

Valuation of Scenic Area Easements

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•IN a proposal dated May 8, 1966, the Committee on Right-of-Way of the American Association of State Highway Officials offered certain guidelines for valuation of rights to be acquired and property damaged by implementation of the various provisions of the Highway Beautification Act of 1965.¹ With regard to taking of rights for landscaping and scenic enhancement, this proposal calls for just compensation measured by recognized valuation practice:

Just compensation shall be paid the owner of any area within or adjacent to the highway right-of-way for the taking of such rights as may be necessary for the restoration, preservation, and enhancement of scenic beauty, including acquisition of publicly owned and controlled rest and recreation areas, and sanitary and other facilities. Where applicable to partial acquisition, the evaluations of such rights shall be the difference in the market value of the property from which the rights are taken in its condition as part of the whole before the taking and its market value after the taking together with damages, less special benefits.

Section 305 of Title III of the Highway Beautification Act of 1965 provides as follows with regard to taking of buildings located within the limits of scenic areas:

Nothing in this Act or the amendments made by this Act shall be construed to authorize the use of eminent domain to acquire any dwelling (including related buildings).

This would seem to mean that although buildings cannot be acquired by condemnation proceedings, this section of the act does not prohibit acquisition of buildings by direct purchase if the state and the owner can come to terms on a price agreement for the buildings. This interpretation is desirable for removal of certain old delapidated buildings that may be within the limits of a scenic area, and where there is no intent to acquire by condemnation any farmsteads or other buildings for clearance of a site desired for a wayside area, an overlook, vista control, or similar purposes.

VALUE BEFORE TAKING

Valuation procedure along newly constructed Interstate Highways is a comparatively simple process. On these projects the appraisals used for acquisition within the past two to five years furnish an excellent starting basis for valuation of the entire property affected by proposed scenic area needs. Reference to the appraisal of after value for the original taking provides a starting point for the scenic easement's appraisal. In some cases ownership may have changed since the construction of the highway, particularly if a remnant parcel has been isolated or separated from the farmstead.

The complicating factor introduced by changes in ownership after the first acquisition makes it very desirable to acquire scenic controls at the time of the original right-of-way purchase.

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¹Public Law 89-285, Oct. 25, 1965.

On trunk highways other than the Interstate System, it is likely that many scenic areas will necessarily have to be acquired long after the original acquisition. In these instances it will be necessary to start from the beginning to make a full-scale appraisal of the entire property before the taking, and another in recognition of the restrictions for scenic easement or possible total taking in fee simple.

VALUE AFTER TAKING

The value of the entire property after imposition of scenic area easement restrictions must consider the effect of those restrictions. Paragraph 1 in the Minnesota Scenic Area Easement, and the paragraph reserving to the owner the right to develop the lands in accordance with certain specified conditions, impose restrictions that must be considered for each parcel individually.

This requires one value estimate for best possible use without restriction, and a second estimate based on the allowable use. In transitional lands adjacent to a municipality, careful judgment must be exercised in predicting future development and present value of the property based on possible future uses such as industrial, commercial, and residential. A second value estimate is then required for the parcel based on allowable use. Total damage for scenic area easement is the difference between these two estimates. At present, the classic example of this type of easement is that established for the Merrywood Estates on the Potomac Palisades in Washington, D. C.²

A similar before and after approach must be used for lakeshore property with development potential. If certain types of cabins, prescribed lot sizes, boat landings, or private dock facilities are to be allowed by specific provision in the easement, the damages naturally will be considerably less than if this type of development is to be totally restricted. If the lakeshore has no potential of development, and would reasonably continue for many years in its present condition, payment for scenic easement would be nominal. Special consideration may be necessary, however, if it is reasonable to expect that the owner might choose to clear the land for agricultural use. In this case payment should be the difference between value for agricultural use less cost of clearing, with consideration of stumpage value, if any. The possibility of agricultural use must also be considered by the same approach for continuous strips of easement in forested areas.

