

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-10744

JACKSON CROSSROADS LLC,
Greencone Investments, LLC,
Tax Matters Partner,

Petitioner-Appellant,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

Petition for Review of a Decision of the
U.S. Tax Court
Agency No. 12235-20

No. 25-10745

LONG BRANCH INVESTMENTS, LLC,
Greencone Investments, LLC,

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Tax Matters Partner,

Petitioner-Appellant,

versus

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

Petition for Review of a Decision of the
U.S. Tax Court
Agency No. 12249-20

Before ROSENBAUM, BRANCH, and GRANT, Circuit Judges.

PER CURIAM:

This is an appeal of a Tax Court decision sustaining gross-valuation-misstatement penalties on Jackson Crossroads, LLC, and Long Branch Investments, LLC (“Petitioners”). These entities claimed over \$36.9 million dollars in conservation-easement deductions for the tax year 2016. The IRS applied penalties because it concluded Petitioners grossly overstated the value of the easements.

Petitioners sued the IRS in the Tax Court, challenging the determination that they were not entitled to a deduction. The case went to trial in January 2024. The trial was a battle of the experts. Both sides presented expert evidence to support their valuations of the conservation easements.

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In a ruling in December 2024, the Tax Court sided with the IRS. Relying on evidence that the IRS’s experts put forward, the court determined much lower fair market values for the easements than Petitioners had assigned—approximately \$1.17 million for Jackson Crossroads and \$1.57 million for Long Branch. Because the claimed deductions exceeded 200% of the court’s valuations, the court sustained the 40% gross-valuation-misstatement penalties under I.R.C. § 6662(h).

On appeal, Petitioners challenge several aspects of the Tax Court’s decision. After careful review, we find no error in the Tax Court’s valuation and determination of a penalty, so we affirm.

I. Facts and Procedural History

A. *The Conservation Easement Deduction*

Under 26 U.S.C. § 170(a)(1), taxpayers can deduct the value of charitable contributions they make within the taxable year. But in doing so, normally, taxpayers can’t deduct gifts that are only partial gifts, like the right to use property in a particular way. *See id.* § (f)(3)(A).

The Internal Revenue Code does contain a carveout to this general rule, though, in the case of conservation interests. *Id.* § (f)(3)(B)(iii). This carveout permits landowners to take a tax deduction for creating a conservation easement on their land. And that, in turn, entails promising not to develop the land in perpetuity. *See Champions Retreat Golf Founders, LLC v. Comm’r*, 959 F.3d 1033, 1035–37 (11th Cir. 2020); *see also* 26 C.F.R. § 1.170A-14(b)(2).

In exchange for creating a conservation easement on real property and donating it to a government entity or other qualified conservation organization, taxpayers can deduct the full “fair market value” of the development rights to the property for the taxable year in which the donation is made. 26 U.S.C. § 170(h); 26 C.F.R. § 1.170A-14(h)(3).

The IRS defines the “fair market value” as “the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts.” 26 C.F.R. § 1.170A-1(c)(2).

If evidence of comparable easement sales is available, “the fair market value of the donated easement is based on the sales prices of such comparable easements.” *See* 26 C.F.R. § 1.170A-14(h)(3). But when such evidence is unavailable, we use the “before-and-after” valuation method. *Id.* The before-and-after method measures the fair market value of the easement by taking the value of the unfettered land *before* the restriction (the “before value”) and subtracting the value of the restricted land with the easement (the “after value”). The fair market value of the right to develop the land (the value that is donated when an easement is created) is the difference between the before and after values. *See id.*

When a taxpayer uses the before-and-after valuation, the Treasury Regulations tell us that the fair market value of the property must account for not only the current use of the property but

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“also an objective assessment of how *immediate or remote the likelihood is that the property*, absent the restriction, 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.” *Id.* § (3)(ii) (emphasis added).

To determine the before value, courts must consider the property’s “highest and best use.” *TOT Prop. Holdings, LLC v. Comm’r*, 1 F.4th 1354, 1369–70 (11th Cir. 2021). The highest and best use is 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.* Because of these qualifications, the highest and best use may not be the maximally profitable imaginable use. See *Palmer Ranch Holdings Ltd v. Comm’r*, 812 F.3d 982, 987 (11th Cir. 2016).

