

The Valuation of Partial Interests in Land

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Today's Discussion

- Outline:
 - How does the BC Expropriation Act deal with the acquisition of partial interests in land?
 - What trends are we seeing in compensation awards?
 - What is the “market value” impact of these partial interests in land?
 - How do other jurisdictions deal with land acquisition?

Definitions

- Standard Partial Interest Definitions:

- **Partial Interest:**

- A division of the “bundle of rights”. An interest in land which represents something less than the 100% fee simple interest.

- **Easement:**

- The right to use or restrict the use of land. May be either positive or negative. A negative easement imposes a limitation on use of the owner’s land. A positive easement is an obligation imposed on the Servient Tenement and confers a benefit to the Dominant Tenement. Under both positive and negative Easements one cannot impose a positive obligation on the Servient Tenement to perform work on, or upgrade/maintain such an Easement.

- **Statutory Right of Way (“SRW”):**

- The most common form of Easement. Essentially the right to cross over another’s land. Cannot carry with it a positive obligation on the Servient Tenement.

Expropriation Act

[RSBC 1996] Chapter 125

- How does the Expropriation Act deal with partial acquisitions?
 - Section 40(1) – An owner is entitled to compensation for the market value of the owner's estate or interest in expropriated land, plus any reduction in market value of the remaining land, plus reasonable and personal business losses.
 - Section 40(3) – “Before v After” approach, but in no case can compensation be less than the equal average value of all of the land before the taking, times the area of the land being taken.
 - Section 40(3) may only be adjusted for a limited interest such as easement or right of way; or
 - The nature of the land being taken (Sec. 40(5); or
 - Specific benefit to that owner or land (Sec. 44).

Impact of Partial Interests on Land

The Impact to Property Stemming from a Partial Interest Taking:

- Surface or air rights (i.e. roads, electrical transmission lines, bridges, transit guideways).
- Subsurface rights (i.e. utilities, tunnels, parkades,

What trends are we seeing in compensation awards?

BC Supreme Court Decisions:

- *Heringa v City of Nanaimo, 2010 BCSC 1571*
- *Caven v BC Hydro and Power Authority, 2016 BCSC 122*

