

# EASEMENTS AND AGRICULTURAL LAND VALUES

## **Introduction**

Land-use objectives can often be attained through the acquisition and transfer of less than the full fee simple rights of ownership. With this approach, private landowners can continue to possess, manage and use their land for a wide range of activities while governments or others can acquire and hold specific property rights that enhance public policy or private objectives. This is particularly the case with agricultural lands that do not involve a high intensity of use. The acquisition of easements by pipeline and power line companies are two examples of less than the full fee simple rights of ownership.

Appraisers in our firm have completed appraisals involving such easements in two different situations. We have completed appraisal assignments to assist in the acquisition of power line and pipeline easements, however, on far more numerous occasions, we have completed appraisals on properties that are already subject to such easements. The agricultural portion of our appraisal work is quite extensive as we appraise a significant number of farm properties throughout most of Eastern Ontario and some of these properties are subject to pipeline and /or power line easements. Appraisers in other parts of Canada will have faced similar situations.

If such easements negatively affect market value at the time of the acquisition of the easement, then they should do so at the time of resale. If that is the case, then we should be making adjustments when conducting appraisals on properties that are subject to such easements. Indeed, Standards Rule 1-2 of USPAP requires that we appraisers consider the effect of easements as they might affect market value <sup>1</sup>.

## **Acquisition Policies and Compensation**

A guiding principle in compensation for rights' acquisition is "to place owners whose rights have been taken in the same position financially as they were prior to the taking" <sup>2</sup>. It has been the author's perception that those organizations with the authority to acquire such easements have been generous to this category of land owners. Aside from tower compensation for inconvenience relating to land use, Ontario Hydro, for example, had a policy of paying 75% of the market value of

agricultural land to cover the acquisition of the basic easement for high voltage transmission lines. To acquire easements for the underground transmission of gas and oil, pipeline companies have paid up to 100% of the market value of agricultural land. Yet, once the pipeline is buried, cropping can continue unabated and generally, the easements avoid building locations so that these are not disturbed. These generous compensation policies stem, at least in part, from the market power that these companies have enjoyed in the past and their resultant ability to pass such costs on to their customers. The compensation policies have also arisen for other reasons. If compensation is generous, it also avoids expensive delays and costly litigation with affected land owners. Further, easement acquisition is only a very small portion of the total cost of such capital projects with a tendency, on the part of such companies, to perhaps be more than fair when it comes to such compensation. As well, various rulings by different authorities, such as the former Land Compensation Board, have contributed to the perception that there is a significant loss in market value with such easements<sup>3</sup>.

### **Lancaster Township**

Lancaster Township (it is now amalgamated with the adjacent township) is a part of Glengarry County in Eastern Ontario and it is the last township in Ontario as one leaves that province to enter Quebec. If you have driven from Ontario to Quebec on highway 401 (the MacDonald Cartier Highway), you have driven through Lancaster Township. The township was surveyed, like the adjacent townships in that area of Ontario, starting in the 1790's with the original farm lots laid out as 200 acre blocks of land within each of nine concessions. The township is about 38 lots wide in the southern concessions. The south portion of Lancaster Township is a prime agricultural area in Eastern Ontario and a high voltage electrical power line (230 kv) and two under ground pipelines cross the township in an east west direction. Hence, sales of farmland should show us if the presence of these easements have had any influence on market values. The south two thirds, more so than the north third, of the township has a very strong dairy and a cash crop community. The essential reason for this lies in the difference in soil types between the two areas. The south two thirds of the township is mostly covered with silt loam soils while the north third has mostly loam soils that are characterized as being stony. The presence of stone discouraged earlier farmers who, over time, moved away from the stony soils.

There was a general increase in farmland values in parts of Eastern Ontario in the late fall of 1995 and the spring of 1996 due to rising commodity prices. This increase in prices continued into 1997 and 1998 and then tended to stabilize somewhat in 1999. This price increase has generally been contained to prosperous farming areas such as Lancaster Township where there were existing commercial farm operations. In these areas, farmers could expand their land base by purchasing additional land as it came on the market. During this time period, dairy farmers and cash crop farmers were both expanding their operations in order to take advantage of economies of scale. In light of the rural location of the township, there was no urban influence affecting farmland values.

