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The Financial Impact of Historic Preservation Easements on Encumbered Property Appreciation Rates in Charleston, SC

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THE FINANCIAL IMPACT OF HISTORIC PRESERVATION EASEMENTS ON ENCUMBERED PROPERTY APPRECIATION RATES IN CHARLESTON, SC

A Thesis
Presented to
the Graduate School of
Clemson University
and
the Graduate School of the
College of Charleston

In Partial Fulfillment
of the Requirements for the Degree
Master of Science
Historic Preservation

by
Julianne W. Johnson
May 2013

Accepted by:
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ABSTRACT

As a response to recent legal pressures directed at donors of historic preservation easements, this research examines the often ignored, potential long-term financial impact of easement and covenant encumbrances on residential properties in the Old and Historic District in Charleston, South Carolina. To address the concerns and questions emanating from both preservation and economic viewpoints, an unbiased, empirical study analyzing the long-term financial implications an easement encumbrance has on real estate property values is necessary. The annual appreciation rates of all single-family residences in Charleston’s Old and Historic District were compared to answer the question: Is there a long-term financial impact associated with the presence of a historic preservation easement on a residential property in the Old and Historic District? By investigating the often ignored, potential long-term impact a historic preservation encumbrance has on a property’s real estate value, this study shows that while encumbered properties are not as vulnerable to abrupt market changes, on average, an encumbered property will not appreciate as fast as similar unencumbered properties in the area.
DEDICATION

This thesis is dedicated to my family: Dad, Mom, Meredith, Mason and Owsley.

Only with their constant support, love, and encouragement, am I able to follow my passions which brought me where I am today.
ACKNOWLEDGMENTS

I would like to express the deepest appreciation and admiration to Amalia Leifeste, my committee chair, for continually pushing me to organize my thoughts into an efficient argument. Her support and patience every Thursday afternoon served as a constant motivation throughout the entire process. Without her guidance and exhaustive edits, this thesis would not have been possible.

A special thank you to April Wood at the Historic Charleston Foundation, Robert Gurley at the Preservation Society of Charleston, and Vicky Seigler at the Charleston County Assessor’s Office for graciously sharing the data necessary to complete this research. This thesis would not have been as successful without the guidance and support of all faculty members involved, including Amalia Leifeste, Dr. Robert Benedict, Dr. Carter Hudgins, Ralph Muldrow, Dr. Barry Stiefel, Ashley Wilson, and Allisyn Miller. In addition, an expression of gratitude for the financial support provided by the P.E.O International Sisterhood Organization helped make the last two years of my education possible.

Furthermore, thank you to my fellow classmates. I am truly fortunate for the last two years we have all shared.
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GLOSSARY OF TERMS

**Bundle of rights**: “Ownership rights in real estate—the aggregate of the separate rights to use, sell, divide, lease, enter, occupy, mortgage, give, or choose to exercise all or none of these rights.” –Judith Reynolds, *Preservation and the Valuation Process*

**[Local] Historic District**: “A delineated area within which physical change, demolition, and new construction are subject to a review and permitting process aimed at preserving the area’s historic character.” –Judith Reynolds, *Preservation and the Valuation Process*

**Highest and best use**: “The reasonably probable and legal use of vacant land or an improved property that is physically practicable and financially feasible. The use among reasonable alternative uses that yields the highest value.” –Judith Reynolds, *Preservation and the Valuation Process*

**Market value**: “The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeable, and for self-interest, and assuming that neither is undue duress.” –Judith Reynolds, *Preservation and the Valuation Process*

**National Register Historic Places**: “The National Register of Historic Places is the official list of the Nation’s historic places worthy of preservation. Authorized by the National Historic Preservation Act of 1966, the National Park Services’ National Register of Historic Places is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect America’s historic and archeology resources.” –National Park Service: “National Register of Historic Places Program: About Us”

**National Register Historic District**: A delineated area of significance recognized by the National Park Service. Delineates between properties considered “contributing” and not to the overall district.

**Preservation ordinance**: “Local landmark law controlling changes to historic structures.” –Judith Reynolds, *Preservation and the Valuation Process*

**Preservation easement**: “Use and change restrictions to protect a historically or architecturally significant property.” –Judith Reynolds, *Preservation and the Valuation Process*

**Revolving fund**: “Funds from which loans are made, usually at low interest rates, to entities or individuals to preserve or restore historic properties; the funds when paid back could be used for other loans or to purchase and resell endangered historic properties.” –Judith Reynolds, *Preservation and the Valuation Process*
Qualified Conservation Contribution [QCC]: “A qualified conservation contribution is a contribution of a qualified real property interest to a qualified organization to be used only for conservation purposes.” –IRS Publication 526

Qualified Organization [to hold easements]: “For purposes of a qualified conservation contribution, a qualified organization is: (1) a government unit, (2) a publicly supported charity, or (3) an organization controlled by, and operated for the exclusive benefit of, a governmental unit of a publicly supported charity. The organization also must have a commitment to protect the conservation purposes of the donation and must have the resources to enforce the restrictions.” –IRS Publication 526

Qualified real property interest [in relation to easements]: “This is any of the following interests in real property... (3) A restriction (granted in perpetuity) on the use that may be made of the real property.” –IRS Publication 526

Conservation purposes [as defined by the IRS for easements as QCC’s]: “...contribution must be made only for one of the following conservation purposes... (4) Preserving a historically important land area or a certified historic structure.” –IRS Publication 526

Qualifying building in a register historic district:
If a building in a registered historic district is a certified historic structure, a contribution of a qualified real property interest that is an easement or other restriction on the exterior of the building is deductible only if it meets all of the following conditions.

1. The restriction must preserve the entire exterior of the building (including its front, sides, rear, and height) and must prohibit any change to the exterior of the building that is inconsistent with its historical character.
2. [The property owner] and the organization receiving the contribution must enter into a written agreement certifying, under penalty of perjury, that the organization:
   a. Is a qualified organization with a purpose of environmental protection, land conservation, open space preservation, or historic preservation, and
   b. Has the resources to manage and enforce the restriction and a commitment to do so.
3. You must include with your return:
   a. A qualified appraisal,
   b. Photographs of the building’s entire exterior, and
   c. A description of all restrictions on development of the building, such as zoning laws and restrictive covenants. –IRS Publication 526
CHAPTER ONE

INTRODUCTION

For the last 37 years, historic preservation easements have existed as a tool for preserving properties in perpetuity. Easements are a voluntary donation, gifted by a property owner to a preservation organization. To property owners, one of the most appealing motivations of donating an easement is the entitlement to a one-time, federal income tax deduction for their charitable donation. Determining the appropriate value of the deduction has called the purpose and financial impact of easements into question, resulting in an uncertain future for the sustainable use of these vital preservation protections. To address the concerns and questions emanating from both preservation and economic viewpoints, an unbiased, empirical study analyzing the long-term financial implications an easement encumbrance has on real estate property values is necessary. The annual appreciation rates of all single-family residences in the Charleston, SC, Old and Historic District were compared to answer the question: Is there a long-term financial impact associated with the presence of a historic preservation easement on a residential property in the Charleston Old and Historic District?

Research Motivation

An analysis of historic preservation easements and their impact on property appreciation is an important examination that has yet to be addressed. The financial outcomes associated with donating and owning a property with an encumbrance has an influence on all subsequent real estate transactions of that property because easements
must be granted in perpetuity to qualify for a tax deduction. Although easements are valid in perpetuity, only the initial donor is eligible for potential tax benefits. All subsequent owners of the property remain subject to the terms and requirements of the easement with no opportunity for financial compensation.

If home buyers are confronted with two seemingly identical properties, one with an easement and one without, where is the incentive to purchase the property encumbered with an easement? If the purchaser is a historic preservation enthusiast, one may assume he or she would choose the property protected by the easement. Although, in doing so he/she would miss the opportunity to donate an easement on the other property. The result of this former decision, to purchase the encumbered property, would be a homebuyer with no opportunity to receive tax deduction, and no additional property protected by an easement. The alternative choice, to purchase the property without an encumbrance, presents the opportunity for the buyer to elect to donate an easement and take the accompanying tax deduction; thereby ensuring the preservation of one more property. Tax incentives aside, a knowledgeable buyer will, at a minimum, want to know that the list price of a property reflects the encumbrance. The larger question presented in this hypothetical situation is whether or not the encumbered property has the potential to yield a comparable return on investment when compared to similar properties in the area.

This research looks at easement and covenant encumbered properties in downtown Charleston and defines their place in the real estate market over a twenty year study period. In many ways, Charleston’s easement programs follow national trends of the twentieth-century and display a general representation that can be applied to other

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1 Similarly, deed restrictive covenants placed on a property by a qualified organization in a revolving fund situation exist for 75 years on average.
areas. By investigating the often ignored, potential long-term impact a historic preservation encumbrance has on a property’s real estate value, this study shows that while encumbered properties are not as vulnerable to abrupt market changes, on average, an encumbered property will not appreciate as fast as similar unencumbered properties in the area.

**Easements Defined**

Easements are a legal agreement providing a third party “...some element of control over or use of another’s property.” Easements come in many forms, such as right-of-way or conservation easements, but the specific agreements termed “historic preservation easements” are voluntarily placed on structures with registered historic or architectural significance. Historic preservation easements protect the structure’s historic and architectural character from alterations considered unsympathetic to the terms specified in the easement document. The historic structure remains the legal property and responsibility of the owner, while legal rights to the easement are held and managed by a qualified organization or governing body.

Typically, easements are inspected annually by the preservation organization holding the rights to the easement. Properties are inspected for unauthorized changes that may have taken place since the time of the last inspection. Many times the annual inspection is considered a burden to property owners. However, a positive benefit from annual inspection is attention to areas in need of maintenance. Easement managers are

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3 A certified historic structure is “any building, structure, or land area which- (i) is listed in the National Register, or (ii) is located in a registered historic district and is certified by the Secretary of the Interior to the Secretary of the Treasury as being of historic significance to the district. IRC, Section 170(h) (4)(B)(ii).
often highly knowledgeable in their understanding of old buildings and may be able to recognize areas in need of maintenance, such as wood rot, before they become a larger issue. The easement holding organization often provides professional guidance and resources to property owners throughout the repair and replacement process, all at no additional cost.

**Easements as a Preservation Tool**

Over time, buildings undergo alterations. Change is inevitable and typically prompted by one of four motivations: modernization, economy, safety, and personal taste. The big picture goal of historic preservation is to manage changes to original and historic building fabric. Contemporary preservationists do not want all historic buildings frozen in time and used as museums. One of the ultimate motivations of the movement is to create a culture that understands, appreciates, and respects existing buildings. A facet of this culture is promoting the continued use of a historic building. An adapted building in continual use serves the public more than a preserved but vacant building in the eyes of contemporary theory. To achieve this outcome, buildings, like their inhabitants, must be flexible.

Most building occupants make stylistic changes based on personal preference that often add to the overall character of a building’s history. While many of these individual changes do not significantly damage the original integrity of the building, cumulatively or with large insensitive intervention, changes have the ability to permanently damage a cultural resource. A range of public policy tools and preservation standards exist to guard the integrity of historic resources by managing changes to a

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building’s physical fabric. Easements are one of the preservation tools employed and exist under the belief that by allowing qualified, knowledgeable organizations to manage appropriate changes to significant buildings, changes will benefit the overall structural and cultural integrity of a building, surrounding buildings, and overall community.

As a legal agreement, easements provide protections through a third party. A qualified organization with vested interests in the protection of the building’s integrity oversees a base line standard of changes allowed to the building. As a legal contract, every easement is different. Each document “...must be individually crafted to meet individual state law requirements, to address the character-defining features of a specific historic property, and to address the respective interests of the donor and the easement-holding organization.” The preservation standards and expectations for the properties overseen are created by the managing organization. This freedom allows each organization to customize stipulations according to local circumstances and supports local vernacular.

**Covenants**

The majority of current conversations regarding easement encumbrance refer only to easements— the voluntary donation offered to a managing organization by a homeowner. However, nearly identical protections exist under another name: covenants. Covenants are generally placed on a property by a nonprofit or government organization and are thereby not eligible for a tax deduction. The restrictions may, but are not required, to exist in perpetuity.

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An organization, Historic Charleston Foundation (HCF) for example, acquires a property through a revolving fund. Under the ownership of the organization, services or monetary funds are donated to improve the overall condition or future of the property. The South Carolina State Historic Preservation Office (SHPO) holds covenants on properties that received Federal and State grants since the 1970s and de-accessioned government buildings. The length of term for a covenant deed restriction is typically proportional to the level of funding granted or loaned to each property. Covenants on de-accessioned government buildings are placed in perpetuity.6

Although the nature of origin is different for easements and covenants, their requirements and means of enforcement are similar. HCF holds covenants on all revolving fund properties, Habitat for Humanity collaborations, and any other property that has received assistance in the form of funding or rendered services from the organization. In each of these situations, the organization seeks to further their mission by investing time and resources into a property to benefit the community and future generations. The covenant means that the organization retains a stake in decision-making about that building for a stipulated period of time.