To assign a cash value to the highest and best use, courts and appraisers use a “comparable sales method” for valuing the land. *Id.* This method involves considering parcels that are physically similar and sold on the open market in “noncollusive, nonforced sales for cash or cash equivalent” in roughly the same time frame as the date of the valuation of the subject property. *Id.*

After identifying the highest and best use (and the corresponding before value), the court must determine the “after value,” which is the price at which the property would change hands now that a conservation easement restricts its development. *Id.* Appraisers and courts can use the comparable-sales method to determine this value as well. See *id.* at 1002.

Finally, we arrive at the fair market value of the conservation easement by subtracting the after value from the before value. The fair market value of the conservation easement is the appropriate deduction value. *See* 26 C.F.R. § 1.170A-14(h)(3).

This case concerns a dispute between Petitioners and the IRS over the proper fair market value of conservation easements that Petitioners sought to claim as deductions for the tax year 2016.

B. Property Transactions Here

In the summer of 2011, Russell Bennett and Carlton Walstad formed a partnership called Greencone Investments, LLC, and began acquiring property. This property included agricultural lands in Kentucky and Georgia, which they purchased for the purpose of creating conservation easements.

A few years later, in mid-October 2015, Walstad formed another partnership entity. He called this one Mor-Ton, LLC, and formed it with Greencone. Greencone served as the managing member with 80% of the partnership interests.

Walstad negotiated purchase contracts for two large parcels of land straddling Morgan and Walton counties near Social Circle, Georgia. He assigned the contracts to Mor-Ton.¹ Through Mor-Ton, Walstad paid \$3 million for one parcel of 604 acres of land and \$2.2 million for an adjacent parcel of 315 acres of land.

¹ Mor-Ton appears to have taken its name from Morgan (MOR) and Walton (TON) Counties, where the parcels of land were located.

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A bank's contemporaneous third-party appraisal collectively valued the properties at \$5.2 million. Both properties were zoned as "Agricultural Residential."

In January 2016, Mor-Ton formed two partnerships, Jackson Crossroads, LLC, and Long Branch, LLC.

Mor-Ton subdivided the properties that Walstad had purchased in 2015 and, in June and July 2016, transferred ownership of 228.61 acres to Jackson Crossroads and of 307.06 adjacent acres to Long Branch, respectively.

Before the end of the year, on December 16, 2016, Jackson Crossroads and Long Branch donated perpetual conservation easements on approximately 229 acres and 307 acres, respectively, to the Oconee River Land Trust.

C. Tax Filings and IRS Decision

Jackson Crossroads and Long Branch claimed charitable-contribution deductions, respectively, of approximately \$23.1 million and \$13.8 million on partnership tax returns for short tax periods ending December 31, 2016. Both partnerships were treated as partnerships subject to the Tax Equity and Fiscal Responsibility Act of 1982.

In July 2020, the IRS issued Notices of Final Partnership Administrative Adjustment ("FPAAs"). The FPAAs disallowed the deductions and assessed penalties against Petitioners for overstating the value of the properties. With respect to the alleged overstatements, as an alternative to completely disallowing the deductions,

the IRS found that the partnerships had failed to establish that the easement value was more than \$588,000 for Jackson Crossroads or \$550,000 for Long Branch.

D. Tax Court Proceedings

In October 2020, Petitioners filed their petitions in the Tax Court. The court consolidated the cases and held a trial in January 2024.

The parties presented conflicting testimony about the highest and best uses of the two properties. Ultimately, the Tax Court found the IRS Commissioner's expert evidence more credible than Petitioners' expert evidence.

1. Jackson Crossroads

At trial, a central issue concerned whether a hypothetical granite mine was the highest and best use for Jackson Crossroads. Both parties presented extensive expert testimony and supporting analysis on this issue.

i. Evidence For Petitioners

First, the Tax Court considered evidence and testimony from consultants who, in 2016, had conducted an initial analysis of the highest and best use of Jackson Crossroads.

In the spring of 2016, Mor-Ton hired Black Rock Consulting, LLC, to drill and analyze the Jackson Crossroads and Long Branch properties for potential mineral interests. Black Rock drilled three holes on each property. At Jackson Crossroads, it struck granite. Based on this development, Stuart David Bleakman, a consultant at

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Black Rock, concluded that Jackson Crossroads could potentially be developed as an aggregate quarry. He wrote that “a reserve of approximately 15,500,000 tons of recoverable construction grade aggregate [was] potentially present.” During the trial, Bleakman testified that more testing would be necessary to confirm whether the reserve was actually available.

The Tax Court also considered appraiser Robert Fletcher’s report, which Jackson Crossroads attached to its tax return. Fletcher relied on Black Rock Consulting’s reports to conclude that the property’s highest and best use before the easement was the construction of a quarry mine and processing facility.