## **Methodology**

In order to determine the effect, if any, that easements might have on the market value of farmland, a search was made for sales during the ten year time period from 1989 to 1999. In light of the number of easements crossing the township, it was actually difficult to find sales of farmland that were not subject to one or more of the easements as two pipelines and one high voltage transmission line cross the township in this area. Only sales within concessions one to six were reviewed in order to eliminate most variations in soil type found within the township. The three easements run through concessions three and four of the township.

In order to eliminate the effect of building improvements on sale prices, only sales of vacant farmland were selected. Further, only sales at arm's length (and not under duress) were reviewed and a check was made as to whether the land was systematically tiled or not. The differential in selling price between tiled and non-tiled land during the period of the study averaged about \$500/acre. One other variable remained as several of the parcels of farmland sold with some bush cover. An allowance was then made, based on the vendor's or purchaser's perception, for the contributory value of such bush.

In analyzing sales to support estimates of market value, as appraisers, we know that paired sales<sup>4</sup> can be a useful way to support an adjustment. The sale of two properties whose characteristics are highly similar, such that the only difference between the two is the passage of time, would be one way to make a time adjustment if their selling prices were different. Likewise, if two properties sold (at the same time) that are highly similar except for one feature, and there was a

difference in selling price, then the difference in price would be a result of that different feature. Conversely, if two parcels of farmland with identical characteristics (except for an easement) sell for the same amount on a per acre basis, we can conclude that the easement has had no effect on market value.

**Table 1: Farmland Sales** <sup>5</sup>

<b>Index No.</b>	<b>Total Acres</b>	<b>Sale Registration Date</b>	<b>Sale Price</b>	<b>Easement(s) (See Note 1 below)</b>	<b>Sale Price Per Acre</b> <sup>6</sup>	<b>Difference in Price Per Acre Between The Paired Sales</b>
1.1	98	4/89	\$95,000	None	\$969	
1.2	164	6/89	140,663	PL	981	\$12
2.1	135	12/90	\$128,000	None	\$948	
2.2	195	4/91	160,000	PL, EL	1,007	\$59
3.1	68	5/93	\$60,000	None	\$973	
3.2	58	12/93	68,000	PL	1,136	\$163
4.1	215	9/94	\$202,700	None	\$943	
4.2	105	3/94	115,000	EL	1,095	\$152
5.1	50	12/97	\$112,000	None	\$2,967	
5.2	112	11/97	312,872	EL, PL	2,794	\$173
6.1	85	5/98	\$216,000	None	\$3,258	
6.2	78	12/98	200,000	PL <sup>7</sup>	2,814	\$444
7.1	98	2/99	\$307,000	None	\$3,102	
7.2	65	11/99	310,000	PL	2,952	\$150

