



United States Tax Court

Washington, DC 20217

COTTONPATCH TIMBER COMPANY, LLC,
ROGER E. GRIGG, PARTNERSHIP
REPRESENTATIVE,

Petitioner(s)

v.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent

Docket No. 26103-22

ORDER

This case is set for trial beginning December 15, 2025. Under the pretrial schedule (see Docs. 34, 36), any motions for full or partial summary judgment were due by October 27, 2025. None were filed. On October 28, 2025, the Court had a telephone conference with counsel for both parties.

Shutdown circumstances

The initial purpose of the telephone conference was to discuss the effect, if any, of the Government “shutdown” on the preparation of this case for trial beginning December 15, 2025. Respondent’s counsel explained that the attorneys assigned to this case are not “furloughed” but are being employed using available funds. If respondents’ counsel’s circumstance changes materially between now and the date of trial, they should inform the Court in a status report or another appropriate filing. This trial scheduled in this case is not an “emergency”, *cf.* 31 U.S.C. sec. 1342, and in this circumstance the Court would expect to entertain a motion for a continuance even after the 30-day deadline of Rule 133.

Preliminary impressions as to issues

The second purpose of the telephone conference was for the judge to commend the parties for their work and cooperation in filing a stipulation of settled issues (Doc. 48) and to give his comments on the remaining issues that the parties have identified for trial (see Docs. 42, 48). The judge explained that he has acquainted himself with the facts and contentions in this case only very preliminarily, that he knows he is able to give only tentative impressions as to the merits of any contentions, that he is keeping an open mind as to those merits, and that he welcomes the parties’ correction of his errors and their supplementation of his information. With those qualifications, he noted--

Served 10/29/25

1. As to conservation purpose, the parties should note the opinion in *Mill Road v. Commissioner*, T.C. Memo. 2023-129, *31-38, observing that the courts should not set a standard that goes beyond the actual requirements of section 170(h)(4)(A)(ii).

2. As to “protect[ion] in perpetuity” under section 170(h)(5)(A), contentions as to reserved rights and timely subordination should generally turn on provisions in the deed. In this case, it would seem that such contentions might have been (but were not) presented under Rule 122.

3. As to the “qualified appraiser” and “qualified appraisal” rules of section 170(f)(11), those rules would seem best understood as requiring satisfaction of objective credentials and qualifications, as opposed to fact-intensive critiques of the merits of the appraiser's valuation opinion, since the latter would often seem to be largely redundant of the issue of valuation per se.

4. As to section 170(e)(1)(A), the judge's understanding of that statute is reflected in *Mill Road*, at *53-56.

5. As to valuation, the Tax Court has criticized overvaluation of conservation easements in *Mill Road*, at *48-53, and in a number of recent opinions in other cases. Petitioner's counsel should be able, in due course, to explain why its position this case is materially different from the strongly criticized positions in those cases, since a position that ignores those opinions and reflects the gross fallacies in those previous positions might be frivolous, see sec. 6673(a)(2), and trial time spent in disregard of those opinions would likely be a waste.

Other pretrial matters

During the telephone conference, the judge expressed a strong inclination against witness trial testimony being presented remotely. However, if the parties agree that a given witness should be permitted to give remote testimony because of special circumstances (e.g., very brief testimony by a third-party witness whose credibility is not likely to be disputed on subject matter not critical to the case, which testimony could be presented the week before December 15, 2025), then they may raise this subject with the Court several weeks before trial. (However, where those circumstances are present, the parties should consider stipulating the facts as to which the witness would testify.)

The judge stated to counsel that he is considering the possibility of issuing, at the conclusion of the trial in this case, a bench opinion pursuant to Rule 152. The parties should keep that possibility in mind as they prepare their pretrial memoranda, since in that event there would be no post-trial briefing.

It is

ORDERED that the parties shall take note of the suggestions and instructions stated above.

(Signed) David Gustafson
Judge