Payment for restriction on dumping, as in paragraph 2 of the Minnesota Scenic Area Easement, should normally be only by token payment.

Restriction on removal of trees and shrubs requires payment based on judgment. This type of restriction in the front yard of a farmstead may require special provision, with assurance that the state will likewise be restrained from cutting any specimen trees or shrubs. Certainly development of residential or lakeshore property will require some tree cutting, and the easement should be specific beyond all reasonable doubt as to those privileges and payments allowed to each of the parties.

Restriction of utility poles and pole lines should require no substantial payment inasmuch as it is generally expected that payment by a utility company for its easement is for the value of such easement as a burden on the property. Their restriction by terms of scenic easement would simply require placement of a utility line beyond the limits of the controlled area with payment therefor by the company, unless allowed within the scenic area by permit from the Commissioner of Highways.

The foregoing procedures would seem to apply especially to scenic areas other than those in corridor development. For a scenic corridor, mass appraisal practice is practical, although even by this method a "before value" of the property should be established either from the previous appraisals, or by mass evaluation and basic land value for various types of land in an entire project. It is totally impractical to require detailed individual parcel appraisals for a lengthy corridor project if controls are to

²This case has been reported in three issues of *The Appraiser*, published by the American Institute of Real Estate Appraisers in Dec. 1963, Feb. 1964, and Nov. 1964.

be by scenic area easement. It is expected that the amount of money involved for each parcel will be comparatively small, and will come within the limits allowed by the U. S. Bureau of Public Roads for value findings in appraisal and acquisition of nominal cost tracts. These will be based on good judgment by competent personnel.

EFFECT OF TAKING

The effect of scenic area easement restrictions must be based on judgment unless adequate documentation is available in support of value after taking. Certainly judgment must be used as the only basis for payment for simple restriction on tree cutting in rural areas or in a farmstead. As of this date there are no available studies of after value similar to those which are now very common for remainder tracts sold after basic right-of-way acquisition and highway construction.

Several years ago the effect of partial takings and restrictions of access for ordinary right-of-way acquisition was based on judgment only, but it can now be based on comparison with actual sales of remainder tracts. We can reasonably expect that within a few years there will be similar data available to show the effect of scenic area easement restrictions.

Future studies may show that there are special benefits due to scenic area controls just as there are by highway construction. It is possible that these controls will be even more effective than present zoning ordinances in holding values at consistent level. Zoning is subject to change, whereas scenic area easements will be permanent. Even now some owners are very receptive to the idea of scenic area control for that very reason.

For the purpose of illustration, four hypothetical appraisals have been prepared and are submitted as examples of valuation of scenic area easements and fee acquisition: (a) safety rest area and scenic area easement (Appendix exhibits 2 and 4); (b) scenic area easement only (Appendix exhibit 3); (c) scenic easement in corridor and river area (Appendix exhibit 5); and (d) scenic easement—river frontage (Appendix exhibit 6).

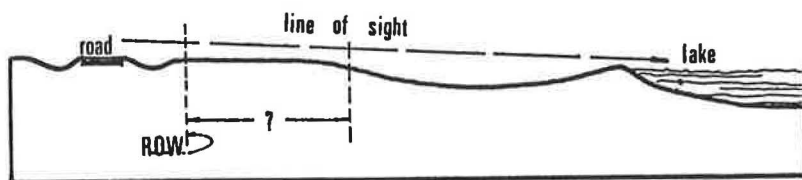
These appraisal examples include a parcel sketch and appraisal data for one parcel along the Chippewa River in Wisconsin. This information was provided by B. J. Mullen, Director of Right-of-Way in Wisconsin.

For better presentation and understanding of the types of control to be acquired, air photos of projects in Minnesota are shown as examples of the various types previously described (Appendix). These are the same parcels on which illustrative appraisals and parcel sketches have been prepared based on hypothetical ownerships.