To value the property, Fletcher used one of three commonly recognized methods: the income method. *See Whitehouse Hotel Ltd. P’ship v. Comm’r*, 615 F.3d 321, 333 (5th Cir. 2010). The income method “involves analyzing data from comparable properties to determine the property’s earning capacity, operating expenses, and rates of capitalization and discount.” *Id.* at 334. “This information is combined with any ‘reasonably clear and appropriate evidence’ of future income potential and expenses to estimate the property’s value.” *Id.* (quotation omitted).

Put simply, valuing a property using the income method involves estimating the money the property could potentially generate in the future and converting that stream of earnings into a single value that reflects the property’s income potential. The income method incorporates a discounted-cash-flow analysis, which reflects the principle that money in the future is worth less than

money available today. When calculated correctly, the income approach accounts for the present value of a property's future cash flow, minus the costs necessary to generate the revenue. *See Cox Enters., Inc. v. News-J. Corp.*, 510 F.3d 1350, 1355 (11th Cir. 2007) (explaining the discounted-cash-flow model).

Fletcher applied the income method to the assumption that a granite mine could be built on Jackson Crossroads. Based on this assumption, he estimated that the before value of Jackson Crossroads was \$23.6 million.

To support Fletcher's value estimate, Petitioners presented other evidence, although the Petitioners' other experts did not precisely corroborate the \$23.6 million figure. Nicholas Proctor, a mining consultant, performed a market study and project evaluation. He used a discounted-cash-flow analysis to estimate that Jackson Crossroads had a mining-based property value of \$18.6 million. Proctor testified that strong regional demand for processed granite existed in the area and that there was a supply deficit. This economic analysis supported Fletcher's arguments that a quarry would produce income.

Benjamin Black, a geologist from GeoLogic, LLC, estimated that about 9.7 million tons of potential mineral were available at Jackson Crossroads. He prepared a conceptual plan that included a two-pit quarry design and compared test samples to nearby permitted mines. This supported Fletcher's analysis that the amount of rock present on Jackson Crossroads justified building a quarry.

Barry Fleming, an attorney with Fleming & Nelson, LLP, testified that in 2016, it was likely that Jackson Crossroads could have gotten a permit to build a mining operation.

Douglas Kenny, a real estate appraiser, also testified in support of the idea that Jackson Crossroads could be used as a granite quarry, although he reached a lower valuation than Fletcher. He estimated a before value of the easement of approximately \$19.2 million. Although Kenny's before value was lower than Fletcher's, Kenny's analysis supported the argument that a profitable mine could be built at Jackson Crossroads.

Shane Short also testified for Petitioners. In 2016, Short became the Executive Director of the Joint Development Authority of four adjacent counties—Newton, Walton, Morgan, and Jasper. The Joint Development Authority was developing what it called the “East Atlanta Megasite” across the road from Jackson Crossroads and the other property, Long Branch. Short testified that, as a result, “a lot more activity” started in the area of Jackson Crossroads and Long Branch in 2016, including projects from the Georgia Department of Economic Development.

In the last quarter of 2016, Short began assembling plans for the megasite and acquired options for 1,000 acres in the vicinity of Long Branch. He priced those options at \$30,000/acre (\$30,000,000 for the full site), which the Joint Development Authority viewed as a fair price. Short also made inquiries about the availability of Jackson Crossroads and Long Branch, though he did not acquire options on those properties.

Petitioners offered Short's testimony to show that, by 2016, it was reasonably foreseeable that industrial development would occur in the area. In fact, several years after Short first developed plans for the industrial megasite, major corporations invested in East Atlanta. In 2018, for instance, Facebook secured property in Stanton Springs, a location south of the proposed location for the megasite.

Then in early 2021, Georgia asked Short to start buying options for land so that Rivian, an automobile manufacturer, could build a factory. Related to that effort, later that year, Walstad and Bennett sold a different parcel of land (not directly at issue in this case) to the Joint Development Authority for \$17.7 million, or roughly \$65,000 per acre.

ii. Evidence for the Commissioner

The Commissioner presented several qualified experts, who offered testimony about the before value of Jackson Crossroads. That testimony contradicted Petitioners' evidence.

Geologist Berkley Tracy of SRK Consulting submitted an expert report and testified about the 2016 testing at Jackson Crossroads. Tracy opined that the information from drilling only three holes was not enough to reliably establish how much granite was present at Jackson Crossroads.

