Philadelphia-Area Preservation Tax Breaks Often Save Treasures Benefiting Few

Publication info: Knight Ridder Tribune Business News [Washington] 26 Feb 2002: 1.
ProQuest document link

Abstract (Abstract): An IRS analysis questioned the premise that homes with preservation easements lost value. That 1980s study, conducted by [Silvio Cutuli], looked at property owners in the Washington area who sought deductions for preserving the historic exteriors of their homes.
[Peter M. Saylor], 60, is long familiar with preservation easements. He is a former president of the Chestnut Hill Historical Society and remains a longtime member of its easement committee.
Saylor is just one of many in Chestnut Hill who have donated preservation easements. In all, the society has accepted two dozen easements, many of them on estates, thus clearing the way for the various owners to reduce their taxes.

Links: Linking Service

Full text: To see more of The Philadelphia Inquirer, or to subscribe to the newspaper, go to http://www.philly.com
Feb. 26--The Drake includes penthouse suites that cost $12,270 a month. A preservationist educated its owner about potential tax breaks.
You clearly should not drive down secluded Caryl Lane in Chestnut Hill. "Private Drive. Please Do Not Use," declares the sign. But a federal tax break helped maintain Caryl Lane's exclusivity.
You probably can't join the elite Sunnybrook Golf Club in Plymouth Meeting, but a similar federal tax deduction helped expand it.
You likely can't afford a $12,000-a-month penthouse at the Drake apartments in Center City. But the Drake got a $3 million federal tax deduction.
A homeowner on Caryl Lane, the golf club's members, and the firm that owns the Drake all have claimed perfectly legal tax deductions - - making them beneficiaries of a federal tax policy designed to encourage the preservation of open land and old buildings.
More than 20 years ago, despite warnings of the U.S. Treasury, Congress authorized tax subsidies for saving public treasures. Noble in intention, the goal was to protect buildings that tell the stories of our collective past, and to save disappearing meadows and farmland.
The legislation has contributed profoundly to the revitalization of decaying downtowns and the safeguarding of pastoral open spaces across the nation.
But the law has also been used in ways that raise troubling policy questions.
In many cases, the public is sacrificing tax revenue to save buildings or land from threats that are hardly menacing.
It is forgoing tax dollars to help private groups or individuals while getting little in return.
Consider: The homeowner on Caryl Lane won a generous tax deduction for pledging not to build a house in his backyard. He says he had no intention of doing that.
The owner of the Drake got a $3 million tax break for pledging never to alter the building's facade. Did the company plan to change that facade? "Of course not," said a top executive of the billion- dollar enterprise that owns the Drake.
Some members of the golf club shared the right to a $750,000 tax deduction -- their reward for donating money to a charity to buy 34 acres that buffer the club and its private drive from public view.
As "preservationists," homeowners have reaped tax deductions for protecting historic facades of houses the public can barely see.

Others have won tax breaks for keeping their land clear of development, while reserving the right to build tennis courts, swimming pools, gazebos, garages, driveways, even new buildings.

Increasingly, people who market estates to the rich have turned preservation tax breaks into what amounts to a sales tool.

Home buyers who need conventional shelter and shelter from taxes are claiming big tax deductions as they buy estates, pledging not to build on their sumptuous lawns.

Though all of this is legal, the public has little access to the facts and figures that would allow it to decide whether the tax breaks made sense.

Tax deductions are a private matter. So are the property appraisals used to justify them. The details of the preservation transactions at issue are buried in county courthouses in obscure real estate documents, if disclosed at all.

As farmland shrinks and suburbia expands, the actions of preservation advocates go largely unchallenged.

"How can you be against conservation, motherhood and apple pie?" said Silvio Cutuli, who analyzed conservation tax breaks as an IRS official. "That's the spin they put on it when, in fact, somebody figured out a way to make some money out of it."

The 30-story Drake apartment building, at 15th and Spruce Streets near the new Kimmel Center for the Performing Arts, is one of the pricier rental addresses in the region. Its penthouse suites run $12,270 a month.

