at legally permissible. You've lost a lot of those potential uses in that legally permissible category. What happens is your buyer pool changes. In the financially feasible, you now have a different buyer pool that's much more agriculturally focused and because there's not that potential, your developers are out. There is a nuisance factor, I think, with the world residential marketplace where folks, if they had the chance to buy something with full rights at a given price versus something that was eased, I think you'd go for something with more rights at the same price. What we're seeing in the marketplace is that's pushing down your easement values for the same type of farm. Physically, the legal restrictions are having that impact. What we're trying to really measure is that change in buyer pool, what's the impact of that on the value of the property and how is that being reflected in the market? I'll just loop back one more time to my point of the whole presentation. Comparable sales data is really the core of all of this. If I don't have 10 lot subdivisions in your town, it's not a thing. It's not financially feasible. If it was, someone would be doing it. If we can't find it in the market, then it's not something that's happening currently and we're not barking up the right tree, so to speak. We need to be looking at what are people actually doing with these properties and what does the market tell us about that reduction in value?

00:22:23 How can Farm Credit East help me?

Jill Robinson:

I'm Jill Robinson. I work with Farm Credit East. We are, for the most part, a lending organization. Farm Credit East is basically all of New England, New York, and New Jersey. We, for 55 years, have been providing financial services to farmers, tax accounting, and I'm a tax consultant, so I do everything from tax returns to succession planning and such with families.

I started out down in Dutchess County where they had the Dutchess Land Conservancy and they started doing a lot there. You're 90 miles north of New York City. Certainly a lot of pressure from that. I remember farms that we had that maybe owned 1000 cow dairies that maybe owned 150 acres and they rented everything else for nothing because the city people there wanted it used for agriculture. It was kind of a cheap way for them to sustain. That was kind of interesting.

Currently, I'm in Greenwich, New York and we have the Ag Steward Association there, and we've just exceeded 30,000 acres conserved in Washington County. We're just across the river from Saratoga County which has their own conservancy, Saratoga Land Conservancy. I mean, there's certainly Saratoga County being the fastest growing county in New York state, I believe. There's some development pressure there. And so, I've been working with easements for 35 years or so, and my own family has conserved about 15 years ago, about a thousand acres along the Battenkill River. So I usually come into play after everybody's signed the deal and then I get the call, and in fact, I got one today from some little old lady, a grand ole thing, she just got proof for her easement. The next thing out of their mouth is, well, how much do I have to send the government? So that's kind of where I come in.

00:24:28 How do conservation easements impact my taxes?

Jill Robinson:

But we've worked a lot of deals where we get a young family to come in, say we have a senior generation that has no next generation coming in, and they can conserve the farm and take off the development rights and get that money and then the new farmer can come in and they buy in at the conserved rate. So then they get a chance to start out with not having to spend a small fortune for the property. So those situations have worked very well. I've had some where they had their eye on the neighbor's property so they conserve some and then use some of that to exchange and buy more ground. So there's a lot of situations that you can do out there.

We also lend money. People are also concerned with lending. We lend a lot to conserved farms, obviously. We have that many under conservation easements. We do subordinate to the easement. We actually pick up a lot of business that way because a lot of banks aren't familiar with the easements. They're just confused by them, and we're very familiar with them and every situation is a little bit different. So we don't run away from those situations as far as the lending goes. The biggest question on a lot of the tax situation is it is a taxable event. It's usually subject to capital gains, which is the better rate compared to ordinary tax rates, which can go as high as... What is it, 36 percent, whatever the highest rate is, whereas-

Greg Fetters:

At six percent stake.

Jill Robinson:

At six percent stake, conservation easements usually start off, some of it, capital gain is in the lower bracket is nothing, and then 15 percent and then you only get to 20 percent if you're over half a million. So it's the better tax rate to have. But the biggest question that usually I run into is, well, how did you acquire the property?

Well, it was gifted, or was it gifted or was it inherited? Spend a lot of time with people looking up a surrogate court and figure out what it was valued at when they inherited it, because nobody wrote that stuff down. Because that will give you basis in the property, and you're allowed to basically use all the basis in the property against that easement because IRS has determined that there is no way to separate the ag value from the rights. So you don't have to try to separate the basis your property cost or whatever that way, you can use all of it. So the biggest thing to try to reduce your tax liability is figure out what your basis is, and that could be a little bit of a game

sort of hunting and finding that. The other one you mentioned about the donations, some of the bargain sales, there's a portion that is donatable, but it's a different appraisal.

It's a second appraisal than the one done by... To be able to meet the IRS restrictions. So that is a possibility, but there's also some tax credits and general... I've found that the donations are not as valuable with people that do the bargain sale because the small portion, right now, the standard deductions are so high they may not need it because maybe they have a parcel that's unconserved or that a family member owns that's unconserved. And so that kind of reduces their donation because, wouldn't you like to own next to a property that nobody's going to build on? So I find that we don't have as much play for the donation part of the bargain sale. And we do use the tax credits. There is a New York State credit for conservation easements, 25 percent of your real estate taxes every year on that property.

Remember, you got to kind of take the buildings off. So it's just the land portion of it. And if you use ag assessment, probably the bigger chunk of your taxes may be on the buildings. And from what we see, New York State doesn't really reduce the value of your property. When you think you get an easement, reduce the value, they reduce your taxes. I've not seen that. But then working with these people from Dutchess County, I've not seen over the years that the property has gone down in value, because people come up from the city and they want a big piece, perhaps, that's not going to be built on. So sometimes I don't think it really reduces your value in the end. Farmers that are full-time in New York State, two-thirds of their gross income from farming, are allowed to get the farmer's school tax credit.