And Kevin Gunesch, also of SRK Consulting, opined that a hypothetical aggregate granite quarry of the kind that Petitioners envisioned was not financially feasible. Under Gunesch's assumptions, building and operating a quarry at Jackson Crossroads would

actually result in a *negative* cash flow of millions of dollars. Gunesch explained that a discounted-cash-flow analysis of the mine plan that he developed for Jackson Crossroads would result in a cashflow of negative \$16.9 million and a net present value of negative \$24.6 million. In Gunesch's view, building a granite mine would require up-front expenditures of \$34 million. And given existing quarries and the level of demand for granite in the Atlanta area reasonably foreseeable in 2016, mine operators would not be able to recoup the initial investment for decades.

Another appraiser, Andrew Sheppard, determined that the highest and best use for Jackson Crossroads was not the hypothetical mine. Rather, Sheppard opined, it was "continued agricultural/low-density residential/recreational use." Shepard testified that, under that use, the sales-comparison method indicated a far lower value for Jackson Crossroads than Petitioners sought to claim on their tax filings. Based on data from five comparable properties sold in the area during the relevant period in 2016, Shepard said, the before value of Jackson Crossroads was \$1.6 million.

And because Jackson Crossroads was only an exploratory-stage mineral property, Sheppard criticized as "logically flawed" Petitioners' experts' use of the income-valuation method for assessing its value. Typically, he said, properties that are the best candidates for evaluation using the income approach already have permits or other entitlements to create mining operations. But Jackson Crossroads's owners did not.

Sheppard was also skeptical that in 2016, it was reasonably foreseeable that Facebook would acquire land in East Atlanta in 2018 and that Georgia would make a large purchase of land in 2021. In Sheppard's view, market conditions were "relatively stagnant" in December 2016 and demand for land in East Atlanta increased only "well after" that period.

2. Long Branch

The parties also presented conflicting expert testimony about the before value of Long Branch, the other property at issue in the tax proceedings.

i. Evidence for Petitioners

Petitioners hired architect J. Bruce Macgregor to design a conceptual plan for an industrial distribution park at Long Branch. His plan for Long Branch included five buildings, totaling more than 3 million square feet, and connections to the train line that ran adjacent to the property.

George P. Galphin, Jr., the appraiser whose report Long Branch attached to its tax return, also testified at trial. Galphin analyzed development potential at Long Branch based on Macgregor's plan. And Galphin agreed that the industrial park reflected the property's highest and best use. Based on that use and applying the sales-comparison and income methods, Galphin concluded that Long Branch's before value was \$14.6 million (\$47,000 per acre).

Besides this evidence, Petitioners presented Ralph Forbes, a civil engineer. He testified that if the development at Long Branch

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were fully operational, it would create work for 100–150 trucks per day. But, Forbes said, the highway running alongside Long Branch might not be big enough to absorb that kind of traffic.

Finally, Douglas Kenny valued Long Branch’s contribution to Oconee River Land Trust. Kenny applied the sales-comparison approach to properties that were smaller than Long Branch, many of which had already been zoned for industrial uses. He also agreed that the highest and best use of Long Branch was as an industrial site. In Kenny’s view, the before value of Long Branch was \$13,815,000, and the property could sell for a price of \$45,000 per acre.

ii. Evidence for the Commissioner

The Commissioner called Laura Smith, an expert in market demand and market feasibility. She testified that industrial development at Long Branch was not feasible. The lack of transportation access and overall lack of demand in the surrounding area required this conclusion, she opined. In Smith’s view, the plans for developing Long Branch as an industrial site were “overly optimistic” given the market conditions in 2016. Because industrial megasites are not driven by organic demand in the market, Smith did not consider any plans for a megasite to be relevant to her analysis. According to Smith, “Megasites are specifically created as an economic engine. That’s why they’re so heavily incentivized and why there’s so much effort put into recruiting businesses to occupy” those sites. Smith explained that the prices that a publicly funded entity like the Joint Development Authority or Georgia

would be willing to pay to start a megasite are not truly reflective of fair market value.

Harvey Crouch, a railway engineer, concluded that Macgregor's plan to connect an adjacent railroad to Long Branch was not feasible.

Finally, Sheppard, the appraiser who evaluated Jackson Crossroads, also cast doubt on Petitioners' experts' appraisal of Long Branch. As Sheppard saw things, Long Branch's highest and best use was its current one: for agricultural and residential purposes. Sheppard used the sales-comparison method to determine that Long Branch's before value was \$7,000 per acre, or \$2.15 million, as of December 2016.