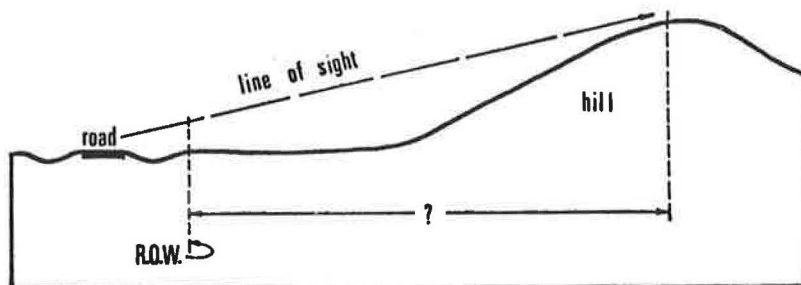
Appendix

EXHIBITS

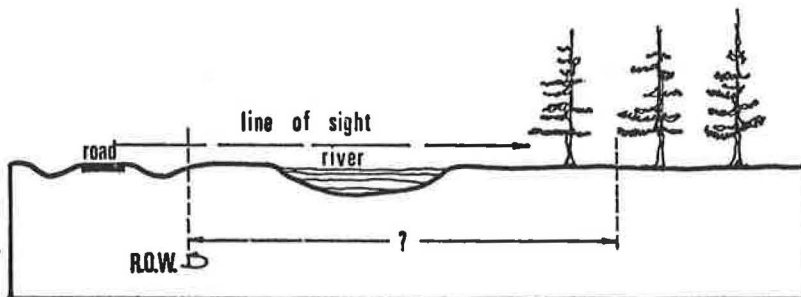
1. Typical Sections—How Far Should a Scenic Easement Extend?