The Drake is just one of 16,000 properties in Philadelphia that are historically certified and could qualify for tax deductions tied to that status.

About 19,000 other homes and buildings are eligible in the surrounding Pennsylvania, Delaware and New Jersey suburbs.

Only a few property owners have used this historical certification as a ticket to a tax break.

The Drake is one example. When the owner of the high-rise advertises for prospective tenants, a chief selling point is the building's 1929 exterior, a stunning creation of brick and sculptured terra-cotta with Spanish Baroque accents.

"The character of the building is only outweighed by that of its residents," proclaims the Drake's glossy rental brochure, featuring details of the ornate facade.

David J. Levey, executive vice president of Cleveland's Forest City Residential Group, which bought the Drake in 1998, said he had never heard of historic preservation tax breaks for protecting facades.

He found out about them from Don Meginley, then the president of the Preservation Alliance for Greater Philadelphia, the city's leading nonprofit preservation group.

"They sort of called me up, taught me a few things," Levey said.

Meginley told him about the tax advantages available to property owners such as Forest City when they donate what is known as a preservation easement -- a deed restriction banning changes to a building.

If Levey's company would spruce up the facade but never change it, Meginley told Levey, a considerable tax deduction would be available.

Levey said in an interview that Forest City had no intention of altering the facade.

No matter. For the Preservation Alliance, a key virtue of the deal was that the Drake's owner would also bind all future owners of the building from altering the distinctive facade.

As is its policy, the Preservation Alliance collected a fee of 5 percent for easements valued up to $3 million, former staffers say.

At that rate, Forest City's fee would have been $150,000. The money is used to monitor easement agreements and for general expenses.

An appraisal by John J. Hosey 4th, an expert often consulted in transactions involving the Preservation Alliance, determined that the property restrictions imposed by the easement on the Drake facade had reduced the building's value from $22 million to $19 million, Levey said.

The amount of the deduction for the Drake would be $3 million.
The amount saved in taxes with such deductions depends on tax brackets and other factors.
"That's real money to take off the table," Meginley said in an interview, regarding the Drake deduction.
"Especially on a building that you know you weren't going to tear down or change significantly anyway.
Suddenly, it's a historic building."
"An easement is money," Meginley said. "There's no question about it. That is salvation, my friend."
More than two decades ago, officials with the U.S. Treasury Department warned that preservation tax breaks would create "private gain at little private cost" with scant benefit for the public.
The warning was sounded before Congress while it debated whether to make permanent a law that offered tax deductions in exchange for conservation easements on historic buildings and undeveloped land.
Preservation enthusiasts dismissed the Treasury's warnings and vigorously endorsed the tax incentives "to protect vital lands and habitat," as one expert put it then. They argued that the government could not afford to buy all the undeveloped land that needed to be saved, and that tax deductions would help get the job done.
Their argument prevailed. In 1980, Congress made permanent the law that cleared the way for the tax breaks.
Soon after, IRS audits and research turned up real problems.
The inquiries found that some owners had vastly exaggerated the worth of their properties' development rights to claim bigger tax breaks.
Over time, other issues came into focus.
The law, and companion regulations, specified how the preservation easements and their tax deductions would work.
Historic-facade easements, such as the one donated by the Drake's owner, protect the outside of homes and buildings. The owner promises to keep a property in good repair and never change its exterior appearance.
For an open-space easement, the owner promises not to subdivide the property.
Both types of easements are binding on all future owners.
In exchange, the current property owner, but no future owner, is eligible for a tax deduction -- even if he or she never intended to develop the property.
The tax breaks are often worth big money.
The value of an easement is determined by an appraisal. An appraiser calculates the sales value of the existing property, then projects the lower value of the property after restrictions on developing it are taken into account.
The difference between those amounts is the dollar value of the easement -- and the value of the tax deduction.

