NOT FOR PUBLICATION

In the

United States Court of Appeals

For the Eleventh Circuit

No. 24-11334

MILL ROAD 36 HENRY, LLC,
MR36 MANAGER, LLC,
TAX MATTERS PARTNER,

Petitioners-Appellants,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

Petition for Review of a Decision of the
U.S. Tax Court
Agency No. 11676-20

Before BRANCH and LUCK, Circuit Judges, and SCHLESINGER,* District Judge.

PER CURIAM:

The tax code allows a deduction to taxpayers who donate an easement that preserves land for conservation. *See* 26 U.S.C. § 170(f)(3)(B), (h). Usually, the amount of the deduction is the value of the easement, which is the land's fair market value before the easement minus its fair market value after the easement. *See* 26 C.F.R. § 1.170A-14(h)(3). But in some cases, the amount of the deduction is reduced to the taxpayer's adjusted basis in the land—normally, the amount the taxpayer paid for the tract—if the land was held as inventory primarily for sale in the ordinary course of business. *See* 26 U.S.C. §§ 170(e)(1)(A), 1221(a)(1). If a taxpayer underpays taxes by grossly misstating the easement's value, the Internal Revenue Service must impose a penalty. *See* 26 U.S.C. § 6662(h).

Mill Road 36 Henry, LLC claimed an $8.9 million tax deduction for a conservation easement it donated on a tract of land in Henry County, Georgia. The Service imposed a penalty on Mill Road because it grossly misstated the easement's value. Mill Road challenged the penalty in the United States Tax Court, but the tax court affirmed the valuation penalty, finding that Mill Road had grossly misvalued the easement. The tax court also concluded that

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* Honorable Harvey E. Schlesinger, United States District Judge for the Middle District of Florida, sitting by designation.

the amount of Mill Road's deduction for the easement was limited to the amount Mill Road paid for the property because the tract was held as inventory primarily for sale in the ordinary course of business.

On appeal, Mill Road argues that the tax court undervalued its easement, so the valuation penalty should not have been imposed. And it contends that the tax court erred in reducing the amount of the deduction because the court wrongly found that the Mill Road property was held as inventory primarily for sale in the ordinary course of business. After careful consideration, we affirm.

FACTUAL BACKGROUND

A. The parties

Jeff Grant was in the real estate business in Henry County. In 2014, he started working with Qin Meng, his orthopedic surgeon's wife. Meng introduced Grant to her brother-in-law, Zhen Wang, who lived in China. Grant helped Meng and Wang buy and sell real estate in the United States and often joined them as their partner. Benjamin Helms, Grant's childhood friend and frequent business collaborator, would also join their group. Helms owned Benwood Investments LLC—another real estate business in town.

In addition to buying and selling land with Meng, Wang, and Helms, Grant worked with Daniel Carbonara, whose investment firm, Old Ivy Capital Partners, specialized in structuring syndicated conservation easements. A syndicated conservation easement turns a conservation easement into an investment product:

investors purchase interest in a pass-through entity that owns a property, and, when the entity donates a conservation easement on the property and claims a deduction, the tax savings pass through to the individual investors. *See* 26 C.F.R. § 1.6011-9 (describing syndicated conservation easements).

B. Creating the Mill Road property

In December 2014, Grant heard about a 117-acre tract of undeveloped land originally intended for an assisted-living facility that the owners had been considering "plac[ing] . . . into conservation." He, Meng, and Wang "thought [this] was a great idea[.]" When the owners decided to sell the 117-acre tract, Meng and Wang "wound up buying the property" with Grant's help.

Meng and Wang, through their company Mill Road Partners 125, LLC, bought the 117-acre tract for $1,250,000 ($10,700 per acre). Two weeks later, they sold a twenty-five percent stake to Benwood (Helms's company) for $315,000 ($10,770 per acre). To create the Mill Road property, Mill Road Partners and Benwood broke off forty acres of the tract and transferred the smaller piece to the newly-formed Mill Road—owned by Wang, Meng, and Benwood—which held the forty-acre Mill Road property as its sole asset.

