

Reviewing the Easement Document

- Identify the donor and donee
- The purpose of the easement
- Mandatory elements required for a charitable contribution
- Determine the portions of the property or property features that are to be protected or are affected
- Review the documentation of the baseline condition
- The duration of the easement – perpetual or for a period of years
- How may easement be extinguished, modified, or transferred
- Identify uses and activities that are permitted, prohibited, or restricted
- Determine if any restoration is required
- Determine the criteria for review of restricted activities or uses
- Restrictions on sale or resale, and provisions for notice
- Prohibitions on division or subdivision
- Prohibitions on demolishing, moving, or removing the improvements
- Requirements for mandatory insurance
- Casualty loss
- Inspection
- Enforcement
- Public access
- Subordination of mortgages
- Recordation

Comparison of Easement to Zoning and Historic Preservation Ordinances

The historic preservation ordinance:

- is not binding upon current or future property owners
- delays by moratorium but does not prohibit demolition of historic properties
- does not provide any protections for interior features and characteristics
- does not provide for any monitoring.
- has enforcement provisions that apply solely to illegal demolition, but the potential civil penalty (not to exceed ten thousand dollars) is a relatively minor cost in a market area of multi-million dollar homes.
- can be amended by the City Council or challenged in court

The Conservation Easement Agreement for Historic Preservation:

- substantially exceeds the scope of the historic preservation ordinance
- has stronger provisions for monitoring and enforcement
- is perpetual, and runs with the land
- is binding upon successive property owners
- maintains and preserves the integrity of the property and the residence in their historical condition, protecting the exterior (except for the first storey of the rear facade) and features which are documented in their baseline condition
- establishes Standards and Guidelines for maintenance, repair, and alteration
- provides a mechanism for review by the easement holders of any repairs or alterations of a certain scale or affecting certain portions or areas of the property

- requires annual monitoring of the exterior
- allows the easement holders to file for arbitration to enforce compliance with the Agreement, and to litigate if arbitration is waived
- establishes funding for Pinetown Heritage, one of the easement holders (or its successors), upon each successive transfer of the fee interest or portion thereof and upon extinguishment of the easement

The Easement-Holding Organization

- Identify the donee(s)
- History of the organization
- Purpose of the organization
- Structure of the organization
- Organization staff
- Current financial condition
- Past experience as easement-holder
- Prior enforcement proceedings
- Do they have the human and financial resources to effectively monitor and enforce the easement agreement?

The Appraisal Process

Bundle of Rights

Interests vary, so real property is said to include a “bundle of rights” that are inherent in the ownership of real estate. Ownership includes the right to use real estate, to sell it, to lease it, to enter it, to give it away, or to choose to exercise all or none of these rights. The bundle of rights is often compared to a bundle of sticks, with each stick representing a distinct and separate right or interest.¹

Easement

An easement is an interest less than the fee estate, with the landowner retaining full dominion over his realty subject only to the easement, and the landowner may make any use of his realty that does not interfere with the easement holder’s reasonable use of the easement.²

Direct Comparison of Easement Sales

If there is a substantial record of sales of easements comparable to the donated easement (such as purchases pursuant to a governmental program), the fair market value of the donated easement is based on the sales prices of such comparable easements.³

Before-and-After Methodology

If no substantial record of market-place sales is available to use as a meaningful or valid comparison, as a general rule (but not necessarily in all cases) the fair market value of a perpetual conservation restriction is equal to the difference between the fair market value of the property it encumbers before the granting of the restriction

¹Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 1992), 10th ed., p. 6.

²Interagency Land Acquisition Conference, *Uniform Appraisal Standards for Federal Land Acquisitions* (Washington, D.C.: 1992), p. 56.

³26 CFR §1.170A-14(h)(3)(i).

and the fair market value of the encumbered property after the granting of the restriction.⁴

The Before and After method is used to determine whether, and the degree to which, an easement changes a property's use and value. Under the Before and After method, the value of the property after the imposition of the easement is subtracted from the value of the property before the imposition of the easement to estimate the value of the easement. Each value conclusion is made as of the same date.⁵

After determining the highest and best use of the property in before condition, fair market value is estimated by employing and reconciling as many of the three techniques as are applicable: the cost, sales comparison, and income approaches.

Easement Analysis

Given the lack of comparable sales of easement-encumbered properties, the appraiser must visualize and consider the effects the easement restrictions will have on the property relative to other properties,....”⁶

⁴26 CFR §1.170A-14(h)(3)(i).

⁵The Land Trust Alliance and the National Trust for Historic Preservation, *Appraising Easements* (Alexandria, VA: 1990), 2nd ed., p. 19.

⁶*Appraising Easements*, 2nd ed., p. 25.

Easement Sales Research

- Easement document recordings on Pinewood's Master List of Structures on the Historic Inventory.
- Easement-holding organizations
- Planning departments, historic resources boards, historic commissions, etc.

Before-and-After Method

- Income capitalization
- Cost
- Sales Comparison
 - Land as if unimproved
 - Property as improved

Before-and-After Sales Research

- Recent sales in the Pleasantville Historic District and throughout subject's Pleasantville neighborhood
- Recent sales in the remainder of subject's market area, i.e., Old Town, Downtown, Riverside, and Civic Center
- Recent sales throughout Pinewood
- Sales throughout Pinewood within the last five years
- Sales in competitive market areas
- Sales in comparable but non-competitive market areas
- Sales among residential properties on the National Register of Historic Places
- Sales among properties under the Mills Act in San Mateo County, and in Santa Clara County since 2005