Properties within the Mazyck-Wraggborough neighborhood in Charleston, SC, are a great example of a preservation organization utilizing deed restrictive covenants to further the goals of historic preservation. HCF targeted houses in the Mazyck-Wraggborough neighborhood in the 1980s to rehabilitate and sell with covenants for use as rental housing.7 The use of covenants as a preservation tool ensures the organization has a protected participation in the future decisions regarding those properties in the

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6 Interview with Dan Elswick, director of Tax Incentives for Income-Producing Buildings at the South Carolina SHPO. September 13, 2012.
hands of subsequent owners. The only alternative option to maintain a similar level of involvement is outright ownership by the organization, which is rarely a financial possibility. HCF’s revolving fund, and the numerous other preservation-aimed revolving funds in use around the country, exists to advance the mission of a non-profit organization, not to make the organization a profit. Although an economically successful program will turn a profit, the income serves solely to replenish the fund and generate the funding necessary to finance the purchase of additional properties and repeat the process.

Organizations utilizing revolving funds will often suffer a monetary loss. Financial risk is an accepted and understood fact among all preservation organizations that choose to become involved with real estate. Because HCF is able to protect projects with covenants, the financial risk associated with real estate ventures is justified because they are able to fulfill their preservation mission. It is unlikely that a preservation organization would spend the overwhelming time and resources to purchase, rehabilitate, and resell a historic property if a buyer is able to demolish the building a year later. Thus, the covenant provides assurance that investment in a property will not be reversed or negated by subsequent owners.

Additionally, one could argue that without the use of covenants, a real estate transaction undertaken by a preservation organization does not fulfill the mission of the organization. The beneficial use of covenants by a preservation organization is not under debate or part of the larger legal discussion, primarily because there is no opportunity for a tax deduction. However, the use of covenants by a preservation organization

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illustrates how this valuable tool can, and is, applied in everyday real estate transactions as a preservation strategy.

**Tax Incentive**

The United States Federal government allows property owners to take a one-time federal income tax deduction for the donation of a Qualified Conservation Contribution (QCC) in the form of an easement.9 Easement donations are eligible for classification as a QCC because of the ensured protection of a historic resource. The value of the deduction is calculated by a qualified appraiser using recognized appraisal methods and is intended to render owning and maintaining a historic building a little more manageable.10 In return for receiving a deduction, a property owner accepts the financial burden and potential risk involved with maintaining and preserving the property for the benefit of the public. The financial tax incentive is only available to the initial donor, despite the perpetual nature of the encumbrance.11

During the appraisal process, existing local historic preservation ordinances are considered to determine the perceived magnitude additional restrictions, if any, that an easement will hold. Opponents of easements mistakenly assume that easements provide no additional preservation protection to a property in an area already subject to local preservation ordinances. One fact to clarify the additional protection rendered by an easement is the distinction of a perpetual agreement of an easement restriction versus a local preservation ordinance, which is vulnerable to political and public pressure that have the ability to abolish preservation regulations and design review. Regardless of local historic preservation ordinance status, easement and covenant encumbered

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9 See glossary of terms for “Qualified Conservation Contribution.”
10 See glossary of terms for “qualified appraiser.”
properties remain subject to the original regulations stipulated in the initial easement/covenant document for perpetuity.

To expand upon the difference between easements and other tools used for preservation, the strongest public protections for historic buildings often come in the form of a local preservation ordinance and a local advisory commission. Although local laws have the authority to protect some changes that are unsympathetic to preservation, the jurisdiction of local laws only extends within the public viewshed. Local governments do not all have the staff and expertise needed to create and enforce a preservation ordinance. In the areas lacking a preservation policy, easements are the only tool available to ensure protection. In many historic districts, there is no assurance a building will not be demolished, especially in instances of economic hardship and neglect. Easement encumbered properties are held to certain historic preservation standards which disallow deferred maintenance and neglect and demolition is almost never an option.

A common real estate analogy used to explain the single-facet agreement represented in an easement donation is the concept of a Home Owner’s Association (HOA). HOAs in a neighborhood exist to ensure that all members of the neighborhood are required to maintain their property to a certain standard. The exterior appeal of the neighborhood as a whole is guaranteed and market values of all properties are preserved by nature of this agreement. Donating an easement on a historic building is similar to taking on the restrictions and guarantees of a HOA, without the mutual agreement that the neighboring properties will do the same. The unencumbered properties in the area may benefit (in the form of higher property values from intangible “curb appeal”) from a

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neighbor maintaining their property to the stipulations of an easement, but there is not a reciprocal agreement ensuring they do the same.

Possibly the least acknowledged gain to the encumbered homeowner is the assurance that they are a vital part of safeguarding the future preservation of a significant cultural resource. Summarized best by Arjo Klamer, “The decision to invest in the preservation of a particular object or structure involves a great deal of uncertainty as to the benefits, both in the present and in the future. The decision not to invest is irreversible, however, because the object or structure may be lost forever.”

Easements: The Numbers

Much of the legislative framework surrounding the preservation of historic buildings, sites, and structures is shared with the conservation of open-spaces, farmland, and scenic viewsheds. Though the focus of attention is different, the commonality of agenda between these fields is evident. The number of organizations created to protect and accept all types of easements has grown significantly in the last fifty years. The increasing number of land trusts and conservation easements is well documented by the Land Trust Alliance and the National Center for Public Policy Research. Although data from the Land Trust Alliance focuses on land trusts and open space conservation easements, general patterns are perhaps indicative of trends within historic preservation easements. By 2005 there were more than 1,667 land trusts, compared to the 123 in the 1950s, a more than ten fold increase. Contrasting historic preservation easements, which protect individual parcels, conservation easements are often measured in acres

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protected. According to information acquired by the Land Trust Alliance, the 128,000 easement encumbered acres protected in the 1980s grew to 6,246,000 acres by 2005. Unfortunately, similar specific data on preservation easements currently does not exist and thus a summary of the quantity and national trends in historic preservation easements is not currently possible.

It is impossible to track the number of preservation easement deductions nationally because individual tax returns, which would document the donation of an easement because of the associated deduction, are not public record. It is important to note that even this method would not necessarily capture all instances of easement donation because it is possible that individuals who donate easements may not seek the benefits of a tax deduction. The only way to track the number of easements in existence is through the holding organizations or property records. A national “alliance” between preservation easement holding organizations, similar to the Land Trust Alliance, does not exist. Nor is there an easily accessible list of all active easement holding organizations. Presently, all nonprofit organizations with easement programs are required to report all easements donated after August 17, 2006 on Schedule A to the Form 990 Federal Tax Return for Tax Exempt Organizations. Though Form 990 is public record, even this tracking method has limits, as it would only capture donations occurring after 2006.

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One technique to track the number of easement donations in recent years is through annual National Park Service (NPS) *Statistical Reports and Analysis*. The NPS reports track the number of Part 1 applications approved within each year. A property owner donating a historic preservation easement must submit the Part 1 application during the easement donation process to register the property as a Certified Historic Structure. Though this data does not provide a long perspective, short term patterns of easement donations are discernible. The 2011 report shows only “twenty-one Certifications of Significance for easement purposes, a forty-two percent decline from the previous year.”\(^{17}\) Once again, this is not a truly comprehensive number, as only property owners seeking a tax deduction for their donation apply to the NPS for certification. Interestingly, of the 1,058 total Approved Part 1 Certifications of Significance granted in 2011 for Rehabilitation Tax Credit purposes, one percent of those projects also combined the tax benefits of adding an easement to the property. The percentage of easement tax benefits combined with rehabilitation projects in 2001 was 1 percent, 2 percent in 2009, and 0.5 percent in 2010. The 2009 Annual Statistical Report and Analysis states: “The overall decrease in the number of Part 1 certifications in the past four years is attributable largely to the decrease in applications solely for charitable donations,” meaning easements.\(^{18}\)

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HISTORY AND LEGAL RULINGS

Since 1985, the Internal Revenue Service has questioned the valuation of historic preservation easements, which in turn, has questioned the viability of a tax deduction for an easement donation.\(^\text{19}\) Many of these disputes end in court with an unfavorable ruling for the easement donor. Following litigation, property owners are often left with a perpetual easement on the property; a smaller tax deduction, and sizeable lawyer fees. The IRS’s interest in easement deductions climaxed in January 2005 with the release of Congress’ *Joint Committee on Taxation Study*. The study proposed to eliminate the charitable contribution status for all preservation and conservation easements on residential properties and significantly reduce the allowed donation for all other easements placed on non-residential properties.\(^\text{20}\) The institutional question of easement valuation and the resulting general climate of uncertainty have left both property owners and easement holding organizations cautious of promoting easement donations. The lack of confidence by both property owners and preservation organizations surrounding the donation of an easement results in an effective, voluntary preservation tool being underutilized.

Easements and covenants were employed as preservation tools long before the financial incentives that qualify them as charitable donations existed. Early preservation organizations began revolving funds to jump-start community revitalization in the absence of government incentive. HCF started the first revolving fund program in 1958

\(^\text{19}\) Hillborn v. Commissioner, 85 T.C. 677 (1985)
with the Ansonborough Rehabilitation Project.²¹ HCF purchased properties within a single Charleston neighborhood then threatened by demolition by neglect. The organization renovated and sold each property. The new owners took on the continued responsibility and stewardship of the property in accordance with deed restrictive covenants placed on each property at the time of sale. Most of these covenants are fixed-term restrictions for seventy-five years. For the duration of the covenant, control is provided to HCF for decisions regarding all exterior changes to the building’s façades. The covenants ensure that the exterior of the property will stay in the restored condition that preserves the historic character of the Ansonborough neighborhood streetscape. At the time of the HCF Ansonborough covenants, no tax incentives were available to the property owners or to HCF. The restrictions existed only to protect a property that had received substantial financial investment from a non-profit organization in ways consistent with the preservation mission of the organization. For HCF, an advantage of the covenants was their ability to protect the buildings in future years in ways the local Board of Architectural Review (BAR) could not.

Several years after the beginning of HCF’s revolving fund, with the passage of the National Historic Preservation Act of 1966, historic preservation became national policy and the legal foundation of the movement was established.²² In this early manifestation of a national preservation ethic, a large part of the financial burdens and responsibilities of preservation were carried by the federal government. Financial assistance for preservation projects, created to encourage the private sector to take on more preservation responsibilities, came a few years later in the form of several tax bills. The

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Tax Reform Act of 1969 created a tax preferred status for conservation and historic preservation easements, although the donation of a covenant or easement did not qualify for a deduction because it was not an “undivided-interest” of real property.  

In the 1970s, financial incentives were developed at the federal, state and local levels to encourage the private sector to invest in existing buildings. The Tax Reform Act of 1976 created the Federal Tax Credit program for the rehabilitation of historic structures certified by the Secretary of the Interior and listed on the National Register of Historic Places. The Tax Reform Act of 1976 also allowed owners of certified historic structures to take a one-time, federal income tax deduction if they agreed to preserve the exterior façade of their building with a perpetual, protective, preservation easement. This is the basis of the current (contested) practice of tax deductions associated with easement donations.

At the time tax incentives for historic preservation were first passed, tax benefits for new construction were already in use. Federal rules allowed developers to deduct the value of a demolished building, making demolition an appealing option. By offering an alternative to demolition, the new financial incentives created by the 1976 Tax Reform Act took the financial burden of preservation off tax payers and encouraged private investment in the maintenance of historic structures. Using existing buildings became economically competitive with new construction for the first time and kept existing buildings on the tax roll.

Although the legal framework allowed easement donations in 1976, qualifying organizations to accept and manage the new donations were necessary before property owners were able to take advantage of the program. In response, the number of

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Easement holding organizations grew around the country in the late years of the 1970s. As part of this trend, the Preservation Society of Charleston created their easement program in 1978 and accepted their first easement, on East Bay Street, in that year.\(^{25}\) Initial donations in Charleston were sparse with only three easements donated in downtown Charleston between 1978 and 1981.

The easement program created by the Tax Reform Act of 1976 became a permanent incentive program with the Tax Treatment Extension Act of 1980, allowing qualified easements to be deducted from the donor’s federal income tax as a Qualified Conservation Contribution, as defined in the Internal Revenue Code section 170(h).\(^{26}\) HCF established a formal easement program in 1982 and donations in Charleston, paralleling trends around the country, began to soar and experience relative popularity until the late 1990s.\(^{27}\)

The growing popularity of easement donations, and related income tax deductions, in the 1980s drew the attention of the IRS. Five cases ended in tax court with the value of the easement as the concentration of the case.\(^{28}\) In each instance the IRS argued that the easement had a lower value than the property owner claimed for the value of the charitable deduction. In all five cases, the Court decided that the easement had a higher value than the IRS argued, but a lower value than the property owner claimed.

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In *Dorsey v. Commissioner*, the last easement case seen in tax court until a resurgence in 2008, it was decided that at the time the easement was donated, the highest and best use of the property was not met.\textsuperscript{29} The judge decided that it was completely plausible, given local regulations, to assume the property owner would be permitted to add another two stories to the building to maximize use, and therefore profit, of the building if the easement restrictions were not in place. It was determined with this ruling that the value of the easement must reflect the potential profit loss associated with a perpetual protection that would restrict the two-story addition anytime in the future. This ruling acknowledged the perspective that an easement is capable of limiting the maximization of a property’s value, while also stating that the value of the “lost potential” was significantly less than the owner claimed.