C. Preparing the Mill Road property

With the Mill Road property created, Grant hired Falcon Design, a civil engineering firm he frequently worked with, to create a "concept plan" showing how the property might be developed.

In Grant's other deals with Falcon Design, the firm had created concept plans showing how a property could be developed into a residential community or an assisted-living facility. Because Grant would price the land based on the total value of the units in the concept plan, Falcon Design would maximize the number of proposed units in order to increase the property's valuation. For the Mill Road property, Falcon Design produced a concept plan for a 677-unit assisted-living facility.

The Mill Road property was zoned for residential and agricultural use. This zoning classification allowed for development of an assisted-living facility only if it had "conditional use" approval from the Henry County Zoning Advisory Board. Conditional-use approval was a two-step process. First, the board's staff reviewed the application. Second, if the staff recommended approval, the application went to the board for evaluation.

In July 2016, Mill Road submitted an application for conditional-use approval to develop an assisted-living facility on the forty-acre tract consistent with the concept plan. The staff recommended approval on the condition that the development met the Henry County code's definition of an "assisted living facility," which excluded "nursing homes, hospices, clinics, or similar institutions devoted primarily to the diagnosis and treatment of the sick or injured." Despite recommending approval, the zoning staff asked Grant to withdraw the application if he did not actually plan to develop an assisted-living facility because the county had a limited number of spots for assisted-living facilities and leaving the application pending would crowd out other viable applications. Grant agreed and withdrew the application.

At the same time, Grant hired Falcon Design to develop assisted-living concept plans for ten other tracts he was involved with in Henry County. Falcon Design obtained zoning verification letters for the other tracts confirming that they were zoned for residential living and could not be used to build an assisted-living facility without conditional-use approval. Some of these other tracts were eventually structured into syndicated conservation easements.

D. The conservation easement on the Mill Road property

So too was the Mill Road property. In June 2016, Grant entered into negotiations with Carbonara to sell the Mill Road property to create a syndicated conservation easement. Around the same time, Grant and Carbonara hired Ron Foster—a professional appraiser—to value a conservation easement on the Mill Road property. Foster estimated that the Mill Road property was worth $8,992,500 ($224,800 per acre) before the easement with a highest-and-best use as an assisted-living facility, and would be worth $56,032 after the easement, giving the conservation easement a value of roughly $8,935,000.

With the $8.9 million appraisal in hand, Carbonara established a new entity—MR36 Investments, LLC—to buy the Mill Road property. MR36 solicited investors, promising $4.25 in tax savings for every dollar invested. The investors lined up for that deal.

In September 2016, MR36 bought a 97.99% stake in Mill Road from Mill Road Partners and Benwood for $1 million ($25,800 per acre). Mill Road then donated an easement over thirty-three acres of the forty-acre property to Southern Conservation Trust, Inc.[1] Using Foster's appraisal, Mill Road claimed an $8.9 million tax deduction for the donation. In its tax return, Mill Road reported that the "basis" of the forty-acre tract—the price at which Mill Road bought the property—was $416,563 ($10,498 per acre).

PROCEDURAL BACKGROUND

A. The tax court proceedings

In June 2020, the Service issued Mill Road a Notice of Final Partnership Administrative Adjustment that disallowed the $8.9 million deduction. The notice also included a forty percent penalty for grossly misstating the value of the easement. Mill Road filed a petition in the tax court challenging the Service's determinations.[2]

The tax court held a bench trial where Mill Road and the Service introduced expert testimony about the value of the easement. Mill Road's expert was James Clanton (not Foster, who had

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[1] The easement on the forty-acre Mill Road property excluded a roughly six-acre floodplain along its southern border and one acre in its northwest corner.

[2] The petition was filed by MR36 Manager, LLC, as tax matters partner for Mill Road. For ease of reference, we'll refer to the petitioners collectively as Mill Road.

conducted the original appraisal). Clanton opined that "the highest and best use before the conservation easement would have been to sell the property to an experienced operator for them to develop the [Mill Road property into] a senior housing community." Clanton assumed that Henry County's zoning regulations would permit the development of a 677-unit senior housing community. To value the Mill Road property, Clanton compared it to four properties in Gwinnett and Fulton Counties that had been purchased as undeveloped land and developed into senior-living facilities. Using the comparable properties, which sold for between $142,857 and $287,908 per acre, Clanton concluded that the value of the Mill Road property before the easement was $6,780,000 ($197,550 per acre). He estimated that its value after the easement was $80,000, making the easement's fair market value around $6.7 million (rather than the $8.9 million claimed on Mill Road's tax return).