So you got to be a little bit careful. And there's also a manufacturing credit out there, as farmers are really considered manufacturing, believe it or not, underneath this thing that Cuomo passed years ago to try to keep all the manufacturing in New York State, they gave the 20 percent tax credit on property taxes for... As long as your business is in New York State, farmers fit under that manufacturing realm. And so we take the school tax credit on the school taxes, we take the manufacturing credit on the county taxes, and then it is really hard to take that conservation one, because you really can't triple dip on the same taxes here. But for somebody that doesn't meet that full-time farming role, if you're just part-time, then the conservation credits do come in very dandy. And that's something that you get every year. That's been going on for quite a while, quite a long time. So New York State is big on taxes, but they have a ton of credits. You've just got to research them all.

I'm sort of the tax end. Now we go to financial end, what to do with the money.

00:30:49 How do donations help maintain conservation easements?

Greg Fetters:

Yeah. Well, hopefully my background will help me give you an idea of several different aspects of conservation easements. Before I retired, I was a CPA for 40 years, certified financial planner for 20 years. I was the treasurer and then chair of the Lake Placid Land Conservancy. And in 2016, I donated to conservation easement on 135 acres of my land in Jay, New York. So what I want to go over is basically three different broad topics. One, the cost of doing that for me, what my tax benefit is and what you might look at. Why I did my easement and why you might want to do one. And then if you do one, some things that I learned that are very helpful in avoiding problems when you have an easement. So first, the numbers. In 2016, I spent about $13,000 in

professional fees, including the attorney's fee to draft the will, the qualified appraisal resurvey of my property.

But the big expense was a donation to the Land Trust Stewardship Fund. Now I just have, it's just private forest land. It's not an ag easement. So I just use it for recreation and timber harvesting. So when the Land Trust accepts a conservation easement, they're taking on an obligation to monitor and defend that easement, not for the next couple years, not for the next 10 years, not even for the next 100 years. But that obligation goes on forever. And that's a serious obligation that costs money. And it's not unlike what I faced with my financial planning clients in planning for their retirement. You have to come up with how much do you need and to be able to not run out of money, say during a 30-year retirement period, but for a land trust, it's not 30 years, it's forever. So I would argue that for a small easement up to like 250 acres and no subdivision rights, no reserve building rights, that minimum's going to be around $30, 000, that the land trust is going to have to raise in order to fully fund that obligation that they're taking on.

Now the easement donor is usually the first person they look to to help raise that money. Now I think the ag area, there may be a lot of sources available to fund that stewardship donation, but for just a private landowner, it's tough, I think, getting that kind of funding. So I was fortunate enough to be able to make that donation when I did my easement. But if I were to do that easement now, my total expenses would probably be that $30,000 stewardship contribution and then at least probably $15,000 of professional fees. So that would total $45, 000 up front just to give away the easement. So the first place you look might be the tax deduction for a charitable donation of the conservation easement. And just to make the math easy, let's say the donors in a 30 percent combined federal and state marginal income tax bracket. So that would mean to recover or save $ 45,000 in taxes, they'd need a charitable donation deduction of $150,000. So that $150,000 times the 30 percent tax rate equals the $45,000 that you have to cover with the tax savings.

The problem with that is... Well, first of all, that $150,000 donation, right away, the $30,000 that you donated in cash for the stewardship donation would cover part of it, that would leave $120,000 that you hopefully could get from Rob's appraisal of that easement donation, the with and without calculation. Altogether, you'd be able to claim $150,000 charitable donation deduction. But as I was saying, the big problem with that, and as Jill mentioned, to be in a combined... Deep enough into a combined 30 percent marginal tax bracket, you need annual income of about $250,000 single or $350,000 joint. So I'll kind of go out on the limb and say that's far exceeds what most farmers probably make in a year and exceeds what a CPA or financial planner would make in a year. And there's ways to make planning opportunities. You can do one time boost your income like a Roth conversion or sell some really highly appreciated security or parcel of land to soak up that deduction.

But if you can't and you're in the lower tax brackets, the benefit from that donation very quickly goes down and disappears because of the lower tax rates. And as Jill mentioned, that very high standard deduction biting into that $150,000 deduction amount. So—

Jill Robinson:

It does carry over for 15 years.

Greg Fetters:

It does, but then that standard deduction takes a whack at it.

Jill Robinson:

Yep.

Greg Fetters:

Probably $10,000, $15,000 dollar bite out of it. But so it's tough to make the numbers work that way. And so as Jill mentioned, you're like, okay, got a reduction in my property taxes. Nah, the town assessors, they totally disregard it. And it might be for good reason, because people like property with easement on it. So you won't see any reduction in your property taxes after doing a conservation easement. And I saw none. But you can take advantage of the New York State annual conservation easement tax credit. And that is helpful.

But as Jill mentioned, it's very important. Remember, it's not on the buildings, it's on the land conserved by the easement. So in my case, my house is about 50 percent of my tax assessment. So I'm only taking 25 percent of half of what I pay in taxes. In 2016, that was booked out to about $600. And when I do my taxes this year, it'll probably be close to $900. So it helps, and as taxes inevitably keep going up, so that tax credit, as long as you own that property and you can collect that, whether you are a resident of New York or not, as long as you own that property, you're eligible for it. Now, big red flag there is, in 2018 under the Trump Tax Act, there was the imposition of limits on state and local taxes as an itemized deduction called the SALT limitation. And the IRS has taken the position that state tax credits for charitable donations are actually a quid pro quo, return of the charitable note donation back to the taxpayer.

And so for that reason, they will disallow that charitable deduction. In other words, that $120,000 easement donation that was in my example. So that is a big problem. Now, there's some hope that the land trust community can get the IRS to accept a position that if the easement donor files a letter with the state disclaiming that they'll ever receive or take advantage of that tax credit. Hopefully, the IRS will allow that tax deduction of the easement. But it's in flux. And certainly, I'm retired, so I'm not up to speed on the status of that, but it's definitely something you got to have... Be very aware of, particularly if you're choosing to get the benefit of that tax deduction versus the annual easement credit. Now for me, fortunately, I did my easement in 2016, so I get to double dip. I got the tax deduction and I get the annual credit. So it's good for me.