Heringa v. City of Nanaimo

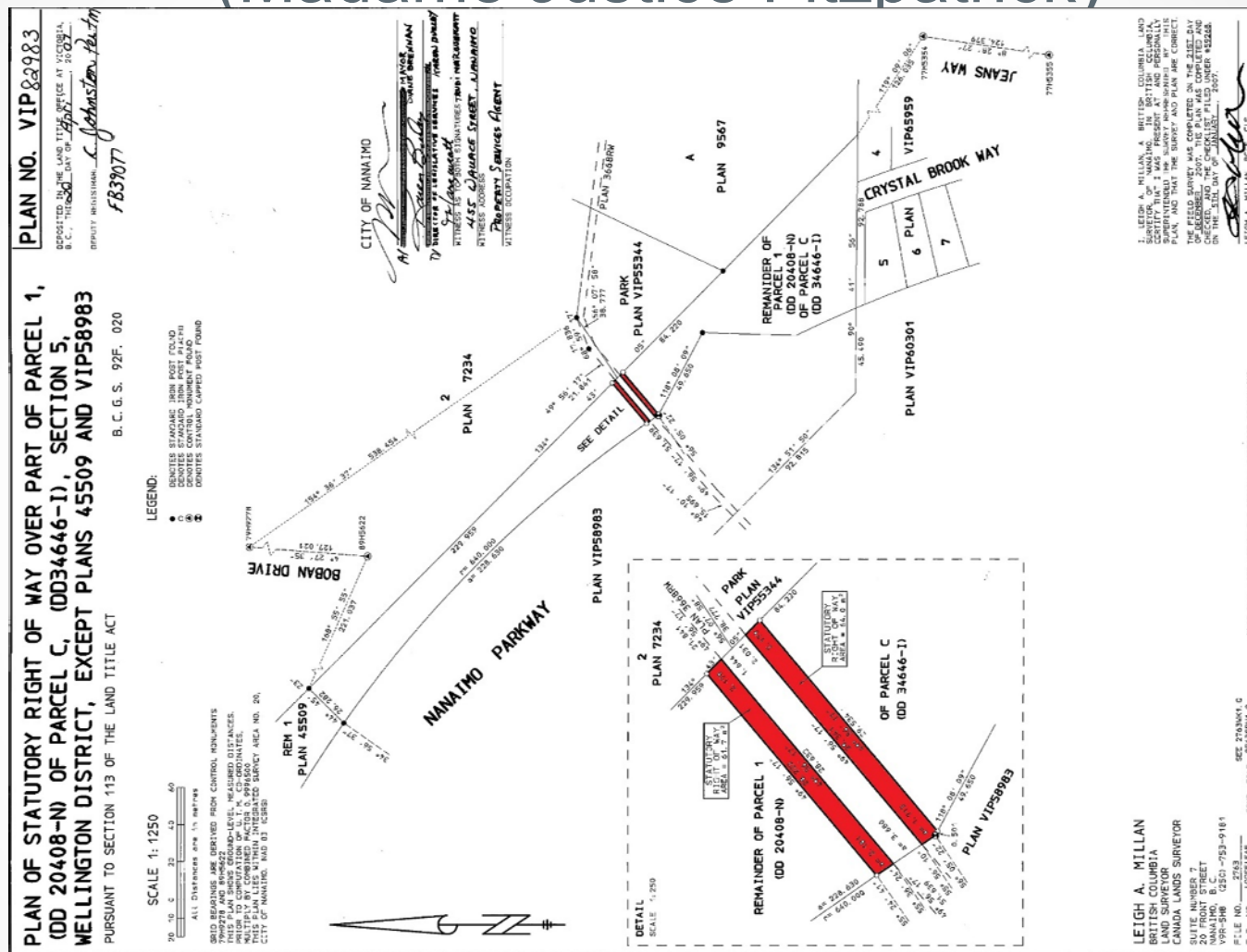
2010 BCSC 1571

(Madame Justice Fitzpatrick)

- Expropriation of a statutory right of way in a portion of the Heringa property “for the purpose of constructing, installing and operating, maintaining and repairing a sewer pipe system.” Vesting notice filed at the LTO in June 2007.



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Caven v. BC Hydro

2016 BCSC 122

(Madame Justice Sharma)

- 36.90 m² SRW acquisition at the northwest corner of a 19.29 acre ranchland property.
- Lands required for “swing” area related to a new 230kV transmission line located adjacent to the property.
- Vesting notice filed at the LTO in November 2013.

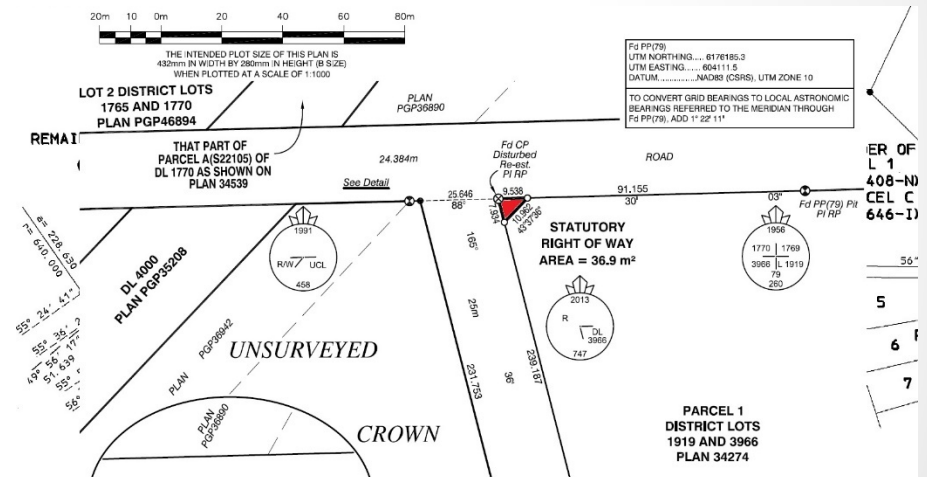


Caven v. BC Hydro

2016 BCSC 122

(Madame Justice Sharma)

- Justice Sharma concluded that 100% of fee simple value was appropriate given the owner was left with no residual rights to the area affected.
- 30% was concluded to be the appropriate level of injurious affection to the remainder.
- In terms of quantum, the 100% of fee simple value represented \$100.



Section 40(5)