The Service's expert was Ray Kinney. Kinney opined that the Mill Road property's highest and best use before the conservation easement was "as an investment property purchased for speculative assisted living development with a secondary fallback use as low density residential." He noted that the zoning staff had recommended conditional-use approval but there was "no way of knowing for sure how that process would have concluded" because Mill Road withdrew the application. Kinney reported that "[n]o one in their right mind would put up a 600+ bed facility" in Henry County because "120[–]150 bed facilities . . . [were] having trouble filling beds[.]" In fact, he said, it was unlikely that a developer would build a 300–400-unit facility in Henry County. Such a large facility, he explained, would likely require numerous levels of care ranging from independent living through hospice care, so it would not meet the definition of an assisted-living facility under the Henry County code.

Kinney then estimated the Mill Road property's pre-easement value using sales of seven comparable properties—six in Henry County and one in nearby Fayette County. The seven properties were undeveloped land purchased for "senior living, residential, or commercial development." The Fayette County property had already received zoning approval for an assisted-living facility, while the rest were eligible to build an assisted-living facility if they received conditional-use approval by Henry County. The six Henry County properties sold for between $6,055 to $10,939 per acre, while the Fayette County property sold for $37,975 per acre.

After adjusting these prices upward to account for changes in the market and other factors, Kinney estimated that the value of the Mill Road property before the easement was $990,000 ($25,000 per acre). After the easement, the Mill Road property was worth $90,000, making the easement worth $900,000. The tax court's decision

The tax court sided with the Service. It started with the value of the Mill Road property. The tax court was skeptical that Henry County would have approved a 677-unit assisted-living facility. Because the size of the proposed development would likely require significant on-site medical-care facilities, it was unlikely that the Mill Road property could have met the Henry County code's definition of an "assisted living facility," which excluded "hospitals, convalescent centers, nursing homes, hospices, clinics, or similar institutions devoted primarily to the diagnosis and treatment of the sick or injured."

Also, the tax court noted, although there was a "good chance" that Mill Road would have received conditional-use approval from the board had it left its application pending, it withdrew the application at the staff's request because the county had a "finite capacity for such facilities, and withdrawing the application . . . was practically necessary in order to enable the staff to consider equivalent applications for [ ] Grant's ten other tracts." Once Mill Road withdrew the application, it "no longer had any assurance of county approval." Mill Road therefore "failed to show that a 677-unit assisted living facility was a legally permissible use of the Mill Road [property]," which "gravely undermine[d] the highest-and-best-use assumption in its valuation."

Despite these shortcomings, the tax court assumed that an assisted-living facility was the Mill Road property's highest-and-best use, as the company's expert suggested. Even so, the tax court explained, "the value could not have been more than a fraction of what [Clanton] concluded[.]" None of his comparison properties were located in Henry County, whereas all but one of Kinney's comparison properties were. All of Kinney's comparison properties in Henry County had the same zoning classification as the Mill Road property (and were therefore equally suited for an assisted-living facility), yet none of them commanded anywhere near the valuation that Clanton asserted. And the arms-length sale of a 97.99% interest in the Mill Road property for $1 million ($25,800 per acre) three months before the donation further undermined Clanton's assertion that it was now worth $6,780,000 ($197,550 per acre). The tax court thus adopted Kinney's $900,000 valuation and affirmed the forty-percent penalty against Mill Road for grossly misstating the value of the easement.

Normally that would be the end of it, but the tax court found that the amount of the deduction had to be reduced to the property's basis—the amount Mill Road bought the property for—because the Mill Road property was held primarily as inventory for sale to customers in the ordinary course of business. The property was primarily held as inventory, the tax court found, because Mill Road Partners and Benwood (Mill Road's contributing partners) were engaged in the business of buying and selling real estate, they acquired the Mill Road property as part of their real estate business, and they sold the property to Mill Road in furtherance of their real estate business. The tax court therefore limited the amount of the deduction to $416,563—the amount Mill Road paid for the property.