Under court rulings, an easement to protect the facade of a historic house generates a tax break that is usually valued as a percentage of the worth of the entire property. Often, that works out to 10 percent to 15 percent, preservation experts say.
Tax deductions for preservation easements are based on the assumption that property owners are giving up something valuable, and therefore some of the property's worth is lost.
So far, that assumption often has proved false. In fact, easements may add value by preserving exclusivity.
"Particularly as you aggregate them, what you do is make the neighborhood more valuable," said Peter Lapham, executive director of the Chestnut Hill Historical Society. "It is, of course, a kind of paradox."
In this region and elsewhere, estates with easements have been resold at big profits, even after the sellers have banked their legal tax breaks for supposedly reducing the value of their properties.
While Congress found merit in saving historic buildings and open space in their own right, it also required that an open-space easement provide significant public benefit in return for what the U.S. Treasury lost.
No demand was made that the public be able to use or even enter the preserved properties.
IRS regulations say that buildings subject to historic easements should be at least partially visible to the public.
If a historic building is not visible, the regulations say it should be opened occasionally for tours.

With the generous tax breaks available, and so little required in exchange, word has spread about the financial advantages of preservation easements.
The IRS has never calculated how much the U.S. Treasury has been depleted by taxes lost due to easements. It tried in the mid-1980s, but gave up when it decided its data were flawed.
The Land Trust Alliance, the Washington-based umbrella organization for preservation nonprofits, says local and regional preservation groups held open-space easements on 2.5 million U.S. acres in 2000.
That's twice the total acreage of Delaware.
In 1990, only 450,000 acres in the nation were protected in this way.
The nonprofit preservation movement, though growing, remains less well-known than the government programs in which public money is used to buy farmland easements.
In Pennsylvania, which is in the national vanguard of farmland protection, taxpayers have financed the protection of 186,000 agricultural acres, twice the amount of ground covered by nonprofit preservation easements.
In the early policy debate over preservation easements, Daniel I. Halperin, deputy assistant secretary for tax legislation during the Carter administration, saw problems looming.
"There is every likelihood that substantial government funds will be expended without any corresponding public benefit," he told a U.S. House tax committee.
Because it was difficult to put a price tag on forgone development, some owners would exaggerate the easement's value to claim a bigger tax break, he said.
Gifts of property are "amenable to aggressive valuations that could not always be policed," Halperin said.
Federal studies in Philadelphia, Atlanta, Baltimore, Washington and Jacksonville, Fla., later showed that property owners tried to exploit these tax breaks just as Halperin had predicted.
Drawing upon IRS audits, the General Accounting Office, the investigative arm of Congress, said in one 1984 study that a group of 26 Philadelphia property owners had sought easement tax breaks that the owners valued at $7.5 million, when the easement donations were worth only $2 million.
The deductions were disallowed. The study did not identify the taxpayers.
Follow-up GAO research, released in 1986, found a similar pattern of exaggerated deductions.
An IRS analysis questioned the premise that homes with preservation easements lost value. That 1980s study, conducted by Cutuli, looked at property owners in the Washington area who sought deductions for preserving the historic exteriors of their homes.
In comparing the prices of the homes sold with easements and the homes sold without, the IRS found that those with the easements fared just as well.
Cutuli, with some hyperbole, scoffed at some of the claims that have been made by homeowners with easements on their properties.
"You can be all for this preservation stuff," he said in an interview. "Just don't make a mockery of it by going overboard with the claims you're making. Don't rob the American taxpayer because you think you're doing something high and mighty."
Halperin, the Treasury official, offered another warning to Congress. He advised the lawmakers to be wary of handing out tax breaks to donors who had given up little.
With donated easements, he said, some people "may receive substantial tax benefits simply for forbearing from doing something they did not, in any event, have any current intention of doing."
Halperin, now a professor at Harvard Law School, said in an interview that though such gifts may protect land in years ahead, the restriction "doesn't mean a darn thing to the current owners.
That's why I find the whole thing troubling."
Peter M. Saylor had no plans to sell his 1/3-acre backyard in 1997.
Nevertheless, the government gave him a tax break to make sure a new home would never be built there, and