<u>00:40:31 A landowner speaks to the intangible values of a conservation easement.</u>

Greg Fetters:

So after saying all that, why would anybody want to do a conservation easement outside the ag benefits? And Chris probably wondered, why did I invite this guy on the panel?

I think the first thing any land trust person will tell you is if protecting and conserving your land isn't your primary objective, it may not be the right thing for you. In my case, there's nobody in my family who shares the value and love of my land. So I was facing the prospect that at my death, the estate would sell my land. It's actually 144 acres. Developer would probably buy it, get a logger in there first thing, he'd take every big pine tree for a saw log and probably all the big maples, beech, oak, cherry, ash. That will all be cut to firewood, then develop, let's start the application process to subdivide that property. I think there could, in theory, be about 19 parcels

on the property. I don't know about you, but that makes me sick to my stomach. No way I could have lived with myself knowing that that was a possibility out there.

So in my case, conservation easement was just the perfect tool that I could put in place to prevent something like that from happening. And boy, every day I go for a walk or a ski like today on my property, and it's just so gratifying to just look around and know it's going to be like this a hundred years from now. And that's just priceless. I guess also as you get older, you tend to look back on your life wondering, did I make a difference? And your mortality is sort of looming up there in the windshield. And well, it's like, well, anybody, will you ever remember me? So in a way, it's my way of trying to leave a legacy, trying to show that at least I made some small little bent in the universe by preserving this property. And maybe a hundred years from now, somebody will actually appreciate that somebody did that.

So if you do actually do a conservation easement, what are the things that I personally did? I lived on the property for 20 years before I did the easement. In fact, it was funny, Chris found a letter from 2001 where I initially reached out to the Adirondack Land Trust about putting a easement on my property. And right away they brought the stewardship fund contribution up. And I said, I can't quite handle that. But the good thing is that push delayed my easement long enough that I knew exactly how I used the property. I knew all the stuff that I'd probably never do to the property and was willing to give up so I could incorporate in that easement document all the stuff I wanted to continue doing, like maintaining my trail system, harvesting a couple cords of firewood each year, continue to participate and manage my forest under New York State's 480a timber management plan, which gives me a good annual reduction in my property taxes.

I also put in there features to give a little flexibility going into the future. I can add 500 square feet to the footprint of my home. And if I do, then a successor owner could. I'm also allowed to construct a 2000 square foot out building and hopefully I never do that, because I already have a garage filled with old cars and motorcycles. I don't need any more junk. Another thing I did was, again, I actually own 144 acres. I've only conserved 135, excluded nine acres, which is just a smidge more than the eight-and-a-half acre requirement for the APA subdivision. So if anything would go wrong. And I absolutely had to raise some cash. I did still have a parcel to sell or hopefully I can talk myself out of building like a little rustic tiny house on this glacial erratic that sits up there with a beautiful view of Whiteface in the Sentinel Range. Hopefully, I don't do any of that stupid stuff and I can add this nine acres to the easement at some point in the future. Conservation easements have been a prime area for tax shenanigans by taxpayers, unfortunately. So all the taxing agencies look closely at conservation easements. And sure enough, a year after I filed my return, I got a notice from New York State, in this case, wanted to audit my tax attorney with the easement on it. Now for me, it's like it was kind of amusing. I started out my career at a public accounting firm auditing clients, and then in corporate finance, I was audited by the public accounting firms as well as the IRS and the US Department of Defense. So I was pretty much either audited or being audited all my life. So I get the letter, I say, fine, you want audit me, come on. Let's audit. So I would've loved to be there when the mailperson dropped this three-inch thick three-ring binder on the tax auditor's desk, and I can just hear that thump.

I had every number in that tax return cross-referenced and then back to a summary schedule and from their cross-referenced back to the supporting document or the actual receipt. Included in that package was my easement document, and the very beginning of that sets out all the public

benefit features of my easement that are required to get that charitable donation. Also included there was a qualified appraisal supporting the easement deduction amount, the written acknowledgement letter signed by the Land Trust, acknowledging that they actually did receive the easement.

Another copy of the Form 8283 signed by the Land Trust and the appraiser, which is required. I included the full baseline documentation report, which was like a 100 pages of narrative as well as colored pictures and maps. So needless to say, about a month later, I get a one-page letter back from New York State, your return was accepted as filed. But that kind of gives you an idea, if you file the deduction, you might want to prepared.

If you go the deduction, you might want to prepared to have that level of documentation ready to go and it's very easy to screw up one of those documents. So there's a ton of information on how to get that right and Steve Small's book was invaluable in doing that.

Jill Robinson:

I upload them. Luckily they're all PDF now, so we upload them with the tax return the appraisal and everything so I don't have to mail them in packet anymore.

Greg Fetters:

I think that was more present have that boom. And the last thing I wanted to mention to add, Jill mentioned it sounds like they actually make loans and conserve property. I was a little step on my private residence, but I happened to be in an Adirondack bank one day depositing a check, and I saw this promotion for a five-year mortgage, no closing cost at three and a quarter percent and I go, what the treasuries are earning like over four percent. So I applied for the loan. The question of an easement never came up, I guess it never came up in their underwriting process. So I got the money and for the next five years I'll enjoying that one percent interest rate spread on the bank's money. So that's my story.

00:49:29 A farmers shares how a conservation easement made it possible for him to buy land.

James Graves:

All right. I'm not nearly as technically savvy as the other four members of the panel, but I see that I'm in decent company some farmers in this room, so that's the perspective that I'm bringing to the panel. My business partner Sarah and I came looking for farmland in, I guess it was around 2007. We'd moved to the area of 2006, fell in love with the community and the landscape and realized that we'd like to make this our home and just through informal channels started looking at a whole lot of different properties and quickly realized that land's expensive.