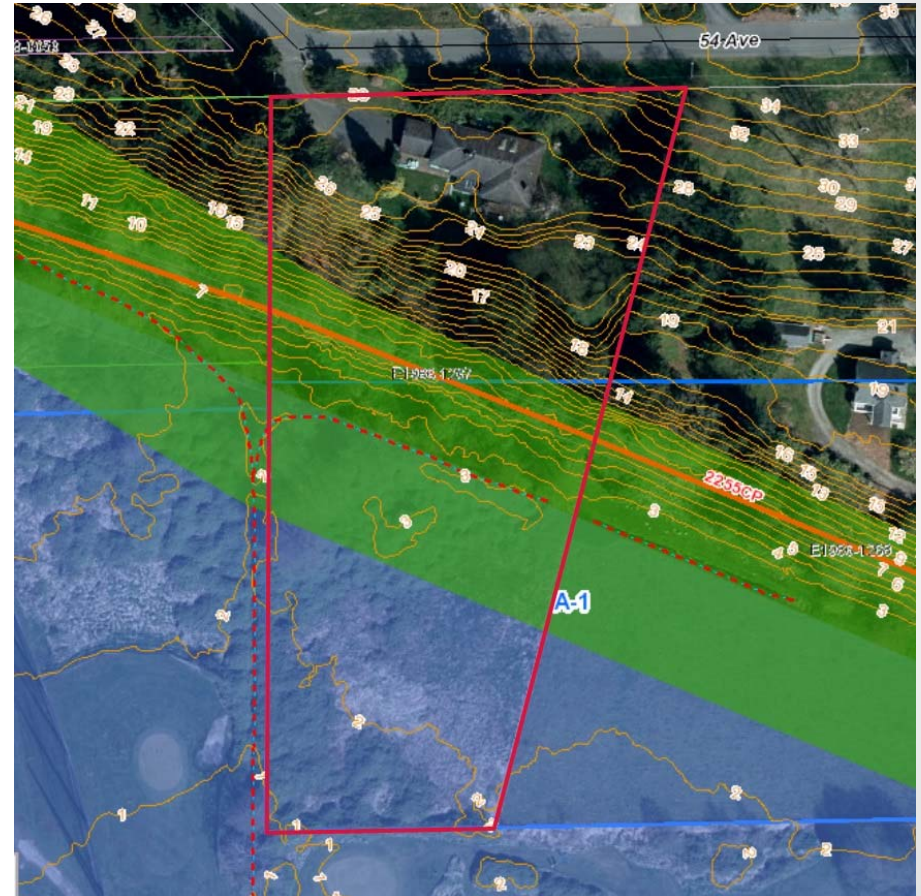
Nature of Land Taken

- Section 40(5) of the BC Expropriation Act states:

“(5) If, in the case of a partial taking, the character and use, or potential use, of the land before it was taken varies such that the land that was taken was, before the taking, more valuable or less valuable than the average value of the land that was not taken, the court may, after making a determination under subsection (3), make an adjustment to reflect that value accordingly.”

Section 40(5) Example

- Steeply sloping suburban residential view property.
- Homesite area towards the north boundary.
- Encumbered by a sewer right of way which traverses diagonally through site.
- Utility limited by floodplain, sloping terrain, bio corridor designation, and red coded watercourse.



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Market Value of Partial Takings

- Do court decisions and settlements differ from “market value”?
- Although the BC Expropriation Act provides for the Before v After Approach, why do the courts and tribunals frequently adopt opinion based evidence of an appropriate reduction in value?

