

# Easement Valuation

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First, what is an easement? According to the Dictionary of Real Estate Appraisal, an easement is "an interest in real property that conveys use, but not ownership, of a portion of an owner's property." By definition, the ownership of real estate is endowed with a bundle of rights. The concept of bundle of rights maintains that like a bundle of sticks, real property ownership may be wholly intact (fee simple estate) or may be "unbundled" and conveyed in part to a third party.

In real property ownership, one has the inherent right to use the property, to sell it, to lease it, to enter upon it, to give it away – or to refuse to do any of these things. For example, the creation of a lease conveys to the tenant a portion of one's rights for the specific term and space occupied by the tenant according to the terms of the lease. During the lease period, the tenant may have a measurable interest in the property (leasehold estate). The creation of an easement is somewhat similar in that we are dealing with concepts of time and space. By definition, the creation of an easement conveys a portion of the total bundle of rights to a third party. The challenge before the appraiser is the measurement (in terms of dollars) of the market value of the rights conveyed.

## Valuation

The task before the appraiser is to evaluate the "rights conveyed" by the creation of the easement and to properly measure these rights. The principles and methodology applied to appraising property for partial acquisitions apply to the valuation of easements. All easement valuations are partial acquisitions under the theory that the property owner retains some residual rights within the easement area. The value of an easement is measured by what the property owner has lost from the bundle of rights NOT by what the grantee has gained.

Under the Federal Rule, the value of the easement will be based upon the difference between the value of the whole property before the taking and the value of the property after the taking with the easement in place.

In the following example, the \$60,000 of total compensation includes both the value of the easement rights being acquired and any damages to the remainder property that may result due to the placement of the easement.

Value of Whole Property Before the Acquisition	
120 acres @ \$10,000 per acre	\$1,200,000
Value of the Remainder Property After the Acquisition	
120 acres @ \$9,500 per acre (Encumbered with 10 acres in easement)	\$1,140,000
Total Compensation	\$60,000

Under the State Rule, the appraiser will be required to estimate the value of the easement plus damages to the remainder, if any. Using the same example:

Value of Whole Property	
120 acres @ \$10,000 per acre	\$1,200,000
Value of the Part Acquired	
10 acres in easement @ \$10,000 per acre @ 50%	\$50,000
Value of the Remainder Before the Acquisition	
\$1,200,000 - \$50,000	\$1,150,000
Value of the Remainder After the Acquisition	
120 Acres @ \$9,500 per acre (Encumbered with 10 acres in easement)	\$1,140,000
Damages	\$10,000
Part Acquired	\$50,000
Total Compensation	\$60,000

The challenge for the appraiser is ascertaining where these figures come from. The answer: THE MARKET! The appraiser's task is to see what effect, if any, an easement has on the sale of property encumbered with similar easements. In the case of residential property, most urban properties within platted subdivisions are likely encumbered with common utility easements. In most situations, these easements extend along the property line and have little effect, if any, on the sale of the home. Thus, the market tells us that the easement has little value, if any. Why? The presence of the easement does not affect the use or utility of the property. The easement does not place any undue burden or hardship on the ownership.

When investigating an easement, some important questions should be addressed by the appraiser. It is imperative that the appraiser understand the nature of both the legal and the physical rights being sought. Some questions may include:

- What is the proposed use?
- Where is the easement located? Can it be moved?
- Is the easement located along a property line or within a setback area?
- What will be the construction method used (open cut versus boring)?
- Who will maintain the easement and how often?
- Does the easement leave a remnant or gap?
- Will the easement be surveyed and monumented?
- May either party alter the construction or grade after completion?

- Will the landowner have to obtain permission to use the easement area?
- Can the landowner cross the easement with roads, utilities, etc.?
- How will the easement holder access the easement?
- Who pays property taxes and insurance?
- Will the easement cause a loss in view, security, etc.?
- Will the easement benefit the owner in any way?