A turning point in easement legislative history is marked by *The Washington Post* series of investigative articles in 2003 looking at easements purely from the perspective as a “tax shelter for the wealthy.” The early articles in 2003 were focused on environmental conservation and open space easements but began to attack historic preservation easements within Washington, DC in a two-part article in December 2004.\textsuperscript{30} The December 2004 articles included multiple quotations from prominent, wealthy homeowners in Washington, D.C. stating beliefs that the easement has no impact on their property value or how they use their buildings. Similar articles, as well as nefarious easement holding organizations and inflated appraisals, attracted the attention of the IRS who “uncovered numerous instances where the tax benefits of preserving open spaces and historic buildings have been twisted for inappropriate

\textsuperscript{29}See glossary of terms for “Highest and Best Use.”

individual benefit.” The IRS then issued a Notice Regarding Improper Deduction for Conservation Easement Donations, June 30, 2004. A second warning was released on July 12, 2004 in an Internal Revenue Bulletin posted to advise participants involved with tax deductions associated with easement donations that, when appropriate, “…the Service intends to disallow such deductions and may impose penalties and excise taxes. Furthermore, the Service may, in appropriate cases, challenge the tax-exempt status of a charitable organization that participates in these transactions.” Additionally, “the Service intends to review promotions of transactions involving these improper deductions, and that the promoters and appraiser may be subject to penalties.”

Though not legal action, these articles and formal warnings contributed to the changing tone around easements through widespread public opinion and a clear stance by the IRS.

Reflecting continual issues with valuation, the IRS’s stance on historic preservation easements climaxed in January of 2005 with the release of Congress’ Joint Committee on Taxation Study, Options to Improve Tax Compliance and Reform Tax Expenditures. These proposed changes to the tax code were directly linked to the problem of valuation of preservation and conservation easements. As stated in the report, “Valuation is especially problematic because the measure of the deduction (i.e., generally the difference in fair market value before and after placing the restriction on the property) is highly speculative, considering that, in general, there is no market and thus no comparable sales data for such easements.”

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32 Ibid.
34 Joint Committee on Taxation, Options to Improve Tax Compliance and Reform Tax Expenditures, 281.
Another supporting reason for initiating tax reform was the lack of government approved and required standards for preservation or protection of conservation easements. This critique alludes to the flexibility of an easement holding organization to create their own standards and decisions regarding the enforcement of the easement or covenant. Interestingly, in the proposal for policy changes, establishing a cohesive set of standards or requiring existing standards (such as the Secretary of the Interior Standards) to govern the management of easements was not proposed. The proposed changes include “eliminate the charitable contribution deduction with respect to façade [historic preservation] and conservation easements related to personal residence properties, substantially reduce the deduction [from 100 percent to 33 percent] for all other qualified conservation contributions, and impose new standards on appraisals and appraisers regarding the valuation of such contributions.”

The 2005 Committee On Taxation proposal very nearly eliminated preservation easements for residential properties, however, only a portion of the proposal passed. The enacted components heightened requirements for appraisers of easements and created a specialized market of qualified appraisers. This specialized group of professionals is currently one of the few authorities producing new literature regarding easements, including many of the source materials used for this study.

To address the 2005 proposal, section 170(h) of the Internal Revenue Code (IRC) was amended to stiffen the qualifications of easements as Qualified Conservation Contributions. The IRC changes were passed as part of the 2006 Pension Protection Act (PPA). These significant changes include defining “qualified appraiser,” increasing penalties for overstatements of value, and requiring that protections be placed on all easements.

35 Joint Committee on Taxation, Options to Improve Tax Compliance and Reform Tax Expenditures, 281.
36 See glossary for definition of “Qualified Conservation Contribution.”
facades of a building, including the roof. Prior to the 2006 PPA, easements that protected façades only visible from the public right of way were eligible for deduction. Requiring easement protections to cover all façades of a building ensured that all exterior surfaces of a building not subject to local preservation ordinances were protected. Ironically, despite the 2006 170(h) amendments’ aim to tighten qualifying contributions, the allowed “carry-forward” time was temporarily extended from five to fifteen years and the deduction limitation was raised from thirty percent to fifty percent of adjusted gross income. The temporary increases in deduction limitations and carry-forward time allowed by the 2006 PPA expired at the end of 2007, but were retroactively extended through 2009 with passage of the Food, Conservation and Energy Act of 2008, and again through December 31, 2011 with the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. This tightening of qualifications combined with increasing the benefits represents the IRS’ recognition of easements as a beneficial tool for historic preservation, while acknowledging areas of concern with regards to their valuation.

Since the 2005 Committee on Taxation, the IRS has audited several donors of easements, picking apart every aspect of their appraisal and the local regulations to which they are subject.37 In 2008 the Federal courts began to question the valuation of easements again after almost twenty years. Several appraisal reports commissioned by the IRS attempt to prove the assumption that easements do not provide significant additional protections by studying local preservation ordinance guidelines against the regulations enforced by specific easement holding organizations.38 The reports focus on

37 Interviews with Easement holding organization, HCF, in Charleston, SC.
determining the immediate loss in value at the time of donation by assigning values based on the strengths and weaknesses of both regulations against the overall value of the property. The results vary significantly due to the subjective nature of appraisals. The divergent findings of these studies exacerbate a common misconception that preservation easements do not provide any additional protections over those imposed by a local preservation ordinance. However, as stated previously, local ordinances only protect areas of a building visible in the public right of way viewshed. The 2006 PPA addressed this by requiring the protection of those areas of a property not visible from the public right of way, thereby not subject to local ordinance regulations. In the wake of the IRS commissioned reports, a dozen cases have come before court since 2008.39

The most recent public attack on preservation easements by the IRS concluded on July 19, 2012 in the United States Court of Appeals for the First Circuit with a ruling on the Kaufman v. Commissioner of the Internal Revenue trial. The case dealt primarily with the legal necessity of obtaining a mortgage subordination at the time of donation, but also addressed the value, or lack thereof, of the easement. The ruling summary included that, at the time of the easement appraisal (estimated at $220,800), “Gordon Kaufman expressed concern that the reduction in the value of the property due to the easement might be ‘so large as to overwhelm the tax savings that accrue from it,’ but a representative of the Trust [Trust for Architectural Easements] sought to reassure him that it was “very unlikely” that the easement would affect the marketability of the

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property.” The mixed messages regarding an easement’s effect on property values render this preservation tool vulnerable to attack. The comments at the Kaufman trail, recorded in open court, neatly summarize what the IRS is targeting through their audits and court cases.

The IRS scrutiny and written stance against preservation easements is keeping preservationists scared silent. Ohio Federal Courts barred well-known easement appraiser Michael Ehrmann and his firm, Jefferson & Lee Appraisals, Inc., from preparing property appraisals for federal tax purposes in the early months of 2013 because of accusations/findings of alleged inflated appraisals of easement value. The injunction order was filed in response to complaints that “Ehrmann distorted data and provided misinformation or unsupported personal opinions to get artificially high values for conservation-easement donation. Ehrmann knows that his clients will use the inflated values provided in his appraisals to claim overstated charitable contribution deductions.” The amount of improper tax deductions alleged to be attributable to his firm’s flawed appraisals is estimated to “reach hundreds of millions of dollars.” One can assume the scale of alleged inflation in appraisal is why the firm is required to “provide to council for the United States a list of clients (including each client’s address, phone number, e-mail address, and federal tax identification number) for whom they have prepared appraisal reports for tax purposes on or since November 1, 2009.” This mandate puts homeowners under great scrutiny and generates concern about audits for owners of easemented properties.

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42 Ibid.
The ability to use easements as a responsible financial incentive toward preservation goals makes their donation more enticing to private property owners. The recent uncertainty regarding financial incentive has depressed the use of easements, as seen in the declining easement numbers seen in figure 2.1 (page 36). A similar depression in the rate of easement donation occurred in the early 1990s, concurrent with the legal proceedings at the time. The uncertainty around the future viability of easements defines the current state of discourse on preservation easements. Advocates maintain that historic preservation easements are a valuable and necessary tool to protect cultural resources under private ownership, regardless of tax incentives. Opponents argue that easements are useless when local preservation ordinances exist and their valuation is often grossly overstated, if they hold any value at all.

**REVIEW OF THE LITERATURE**

The discourse surrounding easements has largely followed patterns of support and growth, followed by scrutiny and silence. The literature tends to fall into three large camps defined by its audience: professionals involved in legal proceedings, proponents of historic preservation, and the IRS.

Most recent literature regarding easements is written for appraisers and lawyers.\(^{43}\) Despite the breadth of literature provided by the legal and appraisal professions, there is not a unanimous consensus regarding easement valuation and financial implications from either profession. These two professions share the most direct financial benefit resulting from an easement donation. The IRS requires an

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appraisal from a qualified, certified appraiser. Lawyers are needed to draft the easement document, and defend it in court if necessary.

Appraisers tend to focus on valuation methods of historic preservation easements and react to current events. Lawyers deliberate on property rights issues and the legal language and enforcement of the easement document. Numerous articles were published after each of the 2008-2012 court decisions by both professions dissecting the Tax Court’s interpretation of the law with regard to easement law and valuation. Each article offers commentary on what the ruling means for the future, and how professionals should proceed. The Appraisal Institute, the main continuing education authority of appraisers in all fields, published two books since the 2006 Pension Protection Act defined “qualified appraiser,” focusing on valuing historic properties and easements.44

In contrast to the magnitude of literature on easements from the appraisal and legal professions, the quantity of literature on this subject published by preservationists is lacking. Current threats of legal action directed at property owners and easement holding organizations has quieted recent dialogue among preservationists. Much of what exists from the preservation perspective is informational pamphlets explaining what easements are and how they can be used to protect significant historic resources.45 Surveying the limited literature in the preservation field regarding easements, it is easy to conclude that the field is a proponent of easements for historic preservation.

Advocates cite examples of failed or lacking local ordinance protections and hypothetical

situations where easements protect a property more completely. The protections easements provide appear to be an obvious benefit to preservationists, however, there is little quantifiable evidence supporting this claim. The “public value” provided by easements is regarded as a confirmed fact.

Preservationists typically rely on intangible evidence to justify the benefits easements provide. Publications focused on historic preservation consistently offer easements as an effective tool, often with little evidence to back up the claims. Jennifer Goodman commented in a 2008 issue of *Forum News*, published by the National Trust for Historic Preservation, “Easements can be used to help meet larger strategic goals such as protecting a critical gateway into a community, managing land uses around a public drinking water source, or preventing a mega-development by controlling a few key properties.” Supporting evidence of historic preservation easements successfully preventing unsympathetic development is not nearly as documented as rehabilitation credit projects accomplishing similar goals. The lack of supporting studies is partly due to the fact that a successful easement placement ensures that a threatening project does not occur - one cannot effectively measure something not happening.

**Preservation Economics**

Economic impact and empirical studies are a generally neglected area of research within the field of historic preservation. Randall Mason compiled an extensive review of preservation economics literature and concluded that the lack of supporting economic evidence for preservation was the result of two factors. The first reason is that economists are generally not interested in cultural topics as subjects of research. The

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“second point, preservation being a field, not a discipline, there is no established academic infrastructure and base of research institutions to support sustained research on the topic (or many other preservation topics) over time.”

This analysis indicates that the lack of research on the economics of easements is part of a larger trend defining preservation research and literature at large.

Despite the shortcomings of research in the areas of historic preservation economics, interest is growing. One area of increased examination is in the economics of tax incentives for historic preservation. The economic success of the Federal Rehabilitation Tax Credit incentive is well documented as “one of the nation’s most successful and cost-effective community revitalization programs. It has leveraged over $62 billion in private investment to preserve 38,000 historic properties since 1976.”

A 2011 report presented to the Advisory Council on Historic Preservation measuring the economics of preservation states, “The good news is historic preservation is good for the local economy,” and many studies reinforce these claims. The impact historic designation has on property values, both national designation as well as local, consistently finds property values higher in historic districts than comparable properties outside of historic districts. Even with the available research supporting the economic and community benefits of Rehabilitation Tax Incentives, parallel studies supporting easements as a tax incentive do not exist or are not available in comparable quantity.

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There are studies documenting evidence of a “price premium” homeowners will pay to reside in designated historic areas. Leichenko and Coulson’s 2001 study measured the impacts in property values on properties that were individually designated as well as the neighboring properties that did not share the historic designation. Substantially higher property values were found on all properties with individual designation and confirm the assumption that owning property within a historic district is enticing, but “designation is not a free good and can entail substantial renovation and upkeep expenditure,” which made quantifying the premium problematic.\(^{51}\) A survey of national tax incentives for historic preservation in 1976, prior to the Tax Reform Act of 1976, by Joe A. Shull concludes by posing the question whether tax incentives by themselves are sufficient to direct an individual’s behavior.\(^{52}\)

In the words of Shull, “…it has been found that heritage designation and its accompanying regulatory protection not only does not have a negative effect on value, but often creates a market-assigned value premium for historic structures”; why then are easement encumbered properties considered the exception?\(^{53}\) Praised historic preservation economist, Donovan Rypkema offers a possible explanation:

The economic role of land-use laws in general, and historic designation in particular, is to protect the context within which the individual property is situated. No one pays a premium for a heritage house for the privilege of having to ask permission from some governmental body to put new shingles on the roof. Rather a homeowner will pay a premium for the assurance that the neighbor across the street will not be allowed to make inappropriate changes to

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\(^{53}\) Ibid, 334.
his house that will have an adverse visual and value effect on the one's own house.\textsuperscript{54}

Thus land-use based incentives add value to the property owner, as the Home Owner’s Association analogy discussed earlier, by nature of holding everyone to a standard. Easements do not carry the same assurances.