% of Fee Simple Interest Achieved by Industrial Lands

	Address	Zoning	Sale Date	Site Area/Ac.	Price / Acre	% Encumbered	Price / R2 Unencumbered	Value of Encumbered	% Value of Unencumbered	Comments
	Legal Description	OCF Designation	Sale Price	Site Area/f2	Price / f2	Area Encumbered	Area Unencumbered	Value of Unencumbered		
A	2920 Croydon Drive, Surrey, BC	RA/IB	Listing (Jan 2010)	2.5	\$750,000	80%	\$25.00	\$1,330,500	61%	BC Hydro and City of Surrey sewer SRW, plus riparian area. OT house and barn on site - limited value.
			\$1,875,000	108,900	\$17.22	87,120	21,780	\$544,500		
B	Assembly of 2618 & 2612 Croydon Drive & Rear portion of 2609 - 158th Street, Surrey, BC	CD/IB (proposed)	\$39,783	2.99	\$727,425	60%	\$25.00	\$872,556	45%	Purchased as part of assembly. 60% of total assembly is encumbered. Three parcel assembly (unencumbered areas negotiated summer of 2007). Purchase 0.67 acres under powerlines for \$300,000 or \$10.28/f2 (negotiated August 2008, before market collapse). CD zoning permits 25% lot coverage. Four storey office building, 71,095 f2 with proposed net FAR of 0.95.
	Various	total	\$2,175,000	130,244	\$16.70	78,147	52,098	\$1,302,444		
C	3080-Croydon Drive, Surrey, BC	RA	Jan-17	4.952	\$504,847	50%	\$15.00	\$882,070	55%	50% Hydro encumbered site. Vacant business park holding property fronting the east side of Croydon Drive, one half block south of 32nd Avenue. BC Hydro transmission lines travel through the westerly portion of the property, including two tower platforms. Morgan Creek traverses through the southeast corner of site.
	Lot 1 Except: Part on Highway Plan 25810 Section 23 Township 1 NWD Plan 9266	Industrial	\$2,500,000	215,724	\$11.59	107,862	107,862	\$1,617,930		
D	19095 54th Avenue, Surrey, BC	IL	Jul-06	4.992	\$530,849	86.00%	\$22.00	\$1,980,203	48%	90% Hydro encumbered site. Light industrial holding property fronting the north side of 54th Avenue, one half block west of 192nd Street. Site substantially encumbered by BC Hydro transmission lines. Approximately 0.70 Acre is unencumbered. Utilizing a rate of \$22.00 per square foot for the unencumbered portion of the property, a value equal to 48% of the unit acreage rate applied to the unencumbered lands is suggested. Agent for property reports that a building of conventional building footprint of 12,000 f2 could be accommodated within the unencumbered area. Most off site works completed by vendor and no requirement for filling or preloading.
	Parcel A (O63489E), Lot 9, Section 4, Township 8, NWD Plan 1461	Industrial	\$2,650,000	217,466	\$12.19	187,021	30,445	\$669,797		
E	19061 54th Avenue, Surrey, BC	IL	Nov-06	2.525	\$950,495	20.00%	\$22.00	\$464,060	96%	20% Hydro encumbered site. Light industrial holding property fronting the north side of 54th Avenue, one half block west of 192nd Street. Site partially encumbered by BC Hydro transmission lines at the northeast corner (Estimated at 0.50 Acre). Most off site works completed by vendor and no requirement for filling or preloading.
	East Half of South Half of Lot 10, Section 4, Township 8, NWD Plan 1461.	Industrial	\$2,400,000	109,997	\$21.82	21,999	87,997	\$1,935,940		
F	15542 - 32nd Avenue, Surrey, BC	RA	Sep-09	1.000	\$769,912	50%	\$23.00	\$269,003	54%	Rectangular shaped parcel fronting south side of 32nd Avenue. Designated "Business Park or Live/Work in Cluster Housing Form" and "Creek Preservation Area" (approx. 50%). Encumbered by red coded creek at rear. Generally level topography. All services along 32nd Avenue. Improved with single family dwelling plus detached two bedroom "cottage" assessed at \$89,800. Net of improvements a price per square foot of \$16.12 is suggested.
	Lot 1, L/D 36, Section 23, Township 1, Part NW1/4, NWD Plan 70995.	Suburban	\$770,000	43,565	\$17.67	21,783	21,783	\$500,998		
G	15542 - 32nd Avenue, 2609 - 158th Street, & 2660 Croydon Drive, Surrey, BC		Listing	18.247	\$1,267,606	40%	\$35.00	\$6,455,450	58%	Designated for mix business park property (lot 1 - 10.4 acres - 70% encumbered) not being actively marketed (multifamily lots listed for \$1,350,000/acre and \$1,950,000/acre. Owners apparently looking for \$1,000,000/acre including encumbered area. No interest.
	Various		\$23,130,000	794,839	\$29.10	318,424	476,416	\$16,674,550		
H	15700/15800 Blocks of Croydon Drive, Surrey, BC	RA	Mar-06	29.11	\$822,361	30%	\$20.00	\$6,154,841	81%	29.88% Hydro encumbered site. Multi-parcel land assembly acquired for the "Croydon Crossing" commercial development. A total of 14 titled parcels comprising an aggregate area of 29.11 Acres. High tension BC Hydro transmission lines traverse through the westerly portion of the assembly, encumbering approximately 8.698 Acres.
	Various	Suburban	\$23,938,941	1,268,119	\$18.88	378,914	889,205	\$17,784,100		



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Example (f): Industrial land – 20% Encumbered