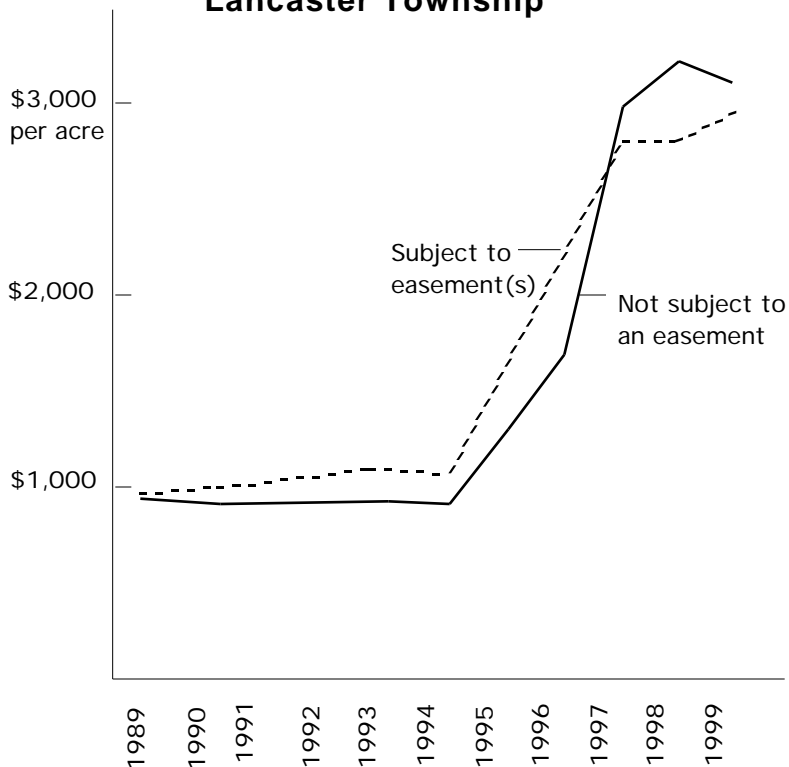
Note 1: In the table, PL refers to pipeline easement and EL refers to an electrical (high voltage) power line easement crossing the property.

Note 2: No match could be found for 1992 sales and no match could be found for 1995 sales. Two 1995 sales were found of tiled land at an average price of \$1,310/acre (both parcels were subject to easements). No match could be found for 1996 sales but two 1996 sales were found of tiled land at an average price of \$1,700/acre (both parcels were also subject to easements).

## Comments

Some of the above data is also shown in Figure 1. Aside from the issue of easements and their effect on market value, there is, as noted in the Table 1, some variation in the price paid per acre of land even if the land is quite similar. In other words, land markets are imperfect. Such price variations, even if the land has an identical soil, can come from factors such as the proximity of the land to the purchaser's operation, the purchaser's knowledge of the land base and the field size as well as the degree of market exposure. It is important to be reminded that we are dealing with vacant farmland and not land with building improvements. As shown in Table 1, the difference in price per acre between land selling, subject to an easement and land selling without an easement, ranged from a low of \$12 to a high of \$444. In percentage terms, it ranged from less than 1% to 15%. Indeed, in four of seven paired sales, the land subject to an

**Figure 1: Selling Price Per Acre – Farm Land Lancaster Township**



easement actually sold for a higher amount per acre.

Note: Although Figure 1 shows the general trend in land values in the market area, the reader is reminded that the two lines are reflective of only two sales per period.

## Conclusions

First, the sales noted above clearly indicate that farmland, subject to such easements, does not suffer in terms of an effect on its market value. Once the dust settles, so to speak, and the easement is in place, it seems to be forgotten. Consequently, no adjustment for such easements would be warranted in appraising such farmland.

Of course, within a farming area that is subject to some urban influence, this conclusion might be different if there was a potential for a change in land use to a higher order and an easement of this nature was hindering such a change.

Second, it would appear that land owners have been over-compensated for such easement acquisition. Such compensation policies might change in the future if those companies were to face more narrow profit margins. Deregulation of these industries, combined with additional competition, may speed such change.

### Endnotes:

1. See Standards Rule 1-2 part c, USPAP 1998 Edition, The Appraisal Foundation, p. 12.
2. See Kenneth J. Boyd, Expropriation in Canada, A Practitioner's Guide, Aurora, Canada Law Book Inc., 1988, p. 27.
3. See for example, Eric C. E. Todd, The Law of Expropriation and Compensation in Canada, Carswell., 1992, pp. 426-34.
4. See Appraisal Institute of Canada, Use of Comparables Bulletin CP – 17, March 1996, p. 3.
5. Additional data on each sale (i.e., amount of bush area if any), together with the instrument number and full legal description of the properties, have not been included in the article in the interest of space. This data is available from the author by email.
6. If there was any bush on the property, the indicated price per acre would be after an appropriate allowance for the bush area.
7. The deed for index 6.2 (#108905) actually describes this property as being subject to a power line easement but it is in error.

Special Note: In Figure 1 of the article, the identifiers for the two lines was missing in the published article.

## The Author

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