STANDARD OF REVIEW

"We review a tax court's legal conclusions *de novo* and its findings of fact for clear error." *Savannah Shoals, LLC v. Comm'r*, ___ F.4th ___, 2026 WL 2056291, at *3 (11th Cir. July 16, 2026) (quoting *Palmer Ranch Holdings Ltd v. Comm'r*, 812 F.3d 982, 993 (11th Cir. 2016)). The fair market value of land is a mixed question of law and fact: the method of valuation is a question of law we review de novo, but we review the factual premises underlying the valuation for clear error. *Id*. A property's highest-and-best use is also a question of fact. *See United States v. 320.0 Acres of Land,* 605 F.2d 762, 817 (5th Cir. 1979) (holding that "adaptability or suitability for nonexisting uses is an inextricable factual element of market value"). And so is "whether the taxpayer intended to hold the property primarily for sale in the ordinary course of business or for investment purposes." *Boree v. Comm'r*, 837 F.3d 1093, 1100 (11th Cir. 2016) (citing *Suburban Realty Co. v. United States*, 615 F.2d 171, 180–81 (5th Cir. 1980)); *see also Major Realty Corp. & Subsidiaries v. Comm'r*, 749 F.2d 1483, 1488 (11th Cir. 1985) (holding that whether a taxpayer holds property for sale in the ordinary course of business pursuant to 26 U.S.C. section 1221(a)(1) "is purely factual, to be determined on a case-by-case approach").

DISCUSSION

Mill Road raises two arguments on appeal. First, it contends, the tax court erred in imposing the valuation penalty because the fair market value of the easement was $6.7 million—and not $900,000 as found by the tax court. Second, Mill Road argues, the tax court erred in reducing the amount of its deduction to the price it paid for the property—$416,563—because the Mill Road property was not held as inventory for sale to customers in the ordinary course of business.

A. Did the tax court err in finding the fair market value of the Mill Road property and assessing the valuation penalty?

Section 170 of the tax code "allows tax deductions for charitable contributions and gifts of interests in real property." *Savannah Shoals, LLC*, 2026 WL 2056291, at *3 (quoting *Pine Mountain Pres., LLLP v. Comm'r*, 978 F.3d 1200, 1203 (11th Cir. 2020)); *see also* 26 U.S.C. § 170. One popular kind of charitable contribution of an interest in real estate is a "qualified conservation contribution." *See* 26 U.S.C. § 170(h). A "qualified conservation contribution" is a contribution "(A) of a qualified real property interest, (B) to a qualified organization, and (C) exclusively for conservation purposes." *Pine Mountain Pres.*, 978 F.3d at 1203 (citation modified) (quoting 26 U.S.C. § 170(h)(1)). The charitable contribution often comes in the form of a conservation easement—an easement that limits the use of land for conservation purposes. *See id.* at 1202 (explaining that a conservation easement is "created when a landowner agrees to forgo its absolute right to use its property as it sees fit and subjects itself, contractually, to the oversight of a land-conservation organization").

For most conservation easements, the amount of the tax deduction is the value of the conservation easement, *see* 26 U.S.C. § 170(a)(1), (h); 26 C.F.R. § 1.170A-1(c)(1), which is its "fair market value . . . at the time of the contribution," 26 C.F.R. § 170A-14(h)(3)(i). One way to calculate the easement's fair market value is to look at "the difference between the fair market value of the property it encumbers before the [easement] and the fair market value of the encumbered property after the [easement]." *Id.*

§ 170A-14(h)(3)(i). These values are determined by the property's "highest and best use." *See id.* § 170A-14(h)(3)(ii). Thus, determining fair market value is a two-step process: first, we find the property's "highest-and-best use"; then, we "calculate a dollar value based on that use." *TOT Prop. Holdings, LLC v. Comm'r*, 1 F.4th 1354, 1369–70 (11th Cir. 2021) (citing *PBBM-Rose Hill, Ltd. v. Comm'r.*, 900 F.3d 193, 209 (5th Cir. 2018)).

