

## Easement Alarm Rings Hollow

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These c.1855 raised-entry row houses represent a building type that is common in Savannah. The row includes condo units that were part of the study.

*Credit: Daniel G. Carey*

An article recently published in *The Appraisal Journal* (“The Impact of Historic Facade Easements on Condominium Values,” Fall 2009) concluded that historic facade easements negatively impact the value of condominiums in Savannah’s National Historic Landmark District (landmark district). The authors’ research found a property value reduction of 57 percent based on easements with an average age of 20 years—which translates into a 2.85 percent/per year decrease in property value. In the end, the authors deduced that “historic facade easements have a substantial, negative impact on condominium value due to the loss of property rights” (p. 336). Further, the authors suggest that the typical tax incentive granted for the donation of an easement may pale in comparison to the actual drop in property value attributable to the easement. Preservationists and organizations with easement programs may be tempted to hit the panic button in response to this article, but they should not. If the article is only cursorily read then, yes, the premise and conclusion may be enough to scare off some potential donors or cause a brief cold snap with respect to donating easements. But upon closer examination and in the full context of what easements do, the negative impact of this article should be minimized. In fact, this article may have done us a favor by prompting more comprehensive studies that will help to affirm that easements are not only effective tools for preservation, but that they offer a reasonable and defensible financial incentive as well.

When the subject easements were put in place in Savannah decades ago, they were valued within a range between 5 to 15 percent, reflecting what the authors describe as “Internal Revenue Service guidelines regarding the valuation of preservation and conservation easements” in place at the time. The IRS has since made it clear that preservation easements cannot be valued by reference to assumed “safe harbor” percentages, but must be determined on a case-by-case approach. The study described in the article appears to confirm that the impact of easements on property values justifies existing—if not larger—deductions and credits. So, if the valuation impacts are greater than those generally recognized for federal deduction or state tax credit purposes, then such enhanced diminution may call for larger deductions and thus justify a much larger incentive for easement programs. That is, the deeper discount could translate into larger tax deductions for owners of such properties and serve as an enticement to donate an easement.

What follows are observations and commonly held assumptions which, at least to some degree, suggest that the study described in the article should not be taken as a reliable predictor in the valuation of all easements. The authors' main conclusion that easements may have significant impacts on property values should, however, help counter recent views by the IRS that easements in historic districts are without value.

- First, the information was drawn from a data set of 14 condominiums in the landmark district—a small and relatively unusual housing type. Detached single-family homes and commercial properties were not considered, and they are, by far, the prevalent property type in Savannah's landmark district.
- Second, maintenance requirements for historic condominiums with easements cannot be said to more onerously impact value until a study is performed that compares apples (historic condos with easements) with other apples (historic condos without easements).
- Third, the authors argue that the owner granting the easement receives an initial tax deduction but the negative impact on value affects all subsequent owners. This does not acknowledge the benefit subsequent owners assume through lower property taxes from controlled property values. In the landmark district of Savannah—where property taxes are very high—lowered values are often considered a blessing not a curse.
- Fourth and perhaps most importantly, the donative intent of property owners to voluntarily give up rights in their buildings—for the expressed written purpose of protecting those same buildings—was not a consideration in this article. Property owners know, or should know, what they are doing when they donate, sell, and/or buy historic buildings. The duty is imposed upon those involved in the transaction to disclose or ask or learn about any restrictions, including those restrictions that can impact property value.



Now a two-unit condominium, this c.1794 house is among the oldest buildings in Savannah's National Historic Landmark District. It was one of the buildings researched.

*Credit: Daniel G. Carey*

So while this article may be helpful in re-tooling easement valuations and calculating valuation reductions (this has been a subject of scrutiny by the U.S. Congress and the IRS for the last four years), it should not scare or dissuade those interested in protecting their properties. Easements and covenants are the strongest and longest-lasting tools for protecting historic properties. Donors gain a charitable deduction (which the article suggests should be significant), and they and future owners receive other benefits, such as paying lower property taxes. And, of course, both donors and future owners enjoy the peace of mind that their historic property will be

protected—even if the property is already in a locally designated historic district—because easements are not subject to the vicissitudes of review board decisions and the politics of local government.

In the end, most people don't donate easements to dodge taxes. They donate easements to protect historic properties. Historic Savannah Foundation is one of dozens of local preservation organizations that administer a solid easement program, and we welcome inquiries into how easements can provide in-perpetuity protection for a historic property.

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