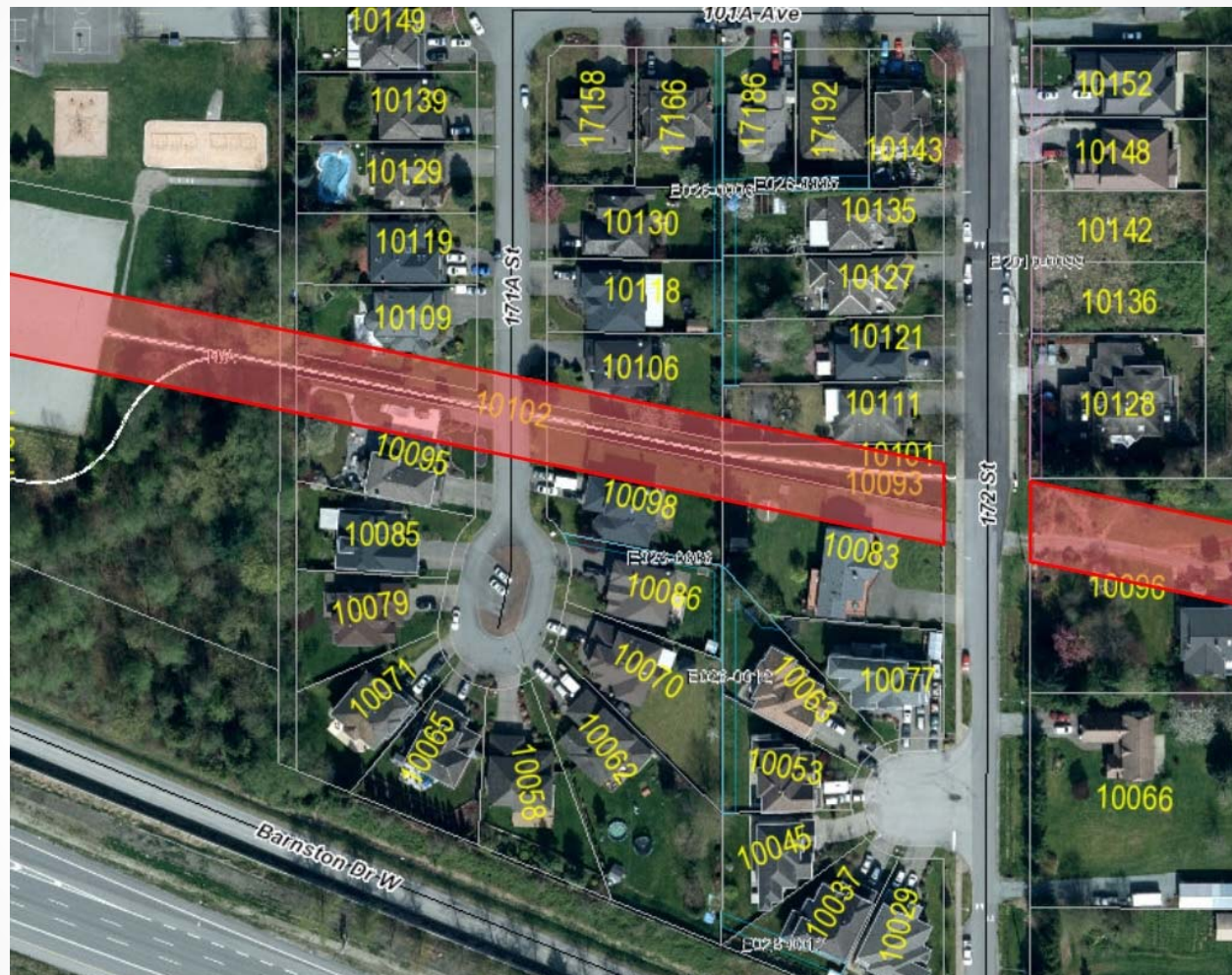


Example (e): Industrial land – 86% Encumbered



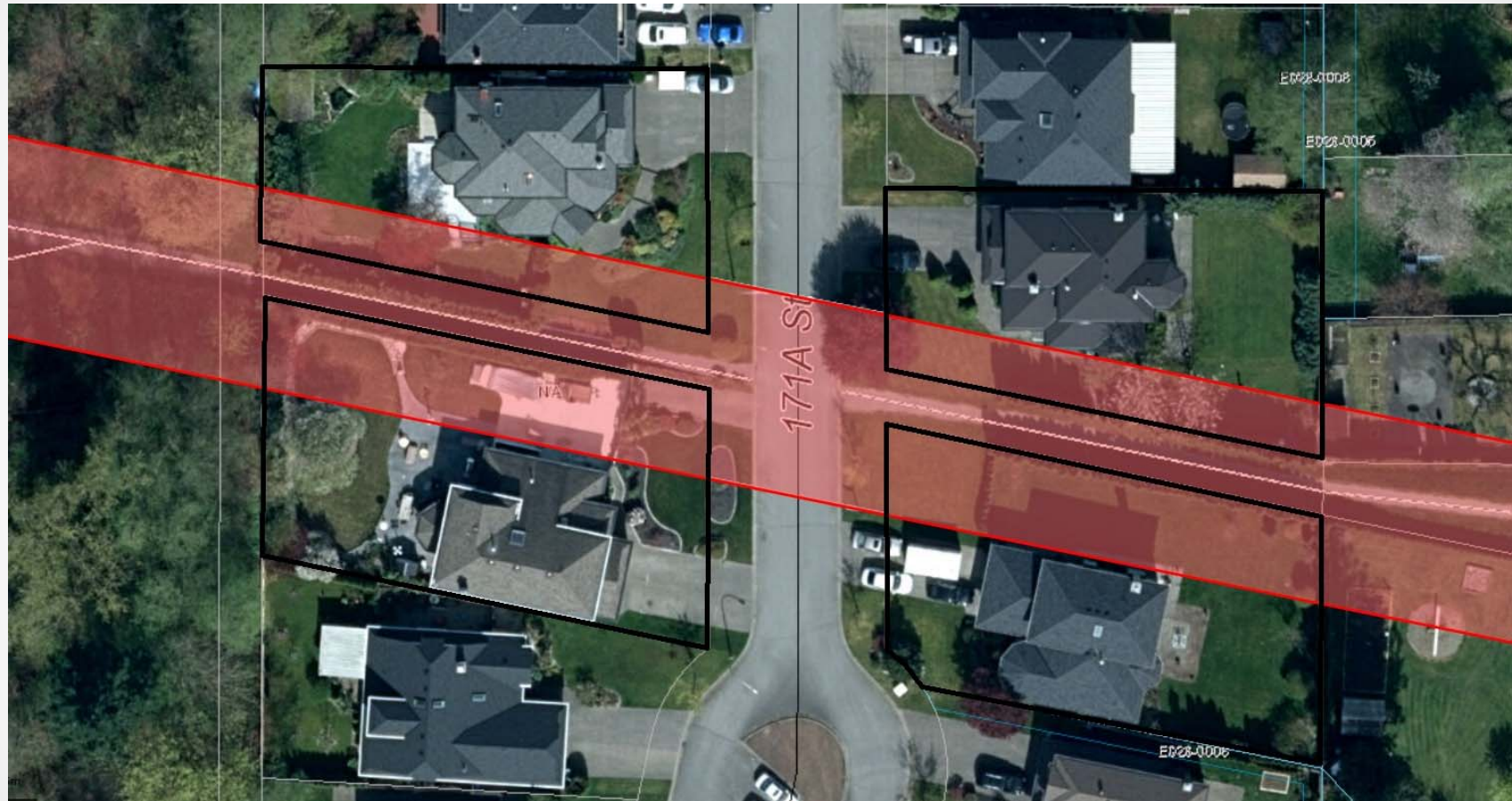
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Suburban Residential Land Encumbered by subsurface gas right of way