E. Tax Court Decision

After reviewing the evidence, the U.S. Tax Court issued a memorandum opinion that overturned the Commissioner's finding that Petitioners were not entitled to deductions. In doing so, though, the Tax Court credited the Commissioner's evidence that Petitioners' filings had severely overstated the value of their properties. And it adopted the Commissioner's experts' analysis as the correct value of the properties.

The Tax Court accepted that developing a mine at Jackson Crossroads was legally and physically possible. Still, the court concluded, such a use was neither financially feasible nor maximally productive. As a result, the court determined that the mine was not Jackson Crossroads's highest and best use. Rather, the court

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agreed with the Commissioner's experts that the preliminary drilling and market analysis failed to provide enough data to support Petitioners' experts' valuations of the properties.

As for Long Branch, the Tax Court questioned the physical and legal possibility of building an industrial site there. And even assuming it was possible, the court determined, the Commissioner had offered credible testimony that such a site would not in fact be the most profitable use for Long Branch. Rather, the Tax Court found that the government's experts' testimony about Long Branch was "far more specific to the region." Although the court acknowledged the evidence about the proposed industrial sites near the properties, it concluded that insufficient evidence supported a finding that use of the properties as industrial sites would be both maximally productive and financially feasible. As Petitioners point out, the Tax Court did not specifically mention Shane Short's testimony in its opinion.

Then the court considered the comparative sales data. It credited Sheppard's testimony that properties without entitlements to build mining operations were the best comparators. The court also accepted Sheppard's selection of five comparable properties to support an estimated before value of \$7,000 per acre for Jackson Crossroads and Long Branch.

Ultimately, the Tax Court determined that the before value of Jackson Crossroads was \$1,600,270 and the before value of Long Branch was \$2,149,420. Using these valuations, the court calculated the appropriate deductions, equal to the fair-market value of

Petitioners' donations, at \$1,169,797 for Jackson Crossroads and \$1,571,226 for Long Branch.

Based on these numbers, the court agreed with the Commissioner that Petitioners' claimed valuations of Long Branch and Jackson Crossroads were gross misstatements. So it sustained the IRS's 40% gross-valuation-misstatement penalties.

Petitioners now appeal.

II. Issues Under Review and Standard of Review

The parties dispute which issues are before us for review.

In their statement of the issues, Petitioners attempt to frame all their challenges to the Tax Court's decision as raising matters of law.² But Petitioners' briefing instead challenges the reasonableness

² Petitioners frame the issues before the Court as follows:

1. As a matter of law, does "fair market value" require consideration of "all relevant facts" including the intervening and foreseeable changed circumstance facts that the Tax Court failed to consider?
2. As a matter of law, should the Jackson Crossroads granite "financial feasibility" method be based on the subject mineral, under the subject industry practices and methods, followed in the market for that mineral?
3. As a matter of law, does the "highest-and-best-use" Long Branch determination require an objective "reasonable probability" standard or a subjective immeasurable standard based on irrational methods?

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of the Tax Court's factual findings about the valuation of the properties. We conclude the parties' dispute is primarily a factual one.

But to the extent that Petitioners challenge the Tax Court's application of the law or decision to adopt a particular legal framework, we review the court's decision de novo. See *Palmer Ranch*, 812 F.3d at 993. We review the Tax Court's factual findings for clear error. *Id.*

We find clear error only when we have a "definite and firm conviction that a mistake has been committed." *Ocmulgee Fields, Inc. v. Comm'r*, 613 F.3d 1360, 1364 (11th Cir. 2010). So even if "two permissible views of [the] evidence" exist, the court's "choice between them cannot be clearly erroneous." *Curtis Inv. Co. v. Comm'r*, 909 F.3d 1339, 1347 (11th Cir. 2018).

III. The Tax Court's valuation of the easements was not clearly erroneous.

As we have explained, a conservation easement's fair market value "is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any

4. As a matter of law, should the method for selecting comparable properties require features comparable to the dominant features of the subject property?

5. Upon correction of these errors, does the Section 6662(h) purely mathematical overvaluation penalty apply?

compulsion to buy or sell and both having reasonable knowledge of the relevant facts.” 26 C.F.R. § 1.170A-1(c)(2).

To recap how we determine the fair market value of a conservation easement, the first step requires us to determine the true “highest and best use” of the property. *Palmer Ranch*, 812 F.3d at 987. And that, in turn, is the “most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future.” *Id.* (quoting *Symington v. Comm’r*, 87 T.C. 892, 897 (1986)).