These issues are often found within the easement document but may require discussion with the condemner. In terms of legal encumbrance, it is important to recognize that the easement will impact the ownership title and may affect both current and/or future uses.

One key question is “will the easement affect the use and/or the utility of the property that results in a change in highest and best use?” Also, the easement may include accessory rights such as the ability to access the easement and the ability to expand the use within the easement (add additional pipes in the future). From a physical standpoint, it should be recognized that most of our activity occurs on the surface. Thus, impacting the surface area tends to affect value to a greater degree compared to a subsurface easement where there may be little, if any, impact on surface use.

Damages as a result of an easement (both temporary and permanent) as well as the easement itself are difficult to measure. By nature, the real estate market is an imperfect market. The presence of an easement on a property is only one of many factors buyers and sellers are dealing with during the buying and selling process. While some buyers may react negatively toward an easement, others may view this same easement with total disregard. For example, in heavily vegetated hunting land, having a cleared area may provide an opportunity to develop a viable hunting stand with a clear field of fire. Others might view this same easement as aesthetically displeasing.

One method used by appraisers includes matched pair sale analysis. In this analysis, the appraiser will attempt to find two similar sales, one encumbered with an easement and another without, and measure the impact the easement has on value. Care must be used in that one example may not be sufficient to apply to all situations. Also, by having multiple pairings, one can establish a general trend of the measured impact. In measuring the impact, it should be noted that the total difference between encumbered and unencumbered includes both the easement and its affect (damages).

A second method may be the result of interviews with buyers and sellers. This method can also be abused by inconsistent questions asked and in the selection of the sample of buyers/sellers asked.

To assist appraisers and right of way professionals, the following Easement Valuation Matrix has been developed. The matrix should be used as a general guide in looking at the effect an easement may have on the total bundle of rights. This chart should not be considered an exclusive list as to the type of easements and their effect on the total bundle of rights but should be used only as a guide to general effects on the total fee ownership.

In establishing the matrix, special emphasis should be made as to the impact the easement has on the use and utility of the real property. Special note should be given that in developing this chart, one seller actually negotiated the easement based on the concept that they were purchasing 50% of the rights in a sewer line easement along a property line for a suburban office site. In this situation, the purchaser

Percentage of Fee	Comments	Potential Types of Easements
90% - 100%	Severe impact on surface use Conveyance of future uses	Overhead electric, Flowage easements, Railroad ROW, Irrigation canals
75% - 89%	Major impact on surface use Conveyance of future uses	Pipelines, Drainage easements, Flowage easements
51% - 74%	Some impact on surface use Conveyance of ingress/egress rights	Pipelines, Scenic easements
50%	Balanced use by both owner and easement holder	Water or sewer lines, Cable lines, Telecommunications
26% - 49%	Location along a property line location across non usable land area	Water or sewer line, Cable lines
11% - 25%	Subsurface or air rights that have minimal effect on use and utility Location with a setback	Air rights, Water or sewer line
0% - 10%	Nominal effect on use and utility	Small subsurface

*Source: Right of Way Magazine "Easement Valuation" Sherwood, May/June 2006*

of an office site negotiated the sale based on an unencumbered value of \$7.27/SF. The area within the easement was purchased at 50% or \$3.64/SF. Furthermore, it is interesting to note that this office site abutted a high voltage electrical transmission line right of way. The presence of this easement adjoining this sale did not appear to affect its value, use or utility.

In another situation, a sale encumbered with an overhead transmission line easement was purchased for suburban residential development. In this situation, the buyer netted out the easement indicating that the remaining rights had little to no value. These types of situations over the past thirty years allowed the development of the above matrix.

Additionally, matched pair sale analysis can also be employed to develop the percentage of rights acquired. However, care must be taken in this analysis as the unit price differential may include not only the easement rights but damages to the unencumbered remainder.