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Gas right of way “blankets” relatively significant side yard areas

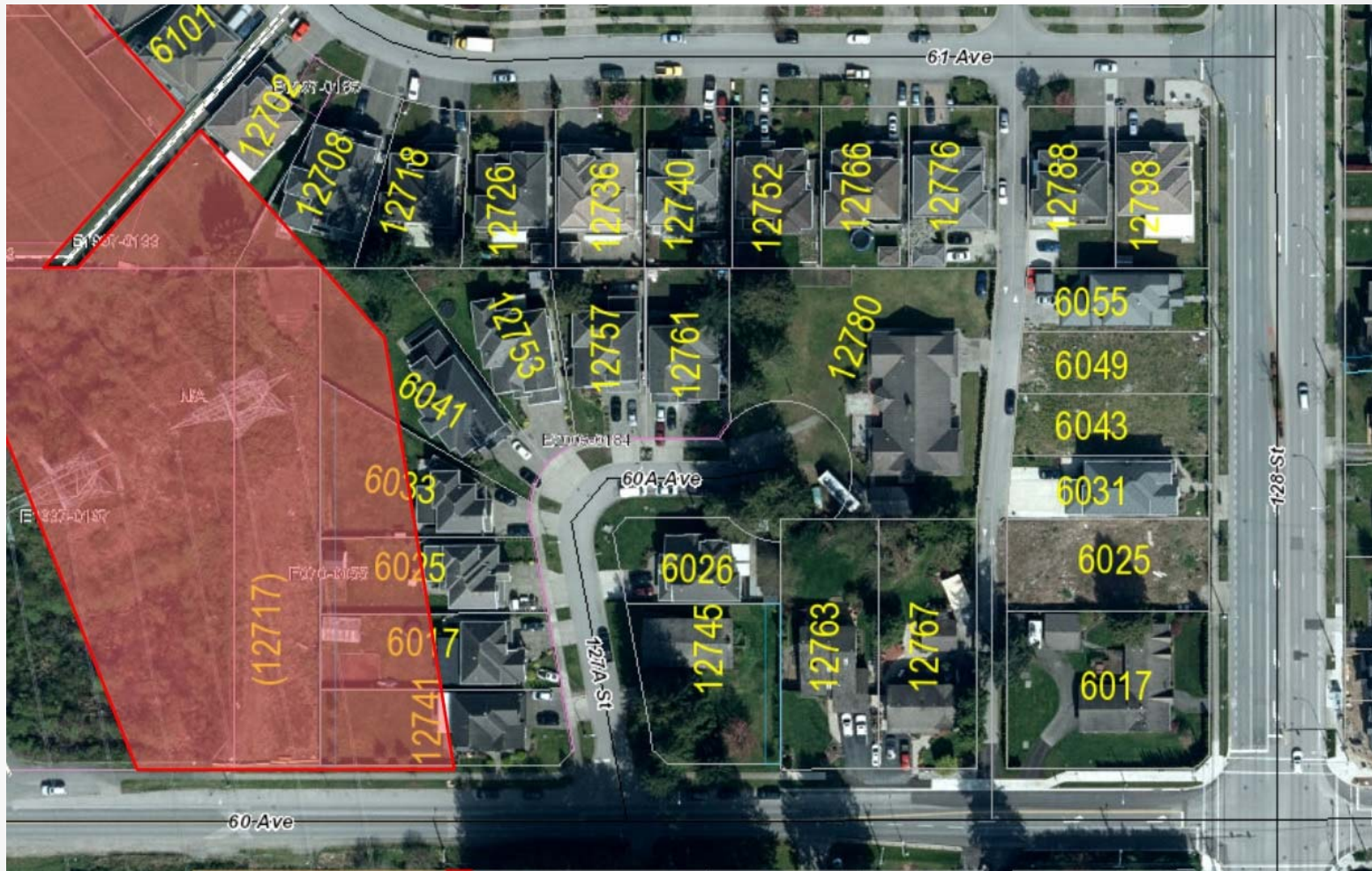


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Paired Sales Analysis – Isolation of gas right of way impact