The highest-and-best use of a property is a "reasonable and probable use that supports the highest present value, with a focus on the highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future." *Id.* at 1369 (citation modified). Because highest-and-best use is ultimately an inquiry "into whether the market will demand the use," *Palmer Ranch*, 812 F.3d at 998, the highest-and-best use of a property must be one that is "reasonably probable" as opposed to merely "within the realm of possibility," *Olson v. United States*, 292 U.S. 246, 255, 257 (1934). The highest-and-best use of a property therefore must be based on an "objective assessment" of "how immediate or remote the likelihood is that the property, absent the [easement], would in fact be developed, as well as any effect from zoning, conservation, or historic preservation laws that already restrict the property's potential highest and best use." 26 C.F.R. § 170A-14(h)(3)(ii). If a use is not legally permissible, it cannot be the highest-and-best use. *See Palmer Ranch*, 812 F.3d at 996–97.

After determining highest-and-best use, the next step is to "calculate a dollar value based on that use." *TOT Prop. Holdings*, 1 F.4th at 1370. Sales of comparable properties with the same highest-and-best use are "the best evidence of market value." *320.0 Acres*, 605 F.2d at 798. "[C]omparability is largely a function of three variables: [the] characteristics of the properties, their geographic proximity to one another, and the time differential [between the sales]." *Id.*; *see also Palmer Ranch*, 812 F.3d at 987 ("The 'comparable sales' method functions by: (1) Locating [parcels] as physically similar (comparable) as possible to the subject [parcel] which (2) have been sold on the open market in noncollusive, nonforced sales for cash or cash equivalent, within (3) a reasonable time of the date for which a value of the subject property is desired." (quoting *Wolfsen Land & Cattle Co. v. Comm'r*, 72 T.C. 1, 19 (1979))). If a taxpayer grossly misstates the value of a conservation easement, the Service must impose a penalty. *See* 26 U.S.C. § 6662(e), (h) (requiring the Service to assess a forty-percent gross valuation misstatement penalty if "the value of any property" claimed on a tax return is 200 percent or more "of the amount determined to be the correct amount of such valuation").

Mill Road argues that the tax court should not have imposed a penalty because the company did not grossly misstate the value of the easement. The tax court undervalued the easement, Mill Road contends, because it did not find that an assisted-living facility was the property's highest-and-best use.

This argument fails because the tax court used future development as an assisted-living facility as the highest-and-best use of the Mill Road property and based its valuation on that use. Although the tax court expressed skepticism that Mill Road's plan for an assisted-living facility was legally permissible, the tax court assumed for valuation purposes that an assisted-living facility was the Mill Road property's highest-and-best use.

To determine the fair market value of the easement, the tax court relied on Kinney's and Clanton's expert reports and testimony. Both experts' valuations assumed that a developer could build an assisted-living facility as the highest-and-best use of the Mill Road property. Clanton opined that the highest-and-best use was "to sell the property to an experienced operator for them to develop the [Mill Road property into] a senior housing community." Kinney likewise reported that the highest-and-best use was as "an investment property purchased for speculative assisted living development with a secondary fallback use as low density residential." Both experts' valuations assumed the Mill Road property could be used for an assisted-living facility, and the tax court valued the Mill Road property on that basis. Although the tax court ultimately rejected Clanton's valuation, it did so because it found that he failed to identify sales of properties comparable to the Mill Road property, not because an assisted-living facility was legally impermissible.

