



SCENIC EASEMENTS

Understanding a challenging appraisal process

BY KEMA WILLIAMS, EDWARD SINGER AND JULITA DE LEON



A scenic easement is “the right to control the use of a particular piece of private land to preserve the natural quality of the property or its surroundings.” According to the Wisconsin Department of Transportation (WisDOT) Real Estate Program Manual, scenic easements are created for the protection and preservation of land areas containing natural beauty by restricting and preventing future development that may tend to detract from other uses. The Manual further explains that the concept of scenic highway easements stem from the idea that there is enjoyment and recreation for the traveling public in viewing a relatively unspoiled natural landscape.

Historical Overview of Scenic Easements

During the mid-1960s and throughout the 1970s, governmental bodies purchased scenic easements along certain highways. This action was prompted by Lady Byrd Johnson, wife of the 36th President of the United States, Lyndon B. Johnson. In her effort to preserve our nation’s scenic highways, Lady Bird Johnson pushed the idea that beauty had a real social utility. Therefore, cleaning up city parks, planting trees and flowers, getting rid of ugly billboards and screening junkyards from public view would make America a better place—both to look at and to live in.

Congress passed the Highway Beautification Act in 1965. Its main purpose was to limit billboards and other forms of outdoor advertising, as well as junkyards and unattractive road distractions. It allocated funds to each state to purchase strips of land deemed necessary for the restoration, preservation and enhancement of scenic beauty adjacent to highways. In addition, publicly-owned rest stops and scenic overlooks were created within or adjacent to certain highways to accommodate the traveling public.

Valuing Scenic Easements in Wisconsin

Historically, Wisconsin is considered a leader and an innovator among the states for land preservation and conservation programs. In 1939, Wisconsin began

acquiring scenic easements along the Great River Road—a scenic highway that parallels the Mississippi River along the state’s entire western border. By 1967, Wisconsin acquired 1,125 scenic easements covering approximately 12,500 acres of land and protecting 282 miles of scenic highway. This project was a monumental task and faced a great deal of challenges, such as the lack of skills in identifying scenic resources, as well as drafting scenic grants, appraising, negotiating and communicating with property owners and the public about such easement. However, as the years went by, additional knowledge and understanding of administering scenic easements began to surface. Wisconsin was able to develop better systems that addressed the administration and implementation of scenic enhancement programs. These new processes promoted better negotiations between land owners and the State Highway Commission (now WisDOT). However, the valuation of scenic easements remains as problematic today as it was 50-70 years ago.

In Wisconsin, scenic easements acquisition is not uniform in their terms, conditions and valuation. Consequently, the development standards in the easement agreements vary. Some easements might be held in perpetuity, allowing no building of any type and covering the entire property. Others have a limited term, permitting a single residence and creating a 300-foot frontage along the interstate. Most scenic easements contain restrictions, such as no development of any type, no billboards, no dumping of offensive or unsightly materials and no cutting of timber. However, some agencies reserve affirmative rights, such as the right to inspect the premises, prune trees or construct a public scenic rest stop. Furthermore, scenic easement agreements are customized to each acquisition, allowing the property owner and the agency some flexibility and creativity in negotiating, which results in a range of compensation. That same range of variables continues to pose challenges for valuing scenic easements even when using orthodox appraisal methods.

Releasing or Modifying Scenic Easements

Based on current land use patterns, demographic changes and economic development, there has been an increased number of property owners requesting variances or modifications to scenic easement agreements. Most of the variance requests address lifting or modifying the development standards in the scenic agreement.

In Wisconsin, the process of releasing or modifying scenic easement agreements begins when a property owner or an applicant sends WisDOT a variance request or application. The request is reviewed by WisDOT and if approved, it turns into a valuation assignment. A scenic easement lifted in its entirety would indicate a straightforward before and after appraisal, which requires the appraiser to evaluate the property in the before condition (before the scenic easement is imposed) and in the after condition (after the scenic easement is imposed). However, if the request is only for a modification of the easement, the appraisal becomes much more challenging and requires a more extensive analysis of the before and after condition.

A Case Study

Let's look at an example located in Crawford County in southwest Wisconsin. The entire 18-acre property is encumbered by a scenic easement. A state trunk highway runs along one side of the property. The property owner requests a modification to the scenic easement that would allow a residence to be constructed on the property, while the interstate frontage would still be subject to the easement restrictions to a depth of 600 feet. WisDOT staff agrees to the variance, and we were tasked to appraise the market value of the subject property in the before and after condition. After extensive research and analysis of comparable sales, including interviewing county officials and planning and zoning officials, we found that the market value of the comparable sales that were unencumbered by a scenic easement

were higher than the market value of the comparable sales with easement restrictions. Below is an abbreviated summary of our analysis of the before and after condition and the market value of the variance:

Indicated value of the property **without** the scenic easement:

Land: 18 acres @ \$4,000 per acre = \$72,000

Indicated value of the property **with** the scenic easement:

Land: 18 acres @ \$2,400 per acre = \$43,200

Difference between before and after:

Easement Value: \$72,000 - \$43,200 = \$28,800

Percentage loss due to change on per acre basis of scenic easement:

\$28,800/\$72,000 = 40 percent

\$28,800 = Rounded to \$29,000

\$29,000/18 acres = \$1,611 per acre

Release or modification requested was 3 acres from the total 18-acre total.

Therefore, the market value of the variance or modification to the scenic easement is: 3 acres x \$1,611 per acre = \$4,833.

By spending a sufficient amount of time analyzing and completing the market analysis, as well as developing the proper highest and best use, we could fairly estimate land values and create a cohesive final analysis and reconciliation.

In Conclusion

There is a wide variety of opinions on how to conduct scenic easement appraisals. It has been an on-going challenge in the market for many years because scenic easements are somewhat unique in nature and the appraisal process is not well understood by many. We found that it is paramount to perform a thorough market analysis of the before and after condition to arrive at the highest and best use. Once established, further analysis is required to arrive at a credible opinion of market value. That research and analysis can be very lengthy, therefore a significant amount of time and resources from both the client and the appraiser are required. ✪



Kema Williams is a real estate broker, appraiser and acquisition specialist for the Wisconsin Department of Transportation. She conducts complex and unique acquisitions and appraisals and has been in the real estate field for over 15 years.



Edward Singer is a real estate specialist with the Rails and Harbors section of the Wisconsin Department of Transportation. He has over 15 years of experience in the public and private sector in acquisition, negotiation and property management of publicly-held lands.



Julita de Leon is the managing attorney for JULITA de LEON, PLLC. In addition to her work in private practice, she has held a number of government positions, including General Counsel to the Virgin Islands Housing Authority and Legal Counsel to the Virgin Islands Coastal Zone Management Commission.