Notwithstanding the relative abundance of research surrounding the economic impacts of historic districts as a whole on property values, easements are rarely isolated as a separate variable of property values. The conjecture that property values will be higher in a historic district is questioned, if not threatened, when you look at individual properties and the possibility that some may be encumbered by a historic preservation easement, which are generally assumed to lower property values. The only research conducted specifically on the economic impacts of easements is by appraisal professionals and is outlined below.

**Similar Studies**

In addition to the public discourse regarding easements in mass media publications like *The Washington Post*, a minimal number of studies over the years have looked at easements as a variable of sale price over time. Most recently, and relevant to this study, are two studies of Savannah, GA. The first is a study of property transactions between January 2000 and March 2004 of nineteen encumbered (eleven perpetual easements and eight covenants that expire between 2041-2069) single-family homes in

the Savannah National Register Historic District.\textsuperscript{55} The results of the statistical hedonic method used showed “that when encumbered, single-family properties transact, market value is not significantly affected when compared to the value of unencumbered properties.” Additionally, the final conclusion drawn was that “the long-term impact on value associated with historic façade easements appears to ease and possibly become non-existent over time.”\textsuperscript{56} Winson-Geideman and Jourdan’s findings support the IRS’s case that tax deductions are being over appraised because market value is not hindered in the long run.

Contradictory results were achieved in the similar, but earlier, Savannah study which tested encumbered condominiums as the property type.\textsuperscript{57} The condominium study concluded “the discount attributable to façade easements is about fifty-seven percent for those properties encumbered by relatively mature easements held in perpetuity and located in a single historic district listed on the National Register of Historic Places.”\textsuperscript{58} The conclusion was based on a hedonic model used to test fourteen easement encumbered properties within one historic district, held by one easement holding organization (Historic Savannah Foundation). The age of the easements ranged from sixteen to twenty-five years old and the sale prices tested all took place within a nine year range from 1995-2004. Highest and best use principles were not tested in this study but noted as important: “The effects of the easement over the long-term, however, can be much more damaging as consumer preferences and local conditions change, placing additional development pressure on encumbered properties, thus reducing market

\textsuperscript{56} Ibid, 16.
\textsuperscript{58} Ibid, 84.
value." The finding that condominium sale prices were affected by easement status fits
the larger appraiser and preservationist’s stance that there is a financial hardship
associated with the relinquishment of rights to alter one’s property.

Though less geographically similar to the subject of the study in this thesis, a
larger 1994 study of ninety-seven easement encumbered condominiums in Philadelphia,
PA, found a value discount of “roughly thirty percent.” The more substantial finding of
this study was the supported “hypothesis that the value of the encumbered property
would be discounted more severely as the number of years after donation increases.”
Specifically, “…a value discount of roughly 4.6 percent per year after donation,” shows
that although the immediate relinquishment of some property rights does impact the
value, the larger overall impact is the highest-and-best use principle, which restricts the
property as development and modernization pressure increase.

Finally, John Kilpatrick, an appraiser, conducted a study assessing the impact of
historic district designation on house prices in South Carolina the late 1990s. Although
the research did not specifically address easement encumbered properties, the Columbia,
SC, study used a repeat sales methodology, frequently used in real estate finance. The
hypothesis was: “[i]f historic district designation has positive impacts for property
owners, then the house prices in such districts should increase faster over time than the
market as a whole.” This research yielded the result that houses within the historic
district had an annual appreciation rate of 7.32 percent, whereas homes outside of the

59 Ibid, 86.
60 Paul K. Asabere, and Forrest E. Huffman, “The value discounts associated with historic facade
61 Ibid.
62 John A. Kilpatrick and H. Thomas Shaw, “Historic District Designation and House Prices,”
(May 27, 1997). Article acquired from Elizabeth Johnson, Director of Historical Services at the
State Historic Preservation Office, SC Department of Archives and History, 8301 Parkland Road,
Columbia, SC, 29223.
historic district appeared to only appreciate 5.8 percent annually. This shows a 1.52 percent difference in annual appreciation attributed solely to historic designation, a substantial finding. A similar methodology as the one used in the Kilpatrick study can be used to test the financial impact of historic designation one step further, in terms of easements. Comparing the annual appreciation rates of properties with easements to other properties within the historic district, the long-term financial impact of undertaking additional protections can be assessed.

**Research Contribution**

From the literature available it is clear that more research needs to be conducted on the economics of easements as a preservation incentive. Because the discourse is stifled by fear of initiating legislative action and parties discussing historic easements tend to identify heavily with one constituency, there is a distinct need for an unbiased, empirical study looking at market value over time. This study will contribute to the growing conversation on the economics of historic preservation by assessing the long-term effects historic preservation easements have on the real estate market and the overall economic value easements hold for both homeowners and the future of preservation.

The fair market value trends of easement and covenant encumbered properties compared to similar properties without an encumbrance over a span of twenty years will lend insight into how these specific property types behave in a free market after donation. The trends reveal the overall economic impact these voluntary restrictions hold. Though the research stands to inform the current discussion of tax deduction
considerations, the study is designed to evaluate property value in a vacuum from the political factors.
Comparing the annual appreciation rate of easement and covenant encumbered properties to all other properties within the historic district includes the investigation of several variables that may impact the final analysis. Time frame, spatial relationship, zoning use and defining factors of encumbrance typology are all important considerations when addressing the question: Do easement and covenant encumbered properties appreciate at the same rate as unencumbered properties within the Charleston Old and Historic District? The property characteristics listed effect property value, and thus may skew the ultimate conclusion regarding encumbrance impact if these variables are not examined and evaluated separately first. To judge the impact each variable has on the eventual analysis, all data was divided into variable sets and analyzed individually. Each variable set represents a feature of the property deemed worthy of isolated individual attention. By isolating groups of properties and limiting the number of variables, it is possible to review the inclusive impact a specific characteristic has on the overall population of Charleston’s encumbered properties.

This chapter is divided into three sections: documentation of Charleston’s easement program, analysis of sales data, and a comparison of appreciation rates. Encumbered properties in Charleston are often looked at individually on a case-by-case basis and rarely as a cumulative whole. The documentation of Charleston’s encumbered properties establishes the overall set of properties considered. All variable sets within this research contain multiple properties, but they are divided to highlight and document the multitude of characteristics that exist within Charleston’s current collection of easements and covenants. Within each variable set, the data was picked apart and
examined to emphasize specific characteristics. This created a better understanding of the data as a whole, which is helpful in interpreting the conclusions.

**DATA**

Extensive data on all properties within the Charleston Old and Historic District is necessary to create a comparison of appreciation rates. Information pertaining to Charleston’s easement encumbered properties, sale history, and mapping data was compiled for this study.

**Easement and Covenant Data**

A list of all encumbered properties within the Charleston Old and Historic District was generated from the three historic preservation organizations that hold easements and covenants within the subject area: Historic Charleston Foundation, The Preservation Society of Charleston, and The National Trust for Historic Preservation.\(^63\)

**Sales Data**

Sales data for all residential properties within the Historic District was acquired directly from the Charleston County Assessor’s Office.\(^64\) Accuracy of data received from Charleston County was confirmed by crosschecking the most recent transaction information of every tenth easement encumbered property (approximately ten percent of

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\(^63\) The State Historic Preservation Office also holds covenants on 11 properties in downtown Charleston, including the Aiken-Rhett House and the Dock Street Theatre. These covenant properties were not included due to the significant nature of the properties and the date of encumbrance is not recorded.

\(^64\) Charleston County Assessor Office located in the O.T. Wallace County Office Building, 101 Meeting Street, Suite 135, Charleston, SC, 29401.
total easement data set) with physical deeds at the Charleston County Records Mesne Conveyance Office (RMC). \(^65\)

The majority of the information obtained from Charleston County was utilized to identify and characterize properties for the purpose of this research (Parcel ID, Street #, Street Name, Use, Acre, Square Footage, Year Built, Number of Stories, Number of Bedrooms, Sale Price, Sale Date, Previous Sale Price, Previous Sale Date). Additional data was added to the database of sales; such as a calculation of the price per square foot, the adjusted prices to reflect inflation, neighborhood, whether or not the property falls within the Old and Historic District boundary, and if the property is protected by an easement or covenant. \(^66\) For easement encumbered properties, all sales occurring after the easement donation date were flagged and retained for later analysis.

Sales under $10,000 were considered to be anomalies and discarded to create a more coherent data set. Sales under $10,000 primarily represent $1-$10 exchanges between family members and thus are not true reflections of market value of the property.

**Geographic Data**

Geographic information was created using an ESRI ArcGIS shape file of downtown Charleston parcel data, provided by the Santee Cooper Geographic Information Systems Laboratory at the College of Charleston. \(^67\) Current Downtown National Register Historic District boundaries were drawn to match boundaries shown

\(^65\) The most recent sale transaction of seventeen properties in numerical order of parcel ID; 9.83 percent of total easement data set. Charleston County Records Mesne Conveyance Office located in the O.T. Wallace County Office Buildings, 101 Meeting Street, Room 200, Charleston, SC, 29401.

\(^66\) Consumer Price Index 2010 annual index.

\(^67\) 114 Tira Liddy Hollings Science Center, 58 Coming Street, Charleston, SC 29424.
on the South Carolina Department of Archives and History ArchSite (GIS).\(^6\)

Neighborhood boundaries were created according to Daniel Ravenel Sotheby’s Real Estate map of Charleston.\(^6\) Each property is considered within current neighborhood boundaries. The City of Charleston Interactive Zoning map was frequently used as a reference while creating boundaries and confirming zoning use codes.

**INITIAL COMPARISON AND DOCUMENTATION**

Initial comparisons of several variables illustrate the development of Charleston’s use of historic preservation easements and covenants over time. Although this data is only a small sampling of a national program, donation patterns emerge and mimic national trends discussed in the previous chapter.


**Rate of Donation**

First, the combined annual donation rate of all easements and covenants is illustrated over time.\(^{70}\)

![Rate of Donation chart](chart.png)

**Figure 2.1 Annual donation numbers of easement and covenants.**

Figure 2.1 illustrates historic preservation encumbrance in Charleston beginning in 1959 with Historic Charleston’s first use of covenant protections to ensure the future preservation of a single property. A significant rise in donations in 1983 and 1984 illustrates a response to the passage of the Tax Treatment Act of 1980, as well as Historic Charleston Foundation establishing a formal easement program in 1982.\(^{71}\)

Separating easement and covenant donations on the same timeline better illustrates the individual relation of easements and covenants to legal and local factors (figure 2.2).

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\(^{70}\) Donation year corresponds to easement donations, but also the year a covenant is placed on a property.

\(^{71}\) April Wood, Historic Charleston Foundation easement coordinator, interview by author, Sept. 7, 2012, Historic Charleston Foundation, Charleston, SC.
As mentioned in the previous chapter, covenant donations typically reflect public initiative, as part of an organization’s revolving fund, whereas easement donations usually reflect private incentive. The use of covenant protections remains relatively steady over time with a large increase in 1989. The next examination of spatial relationships reflect the understanding that seventeen of the twenty covenants placed on properties in 1989 were in the Mazyck-Wraggborough neighborhood north of Calhoun Street. Historic Charleston Foundation targeted houses in the east side neighborhoods north of Calhoun Street in the late 1980s to rehabilitate and resell with protective covenants for use as rental housing.72

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To test spatial aspects of easement and sale trends in neighborhoods, the encumbered properties are divided by neighborhoods, as the boundaries exist today (appendix A). The location of each easement is mapped using ESRI Geographic Information System (GIS) software.

![Annual Donation Rates by Neighborhood](image)

**Figure 2.3** Annual Donation numbers of combined encumbrances. Separated by neighborhood.

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73 Boundaries obtained from Daniel Ravenel Sotheby’s Real Estate Charleston map.
Donation rates of all covenants and easements over time separated by neighborhood explains the abrupt 1989 surge in covenant donations that occurred in Mazyck-Wragborough (figure 2.3-2.4). A consistent rate of donation beginning in 1959 stands out in the Ansonborough neighborhood (figure 2.5). Ansonborough has been a
neighborhood of interest for preservation organizations from the beginning of the preservation movement in Charleston. The first suburb of Charleston was threatened in the 1960s by urban renewal projects during the construction of the Gaillard Auditorium. The neighborhood was recently added to the Preservation Society of Charleston’s “Seven to Save” list of 2012 in the wake of more modern threats to the neighborhood’s historic character.74

South of Broad exhibits a lack of donation until the 1980s when they experienced an abrupt beginning. This could be attributed to the creation of the financial incentive in the 1980s that encouraged property owners to donate easements. The neighborhood known as South of Broad has been described as “Charleston’s most fashionable address. Since 1950 even the alleys have been gentrified and are now upscale addresses,” thus it has not been an area targeted by preservation organizations utilizing covenants. 75

The northern neighborhoods of the Charleston Peninsula, Cannonborough-Elliotborough and South-Eastside, have the fewest number of easements and covenants protecting properties. This can be attributed to several factors. First, the majority of these two neighborhoods fall outside of the historic district. Thereby eliminating the availability of financial incentive in the form of an income tax deduction. Second, these neighborhoods have only recently been the subject of preservation interest within the last decade. Lastly, a variety of socioeconomic factors in these two neighborhoods differ from those in other neighborhoods on the peninsula that are associated with easement and covenant encumbered properties such as student housing, low-income housing, home ownership and education.