Determining the highest and best use requires accounting for existing zoning restrictions, permits, entitlements, and any other preservation laws that currently restrict the property’s potential usage. See 26 C.F.R. § 1.170A-14(h)(3)(ii). When parties propose different highest and best uses, courts must determine whether it’s likely that the property will achieve the use in “the near future” or rather, whether the use is “too risky to qualify” as the highest and best use. *TOT Prop.*, 1 F.4th at 1369.

Here, the record amply supports the trial court’s findings about Jackson Crossroads’s and Long Branch’s before values. Petitioners bought the properties without easements for about \$5.2 million in 2015. The next year, they sought nearly \$40 million in tax deductions. But the only property transaction from the relevant period that reasonably supports Petitioners’ claimed property values is a sale involving a publicly financed economic development project. As the Commissioner’s expert explained at trial, though,

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and as the Tax Court reasonably held, a publicly financed sale is not reflective of fair market conditions.

Below, we discuss each aspect of the Tax Court's decision that Petitioners challenge and explain why each challenge fails.

A. *The Tax Court did not err in placing the burden on Petitioners to show the fair market value of the easements.*

First, Petitioners argue that the Tax Court made an “overarching” error in placing a burden on them to prove the correct amount of the tax they should be required to pay. We disagree.

An IRS determination “has the support of a presumption of correctness, and the petitioner has the burden of proving it to be wrong.” *Welch v. Helvering*, 290 U.S. 111, 115 (1933). To do so here, Petitioners point to caselaw that shifts the burden to the IRS to prove the correct amount when an IRS determination is excessive, erroneous, or arbitrary. But based on this record, Petitioners have failed to show that the Commissioner's determination was any of these things. And in any event, we have explained that when a dispute exists between the IRS and a taxpayer over the amount of a deduction, “there is no burden shifting.” *Palmer Ranch*, 812 F.3d at 1002. So Petitioners' challenge to this aspect of the Tax Court's decision fails.

B. *The Tax Court did not err in refusing to increase the value of the easements based on an alleged Joint Development Authority “frenzy” in 2016.*

Next, Petitioners challenge the Tax Court’s refusal to consider state economic development efforts in its valuation of their properties. Petitioners characterize Joint Development Authority efforts in the area in the mid-to-late 2010s as a “frenzy” that skyrocketed the value of their properties after they purchased them.

In particular, Petitioners fault the Tax Court for failing to refer to the testimony of Shane Short in its decision. But the Tax Court’s lack of a specific citation to Short’s testimony does not create clear error. The Tax Court need not specifically cite each witness’s testimony to reflect its consideration of the evidence. *See Lee v. Comm’r, Ala. Dep’t of Corr.*, 726 F.3d 1172, 1223 (11th Cir. 2013) (explaining that we do not determine whether a court “‘considered’ evidence by looking to see whether the . . . opinion ‘mentions’ or ‘never mentioned’ that evidence”). And in any case, the Tax Court said that it had “considered all of the arguments that the parties have made, and to the extent they are not addressed herein, [it] f[ound] the arguments to moot, irrelevant, or without merit.”

Plus, here, the Tax Court could have reasonably weighed Short’s testimony as evidence that *undermined* Petitioners’ arguments that their property values skyrocketed between November 2015 and December 2016.

Petitioners argue that Short “specifically identified and pursued” Jackson Crossroads and Long Branch as part of his plans for a megasite. But the record reflects that he did not obtain an option to purchase the properties. Short also appears to have struggled to

attract large corporations to the megasite during the relevant period. For example, he testified that by 2020, he still had not found a company for the East Atlanta Megasite, so he “actually dropped all efforts to assemble the property and didn’t renew any options and let it go.”

To be sure, in 2021, Georgia engaged Short to restart his efforts to build the megasite. And the project eventually attracted an automobile manufacturer, Rivian. As that project was getting off the ground, Walstad was able to sell a different property to Georgia for \$65,000/acre. But the Tax Court reasonably accepted expert testimony that this sale, several years after the relevant time period, and the other activities of county and state governments were not reasonably foreseeable and did not reflect true fair market demand. The Tax Court did not err with respect to Short’s testimony or evidence about the impact of the proposed megasite.

C. The Tax Court did not err in refusing to find that a hypothetical granite mine was Jackson Crossroads’s highest and best use.