that the public would always be able to see the historic medieval-style rear wall of his house.
Saylor and his wife, Caroline, live along verdant Caryl Lane in Chestnut Hill. Signs at either end of the serpentine lane mark it private.
In return for a onetime tax break, the Saylors signed a deed restriction that, among other things, forever forbids new construction behind their massive house.
Saylor, 60, is long familiar with preservation easements. He is a former president of the Chestnut Hill Historical Society and remains a longtime member of its easement committee.
Saylor said he could have sold the rear lot for about $100,000. He said he could not recall the amount of his family's tax deduction.
Though Saylor had no plans to sell that land for development, he said he might have been tempted in the future, if he had needed the money.
"I gave up something," he said.
Saylor acknowledged that he could have kept his yard development- free simply by not selling it.
But, he asked, "How do you know what the next buyer will do, or the next one after that?"
Saylor said his easement offered the public a chance to see his hilly backyard from nearby Norwood Avenue, a public street.
The easement deed cites the rear view of the Saylors' historic house, built in 1881. Resembling a medieval fortress, it boasts a 24- foot-high stone wall pierced with arrow slits.
He noted that another owner on Norwood had also donated a preservation easement.
"What that has created is a large open space that anyone can see from Norwood Avenue," Saylor said. "Or it all could have been subdivided. You have a lot of open space in there."
Saylor said he learned firsthand about the threat of development along Caryl Lane.
He and his wife bought their home in 1996 for $490,000. At the time, the house was one of five luxurious homes along the private hilly, wooded lane nestled between Norwood and Germantown Avenues.
Saylor was disturbed to find that a sixth home would soon arrive.
"The day I agreed to buy my house they started to bulldoze the lot across the street," he said.
It was then that he realized that a family had bought slightly more than a quarter-acre there, a little more than the minimum lot size permitted by zoning.
Before too long, the family had trucked in a manufactured home built in Lancaster.
"It's a nice enough house," Saylor, an architect, said of his new neighbor's place.
Joan McGowan and her husband are raising their 11-year-old daughter in that home.
"It's a lovely neighborhood," she said. "It's a nice hillside."
The Chestnut Hill Historical Society accepted the Saylors' easement.
Saylor is just one of many in Chestnut Hill who have donated preservation easements. In all, the society has accepted two dozen easements, many of them on estates, thus clearing the way for the various owners to reduce their taxes.
Bernard J. Frieden, a professor at the Massachusetts Institute of Technology, has questions about the social implications of preservation tax incentives.
"Who's benefiting and how? If the main beneficiaries are the landowners, why should they be subsidized?" said Frieden, associate dean of MIT's School of Architecture and Planning.
"If it's just to protect the views they like or the land they like, why should they be entitled to public support for that?"
Those policy questions might provide a lively discussion if applied to the easement acquired on a 34-acre strip of land that borders the exclusive Sunnybrook Golf Club. The land separates the club from a luxury housing development being built nearby.
About three years ago, Realen Homes of Yardley, Bucks County, was planning to extend that development to a