And so the perspective that I'll bring is something that Joe also mentioned is that land being conserved put under conservation easement is one of the principle instruments that makes land affordable for young farmers and it certainly was the case for us. We did not have the benefit or the education of coming to a little forum like this. When Sarah and I were looking at land, it was a very drawn out process when we settled on some property that, I should give a little more background for those who don't know me two miles down the road we did set up shop. We bought 100 acres and have a diversified small farm CSA and have been running that since on that location since 2009 when we moved there.

But in terms of the navigating that conservation easement process for us, like I said, we looked at some properties and most of them weren't really on the market. A lot of it's just word of mouth. We're blessed live in a community where people wanted us to be their neighbor and to join this community, and so find out we're looking for farmland. People started coming to us with, oh, have you considered this option, this option? But quickly realized that anything that had a house on it was ridiculously expensive from our vantage point, not coming from much of a prior career, not bringing a bunch of money into the situation and setting up the business that we were setting up. It wasn't very attractive on paper.

We ended up getting financing informally through a family member and tried to, years later to refinance through Yankee Farm Credits and other institutions and they wouldn't consider it. We're just not impressive on paper. The kind of business that we run, the size of our revenue and so forth. We're fortunate in part because of the generosity of the Eddy Foundation who we ended up buying from. It made it an affordable price. I was about to say earlier, it was a drawn out process, but it was a very informal one. We would just email each other and say like, all right, I've come up with some questions based on our review of that draft document. Let's get together and we'd have to come up with a time when everybody was in town and would go over to Jamie's house and sit around the woodstove and talk about it.

Like I said, we were not well versed in these matters, so it was a little nerve-racking. What are we committing to? Is this feasible for us to run the business that we want to run under these restrictions? Are we really getting as much value out of this easement that's been encumbering the land as we should be getting? But we didn't have a lot of advisors or even friends that had gone through it, so we were just kind of talking between ourselves and family and like I said, just draft document. It took over a year for us to start between when we initially had a draft of this easement to the various revisions and then coming around the other side. But unlike the process that I think is mostly being described here, it was informal to even down to the purchase. We didn't buy a land that was unconserved and then sell an easement on it.

The Eddy Foundation, the appraisal that we were working with was old and it was really a back of the napkin. We were like, how about $1,000 an acre? We'll value the land at $1,000 an acre. How's that sound? And we're just throwing around numbers and seeing how it sits with everybody and ultimately, okay, $1,000 an acre, but let's deduct, let's make all of the land that we're restricting to an extent that we're not going to be able to do any agricultural factoring on let's say that's not worth anything. So that further made it an affordable purchase for us. And so in this way we were just trying to roll the consideration of the conservation easement and the restrictions that came with that into the price that we paid. And so the Eddy Foundation was really kind of swallowing that expense, if you will, that not realizing the full potential of a sale of an unencumbered partial land.

But it was a good arrangement because we both shared these values. I will kind of give a slightly different take on the easement situation. From a standpoint where I was coming from, it was what allowed us to get into the farming community here and to afford land. I mean there are other ways of farming that leasing land and renting land. For us, we felt strongly that this is what worked for us and what we wanted to achieve and the conservation easement piece of it is part of a big part of what made it affordable, and I don't have any regrets in terms of the financial piece. Which is what we're here talking about tonight, other than the purchase price, it really hasn't affected, you guys have been acknowledging it doesn't show up on the assessment, so it's really

not reflected in our taxes. There's this suggestion and it's kind of been debated whether it's going to be reflected if we were to ever turn around and sell the property, if the value is reduced.

I think the jury's out on that one. I think there's a lot of people who are seeking the aesthetic of conserved property and adjacent conserved property and so forth. I think we could be adding value to this community. I'm a strong proponent of it. I think landowners who are considering should give it a hard look because for me it's just another layer of maintaining the rural landscape that drew us here, layer on top of the restrictions that the APA imposes on development. I think the conservation easement is a valuable tool for keeping our community a working landscape where there are farms that are viable and part of it's how do you make the farm land affordable for the people who want to farm it. I think I'll stop there and happy to take questions. Aaron.

Chris Jage:

Yeah, so now this is the sort of what we're waiting for is to hopefully you brought some questions and hear from the different perspectives up. Okay.

00:58:28 Audience Q&A

Aaron Thomas:

Yeah, so anyone from questions either Carly or I will come around with a microphone just so everybody can hear.

00:58:10 What are the potential estate tax benefits for conservation easement donors?

Audience member:

Greg, would you touch on the estate tax potential estate tax benefits to easement donors?

Greg Fetters:

Sure. That would revolve around and Rob might actually have a better insight on this. What the advantage would be is in my case, I was close to the, what is it these days? Ten million dollars?

Jill Robinson:

Thirteen I think now.

Greg Fetters:

Thirteen, right, tax exemption in selling my estate, an appraisal would be done of all my property and certainly the appraisal of my property would be done reflecting the constraint of that conservation easement. And as several on the panel mentioned, it might actually be hard to justify, who knows, but I think as long as these estate tax limits are up in multiple, you know $13 million, it's hard to see a big advantage from the estate tax side.

Jill Robinson:

It is only $5 million for New York.

Greg Fetters:

Yeah, that, for us regular folk it's...

Jill Robinson:

In my practice, it used to be a lot of planning because when I started it was only $600,000. So now it's more the discussion of how to protect it from going to the nursing home versus the estate situation because that's a little bit more unlikely that we've seen.

Greg Fetters:

There's lots in estate planning, it kind of folds into like can you actually give the property to the land trust and have it as a life base on it or a charter remainder type trust arrangement. But it is probably tough to make the numbers work on that, but it's some things you might want to look at with your tax advisor.

Audience member:

That's perfect.

Audience member:

Have a quick question for James. That foundation you mentioned, is that a third-party partner with the land trust or is that the previous owner of the land, or what was going on there?

James Graves:

Excuse me. Yeah, Eddy Foundation that I mentioned in passing, they owned the parcel that we were interested in and they are a conservation organization in and of themselves, and so it was very consistent with the values that they were pursuing just by being themselves. It so happened they owned a 500-acre parcel that includes a bunch of the wooded mountain that we had bought, and so we were able to subdivide 100 acres, which furthered their mission in a lot of ways, but gave them some resources then go conserve other land or purchase another property.