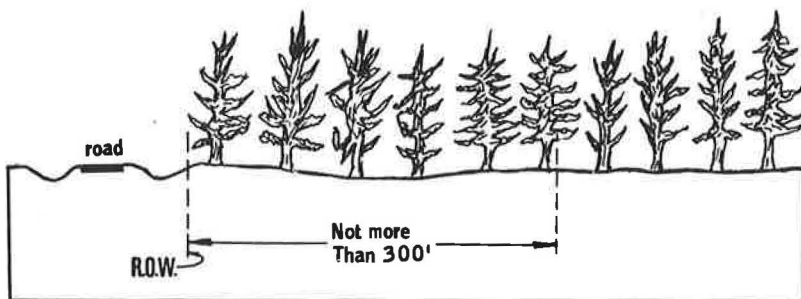
A DOWNHILL



B UPHILL

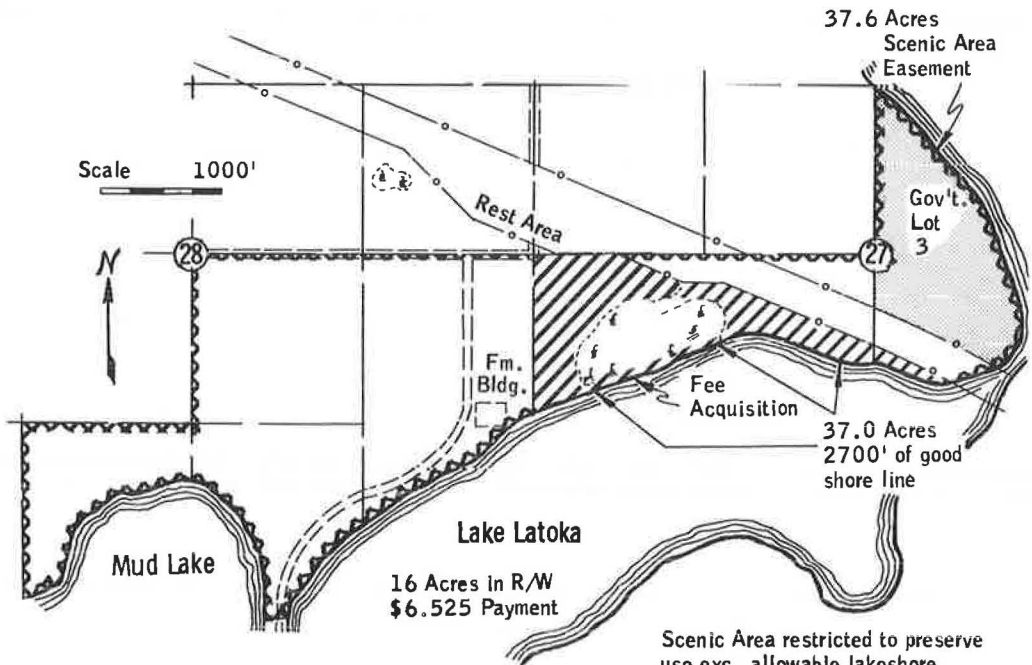


C FLATLAND



D HEAVY TIMBER

2. Safety Rest Area and Scenic Area Easement, Lake Latoka



Scenic Area restricted to preserve use exc. allowable lakeshore improvement with certain type cabins and selected timber cutting by permit

<u>BEFORE VALUE</u>	163 A. SOUTH OF HIGHWAY	136 A. Tillable	\$125/A	\$17,000	
		9 A. Lakeshore	400/A	3,600	
		18 A. Waste	5/A	90	
		Buildings		<u>3,200</u>	\$23,890
	37.6 A. NORTH OF HIGHWAY (isolated)	9 A. Lakeshore	\$200/A	\$1,800	
		28A. Wooded	25/A	<u>700</u>	
		Pasture			<u>2,500</u>
					\$26,390
					Rounded to \$26,500
<u>AFTER VALUE</u>	126 A. SOUTH OF HIGHWAY	126 A. Tillable	\$125/A	\$15,750	
		Buildings		<u>3,200</u>	\$18,950
	37.6 A. NORTH OF HIGHWAY (Isolated)	9 A. Lakeshore	\$100/A	\$ 900	
		28 A. Wooded	25/A	<u>700</u>	
		Pasture			<u>1,600</u>
					\$20,550
					Rounded to \$20,500
					Total Damages \$6,000
<u>BREAKDOWN OF DAMAGES</u>					
	Scenic Area	9 A. Lakeshore	\$100/A	\$ 900	
	Fee acquisition	10 A. Tillable	125/A	1250	
		18 A. Waste	5/A	90	
		9A. Lakeshore	400/A	<u>3600</u>	
	Total		\$5840		Rounded to \$6000

LAKE LATOKA

Before value of this 200 acre farm is based on the after value of this parcel as found in the parcel file for original taking. Basic values have been verified as current value as shown in parcel sketch and hypothetical appraisal.

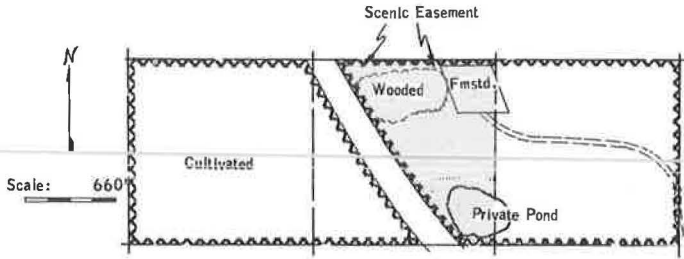
Appraisal narrative refers to lakeshore frontage south of highway valued at \$400 per acre for 9.0 acres and 18 acres of waste land at \$5 per acre. This area is to be acquired in fee for expansion of safety rest area. The farm buildings are unaffected by proposed taking.

Scenic area easement includes 37.6 acres of wooded area north of highway. This area was isolated from the home tract by highway taking and includes 9.0 acres of lakeshore property valued at \$200 per acre because of isolation. Scenic easement for this area will allow lakeshore improvement with one cabin on each 200 feet frontage and selective tree cutting permitted for that type of development only. This restriction will cause a 50% depreciation in value (already depreciated by 50% due to isolation). Continued present use of the remainder with tree cutting restriction, should cause no damage more than that allowed for lakeshore restriction.