The following sales have been analyzed to show how one can use matched pair analysis to ascertain the contributory value of an easement. The first step in this process is to find sales that were encumbered with similar easements to those being appraised. In this analysis, it is important that the appraiser find out what rights were acquired. Often, this is difficult to obtain as the easement may be either undefined or difficult to locate in the public records.

In the following example, the encumbered property is a 100.112 acre rural tract that sold in June 2012 in north central Texas. At the time of sale, property was encumbered with two monopole high voltage transmission lines (HVTL) containing 9.40 acres that traversed the property in a southwest/northeast direction. Also, this tract had extensive road frontage and the easements crossed the property in such a way as leave a similar amount of acreage and road frontage on either side of the easement. The property sold for \$300,336 or \$3,000 per acre.

Once the encumbered sale has been located, the next step is to find similar unencumbered sales in the same market area. Ideally, one would locate an unencumbered sale that is identical except for the encumbrance. However this rarely, if ever, occurs. In this example, the comparison sale containing 84.34 acres sold in December 2010 for \$269,888 or \$3,200 per acre. The market did not indicate a change in market conditions and this sale was found to be highly similar except for its road frontage. The sale required an upward adjustment of 5% for its frontage along a gravel road. Thus, its adjusted price was increased to \$3,360 per acre.

The encumbered sale had a net unencumbered area of 90.712 acres (100.112 acres – 9.40 acres). Utilizing the unencumbered value of \$3,360 per acre, the value of the unencumbered area would be \$304,792. Subtracting this number from the actual sale price of \$300,336 would indicate that the contributory value of the easement area was negative \$4,456. Assigning a value of 90% to the easement, the contributory value of easement would be \$3,158. Adding the unencumbered value of \$304,792 plus the easement value of \$3,158 indicates a total of \$307,950. Subtracting this figure from the actual sale price of \$300,336 indicates damages of \$7,614.

In order to better explain the above example, the following chart is shown that basically represents a hypothetical taking of our sample property.

Value of Whole Property	
100.112 acres @ \$3,360 per acre	\$336,376
Value of the Part Acquired	
9.40 acres in easement @ \$3,360 per acre @ 90%	\$28,426
Value of the Remainder Before the Acquisition	
\$336,376 - \$28,426	\$307,950
Value of the Remainder After the Acquisition	
100.112 Acres @ \$3,000 per acre (Encumbered with 9.40 acres in easement)	\$300,336
Damages	\$7,614
Part Acquired	\$28,426
Total Compensation	\$36,040

While this example tends to support the numbers within the chart, it should be noted that this example assumes that the easement had residual rights of only 10%. If in fact the rights remaining in the easement were increased to 20% (indicating 80% of the rights were

acquired), the amount of damages would increase to \$10,773. As a side note, in interviewing the broker, he stated that the encumbered sale's extensive road frontage seemed to negate any damages. This example illustrates the difficulties in reaching an empirical figure. It also illustrates the need for a greater sampling of market data. Additional sales may indicate greater or lesser rights and/or damages.

The rights included in an easement can vary depending on multiple considerations such as the type of structure, the location of the easement and other physical factors. Thus, this stresses the importance of good and thorough confirmation of the easement rights, verification of the location of the easement, determination of the size of the easement and having an adequate number of comparisons from which one can surmise general trends. Even with all this information, the imperfections of the real estate market must be tempered with the skill and experience of the appraiser.

Another observation was obtained from interviewing the buyers, sellers and/or brokers in these situations. Some observed little or no damages from the presence of the easements while others stated that substantial damages were present when the market indicated otherwise. While these perceptions may reflect actual market reactions, care should be taken with unsupported claims of damages.

### Conclusion

In every situation, the appraiser must explore the rights being acquired and allow the market to dictate the effect the easement will have on the remainder property. In most cases, the presence of an easement may be one of many deciding factors affecting value. Isolating the effect of an easement on the property requires extensive research and evaluation.



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