Petitioners argue that the Tax Court committed a methodological error in its financial-feasibility analysis for Jackson Crossroads. In their view, the court erred in relying on Gunesch’s discounted-cash-flow model. That’s so, they claim, because the model allegedly imported assumptions suited to precious-metal mining rather than applicable to Georgia aggregate quarries, and it allegedly artificially front-loaded capital expenditures.

Petitioners argue that this approach necessarily produced negative cash flow and led the court to reject mining as the property's highest and best use. Because that feasibility finding drove the valuation, Petitioners assert the error effectively reduced the granite's value to zero.

First, we disagree that the Tax Court committed a methodological error. To support their arguments that the Tax Court erred as a matter of law with respect to Jackson Crossroads's valuation, Petitioners cite analysis from the National Stone Sand & Gravel Association suggesting that granite mining operations face lower upfront costs than other businesses in the mining industry.

This argument echoes Dr. Richard Capps's report rebutting IRS Expert Kevin Gunesch's findings. But Capps does not suggest that Gunesch made a methodological error. Rather, he asserts that Gunesch erred in estimating \$34 million in upfront capital expenditures instead of Capps's preferred estimate of \$7 million.

Had Gunesch entirely ignored any potential value of granite at Jackson Crossroads, that may have been a genuine methodological error. *Cf. Dunn v. Comm'r*, 301 F.3d 339, 342 (5th Cir. 2002) (finding that the Tax Court incorrectly valued the assets of a corporation by failing to account for the full statutorily prescribed tax rate the corporation would pay if it were to sell its assets).³ But that's

³ In *Dunn*, the dispute was mainly over valuation methodology and how to treat built-in tax liability, so the Fifth Circuit's review focused on legal error. The Fifth Circuit noted that the "operative facts and inferences" were "essentially uncontested." 301 F.3d at 350–51.

not what Gunesch did. He used the same income-valuation method that several of Petitioners' experts used. Gunesch created a model for a granite quarry on the property with a particular set of upfront costs. He estimated that the mine would generate nearly \$200 million in revenue over its life, just not enough to support a positive net present value.

In short, Petitioners fail to show that the Tax Court credited methods that were logically flawed, so the Tax Court did not err as a matter of law. *Cf. Caracci v. Comm'r*, 456 F.3d 444, 458–62 (5th Cir. 2006) (Tax Court erred in selecting “inappropriate” valuation method and affirming deficiency notices that Commissioner conceded were erroneous); *see also Davis v. Comm'r*, 716 F.3d 560, 571 (11th Cir. 2013) (no legal error where valuation has a “solid, real-world basis”).

And to the extent Petitioners challenge the Tax Court's factual findings underlying its determination that a granite quarry was not the highest and best use of Jackson Crossroads, we find no clear error. In this respect, Petitioners argue that the Commissioner's expert's valuation was unreasonable. They say that if every mine in Georgia faced the kinds of expenses that the Commissioner's expert incorporated into his analysis, the mines would go bankrupt. But Petitioners fail to show that the Tax Court's acceptance of the Commissioner's expert opinions on the profitability of a mine were clearly erroneous.

True, Petitioners' Capps Rebuttal Report contains some information about currently operating granite mines. But it lacks

any data about the startup costs that any of these mines would face if they were to begin from scratch today. In contrast, Gunesch supported his analysis with extensive market data, including data about the average price for granite in the relevant area, data about transportation costs per mile for processed granite, demand in the market area, and a detailed breakdown of startup costs. So the Tax Court did not clearly err when it credited the IRS's evidence over Petitioner's evidence about financial feasibility.

It also remains unclear whether Jackson Crossroads could obtain all required permits in a timely manner. As of 2016, Jackson Crossroads was zoned for residential use and had no permits or entitlements to build a mining operation. So the record soundly supports the Tax Court's finding that Petitioners' proposed use was "too risky to qualify" as the property's highest and best use. See *Palmer Ranch*, 812 F.3d at 1000.

D. The Tax Court did not err in finding that industrial development was not Long Branch's highest and best use.

The record also amply supports the Tax Court's finding that Long Branch's highest and best use was not industrial development.

To support the value of the claimed Long Branch easement, Petitioners presented only a series of conceptual plans that consultants developed. But the Commissioner's expert, Laura Smith, testified that the proposed development was "speculative" and "well beyond market threshold and what could reasonably be inferred from an objective assessment of the data."

The Tax Court found the Commissioner’s experts’ testimony to be more credible, more specific, and more appropriately tailored to the local geographic area during the relevant time period. In other words, the Tax Court made a reasonable choice between two contradictory sets of evidence. And that kind of determination is not clearly erroneous. *See Curtis Inv.*, 909 F.3d at 1347.