Mill Road pushes back, arguing that the tax court erred by relying on Kinney's analysis because he found that the highest-and-best use was for a "speculative assisted living development," implying that the property "is held, not sold either immediately or in the near future." But Mill Road does not explain how this affected the tax court's valuation. To value the Mill Road property, Kinney used comparison properties that were "purchased for the purpose of senior living, residential, or commercial development." All but one of his comparison properties were zoned to allow an assisted-living facility with conditional-use approval, just like the Mill Road property. The properties Kinney used were comparable to the Mill Road property regardless of whether the buyer intended to develop the property immediately or at some point in the future. Moreover, the tax court made clear that it was analyzing the expert reports from the perspective of a "developer intending to build a[n assisted-living] facility," not a buyer purchasing property for speculative investment. Thus, the tax court ultimately assumed that the highest-and-best use of the Mill Road property was to develop it into an assisted-living facility and valued the property that way.[3]

Based on that highest-and-best-use determination, we see no clear error in the tax court's valuation because there was ample support in the record for rejecting Clanton's valuation and crediting Kinney's. First, as the tax court noted, none of Clanton's four comparable properties were located in Henry County; instead, they were in Fulton and Gwinnett Counties, which are much closer

[3] We don't need to decide whether an assisted-living facility was a legally permissible use of the Mill Road property because the tax court assumed that it was.

to the heart of Atlanta. Mill Road claims that "it did not matter that they were not in Henry County" because "there were no comparables in Henry County." But Kinney was able to locate six sales of undeveloped properties in Henry County of the same size and zoning classification as the Mill Road property. Mill Road provides no explanation for why Clanton's properties in Fulton and Gwinnett Counties were better comparators than Kinney's properties in Henry County. *See 320.0 Acres*, 605 F.2d at 798 (noting that "geographic proximity" is a key variable in determining whether two properties are comparable for valuation purposes).

Second, the tax court rejected Clanton's valuation because it was highly unlikely that any willing buyer would have paid nearly $200,000 per acre for undeveloped land in Henry County to build an assisted-living facility. *See* 26 C.F.R. § 1.170A-1(c)(2) (providing that "[t]he fair market value is the price at which the property would change hands between a willing buyer and a willing seller"). The tax court found that nothing about the Mill Road property "made it uniquely suitable for an assisted living facility" because Kinney found six other properties in Henry County that could have served as substitutes and Grant found ten more that he claimed had a highest-and-best use as an assisted-living facility. Kinney's comparable properties in Henry County, which were zoned the same way as the Mill Road property, were valued at roughly between $6,000 to $10,000 per acre. And because these properties were roughly the same as the Mill Road property, the tax court reasonably concluded that "[a] developer intending to build a facility would never have contemplated buying the Mill Road [property] for

$6.7 million but would instead have bought one of the many other tracts available at much lower prices."

Third, the tax court properly found that the Mill Road property's sales history undermined Clanton's valuation and supported Kinney's. A recent arm's-length sale can provide "overwhelming support" for a property's value before a conservation easement. *See TOT Prop. Holdings*, 1 F.4th at 1371 (finding that the arm's-length sale of a property seventeen days prior to a conservation easement provided "overwhelming support . . . of the before use value of the property"). Here, the Mill Road property sold for $1 million ($25,800 per acre) three months before the conservation-easement donation. This figure is consistent with Kinney's valuation of $990,000 ($25,000 per acre) and nowhere near Clanton's valuation of nearly $200,000 per acre.

Put together, we see no clear error in the tax court's valuation of the conservation easement at $900,000. And because the $900,000 value of the easement was $8 million less than Mill Road claimed, the tax court did not err in imposing a penalty for grossly misstating the value of the Mill Road property. *See* 26 U.S.C. § 6662(e), (h).

B. Did the tax court err in finding the Mill Road property was held primarily for sale in the ordinary course of business?

Usually, the fair market value of the easement is the amount the taxpayer can take as a deduction on its tax return for the charitable contribution. *See* 26 C.F.R. § 1.170A-1(c)(1). But the tax code has a special rule if the property is "held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business." 26 U.S.C. §§ 170(e)(1)(A), 1221(a)(1). In that case, the value of the deduction is limited to the taxpayer's basis in the property—which is generally the price the taxpayer paid for it. *See id.* § 170(e)(1)(A). In determining whether property is held primarily for sale in the ordinary course of a trade or business, we apply a three-part test from our *Suburban Realty* decision: "(1) whether the taxpayer was engaged in a trade or business, and if so, what business; (2) whether the taxpayer was holding the property primarily for sale in that business; and (3) whether the sales contemplated by the taxpayer were 'ordinary' in the course of that business." *Boree*, 837 F.3d at 1102 (citing *Suburban Realty*, 615 F.2d at 178).