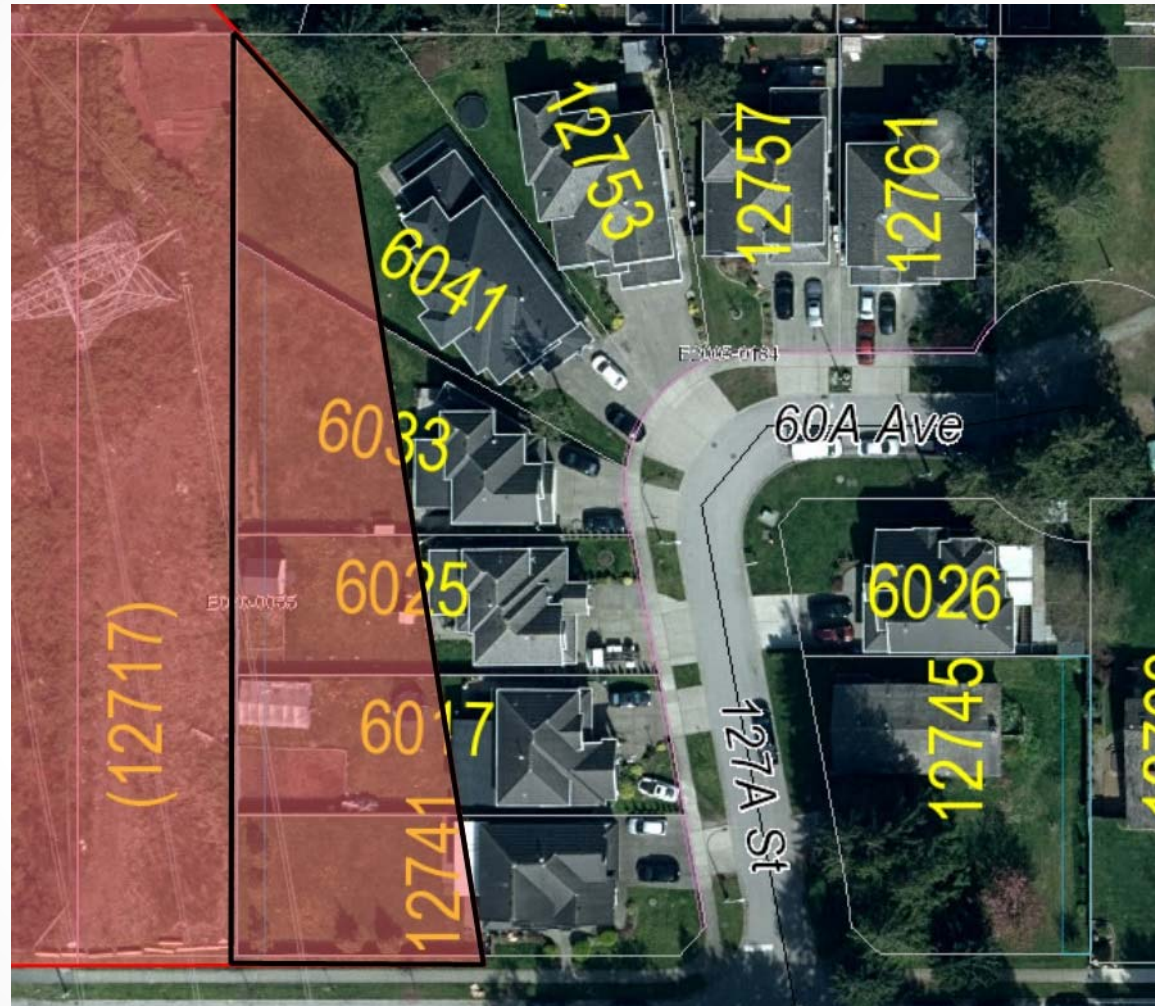
Subsurface Gas Right of Way - Single Family Residential Use Context (side yard encumbrance)												
				Estimated		Encumbered Site Area	% of site encumbered	Value of		Imputed		Indicated % of fee
Lot Size		S.P./ft2	Unencumbered Unit Value	Unencumbered Area	Imputed Value of Encumbered Area			Encumbered Unit Value				
Encumbered Indices												
10098 171A Street	Jul-92	\$112,000	10,441	\$10.73	\$11.00	3,759	36.00%	6,682	\$73,502	\$38,498	\$10.24	93.11%
10095 171A Street	Aug-92	\$112,000	10,980	\$10.20	\$10.50	3,839	34.96%	7,141	\$74,981	\$37,020	\$9.64	91.84%
10109 171A Street	Oct-92	\$112,000	9,182	\$12.20	\$12.50	2,208	24.05%	6,974	\$87,175	\$24,825	\$11.24	89.95%
10106 171A Street	Oct-92	\$112,000	9,180	\$12.20	\$12.50	2,213	24.11%	6,967	\$87,088	\$24,913	\$11.26	90.06%