E. The Tax Court did not abuse its discretion in selecting comparable properties for its valuation analysis.

Petitioners also argue that the Tax Court erred in selecting comparable properties for its valuation analysis. Once again, they attempt to frame the issue in purely legal terms. They characterize the issue as whether the court erred “as a matter of law” in selecting comparable properties that lacked the “dominant feature” of the subject property—namely, as relevant here, the existence of granite reserves.

But the Tax Court neither announced nor applied a rule that, as a matter of law, comparable properties qualify as comparable even if they lack the alleged “dominant features” of the subject estate in a valuation analysis. Rather, the court examined both sets of properties that the parties’ experts offered as comparable and found that one set was more suitable than the other. So we construe Petitioners’ challenge to this decision as one to the court’s selection of comparable properties. Because this raises a factual issue, we review it for clear error. *See Palmer Ranch*, 812 F.3d at 993.

At trial, the Commissioner’s expert, Andrew Sheppard, offered several properties as comparable to Jackson Crossroads and

Long Branch to inform his sales-comparison analysis. Those properties were located within neighboring counties. They were zoned for residential or agricultural uses, were roughly the same size as Jackson Crossroads and Long Branch, and were sold during the relevant time frame. In contrast, Petitioners offered many properties that were zoned for industrial uses. Because Jackson Crossroads and Long Branch were not zoned for industrial uses, and any future industrial use of the properties was overly speculative, the Tax Court found that the Commissioner's comparable properties were a better fit.

On appeal, Petitioners argue that Sheppard's comparable properties did not contain the "dominant" feature of Jackson Crossroads: the "9.7+ million tons" of granite present on the property.

But as we've noted, even Petitioners' experts admitted that more testing would be needed at Jackson Crossroads to fully substantiate their findings about the amount of granite present. Plus, Petitioners never established that Sheppard's comparable properties did not contain granite reserves. To be sure, no one drilled for granite on those properties, but the record reflects that only "minimal" mineral exploration had occurred there.

Not only that, but the Tax Court reasonably concluded that Sheppard's comparable properties shared *more* features with Jackson Crossroads and Long Branch than Petitioners' experts' alternative comparable properties. The court found that Petitioner's com-

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parable properties were “far from the subject property and scattered throughout the Atlanta metropolitan area. They are also smaller[,] with three of [the] four being zoned for industrial use.”⁴ The Tax Court acted well within its discretion in making these findings.

F. The Tax Court did not clearly err in sustaining the IRS’s gross-valuation-misstatement penalty.

The Tax Code imposes a penalty for “the portion of any underpayment [of tax] which is attributable to . . . [a]ny substantial valuation misstatement.” 26 U.S.C. § 6662(a), (b)(3). When the claimed value of property is more than 200% of the correct amount, the valuation is considered a “gross” misstatement. For a gross misstatement, the Tax Code imposes a penalty of 40%. *Id.* § (h); *see also id.* § (e)(1)(A). Generally, a taxpayer can raise a defense to the imposition of an overvaluation penalty if he can show that he acted in good faith with respect to the underpayment. 26 U.S.C. § 6664(c)(1). But this defense is unavailable when a taxpayer makes

⁴ Walstad himself purchased one of Sheppard’s chosen comparable properties for \$7,751 per acre in 2017—the year *after* a supposed development frenzy skyrocketed prices in the area surrounding Jackson Crossroads and Long Branch. \$7,751 per acre is higher but still in the same ballpark as the \$5,600 per acre that Mor-Ton paid for Jackson Crossroads and Long Branch in 2015 and the \$7,000 per-acre value the Tax Court assigned to the properties. For comparison, Petitioners estimated on their 2016 tax returns that Jackson Crossroads had a price per acre of about \$100,000 and Long Branch had a price per acre of about \$45,000.

a "gross" valuation overstatement with respect to charitable deduction property. *See id.* § 6664(c)(3).

We review for clear error the Tax Court's decision to sustain a penalty. *See Gustashaw v. Comm'r*, 696 F.3d 1124, 1134 (11th Cir. 2012). For the reasons we've explained, we conclude that the record amply supports the Tax Court's valuation of the easements. And Petitioners' claimed deductions far exceeded 200% of the Tax Court's valuation of the easements. As a result, its decision to sustain the penalty was not clearly erroneous.

IV. Conclusion

For the reasons we have explained, we affirm the Tax Court's decision in all respects.

AFFIRMED.