75 Poston, The Buildings of Charleston, 199.
**Neighborhood**

To more completely understand the significance easements and covenants have on individual neighborhoods, the percentage of encumbered properties that makeup each neighborhood is calculated by dividing the total parcels within each neighborhood by the total number of parcels with an encumbrance (figure 2.6). Total encumbered parcels relative to total unencumbered parcels shows the ratio of easement saturation in each neighborhood. The impact of this variable is discussed in more depth later when drawing conclusions regarding the impact an easement has on the appreciation rate in each neighborhood (ie: Does an easement have a greater/lesser impact on property appreciation relative to the overall portion the neighborhood that is protected by encumbrances?).

The number of easements versus covenants within each neighborhood is also addressed. As mentioned earlier, easements typically represent private initiative whereas covenants usually represent public. Therefore a high saturation of covenants in a particular neighborhood will highlight targeted preservation efforts and previous areas of urban renewal. The initial root of investment (public versus private) is not believed to affect market trends after the first sale. This belief is why both easements and covenants are treated as one entity (‘encumbrance’) in later analysis of appreciation rates. The purpose of separating the two encumbrances during various stages of the initial variable observations serves to develop a more comprehensive understanding of their respective use in Charleston.
Figure 2.6: The percentage of encumbered parcels in each neighborhood. Including the entire Historic District.

The value of including a spatial observation is immediately apparent (figure 2.6). Although South of Broad has the highest number of easements (150), Ansonborough has twice the concentration of protected properties with nearly 20 percent of all parcels in the neighborhood encumbered. The impact of neighborhood saturation on the market value of properties will be investigated later in the sales analysis. Because the majority of Ansonborough’s encumbered properties are protected by covenants, the neighborhood is evidence of a large-scale, community based preservation interest. Many of the covenants are a result of the Ansonborough Rehabilitation undertaken by HCF in the 1960s and are set to expire after a length of time. This raises questions about the future preservation of the neighborhood amid current perceived threats.

The neighborhoods with the lowest saturation of encumbered properties are those with boundaries not falling entirely within the historic district, the South-Eastside neighborhood and Cannonborough-Elliotborough. Because these neighborhoods are not completely within the historic district, there is little opportunity or financial incentive to
donate an easement. To qualify for a tax deduction, the property must be individually listed on the National Register of Historic Places, or a contributing property to a Nationally Registered Historic District. Though the South-Eastside and Cannonborough-Elliotborough neighborhoods are not fully within the National Register Historic District, they are still subject to local protections and approval by the Charleston Board of Architectural Review (BAR) Design Board as part of the Lower-Old City District.76

The Charleston Old and Historic District was declared a National Historic Landmark in 1960 and added to the National Register of Historic Places in 1966. The Nationally Registered Historic District has been extended six times since its creation in 1960, with each extension increasing the opportunity for private easement donations. Of the 408 easement and covenant encumbered properties on the peninsula, 371 of these properties are located within the current Federal Historic District boundaries.77 Of all the parcels that fall within the Historic District boundaries, 6.36 percent are protected by easement or covenant restrictions.

**Encumbrance Typology**

As previously discussed, historic preservation encumbrances in Charleston fall into two large categories of easements versus covenants. A secondary classification details the level of protection placed on each property. The three types of encumbrances are: exterior, interior and open space. A graph showing the cumulative donation numbers of these three encumbrance typologies over time illustrates the popularity of each (figure 2.7).

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77 See maps.
Figure 2.7: Cumulative donation numbers of all three encumbrance typologies over time.

The obvious standout, and most common of the three typologies, are exterior easements. Depending on the age and specifics of each individual easement or covenant document, an exterior encumbrance can represent protection of a single façade or all façades, including the roof and surrounding ground space.⁷⁸ Open space encumbrance, not to be confused with conservation easements, which protect large areas of land for environmental reasons, represent additional restrictions that protect use of the entire parcel or adjoining lot.

Interior encumbrances protect specific features of a property that are spelled out in the easement/covenant document. Often they are used to shield original woodwork and floor plans from a new owner’s changing tastes. The use of interior protections is on the rise, although donation rates of both interior and open space encumbrances plateaued in 2007. April Wood at HCF mentioned that the organization encourages donors of an exterior easement to consider donating interior easements as well. This is a

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⁷⁸ Including paved walkways, front steps, fences, etc.
more recent development as the Historic Preservation Movement has evolved to recognize the historic and architectural significance of all aspects the built environment. The interior and open space areas of a historic building are often central in providing context and a more complete picture of the cultural resource. Additional building protections prevent “façadism;” a growing concern among preservationists that historic buildings are gutted and replaced with a modern building, hidden behind a historic façade.79

Additionally, with the current legal climate questioning the value of easement donations, there is a speculative belief that a joint protection, meaning paired exterior and interior or exterior and open space easements/covenants, makes a donation harder to question in court. The theory is based on the understanding that because an interior easement requires mandatory entrance into a private home for inspection, there is a larger burden on the owner’s property rights. Interior easements cover aspects of a property that are not regulated by the local preservation design review board. This is a requirement that far exceeds the level of interference necessary in enforcing exterior easements. Ultimately, adding an open space or interior easement to a property gives the preservation organization more control over the future of the entire property.

The current quantity of each typological combination (exterior, interior, and open space) is necessary to better understand the place of each in the Charleston real estate market. The possible typology combinations, the number of properties each group encompasses, and the percent of the total data set they affect are as follows (figure 2.8):

---

Typology | Easement | Covenant
--- | --- | ---
Exterior Only | 188: 46.19% | 114: 28.01%
Exterior + Interior | 39: 9.58% | 6: 1.47%
Exterior + Open Space | 51: 12.53% | 2: 0.49%
Exterior + Interior + Open Space | 3: 0.74% | 0: 0%
Interior Only | 0: 0% | 1: 0.25%
Open Space Only | 3: 0.74% | 0: 0%

Figure 2.8: Table shows the number of properties described by each typology combination with the cumulative percent each typology combination makes up of the total data set.

This data provides a representation of each typology and its frequency within downtown Charleston. Interior and open space protections are more commonly used in the form of easements, as opposed to covenants, which reinforces the belief mentioned earlier that adding additional restrictions may allow a more secure donation for tax purposes. At first, it is interesting to note that only six covenant properties have both exterior and interior protections. However, when this information is combined with the historic timeline of covenant donations in Charleston, it shows that interior restrictions were virtually nonexistent until after the significant revolving fund projects of HCF occurred. This finding emphasizes the claim that recognizing the preservation and protection of interior spaces is a relatively new concept.

**SALES DATA ANALYSIS**

There are 408 total encumbered properties in downtown Charleston. However, sales data is not available for all properties. Data was only accessible for residential encumbered properties with at least one sale between 1990-2010. Thus, the following research represents only the 173 encumbered properties for which sales data was available.
**Use Typology**

A final characterization of encumbered properties uses the sales data acquired from the Charleston County Assessor’s Office. Charleston County defines residential “use” as one of the following: SFR (single-family residence), DUP (duplex), ROW (row house), TRI (triplex), or TWH (townhouse). The purpose of this typology separation was to find the most common property classification for isolation in the continuation of the study. As seen in similar studies, typically only properties within a single zoning use code are chosen for comparison.\(^{80}\) The percentage each typology represents of the entire data set is calculated (figure 2.9). Single-family residences embody the largest sector of the data set by a wide margin at 84.39 percent and triplexes represent the smallest, only 1.73 percent of encumbered properties.

<table>
<thead>
<tr>
<th>Use</th>
<th>Number of Properties</th>
<th>Percent of Data Set</th>
</tr>
</thead>
<tbody>
<tr>
<td>DUP</td>
<td>11</td>
<td>6.36%</td>
</tr>
<tr>
<td>ROW</td>
<td>13</td>
<td>7.51%</td>
</tr>
<tr>
<td>SFR</td>
<td>146</td>
<td>84.39%</td>
</tr>
<tr>
<td>TRI</td>
<td>3</td>
<td>1.73%</td>
</tr>
</tbody>
</table>

*Figure 2.9: Table of use typology distinction division among properties.*

**Secondary Data Selection**

Within the sales data collected from the Charleston County Assessor’s office, a secondary group of data is extracted from the sales and properties that met defined qualified criteria established for this research. The qualifying characteristics selected to produce a fairly homogeneous, yet numerically sizable set of properties to investigate were: single-family residence only, within the historic district, on a parcel less than 0.01

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acres.\textsuperscript{81} Only single-family residences are used to minimize extraneous characteristics that have the ability to influence results and complicate comparison to other properties. Single-family residences represent 84.39 percent of the available properties and thus constitute the largest group. A study period of 1990-2010 was established. Properties meeting these parameters possess the advantage of all available data, and allow a mature twenty year period for comparison. Only sales occurring between 1990 and 2010 were used in calculations.\textsuperscript{82} Furthermore, for properties with easements, only sales occurring after the easement donation date were used.\textsuperscript{83}

This more specifically defined group of properties focused the research on 1,033 unencumbered properties. These unencumbered properties were sold a total of 2,225 times within the study period. A qualifying group of 136 properties with an encumbrance is diminished to 94 properties with 189 sales after sales occurring before the donation date are removed. Among the total group of encumbered properties, 54 properties are protected by easements (with 101 sales), and 40 properties are protected by covenants (with 88 sales).

\textsuperscript{81} Acres as recorded by the Charleston County Assessor’s office data.
\textsuperscript{82} Single sales prior to 1990 were used when available to calculate the annual appreciation rates for sale periods ending within the study period. (ie. If a prior 1989 sale price/date was known for a sale period ending in 1991, the 1989 data was used to calculate an annual rate for 1990 and 1991.)
\textsuperscript{83} Properties with an easement are always defined as “with easement” for this study. Ie: although there may be multiple sales before the donation date, appreciation rates were not calculated for them to include in either the easement appreciation data set OR the unencumbered appreciation data set.
Summary statistics for the specifically defined groups are as follows (figure 2.10):

<table>
<thead>
<tr>
<th></th>
<th>Unencumbered Properties (no easement or covenant)</th>
<th>Encumbered Properties (with easement or covenant)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Count of Unique Properties</td>
<td>1033</td>
<td>94</td>
</tr>
<tr>
<td>Count of Unique Sales</td>
<td>2225</td>
<td>189</td>
</tr>
<tr>
<td>Max # of Sales Per Property</td>
<td>10</td>
<td>7</td>
</tr>
<tr>
<td>Min # of Sales Per Property</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Average # of Sales Per Property</td>
<td>2.2</td>
<td>2</td>
</tr>
<tr>
<td>Mode # of Sales Per Property</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Max Sale Price</td>
<td>$7.375 million</td>
<td>$6.1 million</td>
</tr>
<tr>
<td>Min Sale Price</td>
<td>$10,000</td>
<td>$35,000</td>
</tr>
<tr>
<td>Average Sale Price</td>
<td>$693,273.32</td>
<td>$1,014,373.06</td>
</tr>
<tr>
<td>Max “Year Built” (Year)</td>
<td>2008</td>
<td>2000</td>
</tr>
<tr>
<td>Min “Year Built” (Year)</td>
<td>1709</td>
<td>1720</td>
</tr>
<tr>
<td>Average “Year Built” (Year)</td>
<td>1884</td>
<td>1843</td>
</tr>
<tr>
<td>Max Habitable Square Feet</td>
<td>15,140</td>
<td>18,488</td>
</tr>
<tr>
<td>Min Habitable Square Feet</td>
<td>450</td>
<td>1,032</td>
</tr>
<tr>
<td>Average Square Feet of properties</td>
<td>2,555</td>
<td>3,525</td>
</tr>
<tr>
<td>Max Price Per Square Foot (Sale Price/House Square Feet)</td>
<td>$6,009.56</td>
<td>$1,441.83</td>
</tr>
<tr>
<td>Min Price Per Square Foot (Sale Price/House Square Feet)</td>
<td>$6.08</td>
<td>$14.27</td>
</tr>
<tr>
<td>Average Price Per Square Foot (Sale Price/House Square Feet)</td>
<td>$337.43</td>
<td>$352.81</td>
</tr>
</tbody>
</table>

Figure 2.10: Summary statistics of the two data groups of encumbered and unencumbered properties that meet the specific criteria.

**Sale Price over Time**

The mean real value (not adjusted for inflation) of sale prices for both groups of properties during the study period is calculated for each year. This basic comparison illustrates the volatility/stability of property sales within the Charleston Old and Historic District over time. A basic fair market value evaluation of easement-encumbered properties to non-encumbered properties without the consideration of other variables is shown in the graph below (figure 2.11).
Figure 2.11: Average real sale price comparison of encumbered and unencumbered properties, 1990-2010.

Although this graph does not reflect inflation, average sale prices steadily increase until 2008 before a significant downturn in 2009. This corresponds to the depressed real estate market experienced across the United States with the largest historic drop in house prices experienced. The representation of properties with an encumbrance is not as stable as the representation of sales of unencumbered properties, presumably because the overall data pool is significantly smaller. A smaller data set amplifies the variation among properties significantly and yields a more volatile depiction of sale trends.