Audience member:

Similar situation, but not owned by a generous foundation. So

01:02:02 What is the buy, protect, sell model and how do land trusts use it?

Chris Jage:

I'll add to that. In the business, it's what we call buy, protect, sell. And so the conservation group owned the land and then they're going to sell the property and they hold back the easement. We've not done anything like that, but it's certainly in the toolbox of things to do. Sometimes there's a really important piece of farm land that may go up that we know wants to be, it should be conserved, but because of the current situation, that's not an option. So we go in, all right, we're going to buy the whole thing. We'll figure out the easement, work with that new landowner so that easement's right for the operations that they want to do or might want to do and then put that property back out to use.

James Graves:

Something you just said reminds me of something I mentioned, meant to mention earlier, which was one of the nice things about our arrangement and the timeline through which it happened is the Eddy Foundation allowed us a year. I mean it was just an open-ended lease, free lease on the

farm. And so we were able to come in there, set up our operation and really get a feel for it, find out what were our wishes and our needs and where were we going to draw the line or this is really going to encumber what we're trying to do.

Audience member:

Yeah, super envious about it though. I'd like to chat with you Chris though.

Jill Robinson:

I think the land trust can really do a lot to help. If young farmers, maybe they don't know anything, can get in touch with the land trust, who knows, maybe some senior generation farmers who don't have another one, don't want to see the farm, go to development and create partnership. And I think we've seen that work in quite a few different places. And that's, guess the young group in there are able to afford the property, get the retirement for the older generation out, and the land is conserved.

Chris Jage:

Yeah, I'll add that, Greg. We're talking about in your transaction there was survey costs and the endowment costs and things like that. And these are all real costs that are out there. A lot of times though in the farm arena, because there's grants that support a lot of this work, the Land Trust can get that survey covered. So we can take care of that. And you're absolutely right, we do ask because we have to raise that money to pay staff forever to look at this easement. These grant programs are other ways of covering that. So the landowners are always going to have to cover their own legal costs and their own advisor's costs. But a lot of the other transactional costs and some of these can be absorbed into these grants that we're able to secure.

01:04:52 What happens to conservation easements if a land trust dissolves?

Audience member:

A couple questions. One is if the land trust dissolves, what happens to the easements that they've been holding? No, I'm not trying to be doomsday. I'm just curious. And then another question for Rob was what the geographic footprint of is when you're looking for comparable properties, because I feel especially in this area, it's a very unique area and comparable sales. You might have to go a ways to try to find if they exist at all.

Chris Jage:

So I'll start with that and it's, we have a real live example actually up here. So fortunately our land trust and most land trusts are really solid organizations, even land trust that had no staff. I use my hometown land trust and I used to live in New Jersey, held easements and monitor them with very small budgets and no staff. And so they can continue along on a shoestring, but they are real, they're real estate, they're a real thing. And so if a land trust does decide if something happens to it, I have no go instances where it's been sort of catastrophic. Land trust don't go into bankruptcy, but sometimes they do go out of business. And just as of January 1 this year prior to that there was a land trust called the Lake Placid Land Conservancy. Greg was the board chair

Greg Fetters:

And we didn't go bankrupt, that wasn't the issue.

Chris Jage:

But they made it the business decision to no longer continue. And so we actually merged as organizations and so one of the things that happened is all of the land that they own and all of the easements that they own, then as we own, essentially that organization merged with us. They all became the assets of the Adirondack Land Trust and I became Greg's easement monitor. But so they are perpetual, they don't go away. So there's a process when nonprofits, which is what we are, the nonprofits assets do have to go somewhere that they can continue that donor purpose or other purpose that they're selling. And there's the other question—

Audience member:

Yeah it's comparable.

01:07:06 How does an appraiser find comparable properties?

Rob Guay:

About comps, it's actually a really good question because in this market there really aren't that many eased farms and there aren't that many eased, therefore eased farm sales. There's a handful over the past few years, which I think do indicate reduction in value when compared to similar properties. You know, can't just take an average land value in any given area because obviously open land is worth more than woodland, almost everywhere because it has more development potential. It generally has road frontage. Open land is where they built the roads, right, follows rivers. So it's got recreational potential. But the crux of the problem here is that there hasn't been that many easements. So there aren't that many sales of these properties. So you have to pull from similar market areas to get comparable sales because you're trying to get as physically similar as possible, but also economically similar as possible.

So if you're in a rural marketplace, you're looking for areas that are as similar as possible. When you go north, you've got Clinton County which has a completely different agricultural market that's driven by commodity producers who are really driving up the value of land in those marketplaces. So really I can't go north. Going south is more fruitful as we talked about, ASA does a lot of easement work, there's more sales down there. So I think Washington County is a reasonable place to go. I do a lot of work in Vermont, so I pull from Addison County and northern part of Rutland County because I think the connection, agricultural connection, economic connection is similar enough that those are reasonable comps. But I do want to stay as close as possible. But let's say I was doing a 200 cow dairy farm in this market area, there really aren't many left and so I'm going to need to go into adjacent markets.

The other thing that we do is we look at kind of broader market analysis. So when I'm pulling sales from northern Massachusetts, from Maine, from throughout the state of Vermont and north of Albany in New York, what I'm seeing with those more active easement markets is a 25 to 50 percent reduction in value from the base land value of the before. So I think that's applicable in this marketplace. It's just that we maybe have a different before. So I think that that reinforces the specific market data that I'm looking at as I compare two farms that sold within a reasonable time period that show a difference in value on a per acre basis. We can also back that up with kind of statistical analysis from other markets.

Audience member:

Sort of a follow-up on that, maybe I'm missing something, but presumably most of the Ag, the present Ag lands that are surrounding us here are resource management. They're already resource management. They already are pretty severe restrictions in terms of, so I mean I don't know how the heck you do comparables. You, I mean looking at Vermont, sorry.