piece of land that runs in part along the half-mile driveway of the Plymouth Meeting club.
Sunnybrook was opposed to the development, but could afford to buy only two-thirds of the land.
It solved that problem by using U.S. tax law to help club members stretch their dollars.
All it took was the help of two nonprofit conservation groups and a migraine of a day at the settlement table.
Sunnybrook has a small membership and a long waiting list. It rallied some of the members to donate money to the two nonprofit groups, the Montgomery County Lands Trust and the Preservation Alliance for Greater Philadelphia.
In September, the Lands Trust and the Preservation Alliance, with $750,000 donated by club members, paid Realen Homes for the developmental rights to the 34 acres.
On the same day, the club itself paid Realen $170,000 for the land.
Why was the purchase from Realen divided into two parts?
Because participating club members, by working with the nonprofit organizations, could pick up valuable tax deductions on the $750,000.
Those deductions would not have been forthcoming if the members had simply given their money to the club.
Arthur F. Loeben, treasurer of the Montgomery County Lands Trust, said the club brought its members' $750,000 to the settlement table.
Mike Stadulis, who handled the sales for Realen Homes, said Sunnybrook's members, once they had linked up with the nonprofit conservation groups, significantly enhanced how much ground they could buy.
In the beginning, Sunnybrook was eyeing 20 acres, Stadulis said.
"Subsequently, when they got a little more horsepower with the two conservancies coming into the picture, they asked to expand the sale," he said.
The open-space easement bans construction of houses, and provides a small area for a future Montgomery County hiking trail.
It also permits Sunnybrook to develop 5 acres for its recreational use "such as tees, greens, bunkers, fairways and driving ranges."
In a news release in the fall, the Preservation Alliance said the money donated for the easement came from "numerous individuals with a deep concern and appreciation for the Whitemarsh Woodlands."
Bruce Robertson Sr., a Sunnybrook member and Chestnut Hill florist, helped put the transaction together.
"For us to preserve 30 acres was important to a lot of members of the club and the community. Everybody likes the idea," Robertson said.
"It was pretty much a club initiative. There are some people who can afford to do things like this. We were fortunate that we had enough people within the club that we were able to do that."
The emotional satisfaction might well be misplaced Though the tax deduction may be claimed only once, the restrictions imposed by a preservation easement pass on to future owners in perpetuity, or so the theory goes.
In an interview, Julia D. Mahoney, a law professor and real estate expert at the University of Virginia, said it was foolish to try to so control the future.
"It makes no sense to say that William Penn's vision of central Philadelphia should bind us today," she said. "I don't think with respect to any issue of land-use planning, we look for guidance to 200 years ago."
Mahoney said preservation easements might unwisely bind future generations who may have other priorities about housing and open space.
"On the other hand," she wrote in a recent law journal, some in the present generation "reap significant benefits . . . including tax breaks and the emotional satisfaction of believing that their land- use choices will prove eternal."
Eternity is tough to predict.
The Preservation Alliance discovered that last year when it sought to protect a historic easement it held on the 14-story Mayfair House apartments in Mount Airy.

Once elegant, the Mayfair House was abandoned in the 1990s.
Eventually, the city targeted it for demolition, paying the alliance $25,000 to give up the easement and promising to turn the space into a park.
"The neighborhood hated the building," said Meginley, alliance president when the fight was under way. "We were alone. Everyone wanted that building down."
Last year, the city dismantled the building, historic facade and all. The preservation easement, granted in 1981, thus came to an end in 2001.
In the case of the Mayfair House, perpetuity lasted 20 years.
By Craig R. McCoy and Linda K. Harris. News researchers Denise Boal, Frank Donahue, Steve Elliott, Virginia D. Graham, Gene Loielo, Marla Otto, Michael Panzer and Ed Voves assisted with this article.
Credit: The Philadelphia Inquirer

Company / organization: Name: Internal Revenue Service; NAICS: 561440, 921130; SIC: 9300; DUNS: 04-053-9587; Name: Department of the Treasury; NAICS: 921130; Name: Realen Homes; NAICS: 233210; Name: Preservation Alliance for Greater Philadelphia; NAICS: 813410;

Publication title: Knight Ridder Tribune Business News

Pages: 1

Number of pages: 0

Publication year: 2002

Publication date: Feb 26, 2002

Year: 2002

Publisher: McClatchy - Tribune Information Services

Place of publication: Washington

Country of publication: United States

Publication subject: Business And Economics

Source type: Wire Feeds

Language of publication: English

Document type: WIRE FEED

ProQuest document ID: 464533672

Document URL: http://search.proquest.com.ezp-prod1.hul.harvard.edu/docview/464533672?accountid=11311

Copyright: Copyright 2002, The Philadelphia Inquirer. Distributed by KnightRidder/Tribune Business News.

Last updated: 2011-11-30

Database: ABI/INFORM Dateline

Contact ProQuest
Copyright © 2013 ProQuest LLC. All rights reserved. - Terms and Conditions