This is a good example of tailoring to fit special conditions.

Appraisals must be on before and after basis - recognizing highest and best use in each case.

3. Scenic Area Easement



<u>BEFORE VALUE</u>	<u>EAST OF HIGHWAY</u>	
20 A. Cult.	\$75/A	\$1500
25 A. Pasture	65/A	1625
10 A. Pond	5/A	50
Bldgs.		4000
		<u>\$7175</u>
	<u>WEST OF HIGHWAY</u>	
50 A. Cult.	\$70/A	<u>\$3500</u>
	<u>TOTAL VALUE</u>	<u>\$10675</u>

Total restriction on cutting hardwood
Timber Pasture

<u>AFTER VALUE - EAST OF HIGHWAY</u>		
20 A. Cult.	\$75/A	\$1500
25 A. Pasture	50/A	1250
10 A. Pond	5/A	50
Bldgs.		3500

	<u>WEST OF HIGHWAY</u>	
50 A. Cult.	\$70/A	<u>3500</u>
	<u>AFTER VALUE</u>	<u>\$9800</u>

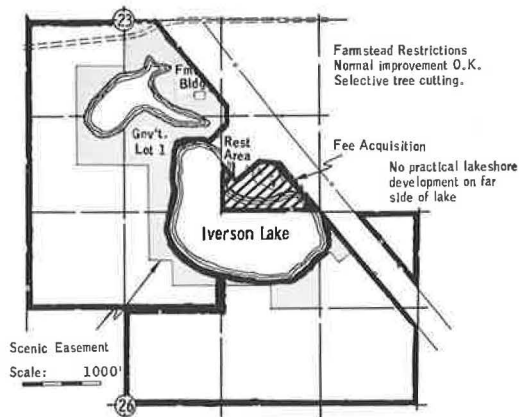
Total Damages \$875

BREAKDOWN

Scenic Easement	25 A. Pasture	\$15/A	\$375
	Farmstead		<u>500</u>
	<u>TOTAL</u>		<u>\$875</u>

SCENIC EASEMENT FARMSTEAD - Basic value of \$75 per acre east of the highway is based on consideration of comparison sales data for cultivated land in the vicinity of the farmstead east of the highway. Comparison sales were also considered for establishment of value west of the highway in recognition of separation from the farmstead. \$15 per acre damage is allowed for scenic easement rights within the 25 acre tract between the farmstead and the highway. This is considered adequate allowance for total restriction on cutting hardwood timber in a very fine timber pasture. It will also preserve scenic rights in the vicinity of the small private pond. \$500 allowance is made for restriction of timber cutting and change from present scenic features in the immediate vicinity of the farmstead. This includes allowance for restriction on dumping of refuse and placement of unsightly buildings not in keeping with the quality of the farmstead.

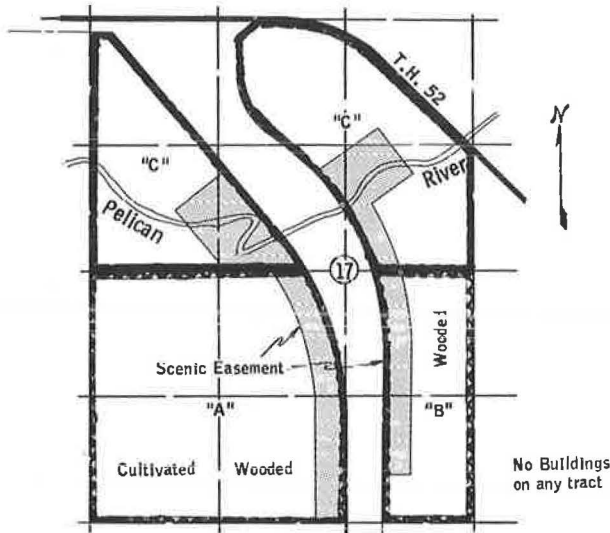
4. Safety Rest Area and Scenic Area Easement, Iverson Lake