The same comparison with values adjusted to reflect 2010 dollar amounts shows a similar story: the Charleston Real Estate market steadily increased beginning in the mid-1990s, ostensibly after recovering from Hurricane Hugo in 1989 (figure 2.12).
Figure 2.12: Average adjusted sale price comparison of encumbered and unencumbered properties, 1990-2010.

The trend lines comparing both groups of properties illustrate that on average, encumbered properties sell at a higher price, above the average sale prices of unencumbered properties. Rather than indicating against the IRS Federal Tax Code assumption that an easement negatively impacts property value, this may represent a finding that easements are typically placed on more expensive properties.

Once again, covenant and easement encumbered properties are separated for a similar comparison of average adjusted sale price (figure 2.13). The graph below demonstrates properties with easements almost always sell at a higher price than covenant properties. Although this finding is speculative and requires more thorough analysis to definitively support this assumption, this discovery supports the lack of easement protections in the Northern neighborhoods of the Charleston Peninsula, where property values on average are significantly below those of properties in the lower
neighborhoods included in this study.

![Average Sale Price Adjusted for Inflation](image)

**Figure 2.13:** Average adjusted sale price comparison of easement and covenant encumbered properties, 1990-2010. Zero values for covenants in 1991 and 2009 represent years with no sales occurring on covenant properties.

**Adjusted Sale Price**

The adjusted value of all sales data is calculated to reflect 2010 dollar values. Adjusted values are achieved through a conversion accounting for inflation using Consumer Price Index data obtained from the United States Labor Bureau of Labor Statistics. The average price per inhabitable square foot of all sales occurring in each year was calculated for both groups of properties, encumbered and unencumbered, and reflected below (figure 2.14).

---

Figure 2.14: Average price per habitable square foot comparison of encumbered to unencumbered properties; 1990-2010. Values are adjusted for inflation to reflect 2010 dollar value.

The price per square foot of each property creates a more uniform comparison of value between the two sets of properties (encumbered versus unencumbered) by comparing the values of an identical unit of measurement. There are several instances where encumbered properties command a higher price. Most interestingly is the spike in 2009, amidst a poor real estate climate, among properties with easements. Encumbered properties averaged $300 more per square foot than properties without easements in this year. Although the overall value drops significantly in the next year, it drops $30/square foot less than properties without easements; initially suggesting that encumbered properties fared better in the early years of economic recession. Again, this may be a misleading result of the smaller set of data available and can most likely be explained by the fact that there were only two sales on easement properties in 2009, both exceptionally high.
Figure 2.15: Average price per habitable square foot comparison of easement to covenant encumbered properties; 1990-2010. Values are adjusted for inflation to reflect 2010 dollar value. The two years, 1991 and 2009, where covenant property values drop to $0.00 is the result of zero sales occurring within those two years.

Again, easement and covenant properties are separated to reinforce the financial diversity between the two types of encumbrance, easements versus covenants (figure 2.15). It is evident that the properties these two types of encumbrance protect demand very different price tags. Easements are a private initiative, applied to properties of higher market value; whereas covenants are public initiative, applied to properties with a lower market value.

There are further several possible explanations for this difference in price. First, a preservation organization working through a revolving fund targets properties in need of preservation protections. This suggests the property is “at risk” (ie: demolition by neglect, development pressures, etc.) and may inhibit the property’s ability to compete fairly in the market. Second, the tax benefits an easement donation is entitled to is a Federal income tax deduction. Contrary to a tax credit, which is a dollar-for-dollar
reimbursement, a deduction is granted at a percentage based on an individual’s income tax bracket. This suggests that property owners with high incomes and high property values receive the greatest financial benefits of easement donation.

The spatial variable explored earlier, neighborhood, is reintroduced to establish a basic price comparison for each neighborhood. The average price per square foot of all encumbered properties versus unencumbered properties within established neighborhood boundaries is calculated and reflected in the table below (figure 2.16). This comparison highlights the value variation among neighborhoods and emphasizes the importance of separating the data set by neighborhood in the final analysis of appreciation rates.

<table>
<thead>
<tr>
<th>Neighborhood</th>
<th>No Encumbrance Average Price/Square Ft</th>
<th>With Encumbrance Average Price/Square Ft</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ansonborough</td>
<td>$325.39</td>
<td>$283.40</td>
</tr>
<tr>
<td>Cannonborough-Elliotborough</td>
<td>$87.25</td>
<td>N/A</td>
</tr>
<tr>
<td>Downtown</td>
<td>$262.40</td>
<td>$187.06</td>
</tr>
<tr>
<td>French Quarter</td>
<td>$346.02</td>
<td>$332.90</td>
</tr>
<tr>
<td>Harleston Village</td>
<td>$240.99</td>
<td>$194.72</td>
</tr>
<tr>
<td>Mazyck-Wragborough</td>
<td>$248.65</td>
<td>$205.92</td>
</tr>
<tr>
<td>Radcliffeborough</td>
<td>$232.23</td>
<td>$235.90</td>
</tr>
<tr>
<td>South of Broad</td>
<td>$420.70</td>
<td>$520.72</td>
</tr>
</tbody>
</table>

Figure 2.16: Table comparing the average price per habitable square foot values of each neighborhood. Adjusted values reflect inflation.

Sales Transactions

The number of sale transactions occurring within the study period, 1990-2010, was averaged for each property and is reflected in the summary below (figure 2.17). The average number of sales transactions for all encumbered properties compared to all unencumbered properties reveals a slightly higher turnover rate among unencumbered properties. Turnover rate among real estate studies suggest a level of interest and
demand for a particular type of property. This understanding would suggest unencumbered properties are in higher demand or are more desired in the downtown Charleston real estate market; or owners who donate easements are longer-term inhabitants.

<table>
<thead>
<tr>
<th></th>
<th>Unencumbered Properties</th>
<th>Encumbered Properties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Count of Unique Properties</td>
<td>1033</td>
<td>94</td>
</tr>
<tr>
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<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Average # of sales per property</td>
<td>2.2</td>
<td>2</td>
</tr>
<tr>
<td>Mode # of sales per property</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

Figure 2.17: Summary of sales transactions of unencumbered and encumbered properties.

**APPRECIATION RATES**

The final analysis, and ultimate purpose of this study, is to determine if there is a significant difference in the annual appreciation rates of easement and covenant encumbered properties compared to those without these encumbrances. To answer this question, the price movement of average home price over time was calculated. The annual appreciation rate for each property is an indication of how much a property’s value (based on sale price) has increased or decreased in a given year. Often annual appreciation rate is used in real estate analysis to predict a home’s future value based on an expected appreciation rate. The appreciation rate of past sales is approximately the price difference between the second and first sale divided by the period of time between the sales, with additional consideration for compounding appreciation between years, and is defined by the following equation:

---

\[ \text{AAR} = \left[ \frac{\text{SP2}}{\text{SP1}} \right]^{(1/T)} - 1 \times 100 \]

Where: \( \text{AAR} \) = annual appreciation rate  
\( \text{SP2} \) = second sale price  
\( \text{SP1} \) = first sale price  
\( T \) = time between \( \text{SP2} \) and \( \text{SP1} \), in years

The two data groups (encumbered properties and unencumbered properties) used in the previous sale analysis section were paired down even more to only include properties with more than one sale in the following analysis. Multiple sales are needed for each property to calculate the change in value between the first and second sale. Additionally, only sales occurring more than thirty days apart were used to limit the number of anomalous sales taking place on the same day, or within the same week. Sales eliminated based on this unit of time suggest properties purchased using real estate options or “quick flips,” both of which are not representative of typical market conditions. The final size of the easement data set is sixty-one properties. This data set is currently the largest of any study of this kind. The advantages of a larger data set are well known to researchers, scientists and statisticians for their ability to provide a more accurate representation and establishment of trends.

**Easement and Covenant Encumbered Properties Data Group**

To reiterate, the qualifying characteristics which define this final data set are: single-family residence only, within the historic district, with more than one sale (more than $10,000 and occurring more than thirty days apart) between 1990 and 2010. These defining characteristics yield a data set of sixty-one encumbered properties and 726 unencumbered properties from which annual appreciation rates were calculated. A summary of characteristics based on the variable sets explored earlier provide
information defining the sixty-one encumbered properties more completely (figures 2.18-2.20).

| Number of Unique Properties | 61 |
| Total Number of Unique Sales | 173 |
| Minimum Number of Sales per Property (controlled variable) | 2 |
| Maximum Number of Sales per Property | 7 |
| Mode Number of Sales per Property | 2 |
| Average Number of Sales per Property | 2.84 |
| Earliest Donation Year | 1963 |
| Latest Donation Year | 2007 |
| Average Age of Encumbrance (also mode) | 28 years |

Figure 2.18: Sale and encumbrance history of 61 encumbered properties.

| Ansonborough | 22 | 36.07% |
| Downtown | 2 | 3.28% |
| French Quarter | 2 | 3.28% |
| Harleston Village | 2 | 3.28% |
| Mazyck-Wraggborough | 6 | 9.84% |
| Radcliffeborough | 3 | 4.92% |
| South of Broad | 24 | 39.34% |

Figure 2.19: Neighborhood distribution of 61 encumbered properties.

| Easement | 36 |
| Covenants | 25 |
| Exterior | 61 |
| Interior | 8 |
| Open Space | 10 |
| Historic Charleston Foundation | 55 |
| Preservation Society of Charleston | 7 |

Figure 2.20: Summary of encumbrance typology, including the representation of the two encumbrance holding organizations.

**Comparable Unencumbered Properties Data Group**

The baseline group of 726 unencumbered properties are a representation of all qualifying properties in the Charleston Old and Historic District and represent a sample of the overall residential real estate market trends in downtown Charleston. Because this study aims to interpret appreciation rates of properties over a twenty-year period, it was
necessary to develop a method of comparing all annual appreciation rates for a single property to all appreciation rates of other individual properties. A chart organizing the appreciation rate for each property in a given year was the best method. The following chart allows all available appreciation rates for all properties to correspond to their place in time, while preserving their association to a single address. Due to the manual nature of inputting the appreciation rates for each property in the chart, including all 726 unencumbered properties is not only impractical for this study, but also unnecessary given the comparable number of encumbered properties used in comparison. Using all 726 properties may better illustrate the appreciation rates of unencumbered properties over time, but it would not postulate additional insight regarding how encumbered properties behaved. Instead, neighborhood and street characteristics of the sixty-one easement-encumbered properties were analyzed to develop a better understanding of the Charleston properties they represent.

Using the descriptive characteristics described in the next paragraph, a data set of sixty-one unencumbered properties was chosen based on spatial characteristics to maximize the similarities of influential variables between the two data sets. Because appreciation rate is an index of a single property’s value change, factors such as square feet are not nearly as influential as factors that impact the overall area. In other words, these differences are taken into consideration by comparing sale price one of a given property with sale price two of that same property. The earlier variable distinctions proved that spatial characteristics are the most influential factor impacting sale price. The only significant difference between the two sets of data examined for appreciation rates is the presence of a property encumbrance in the form of an easement or covenant. No properties from Cannonborough-Elliotborough or the South-Eastside neighborhood
were included in either group of properties because of a lack of qualifying sales data for encumbered properties in those neighborhoods.

The process of selecting unencumbered properties to compose a comparable set of “case study” properties, parallel to the limited number of encumbered properties under consideration, involved sorting the data in Microsoft Excel; first by neighborhood, then by street, then by year built. From the ascending list of properties, the first properties listed within each neighborhood/street category were selected for inclusion in the unencumbered data set. For example, of the twenty-two encumbered properties in Ansonborough making up the sixty-one property data group, three are located on Anson Street, two on George Street, one on Hasell Street, seven on Laurens, two on Society, and seven on Wentworth. To select twenty-two unencumbered properties from the same neighborhood, the data group of all 726 unencumbered properties is sorted in Excel as described above, and the first properties that share the same characteristics of neighborhood and street addresses are selected. The first three numbered street addresses on Anson Street are included to correspond with the three Anson Street encumbered properties in the parallel data set. Through this process, a parallel group of unencumbered properties with three located on Anson Street, one on Hasell Street, two on Society Street and seven on Wentworth Street are selected for inclusion. Notice, no properties on George or Laurens Streets are mentioned or selected in the unencumbered data set. This is because there are no qualifying unencumbered properties located on these two streets. The remaining nine properties necessary to create a set of twenty-two unencumbered Ansonborough properties are selected at random from the neighborhood

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86 Year Built was included to ensure the age of properties most closely resembled the age of encumbered properties. The resulting average year built of properties in the unencumbered data set of 61 properties was 1831; with a min year built of 1725, and max year built: 1995.
with an emphasis on streets that are already included (six properties from Anson and three from Hasell). This method is repeated for each neighborhood.87

The Downtown neighborhood proved the most difficult to populate with parallel properties according to this methodology because of the few qualifying unencumbered properties in the neighborhood to choose from. The portion of the encumbered data set located in the Downtown neighborhood is populated by properties on George Street. Within the same neighborhood, the only qualifying unencumbered properties are located on Menotti Street. An alternative choice of properties Downtown was not possible, likely due to the commercial nature of Downtown. Although George Street was historically lined with single-family residences, very few of these properties retain the single-family use today. The available properties on Menotti Street are part of a 1995 development set back from the road, in the middle of the George-Meeting-Calhoun-Anson block. Although these two properties are not ideal comparison for this study (both in location and age), they are included as the only available representatives of the Downtown neighborhood.