The tax court applied the special rule to limit Mill Road's deduction to the amount it paid for the property—$416,563. Mill Road argues this was error because the tax court "properly identified, but failed to analyze," the *Suburban Realty* factors. We disagree. The tax court made explicit findings based on the *Suburban Realty* test, and the record supports these findings that the Mill Road property was primarily held for sale to customers in the ordinary course of business.

As to the first *Suburban Realty* factor, the tax court found that Grant, Helms, Meng, and Wang "all worked together in the business of buying and selling land, and that the Mill Road [property] was both acquired and sold within the ordinary course of their real estate business[.]" And it found that Mill Road's two contributing partners (Mill Road Partners and Benwood) "were previously and subsequently engaged in the business of buying and selling real estate."

The evidence supported these findings. Helms (Benwood's sole owner) confirmed that Benwood had been in the business of buying and selling real estate since 2011, and that he, Meng, and Wang were in the business of buying and selling land together. And Grant testified that Meng and Wang had both been in the business of buying and selling real estate with him since 2014. Mill Road offered no evidence that Helms, Meng, or Wang sold the Mill Road property for any purpose other than buying and selling real estate or that Benwood or Mill Road Partners had any business other than real estate sales. *See Suburban Realty*, 615 F.2d at 179 n.24 (noting that a "taxpayer's claim to capital gain treatment is likely to be weaker if he can point to no other business activities" other than land sales).

As to the second *Suburban Realty* factor, the tax court found that Mill Road Partners and Benwood acquired the 117-acre parent tract and created and sold the Mill Road property "pursuant to" and "in furtherance of their real estate business." The record supports these findings too. Grant testified that the group's purpose in buying the original 117-acre tract was to sell it for a conservation easement transaction. The group heard that the owners of another local property intended as an assisted-living facility "decided to place it into conservation." According to Grant, "[t]hat was something new to us, and we thought [it] was a great idea, and that's exactly what we did." So, when the original 117-acre tract went up for sale, they "wound up buying the property[.]"

Grant also hired Falcon Design to develop a concept plan for the 117-acre property to enhance the property's marketability for sale. *See Sanders*, 740 F.2d at 889 (finding that efforts to enhance the marketability of land were relevant to whether the land is held primarily for sale) The purpose of the plan was to maximize the number of units that could fit on the property to increase the valuation for a conservation easement or, as Grant put it, to get "the most bang for my buck[.]" All of this was, in Grant's words, "a way to sell property" and "make our modest profits[.]" This evidence clearly supports a finding that Mill Road Partners and Benwood created the Mill Road property primarily for sale because the "whole purpose" of the group's activities "was to sell" the Mill Road property for use in a conservation easement transaction. *See Thompson v. Comm'r*, 322 F.2d 122, 127 (5th Cir. 1963).

As to the third part of the *Suburban Realty* test, the tax court found that the sale of the Mill Road property was in the "ordinary" course of Meng, Wang, and Helms's business. The record supports this finding as well. Grant, Meng, Wang, and Helms were in the business of buying and selling land. Helms had been in real estate since 2011. Meng and Wang had both been buying and selling real estate with Grant since 2014. When asked to name the deals he made with Meng and Wang, Grant couldn't because there were too many, but he estimated that he set up four or five such transactions with Wang and "a few more of that" with Meng. For Helms, Meng, and Wang, selling the Mill Road property was not an "abnormal or unexpected event." *See Suburban Realty*, 615 F.2d at 185–86 (quoting *United States v. Winthrop*, 417 F.2d 905, 912 (5th Cir. 1969).