Rob Guay:

So I mean if you've got a 43-acre lot and you have one house right on that lot and the before and after, there probably won't be much difference in value, right? Because you're an RM [resource management] and you—

Audience member:

Yeah, like none.

Rob Guay:

Okay. But if you've got a parcel that's 200 acres, you now have four different lots. So those part you are losing something tangibly losing something even in resource management.

Audience member:

I understand, just my point is the business about comparables, I don't, using Vermont as a comparable to resource management land.

Rob Guay:

Right now is a, there's a program in Vermont, the current use program that severely restricts development, not the same as the APA, but much of that land is in the current use program, which is if you've removed it from the current use program, you would incur a 10 percent penalty based upon the value of whatever you withdraw. So if you withdraw a hundred thousand dollars lot, you owe state $10,000. So there is some impediments to just subdividing property. And not that I'm saying that the APA restrictions are the same as the current use restrictions, but I don't generally pull, let's say, a 100-acre lot from Vermont and compare it to something in Essex County. So if I'm doing a 1,000-acre farm, I'm going to necessarily have to make comparisons across broad geographic areas because sales of that type of property are going to happen in Essex County maybe once every 20 years, once every 10 years. So I'm going to have to pull from a large geographic area and make some subjective decisions about how the market is treating farmland in this market versus that market. To your point, we are trying to reflect the loss of value that's attributable to your loss of property rights. So I'm not going to pull comps from a hamlet if I'm appraising an RM. I'm going to pull comps from resource management almost exclusively, because of the heavy restrictions on those. Now, if I'm finding that there's no difference based upon what people are paying in the open market, probably the land trust is going to be happy, probably the landowners are going to be happy. It is my license and I'm going to say there's no difference in value. I'm obligated that's just how it is.

In some markets, that's the case. In the Hudson Valley, we have seen where there may not be a lot of difference in value anymore between eased and non-eased properties, because rich folks like to have elbow room and they can afford to have it. Now it's probably getting hard to do easements in those markets, because nobody's going to accept an easement and not get paid or not be able to take a charitable contribution. So I think that those more developed markets

probably don't see a lot of diminution in value and probably have a hard time getting new easements. As these places built up, I think a lot of those places got eased and there was at some point a difference in value.

Chris Jage:

Rob, you talked a little bit about, so these might also get to your point, is that comparables don't mean it's the same. They're similar and then the adjustments that you do about the different elements of the property.

Rob Guay:

Yeah.

Chris Jage:

To make them... anyway.

Rob Guay:

No, you're right. You're right, but we're going to try to get as similar as possible. The fewer adjustments you have, obviously, the more reliable the analysis is, because it means that you found properties that were more similar, but they have to have sold. You can't just find a very similar property and say, well yeah, that one's perfect. If it didn't sell, it doesn't matter.

We have to work only with what's sold in the last probably two to three years. Really since COIVD, it's got to be two and a half years. If I'm going pre-COIVD, it's getting a little sketchy at this point, because the market's moved so much in that time period that the change in the market is almost more important than the physical characteristics of the property.

If it sold in 2019, it probably just isn't a good sale, because we've moved so much and I'm going to have to adjust so much. Now, on the other hand, I'm probably not going to compare 100 percent open land with woodland, because the market for those things are completely different. You couldn't really adjust enough to make it make sense.

Actually, what I do is all common sense. There really isn't a lot of hocus pocus to it. You have to work with stuff that's sold. You got to get as similar as possible. When I'm searching for comps, it's like in a concentric circle. I keep going out until I start bumping against our other markets and then maybe it doesn't get circle area anymore. Maybe it starts to morph a little bit, but it has to all be based upon as similar as possible.

When you're making adjustments, that too is market derived. So if I'm seeing that properties with more road frontage don't sell for more than properties that are right of way access, there's no adjustment. As odd as that might sound in that market, the market is not proving out that adjustment.

Jill Robinson:

I know our appraisers go through lots of years of training. So anybody can appraise houses, but I'm assuming a rural ag appraiser they have to be certified-

Rob Guay:

I was with Farm Credit for 12 years actually, out of Saint Albans.

Jill Robinson:

Yep.

Chris Jage:

I'll mention from the land trust perspective, if we're going to be purchasing an easement, there are times, whether land or easements, that we'll get even two appraisals.

Greg Fetters:

Because you're family. You can't pay more than the appraisal—

Chris Jage:

You can't pay—

Greg Fetters:

Or you lose your nonprofit.

Chris Jage:

That's exactly right, but a lot of times, it's to help the seller, the landowner feel more confident that, okay, Rob, you got your number. We like Rob, but the landowner might not like you. And there's been times where appraisers have certification. Then we'll say, okay, here's the list of qualified appraisers. We'll pick one, you pick one, and then we'll have two numbers and maybe we meet in the middle and something like that because it's an art.

Rob Guay:

What's your number? This is an opinion of value based upon market data and facts, but it's still an opinion and interpretation of market data. So two people with the same data can interpret it differently, understand it differently, and therefore come to different conclusions. And that is not prohibited. That is part of the process. So it's not like accounting where there's a right answer—there's a lot of wrong answers, but there's not a right answer. So it is an opinion and I think it's good to point that out.

Chris Jage:

And we rarely see them be widely divergent when they're using the same facts. So that's good too. When you use the good—

Rob Guay:

Hopefully, hopefully that's the case.

01:17:34 Can you add housing to a property with a conservation easement?

Audience member:

I have a question. I don't need the microphone. I'm right here. Trying to balance the fact that you have, for example, we have 18 building rights and people need places to live and we want to

conserve land and we weren't here for the first part, so we might have missed something. And so are there some ways you're clustering those kind of things so that we are not doing something that doesn't fit both of our goals for what we would like to leave as the legacy?

