



Real Estate Appraisers & Consultants
A Division of Wellington Realty Group Inc.

Market Study

**Diminution in Value
Injurious Affection**

Non-Visible Easement

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Diminution in Value caused by a Non-Visible Easement

The purpose of this study is to isolate any loss in value caused by a non-visible easement. An easement is the privilege of using something that is not your own, a legal right to use another person's property. It attaches to the land, binds subsequent owners, and can be permanent or terminal (temporary). Examples are passage rights over driveways, utility rights for telephone or hydro corridors, and temporary access for road works. Easements can be visible (i.e. overhead) or non-visible (i.e. buried).

To determine any loss in value due to a non-visible easement, it is reasonable and practical to analyze the open market in order to estimate the market value of a property *before* and *after* the easement and thus measure the diminution in value reflected in the price change.

The scope of this study included:

- **Passage of Time.** Measured by changes in average price. Average price includes sold residential property and does not include sold commercial or industrial real property. The *Average Price* used to adjust for time is provided by the Canadian Real Estate Association and is based on the board statistics for the example property.
- **Market Value of Land.** Diminution in value is best measured by the actions of willing sellers and willing buyers functioning in the open market place. The example within this study involve actions within the open market place.
- **Market Value Estimates.** In this analysis, the market value of real property is estimated; however, any expression of possible value is not a formal opinion of value and therefore not an appraisal as defined by Canadian Uniform Standards of Professional Appraisal Practice.

Case Study: Non-Visible Easement

Located on a desirable above average tree lined street in London, Ontario, a single dwelling property was listed on the MLS® system on April 19, 2006 at an asking price of \$264,900. The lot has 43.0 front feet and a depth of 147.67 feet for a total area of 6,349.81 square feet.

The dwelling, circa 1930, has an area of 1,259 square feet above ground plus a full basement. The dwelling is in very good condition and has received many upgrades over the years including windows, heat and air conditioning. The home is comparable to homes on the street and is comfortable and livable. The property also has a detached 1.5-car garage with hydro.

A Seller Property Information Statement (SPIS) was utilized by the Realtor®, a member of the Ontario Real Estate Association (OREA) when the case study property was listed and sold. Pertinent questions from the SPIS follow:

1. Are there any encroachments, registered easements, or rights-of-way?
2. (a) Is there a plan of survey?
(b) Does the survey show the current location of all buildings, improvements, easements, encroachments and rights-of-way?

The SPIS form was signed by the Sellers who did not disclose any easements.

The property was purchased via the MLS® system on May 18, 2006 at a price of \$255,000 with a closing scheduled for June 23, 2006.

Notwithstanding that the existing building is in very good condition, the out-of-town buyers intended to demolish the home and construct a new home that would have modern features and would respect the street's architecture and character.

On June 23, 2006, the property was conveyed to the out-of-town Buyers who then made an application to the Municipality to demolish the existing dwelling and garage buildings.

The Municipality refused the demolition permit as it was discovered there is a storm sewer pipe under the garage and dwelling. The storm sewer traverses the site diagonally and had been installed prior to or during construction of the dwelling and garage, circa 1930. The storm sewer pipe was not registered on title as an easement; hence the seller, Realtor®, lawyer, and out-of-town buyers could not and did not know of the storm sewer pipe's existence. It was later concluded that the sewer pipe was within an unregistered easement. The storm sewer pipe functions noiselessly and does not affect the quiet enjoyment of the property.

Since the new Buyers could not demolish the buildings, the property was listed on the MLS® system on May 7, 2007 at an asking price of \$236,900. No physical changes had been made to the land or buildings since April 19, 2006 when the property was first listed on MLS®.

This time the Realtor's® SPIS detailed the easement and the storm sewer pipe making prospective Buyers fully aware of the easement and the buried pipe.

Events	Date	Price
Initial Sale	May 18-06	\$255,000
Resale	Jun 19-07	\$233,000

Percentage Change in Open Market Value over Time		
Date and MLS® Average Price ¹	Jun 19-07	\$204,500
Date and MLS® Average Price ²	May 18-06	\$193,014
Monetary Increase in Open Market Value		\$11,486
Percentage Increase in Open Market Value		+5.95%

Calculation of Diminution in Value		
Initial Sale	May 18-06	\$255,000
Add: Percentage Change in Open Market Value of Time	5.95%	\$15,175
<i>The property should have sold for... (without easement)</i>	Jun 19-07	\$270,175
<i>The property sold for... (with easement)</i>	Jun 19-07	\$233,000
Monetary Loss (Diminution in Value)		-\$37,175
Percentage Loss (Diminution in Value)		-13.76%

In this study, the non-visible easement caused a loss in value in the amount of approximately 14% of the open market value of the property. In other words, the property was injuriously affected with a diminution in value of approximately 14%.

¹ Canadian Real Estate Association.

² *ibid.*

Conclusion

Although the easement did not affect the quiet enjoyment of the home, the resale price reflects the negative impact of the easement on the property. Therefore market evidence suggests that properties are harmed or injured by a non-visible easement. Diminution in value to a property is a result of buyer resistance.

The presence of a non-visible easement traversing a property can create apprehension in the general public, which makes the property less desirable and thus diminishes the market value of the property. A real estate appraiser can only analyze the actions of willing sellers and willing buyers acting in the open market place, sellers and buyers who may believe there are unknown consequences associated with a non-visible easement.

Based upon real or perceived consequences of the presence of a non-visible easement in the market place, this analysis concludes that there is a diminution in value to a property that is subject to a non-visible easement.