Just as in *Suburban Realty*, Mill Road Partners and Benwood sold the Mill Road property "shortly after [they] acquired the land" and "never used the land for any other purpose[.]" *See id.* at 186 (quoting *Winthrop*, 417 F.2d at 912). Selling land was the "sole object" of their business. *See Winthrop*, 417 F.2d at 912. Having applied the *Suburban Realty* test, the tax court did not clearly err in finding that the Mill Road property was held primarily for sale in the ordinary course of business. *See Wright v. Sumter Cnty. Bd. of Elections & Registration*, 979 F.3d 1282, 1301 (11th Cir. 2020) (holding that, under the clear error standard, we must affirm "unless 'we are compelled to conclude that the [trial] court's findings are not supported by substantial evidence[.]'" (quoting *Johnson v. Hamrick*, 296 F.3d 1065, 1074 (11th Cir. 2002))).

Mill Road offers two arguments in response. First, it contends that the tax court could not consider Grant's actions in determining whether the Mill Road property was held primarily for sale in the ordinary course of business because Grant was not one of Mill Road's contributing partners. The tax court, it says, engaged in a "sleight of hand" by suggesting that "Grant was . . . a contributing partner to Mill Road" and thereby linked Grant to Mill Road Partners and the Mill Road property "such that his business activities [we]re attributable to" them.

But the tax court never found or even suggested that Grant was one of Mill Road's partners. Instead, the tax court found that "the [Mill Road property] was contributed to Mill Road . . . by . . . Mill Road Partners and Benwood[.]"[4] And the tax court did not err in considering Grant's involvement with the Mill Road property even though he was not one of the contributing partners. Grant, Helms, Meng, and Wang were close associates engaged in the business of buying and selling land. Their businesses were intertwined and they worked together in multiple transactions. Here, Grant didn't take an ownership interest in the property, but he acted on behalf of Mill Road Partners and Benwood to buy the original 117-acre tract and to sell the Mill Road property for a conservation easement transaction. His actions on their behalf and his testimony about their intentions were relevant to whether the property was held primarily for sale in the ordinary course of business. The tax court properly considered Grant's relevant testimony.

Second, Mill Road faults the tax court for not properly considering our decision in *Winthrop*. There, we set out seven factors to help determine whether a taxpayer held property primarily for sale to customers in the ordinary course of business:

> (1) the nature and purpose of the acquisition of the property and the duration of the ownership; (2) the extent and nature of the taxpayer's efforts to sell the

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[4] Elsewhere, Mill Road concedes that the tax court "correctly found that the only contributing partners in Mill Road were [Mill Road Partners] and Benwood."

> property; (3) the number, extent, continuity and substantiality of the sales; (4) the extent of subdividing, developing, and advertising to increase sales; (5) the use of a business office for the sale of the property; (6) the character and degree of supervision or control exercised by the taxpayer over any representative selling the property; and (7) the time and effort the taxpayer habitually devoted to the sales.

417 F.2d at 909–10. Mill Road argues that the tax court's analysis was flawed because it did not analyze the seven *Winthrop* factors.

But the tax court was correct that it didn't need to "analyze in detail each of these factors[.]" That's because "[t]he ultimate inquiry in cases of this nature is whether the property at issue was 'property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.'" *Suburban Realty*, 615 F.2d at 177, 187 (quoting 26 U.S.C. § 1221(1) (1967)). The seven *Winthrop* factors may be "relevant," but, as *Winthrop* recognized, "in and of themselves . . . [they] have no independent significance," and "only form part of a situation which in the individual case must be considered in its entirety[.]" 417 F.2d at 910 (quoting *Cole v. Usry*, 294 F.2d 426, 427 (5th Cir. 1961)).

For that reason, there's no "authority requiring courts to address each and every [*Winthrop*] factor." *Boree*, 837 F.3d at 1105. The *Winthrop* factors, we've stressed, are non-exclusive and non-controlling. *See id.* at 1100 ("No factor or combination of factors is controlling."). Rather, "each case must be decided on its particular facts . . . viewing the evidence in its totality and drawing appropriate inferences from that evidence." *Id.* at 1100, 1105. Here, "viewing the evidence in its totality," *id.* at 1105, the tax court committed no clear error in finding that the Mill Road property was held primarily as inventory in the ordinary course of a real estate business.

CONCLUSION

The tax court did not err in valuing the easement. It did not err in imposing the valuation penalty. And it did not err in limiting the deduction to Mill Road's basis in the property. We affirm the tax court in full.

AFFIRMED.