Chris Jage:

Sure. I'll start. Cause what you're really talking about is what goes into the easement in the first place and the restrictions to building rights. And one of the things that us at the land trust wanted to do with these sessions is to sort of dispel some of the myths or deal with some of the bad stories that people may know about conservation easements out there. And what I'd like to say is, I don't care if you like conservation easements or you hate them as long as you do it for the right reasons. And so one of the things that we learned from the older easements that we try not to replicate anymore, is they were all about this ideal farm where you had a couple living in a farmhouse working on a farm, making their money. And we've learned that farms need flexibility in operations and housing and all these things to maybe keep the farm.

So building rights has always been a big one that you would take a farm and you would leave it down to the primary building and maybe some ag housing. And so a lot of times it's about figuring out, knowing, if I put you on the spot, one of the reasons why the land trust hired someone who not only was raised in agriculture but worked in agriculture and understands agriculture, is that we're designing easements that allow for more worker housing, residential housing, quite frankly, folks want to have little farm stays. Basically it's the AirBnB, that's part of the income matrix. We have other landowners that actually want to have an educational component. So they have an equestrian operation and they want people to come for a week, stay and learn horsemanship. So we're like, okay, it's about the impact because ultimately what we're trying to do is find the good soils, make sure they stay open and healthy, understand where the waters and the wetlands and the other important environmental features are and the activities aren't really impacting them.

And then put the buildings in the most logical place for that property. And so we try to work with the landowners and other professionals to say what's really needed on properties like this to make it go, not just in maybe how you operate it, but how it might be operated, what's around the corner if we could see around the corner where ag is heading. So these days, these are all the discussions we like to have to build in enough flexibility so that the farms can operate and be as profitable as possible while still protecting those resources of the soils and the water.

Audience member:

Perfect. Thank you. And also the recording the first session that I watched, and was glad that they recorded it, you want check it out.

Chris Jage:

So there is how to use those fancy little QR codes with your phone. You can get the link with YouTube back there and see what they talked about the first time. And if you didn't know you were being recorded this time as well.

Carly Summers, Agriculture Issue Leader for Cornell Cooperative Extension Essex County:

Anybody else?

Chris Jage:

Someone from my side?

01:21:14 How is a stewardship endowment calculated?

Audience member:

I was wondering if there's a rough formula for calculating this stewardship donation.

Chris Jage:

There isn't a rough formula, but there is a formula and it depends on, okay, how many times can that farm be subdivided? Because from our perspective, at the end of the day, if there was say a 400-, 500-acre farm and that could be divided two or three times, it's three landowners now three different ideas. And so it's almost tripled, I would say on average we raise about, I think when we just did this for the average property, I think it came up about $55,000 that the land trust puts into an endowment that pays our stewardship staff every year to do the monitor and work with landowners and all that kind of stuff. And as I said, we can raise that in different ways and if the landowners able to help with that, that's wonderful. But that's basically what we figured. That's our cost, that's our annual cost.

Greg Fetters:

And it help funds your contribution to a legal defense fund in the event something really goes wrong.

Chris Jage:

Yeah, so in addition, the stewardship fund basically handles pretty much the day to day. And quite frankly, sometimes there's like, okay, we want to build a barn and there's some conversations and sometimes there's a violation. We have to work through that. It takes a lot of extra staff time. So there's the legal reserve, we actually have insurance. So if things really go off the rails. A few years ago, land trust community developed a pooled insurance fund that we can draw upon to help us when things really get the go sell, because it's talking about land trusts going out of business, land trust is going out of business by doing their business bad. And so we have to do our business right. Not all land trusts.

Rob Guay:

Well, honestly, if the easements aren't enforced well in any given market, then the value difference between fee and eased is going to logically reduce because the stigma factor that goes along with an eased property, the fact that someone is watching over your shoulder and has to approve that new barn and if you want to do something with the property that falls outside the easement, you can't. So I think if they're not properly enforced, that has its own impact on the value of those easements.

Chris Jage:

Well, one thing I'll mention, we talked about before about you starting, have a rough idea of the easement when you start the appraisal processes we do, I'll also say that the process brings up a lot of things. And when you're laying out, say the building envelope in the field, here are the

seven acres where the buildings can go, but then you realize, this is cutting through a fence line. So there's adjustments that happened or your son who didn't want a lot, now they want a lot. We make those adjustments all the time through the process, but at the end we'll go back and say, Rob, this has changed. How are the numbers looking? And you may say, nah, we're still about the same. Or you may want to say, wait a second, that's changed too much from when your initial appraisal, this added or removed value. And we adjust that before we finish the process.

01:24:43 Can conservation easements change as farming practices evolve?

Audience member:

I got another question. So if there is like, say, 50, 70 years from now there new technology, new ideas, and there's a mutual agreement between the current landowner and the easement holder that there needs to be an amendment made. Is there a process to do that or is it, and that's one of the things as a young property owner who's thinking about pursuing an easement, it's like the humility which with these things are approached sometimes is not loosening or not enough in my opinion. And so I just wonder what the mechanisms are—

Chris Jage:

Sure.

Audience member:

Far off in the future and not in a way that's a barrier to someone trying to take advantage.

Chris Jage:

Sure, it's a great question. And so easements can be amended. There is an amendment clause in there, but the bar tends to be set pretty high. And particularly if the easement was, you got some sort of tax benefit, whether it was a donated or a bargain sale easement because the IRS views that the citizens gave up this tax benefit to this landowner because of this agreement like it or not. And changing that they look very, very harshly at. So it can only be done very carefully. I'll say in the business we've learned a lot to have easements that are as smart as we can make them today to anticipate a lot of things. Easements, I'll go older. Conservation easements would often be very prescriptive about how you run your cattle. We're not cattle people. Aaron's great, he's not a cattle person. So we leave a lot of the farm operations to have the professionals do soil and water, conservation plans.