**Appreciation Rates Over Time**

Once the comparable “case study” group of sixty-one unencumbered properties is selected, the annual appreciation rates of both groups of properties (encumbered and unencumbered) were plotted in the table created to illustrate the annual rates of each property during the study period (appendix C).

Although sales took place in different months each year, appreciation rates were plotted based on whole years. For example, the first sale available for 13 Franklin Street

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87 See Appendix B for maps illustrating the locations of properties selected.
took place in March of 2002 for $755,000. A following sale occurred in June of 2004 for $905,000. The annual appreciation rate for 13 Franklin Street in the period between the March 2002 sale date and June 2004 sale date is calculated at 8.3 percent. The 8.3 percent annual appreciation rate is charted for each year of the sale period, beginning in 2002 and ending in 2004. The next sale occurred in June of 2010, for $1.15 million, resulting in a 4.1 percent annual appreciation rate since the time of the last sale in 2004. The 4.1 percent annual appreciation rate is applied for all years between the two sales, beginning in 2005 and ending in 2010. This method implies that the years containing a sale are assigned an appreciation rate value corresponding to the first sale period within that year. So, despite obvious overlap of appreciation rates in the year of a sale, each annual rate is attributed to whole years. The preceding annual appreciation rate and following appreciation rates are not averaged. The average of all annual property appreciation rates was calculated for each year, for both groups of properties, and is shown in the graph below (figure 2.21). A comparison of the volatility versus stability of property values over time is apparent between each group of properties. The information shown in the graph can be applied to events in the local and national real estate market as a whole, again, to further understand the patterns present.
Figure 2.21: Average annual appreciation rate of both encumbered and unencumbered properties.

For most of the 1990s, the average annual appreciation rate of encumbered properties behaved almost identically to unencumbered properties, but at a reduced three percent difference. Both encumbered and unencumbered properties rose and fell at the same time, by a similar rate, but encumbered properties appreciated at a noticeably lower rate. After 1996 the relationship of the two data sets becomes more complex.

The majority of the time, annual appreciation rates of unencumbered properties exceeded those of encumbered properties. However, in five of the twenty years included in the study period, encumbered properties evidence a higher average annual appreciation rate. Instances when encumbered properties exhibited a higher appreciation rate occurred only for individual years, typically more than five years apart; the only exception occurring in the two consecutive years, 2008 and 2009. The two consecutive years, 2008 and 2009, are the two years when the Charleston real estate
market, along with the majority of real estate markets in the country, experienced the worst property appreciation in nearly two decades. However, whereas the appreciation rates of unencumbered properties fell lower below any other point within the study period, encumbered properties appear to have held their value slightly better, with only a 0.14 percent difference from the previous low during the study period in 1993. Unencumbered properties experienced a 1.54 percent drop from the previous recorded low in 1991. Although this only represents a sample of all properties, it suggests that although encumbered properties are subject to a lower annual appreciation rate, they remain less vulnerable to abrupt market changes.

**Overall Average Annual Appreciation Rates**

To further investigate how significant the difference in the overall average annual appreciation rate is between encumbered and unencumbered properties, the overall average annual rate for both sets of properties is calculated using a weighted average. To do this, the average annual appreciation rate during each sale period is calculated for each property and multiplied by the total number of years that appreciation rate existed. For example, the chart displays 60 Anson Street had an annual appreciation rate of 16.6 percent for the years 1995-2000 and a rate of 4.30 percent for 2001-2003. The average of the two rates for this property, 12.5 percent, is then multiplied by the total number of years a rate is present, 9, to attain a weighted value of 112.5 percent. This method is repeated for each property within both groups of encumbered and unencumbered properties. The final average, weighted by time, is achieved by dividing the sum of all weighted values (of appreciation rates) by the sum of all years with known appreciation rates. This is a more accurate method than using the mean of each annual average
illustrated in the graph because each year does not have the same number of rates available.

The resulting overall weighted average for each group of properties shows that encumbered properties appreciate on average 10.04 percent annually, whereas unencumbered properties appreciate 12.37 percent annually. This signifies that unencumbered properties appreciate, on average, 2.33 percent more each year. This finding is the most comprehensive and significant finding of the research. Though it does not have the fine grained distinctions of looking at differences within neighborhoods or depict market based fluctuations by year, it is a take away from a refined and yet statistically significant dataset not previously established in a study. Because only sixty-one of the available 726 unencumbered properties are represented in this finding, a second, overall average using all available annual appreciation rates was computed and subjected to a paired, two-tailed, statistical heteroscedastic t-Test to verify the significance of the results.88

Because this larger comparison does not require manually charting each appreciation rate by year, as was done in the previous comparison with the smaller case study group of unencumbered properties, the annual appreciation rates of all qualifying properties without easements were used to calculate an overall average. The weighted average methodology mentioned earlier (sum of the product of the annual appreciation rate and the years between sales, divided by the sum of total years between sales) was applied to this larger data set. In this instance, the precise time between both sales is used, with days and months represented as a fraction of a year. Rather than combine all rates for one property and calculate a single average for each property, as was done in the

88 Heteroscedastic t-Tests are used when the two sets of data being compared have unequal variance.
previous analysis, each rate is treated as an individual piece of data. The sum of all weighted values within each group of properties are then divided by the total time to yield the overall average annual appreciation rates for each group of properties, weighted by the length of time they apply.

Encumbered properties overall produced a 10.09 percent rate and unencumbered properties yielded 12.18 percent. This is a 2.09 percent difference. You will notice that the 10.09 percent rate for all encumbered properties differs from the earlier 10.04 percent average represented in the chart. This discrepancy is attributed to the method used in the chart where each sale period was rounded to whole years. The 10.09 percent weighted average credits each annual rate to the exact fraction of a year it represents and is a more accurate number. Regardless, the finding from both methods of calculation reveals a difference of approximately two percent annually between the two data sets.

**Statistical Analysis**

The distributions of all individual annual appreciation rates for all properties were graphed (figure 2.22). The distribution of all unencumbered annual appreciation rates appears skewed initially because of the inclusion of extreme outliers. The scale of a secondary distribution is adjusted and shown at the same scale as encumbered properties for a more accurate comparison (2.23).

One method of characterizing the distribution of all annual appreciation rates is the interquartile (IRQ) range. The IRQ range represents the central tendency of the data and is comprised of the median data point +/- twenty-five percent of the remaining data. The IRQ of both encumbered and unencumbered properties is similar, signifying a normal distribution.
Figure 2.22: Distribution of encumbered and unencumbered annual appreciation rates. It is difficult to see that the unencumbered properties are normally distributed from the figure above, but the summary data bears it out.
Figure 2.23: Distribution of encumbered and unencumbered annual appreciation rates. Shown at the same scale.

Figure 2.24: Results of a paired, two-tailed, heteroscedastic t-Test.
A heteroscedastic t-Test is used to determine if the individual annual appreciation rates of the two groups of properties are significantly different from each other (figure 2.24). A P-value less than 0.05 is generally considered to be evidence of a statistically significant difference. The comparison of encumbered to unencumbered properties resulted in a P-value of 0.0105, signifying the annual appreciation rates of encumbered properties are significantly less than those of unencumbered properties. This is further evidenced by the fact that the ninety-five percent of the appreciated rates on encumbered properties are less than 18.06 while ninety-five percent of the unencumbered properties have appreciation rates greater than roughly the same value at 18.44 (as referenced in the distributions above).

At 30.9, the mean annual appreciation rate of unencumbered properties is 2.6 times greater than the mean appreciation rate of 13.7 at unencumbered properties. The mean (30.9) appreciation rate of unencumbered properties is substantially greater than the median (10.3). This difference demonstrates the influence of a few extremely large annual appreciation rates. A similar, yet diluted, relationship can be seen between the mean (x) and median (y) values for unencumbered properties.

**ADDITIONAL ANALYSIS OF FINDINGS**

Several additional techniques were used to further compare the annual appreciation rates of encumbered and unencumbered properties.

**Neighborhood**

The descriptive variable of neighborhood location was a significant distinction during the initial observations. The “case study” group of properties was primarily
selected based on their location, so it is necessary to address the neighborhood distribution of the total 726 unencumbered properties.

<table>
<thead>
<tr>
<th>Neighborhood</th>
<th>Number of Properties</th>
<th>Percent of Total Properties</th>
<th>Number of Annual Appreciation Rates</th>
<th>Percent of Total Appreciation Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ansonborough</td>
<td>23</td>
<td>3.21%</td>
<td>41</td>
<td>2.66%</td>
</tr>
<tr>
<td>Cannonborough-Elliotborough</td>
<td>1</td>
<td>0.14%</td>
<td>2</td>
<td>0.13%</td>
</tr>
<tr>
<td>Downtown</td>
<td>7</td>
<td>0.98%</td>
<td>13</td>
<td>0.84%</td>
</tr>
<tr>
<td>French Quarter</td>
<td>20</td>
<td>2.79%</td>
<td>40</td>
<td>2.59%</td>
</tr>
<tr>
<td>Harleston Village</td>
<td>224</td>
<td>31.28%</td>
<td>489</td>
<td>31.67%</td>
</tr>
<tr>
<td>Mazyck-Wraggborough</td>
<td>24</td>
<td>3.35%</td>
<td>48</td>
<td>3.11%</td>
</tr>
<tr>
<td>Radcliffeborough</td>
<td>58</td>
<td>8.10%</td>
<td>149</td>
<td>9.65%</td>
</tr>
<tr>
<td>South of Broad</td>
<td>359</td>
<td>50.14%</td>
<td>762</td>
<td>49.35%</td>
</tr>
</tbody>
</table>

Figure 2.25: Summary of neighborhood statistics for all unencumbered properties.

The neighborhood distribution of all unencumbered properties reveals that the majority of properties, and resulting annual appreciation rates, represent Harleston Village and South of Broad (figure 2.25). This uneven division may have a bearing on the two percent annual difference discovered earlier so the average annual appreciation rates of all unencumbered and encumbered properties was calculated for each neighborhood (figure 2.26).

<table>
<thead>
<tr>
<th>Neighborhood</th>
<th>Encumbered</th>
<th>Unencumbered</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ansonborough</td>
<td>11.04%</td>
<td>10.3%</td>
</tr>
<tr>
<td>Downtown</td>
<td>8.37%</td>
<td>11.44%</td>
</tr>
<tr>
<td>French Quarter</td>
<td>8.73%</td>
<td>12.78%</td>
</tr>
<tr>
<td>Harleston Village</td>
<td>5.1%</td>
<td>11.43%</td>
</tr>
<tr>
<td>Mazyck-Wraggborough</td>
<td>11.02%</td>
<td>11.82%</td>
</tr>
<tr>
<td>Radcliffeborough</td>
<td>10.68%</td>
<td>13.42%</td>
</tr>
<tr>
<td>South of Broad</td>
<td>9.42%</td>
<td>12.61%</td>
</tr>
</tbody>
</table>

Figure 2.26: Neighborhood annual appreciation rates of all unencumbered properties.

Because the average annual appreciation rate of all unencumbered properties within the South of Broad neighborhood is higher that the average (12.18 percent) discovered in this study, it is possible the overall average is unbalanced. However, the
other largely represented neighborhood, Harleston Village, has an overall annual average appreciation rate below the 12.18 percent overall, and is in the bottom half of all averages represented. Therefore, the potential impact, if any, is likely small.

**Encumbrance Saturation**

The saturation of encumbrances within each neighborhood explored earlier shows a somewhat surprising revelation. Ansonborough, the neighborhood with the highest density of easement and covenant encumbered properties, is the only neighborhood in which encumbered properties share a higher average annual appreciation rate over unencumbered properties. This may represent several factors at play, including an anomalous result. One explanatory factor may harken back to the comparison of easement and covenant encumbrances to that of a neighborhood association in the first chapter. The fact that twenty percent of all properties within Ansonborough are encumbered by an additional preservation protection may influence the overall impact an encumbrance has on a single property.

**Similar Properties**

A final comparison using the average annual appreciation rates among encumbered and unencumbered properties with similar characteristics reinforces the finding that an encumbrance inhibits a property’s annual appreciation relative to unencumbered properties. For this comparison, 134 encumbered and unencumbered properties within the South of Broad neighborhood were selected based on features of the property.\(^89\) The criteria of features used to assimilate two groups of similar

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\(^89\) The South of Broad neighborhood was selected due to the fact that the neighborhood makes up the largest overall percentage of the total data set.
properties were chosen to reflect the most common characteristics occurring within each field to reflect the highest number of properties. The criteria are as follows: location within the South of Broad neighborhood, 3-4 bedrooms, 2-2.5 stories, and 2,000-3,000 livable square feet. This criteria yields 128 qualifying unencumbered properties (with 271 unique annual appreciation rates) and six qualifying encumbered properties (with sixteen unique annual appreciation rates). Using these two groups of properties, the weighted average annual appreciation rate (methodology as discussed previously) of unencumbered properties is 10.72 percent. The appreciation rate of unencumbered properties proves 1.17 percent more than the weighted average annual appreciation rate of encumbered properties, which is 9.54 percent. Although this difference in average annual appreciation rates within a specific property type reinforces the overall conclusion that encumbered properties appreciate at a lower annual rate than unencumbered properties, the set of available data is not large enough to draw specific conclusions of reduced annual appreciation based on property characteristics. Though the difference in appreciation rate seen in this segment of the properties (1.17 percent) is less than that discovered in the previous models, it follows the macro trend of lower appreciation rate experience by encumbered properties.