<u>BEFORE VALUE</u>	120 A. Cult.	\$80/A	\$9600	
	30 A. Pasture	30/A	900	
	9 A. Isolated	10/A	90	
	15 A. Fmstd.-Bldgs.		5500	
	TOTAL		\$16090	
 <u>AFTER VALUE</u>	120 A. Cult.	\$80/A	\$9600	
	30 A. Pasture	25/A	750	
	15 A. Fmstd.-Bldgs.		5000	
	TOTAL		\$15350	
	TOTAL DAMAGES	\$740	ROUNDED TO	\$750
 <u>BREAKDOWN OF DAMAGES</u>	Fee Acquisition	9 A Isolated	\$90	
	Fmstd. Easement		500	
	Scenic Easement	30 A \$5/A	150	
	Total Damages		\$740	

LAKE IVERSON - This 174 acre farm includes considerable timbered area adjacent to Iverson Lake. The lake itself has no potential lakeshore development. There are 9 acres of land directly adjacent to the present rest area that have been isolated from the remainder of the farm tract and separated from the farm buildings by the present rest area. Value of this nine acre tract was estimated in previous acquisition at \$10 per acre and is to be acquired in fee. Total payment in this taking should be the same. \$500 allowance is to be made for farmstead restrictions but with allowance of nominal improvement in keeping with the quality of the farmstead. Selective cutting will also be allowed but only by permit from the Commissioner of Highways. Scenic allowance of \$5.00 per acre for 30 acres along the lakeshore is considered reasonable because of limited restrictions as to tree cutting only with allowance for continued use as pasture.

5. Scenic Corridor and River Area, Pelican River



Tract "A"	Cult.	80 A.	\$80/A	\$6400
	Wooded	75 A.	30/A	2250
	Easement area	18 A.	20/A	360