And those conservation plans reflect the best and brightest ideas and they can always be updated, but creeks will be creeks. And so keeping buffers on creeks, houses will be houses, keeping them next to roads. We always make sure that the building areas are in fact on the soils that perc and not the ones that are wet. So we know that they can actually withstand the buildings that ultimately would go there. So we try to do a little bit of that homework before we say this is where the house can go and it can't go over here, but if the circumstances arise, and without getting too specific here, just so you know, it's not like we can do something, we can say, okay, let's amend the easement. It's a big process and that's also a costly process because it involves attorneys on your side and that sort of thing. But the one thing I wanted to mention is we think of these things as agreements and they kind of are in initial stage, but they're interests in land that the land trust owns. And so it stays with the land, not the landowner. So they're subject to these, but it's not a contract where we can just sit down and rewrite the contract and do it because it's

actually, it's a real property interest that we have. So it's handled a little differently. I don't know if that answers your question or not.

Audience member:

Yeah, no, I mean I think a lot of my fear probably comes from the more restrictive side of things when current farming techniques were being allowed or disallowed and not leaving enough room for the future. So it's reassuring to hear that things are changing.

Chris Jage:

I'll say that the biggest impact honestly is like I mentioned, I did a lot of work in New Jersey and where they had to get more and more revenue, out of smaller and smaller acreages, and they're going to things like turf farms, they're going into full enclosures and greenhouses and nursery stock and all that kind of stuff. So removing soil because turf and nursery stock, you're basically mining soil there. If you're having greenhouses, you're covering those existing natural soils. That's where honestly, if that's where you're headed in your operation, a conservation easement might not be for you because we're no longer protecting those soils. So those are certain instances where I know that even today's easements do rub against certain operations.

01:28:56 How do conservation easements impact taxes of the surrounding community?

Audience member:

Question. So when you're removing the building rights from some of these properties, basically you're removing some of the finite potential for any development somewhere. And have you heard of any discussions to mitigate that, put those building rights somewhere else in that community or things like that? And then my other question was, we've talked about this before, but you could explain it again, about if one area against a lot of easements, what that can potentially do to the taxes of the rest of that community.

Chris Jage:

Sure, I'll start. I bet you have some more examples on the Vermont side of things. But as an individual landowner, the rights that zoning and the APA allow you to exercise on your property are things you can do there and no place else. I don't know, there's a concept called transfer of development rights. I don't believe that that's here in Adirondacks.

Audience member:

No.

Chris Jage:

Yeah, but they're towns that can, back in New Jersey I used to do this quite a bit where you could actually sell just your development rights, not even an easement, just your development rights. And they would go to town and the town could realize them there. So you wouldn't be extinguishing them, you would just be putting them someplace else. So the easements don't do that. You either have it or you don't. Now zoning changes and you can do that. What you can do on some of these properties is cluster them. So rather than having several large lots, you could have a large piece of protective land and the buildings may be up on this corner by the road and that sort of thing. You can kind of move them around within the lot, but actually moving them to

town or whatnot, unless there is ordinances, the town and APA approval, that doesn't happen. And the second part of the question?

Audience member:

Taxes.

Audience member:

Oh [inaudible].

Greg Fetters:

I paid the same, doesn't matter.

Audience member:

[Inaudible.]

Carly Summers:

So there are tons and tons of studies that the American Farmland Trust, put together it sets the awesome documents of tons of research studies around the whole nation that oftentimes—well across the board, conserve land actually reduces taxes for people because it reduces the spread out of the costly services that taxes support. So say school buses, sewers, water lines, all the things that cost a lot in tax money, it helps cluster the development and that makes it cheaper for people. And that's one reason why even ag assessment has the of stigma of, well those farmers aren't contributing to the tax base as much as everybody else, but in reality the farm land does not cost taxpayers very much. So giving the farmers the tax break on that, the big piece of property, the farmers still are not the major cost on the tax land then it's the same with conserved land. I can share that document with anybody who want to look at, it's a great question cause that's a question that a lot of people have it and it's so good that there's actual research to answer it.

Chris Jage:

Yeah, it's about looking at both sides of the balance sheet. Yes, more houses would be more tax revenue but they also demand more services. So when you do the math, actually not having them in the first place and not having that additional tax revenue is a net positive just from a town budget perspective.

Audience member:

All right.

Chris Jage:

Dave Sayer, did you have a question?

Audience member:

No sir.

Chris Jage:

Behind you.

Audience member:

Oh Dave.

Chris Jage.

No.

Aaron Thomas:

All right, well there no more questions. Thank you everybody for coming. Oh, right, we got to do the hat raffle. Mike—

Mike Carr:

I don't want, we need a kid.

Aaron Thomas:

Of course.

Carly Summers:

I think it's possible if any of you are here because you're interested in conservation easements as a succession planning tool and you're looking into thinking about transferring your land or what am I going to do in the future, which is great to do as soon as possible. As soon as you own land. It's always good to look at your succession plan no matter how young or old you are, there are lots of services to help do that, including free services like Farm Net. And so definitely be in touch. All of us can help you get in touch with people who can support free succession planning services because it's a really big set of things you have to do and it's daunting and complicated. So that's what we're here to do to help. And then Adirondack Land Trust actually has as part of this grant, $500 to help support getting in touch with service providers like an appraiser or a surveyor or other accountant. And then CCE Essex County just got another grant that we can continue that stipend whatever this particular grant runs out. So if some of these services are looking like they're a little too expensive or you you're wanting to explore conservation easements, there are ways that we can help support you. So just be in touch. All right.

Aaron Thomas:

Thanks, Carly. Chris, want to pick?

Chris Jage:

All right, so we have two hats to give away. First person gets their pick. Alice Hallard.

Audience:

Yay.

Chris Jage:

All right. And for the great Adirondack Land Trust camo trucker, Tracy Sayer.

Mike Carr:

Congratulations Tracy. And we should thank the panelists. This is brilliant, exceptional.

Aaron Thomas:

Thanks again everybody, and just safe travels and feel free to stop and talk to any of us in the next few minutes. Thank you.

Chris Jage:

Thanks.