**Implications**

The approximate two percent difference in annual appreciation rate presented in this study is a significant variation. To exemplify the magnitude of this variation, the table below represents the compounding difference a two percent reduction in annual appreciation will have on a hypothetical property over twenty years (figure 2.27).
<table>
<thead>
<tr>
<th></th>
<th>Unencumbered (12.18 percent)</th>
<th>Encumbered (10.09 percent)</th>
<th>Potential Profit Loss</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchase Price</td>
<td>$500,000.00</td>
<td>$500,000.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>After 5 Years</td>
<td>$888,274.48</td>
<td>$808,554.62</td>
<td>$79,719.86</td>
</tr>
<tr>
<td>After 10 Years</td>
<td>$1,578,063.09</td>
<td>$1,307,521.15</td>
<td>$270,541.94</td>
</tr>
<tr>
<td>After 15 Years</td>
<td>$2,803,506.32</td>
<td>$2,114,404.53</td>
<td>$689,101.79</td>
</tr>
<tr>
<td>After 20 Years</td>
<td>$4,980,566.21</td>
<td>$3,419,223.10</td>
<td>$1,561,343.11</td>
</tr>
</tbody>
</table>

**Figure 2.27**: Hypothetical profit loss over time of encumbered properties.

Though beginning with a conjectural situation, this chart shows the cumulative impact an easement or covenant encumbrance can have on a property’s value over time.
CHAPTER THREE
CONCLUSION

This study fundamentally reinforces the current tax code which acknowledges historic preservation easements are associated with a diminished property value. The immediate loss in value attributed to a donation was not considered in this research. Instead, the focus of this project assessed the long-term financial implications of a perpetual easement on a property’s appreciation rate. The enduring diminished value presented in this study is currently not addressed in the tax code.

This research reinforces the results of the few similar studies existing on the long-term financial impacts of perpetual property restrictions (encumbrances). Studies of historic preservation easements on condominium property values in Savannah, GA, and Philadelphia, PA, both concluded that the financial impact an easement has on a property over time becomes larger as the easement ages.\(^9\) The Savannah study attributed a 2.85 percent per year rate decrease, while the Philadelphia study attributed a 4.6 percent per year reduction after donation.

The variation between annual rate reductions can be attributed to several factors. Asabere and Huffman suggest two explanations: the property rights effect and the highest and best use effect. The property rights effect is connected to the severity of restrictions enforced by the managing organization and how much flexibility the easement allows for personal preferences. Although a valid point, the allowance for personal preference assumes the buyer understands what will and will not be allowed at the time a purchase price is negotiated and that the final sale price is impacted accordingly. A more encompassing assumption is the theory that an easement has the

\(^9\)Winson-Geideman et al., *The Impact of Historic Façade Easements on Condominium Value*; Huffman et. al, *The Value Discounts Associated with Historic Façade Easements*. 
potential to restrict capital improvements to a property which could yield a higher sale price down the road. An obvious example is a rear addition. A historic property located in a historic district without an easement would most likely be allowed to add a rear sunroom to the back of their property. This addition would increase the overall square footage and living space and would most likely increase the value of the property. However, a similar property with an easement may not be granted permission by the managing organization for the same addition. Another example is a backyard pool. If an easement covers the entire parcel, the managing organization may not allow the addition of a pool which would otherwise be allowed on an unencumbered parcel.

The second influence Asabere and Huffman discuss is the highest and best use effect. As discussed in the initial chapter, highest and best use is a significant factor to recognize when considering an easement’s impact on property value over time. Unencumbered properties are allowed more flexibility, to maximize use and profits, over time than encumbered properties.

The overall finding that historic preservation easements have a substantial impact on property values is significant. The difference in appreciation rates between encumbered and unencumbered properties reveals a disconnect between the market value of an encumbered property and current tax relief. The association of a lower appreciation rate with encumbered properties poses a threat to the continued use of this vital preservation tool.

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91 Given that it is not visible from the public right of way and conforms to land use regulations and zoning codes.
Suggestions for Further Study

To complement the statistical methods employed in this study, a hedonic model should be used to further reinforce this research and measure the statistical impact of an easement on property value against other property characteristics. Both the Savannah and Philadelphia studies used regression analysis, thus hedonic modeling is the logical next step to further the validity of this research.

A further examination of historic preservation easements and their influence on appreciation would assess properties outside of the historic district. It would be interesting to see if the historic designation premium that is so often discussed in preservation economics literature applies to individually listed properties or only applies to the area as a whole. With the exception of properties individually listed on the National Register of Historic Places, easement encumbered properties located outside of a historic district are not eligible for a tax deduction under current tax code. It would be interesting to research how the value of individually listed properties compares over time to other properties in the area.

Following this research, it can be theorized that easement encumbered properties located outside of a historic district would suffer a more greatly reduced appreciation. Because these properties may not have local regulations in the form of a preservation ordinance associated with historic districts, an easement encumbrance on a property is subject to a more stark contrast to regulation about changes than neighboring properties. Outside the bounds of a local historic preservation ordinance there are no preservation protections afforded for a property. Even if a property is individually listed on the National Register, the owner is not bound by any preservation obligations to maintain the building, let alone keep it standing. Undertaking the restrictions of a
historic preservation easement on these threatened properties would significantly affect the highest and best use over time; at a potentially much higher level than if that property is already protected by local ordinances as part of a historic district.

One final area of future study that may reinforce the long term impact easement and covenant properties have on property value would be an assessment of covenant properties after the restrictions expire. This study will not be possible in Charleston for several years given most covenants have seventy-five year term restrictions. It would be interesting to investigate if appreciation rates increase once the restrictions are lifted.

**Recommendations**

A solution to address the long-term financial implications of a reduced appreciation rate would be to adopt a uniform annual tax incentive for all properties protected by easements or covenants. This incentive could occur at the federal level, replacing the existing one-time deduction; or even at state and local levels as a supplemental enticement in the form of a reduction in property tax. Whatever form, an annual tax incentive would address many of the concerns among all parties involved in the current debates surrounding easements.

Abolishing the one-time federal tax deduction for easements in favor of an annual deduction would preserve the initial financial incentive, although its value would be much smaller, while offsetting the potential loss of appreciation that accumulates over time. The larger change however, would be the development of an incentive aimed at buyers. Developing historic preservation easements as a real estate marketing tool has the potential to create more awareness for historic preservation.
Currently, easements are not always understood at the time of sale and as a result they have developed a bad reputation among buyers who are not familiar with the responsibilities legally required of them. If easements are seen as a desirable asset, a dialogue would start much earlier in the sale process to attract buyers.

The introduction of a state incentive would expand on legislation that is already in place. South Carolina currently offers incentives for land conservation easements, but distinguishes between easements for conservation and those for historic preservation purposes. The incentives allowed for land conservation easements include ad valorem tax valuation, which considers the property’s loss in value due to highest and best use when assigning property tax.

Obviously, the granting of a conservation easement may affect a property’s fair market value. Section 27-8-70 of the Conservation Easement Act of 1991 recognizes this by providing: “For ad valorem tax purposes real property that is burdened by a conservation easement must be assessed and taxed on a basis that reflects the existence of the easement.”92

If a preservation easement has been recognized by the Federal Government’s tax code as capable of diminishing the value of a property upon donation, that diminished value should be recognized in the property taxes for that property. Even if property taxes account for the initial loss of value from an easement donation, after the first sale that reduced value may be lost. Any reduction in property tax at the local level must be on a continuing basis.

A final recommendation, to create a national alliance organization of historic preservation easement and covenant holding organizations, would provide organizations and homeowners with the support to enact the policy changes suggested above.

Throughout the course of this research, the lack of cohesive documentation of easements on a national scale was alarming, especially when compared to the large amount of data available regarding land conservation easements. The concept, method, and goal of a land conservation easement are very similar to that of a historic preservation easement: protect a valuable resource for future generations. The Land Trust Alliance provides a good model.

As an organization, the Land Trust Alliance compiles a national list of accredited land trusts, and helps new organizations qualify. They developed a system of *Standards and Practices* to provide a guideline for ethical performance, and they educate organizations on implementation. The Alliance fundraises and lobbies to create additional support systems to further the overall mission of conservation.

An “alliance” of historic preservation easement holding organizations would create a system of quality control for organizations and their methods of enforcement. A national organization would produce a uniform front to fight for the necessary policy changes suggested in this research.

This study of the financial impact a historic preservation encumbrance (easement or covenant) holds over a twenty year study period contributes to the discussion regarding the effects of easements on a property’s value. It addresses the concerns from both preservation and economic viewpoints and establishes the reality that there is a long-term negative financial impact of an encumbrance. This research also addresses a topic that has yet to be considered in any other study to date by recognizing the financial security an encumbrance may provide to a property owner in a volatile real estate market. In the wake of the Nation’s most recent economic recession, this small sense of
security may be more valuable over time than a higher appreciation rate and should be acknowledged.

**Summary of Recommendations**

1. National Level
   a. Create an organization of all Historic Preservation Easements
      i. Allow more accurate data collection
      ii. Provide opportunities for funding/lobbying
      iii. Develop an alliance among organizations with similar goals to share methods of enforcement
      iv. Accept a uniform, national baseline of preservation protections to be enforced
   b. Amend current Federal Tax Code to allow annual deductions for easements (in place of, or in addition to the one-time deduction currently allowed)

2. State Level (South Carolina)
   a. Amend current State Tax Code to allow a tax relief for property owners with historic preservation easements/covenants.
      i. One-time deduction (currently not in place) and/or;
      ii. Annual deduction (currently not in place)

3. Local Level (Charleston, South Carolina)
   a. Easement holding organizations should provide the City’s Design Review Board with a current list of easement and covenant properties to ensure all changes approved by the City are also approved by the easement holding organization.
Appendix A

Downtown Charleston Neighborhood Boundaries

1. South of Broad
   a. Boundaries:
      i. North by Broad Street
      ii. South/West by Murray Blvd
      iii. East by East Battery- East Bay- Concord Street

2. Ansonborough
   a. Boundaries:
      i. North by Calhoun Street
      ii. East by Concord Street
      iii. West by Meeting Street
      iv. South by N. Market Street

3. French Quarter
   a. Boundaries:
      i. North by N. Market Street
      ii. East by Concord Street
      iii. West by Meeting Street
      iv. South by Broad Street

4. Harleston Village
   a. Boundaries:
      i. North by Calhoun Street
      ii. East by St. Philip Street- Archdale Street
      iii. West by Halsey Blvd- Lockwood Blvd
      iv. South by Broad Street

5. Radcliffeborough
   a. Boundaries:
      i. North by Morris Street
      ii. East by King Street
      iii. West by Ashley Ave
      iv. South by Calhoun Street

6. King Street Historic District
a. Boundaries:
   i. North by Mary Street
   ii. East by King Street
   iii. West by East Bay Street- Alexander Street- America Street
   iv. South by Calhoun Street

7. Mazyck-Wraggborough
   a. Boundaries:
      i. North by Calhoun Street
      ii. East by Meeting Street
      iii. West by St. Philip Street- Archdale Street
      iv. South by Broad Street

8. Cannonborough/Elliotborough
   a. Boundaries:
      i. North by Septima Clark Parkway (17)
      ii. East by Meeting Street
      iii. West by President Street
      iv. South by Bee Street- Morris Street

9. Eastside/Southside
   a. Boundaries:
      i. North by Harris Street
      ii. East by East Bay Street
      iii. West by Meeting Street
      iv. South by South Street
Figure A-1: Neighborhood boundaries shown in ArcGIS as they were used to assign
Figure A-2: All encumbered properties held by Historic Charleston Foundation and the Preservation Society of Charleston; overlaid neighborhood boundaries shown in ArcGIS as they were used to assign location.
Figure A-3: Charleston Old and Historic District boundary overlaid neighborhood boundaries; shown in ArcGIS as they were used to assign location to each property.
APPENDIX B
Appendix B
Spatial Relationships of Encumbered Properties

Figure B-1: All encumbered properties (easements and covenants) on the Charleston Peninsula held by Historic Charleston Foundation and the Preservation Society of Charleston.
Figure B-2: All encumbered properties in the Charleston Old and Historic District with available sales data.
Figure B-3: All encumbered properties used to calculate appreciation rates.
Figure B-4: All Properties, encumbered and unencumbered, used to calculate appreciation rates illustrated in the annual appreciation rate chart (Appendix C). Parcels shown in orange are encumbered properties. Parcels shown in blue are unencumbered properties.
Figure B-5: All Properties, encumbered and unencumbered, used to calculate the overall average appreciation rates illustrated in statistical distribution (pp 67-68). Parcels shown in orange are encumbered properties. Parcels shown in blue are unencumbered properties.
### Appendix C

#### Annual Appreciation Rates

<table>
<thead>
<tr>
<th>ENCOMIUM PROPERTIES</th>
<th>ARCH STREET</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>Property Average</th>
<th>Count</th>
<th>Weighted Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parcel ID</td>
<td>House</td>
<td>Street</td>
<td>Total Value</td>
<td>Weighted Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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**Average Annual Appreciation Rate**: 7.09%
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