Total Restriction on Cutting - Clearing Cost \$50/A
 Pasture rights Reserved

Tract "B"	Same Basic Value			
	Easement Area	16 A.	\$20/A	\$320

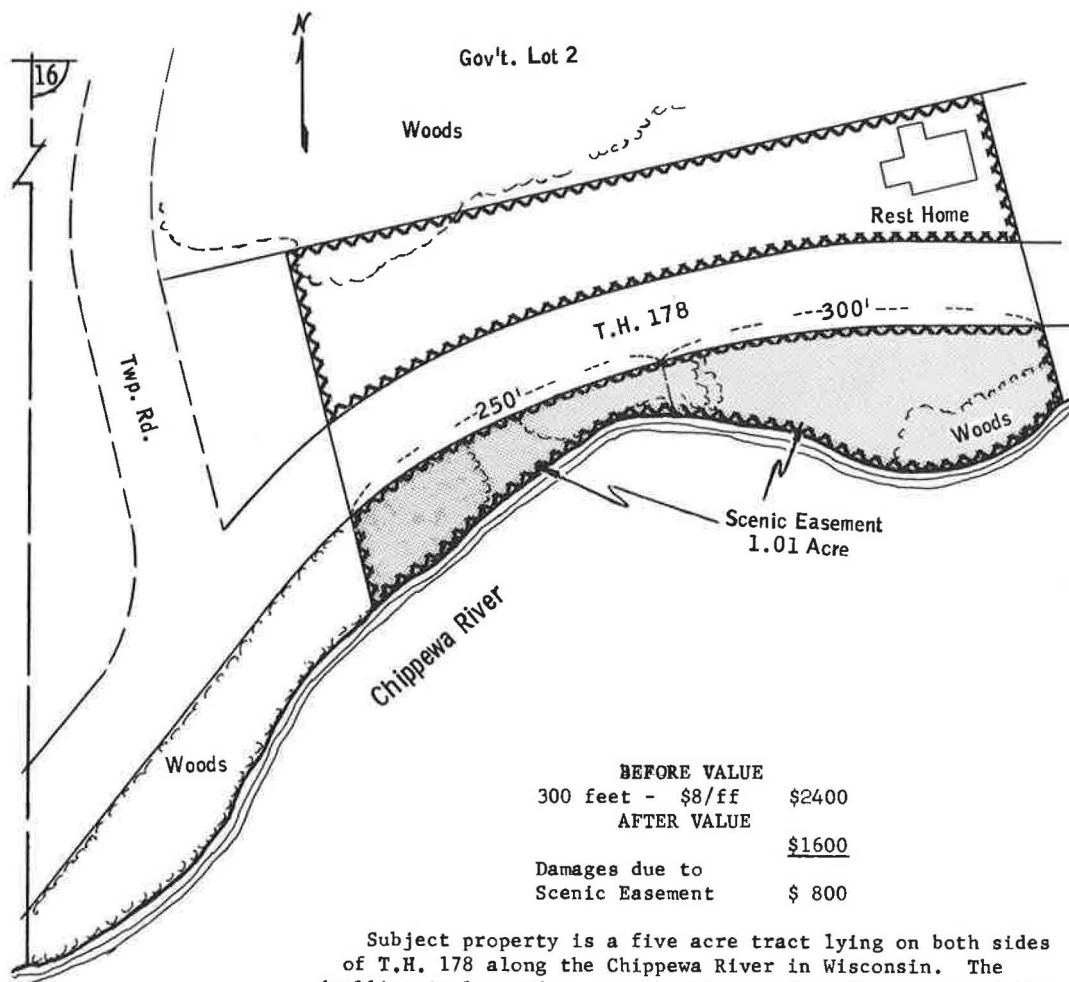
Tract "C"	River Bottom Land = Value	\$20/A	
	Easement Area	25A	\$20/A \$500

Restrictions Equal Fee Value

PELICAN RIVER - Much of this tract is low bottom land. This is the part adjacent to the river. Some of the bottom land is also heavily wooded. The tract has adequate water all summer long and makes an ideal calf pasture. Valuation at \$20 per acre for that part in the vicinity of the river is reasonable. The wooded tracts affected by scenic corridor easement are high land suitable for agricultural use if cleared. Therefore basic value at \$30 per acre is reasonable in consideration of the cost of clearing to make the land available for agricultural use. Estimated payment for scenic easement at \$20 per acre is in consideration of selective cutting and restriction for other use.

This parcel has special stumpage value for timber. Value approach is the same as for forest land.

6. Scenic Easement—River Frontage



Subject property is a five acre tract lying on both sides of T.H. 178 along the Chippewa River in Wisconsin. The dwelling is located across the highway from the river and the surrounding grounds along the area directly across the highway are well landscaped. Area between the highway and the river will be covered by scenic easement and due to the fact that the easement will not adversely affect the home tract, that portion is not considered in the appraisal.

The easterly 100 feet of the easement area averages about 100 feet in depth and has a steep bank to the river. The balance of the easement area is very narrow and has little use other than providing a view and access to the river.

By comparison with other sales of river frontage the value of the easterly 100 feet was estimated at \$800 per foot or \$2400 for 300 feet of frontage. To estimate value after restrictions of scenic easement have been imposed, the appraiser assumed that the owner would want no buildings nor mobile homes in the area across the highway from the house but on the other hand, he felt it could be very possible that another prospective purchaser may be more interested in revenue from rental of trailer stalls or sale of cottage sites. Scenic easement as tailored for this parcel, permits use of shoreline for private boat landing, dock or bathing beach. No mobile homes, house trailer or other portable structures will be allowed. Selective tree cutting by the owner is allowed by permit only.

The appraiser felt that restrictions of the easement depreciated the value of the tract by one-third and made a total allowance of \$800 for scenic easement damages. He made no allowance whatever for the westerly 250 feet of the easement area.