Urban Residential Land Encumbered by Hydro right of way



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Hydro right of way “blankets” rear yard areas, including visual disturbance



Paired Sales Analysis – Isolation of Hydro right of way impact



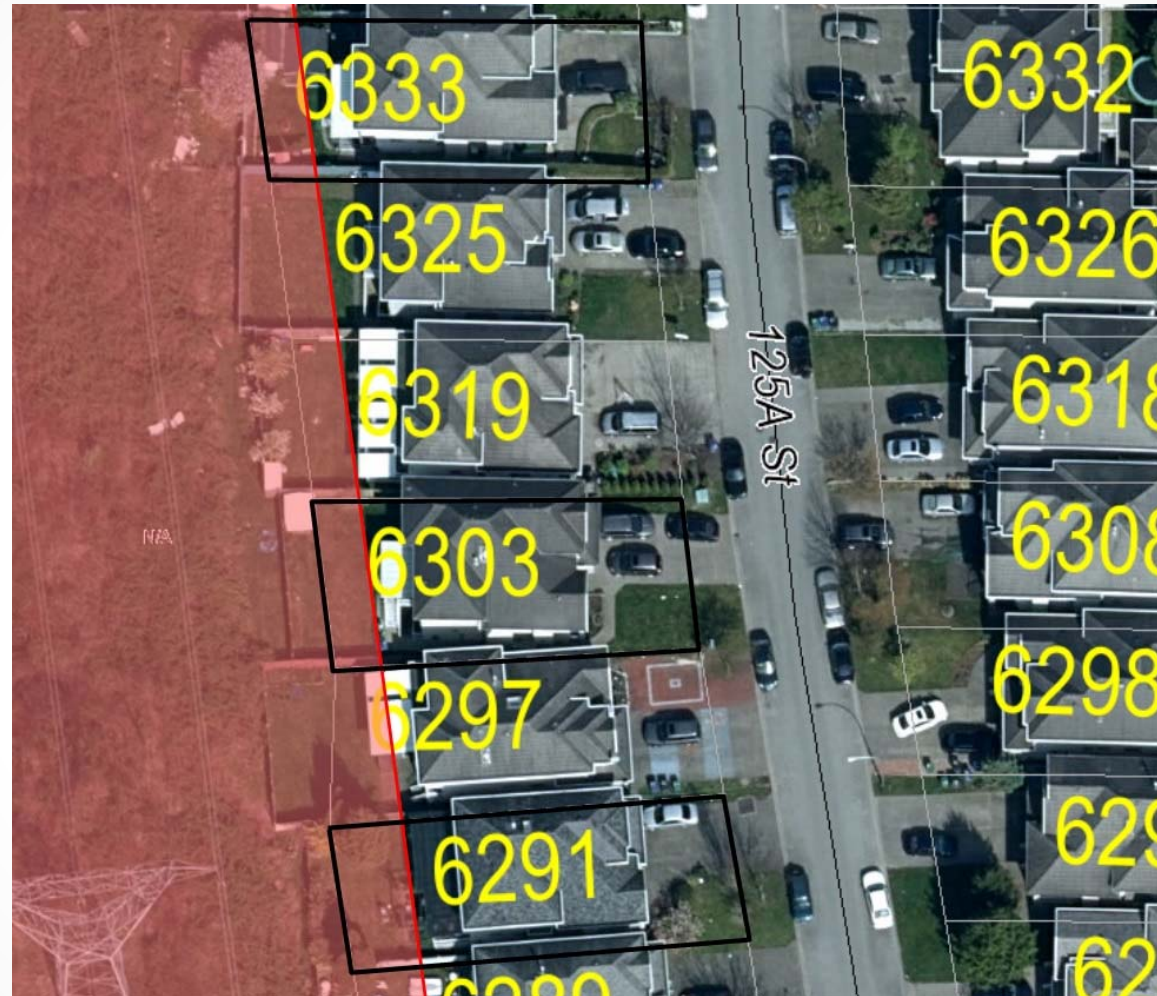
Hydro Encumbered Rear Yard - Single Family Residential Use Context (Properties back onto Hydro Corridor with Towers)												
					Estimated	Encumbered	% of site	Unencumbered	Value of	Imputed Value of	Imputed	Indicated
	Lot Size	S.P./ft2			Unencumbered	Site Area	encumbered	Site Area	Unencumbered	Encumbered Area	Encumbered Unit	% of fee
Encumbered Index												
6017 127A Street	Aug-05	\$165,000	7,536	\$21.89	\$30.00	3,870	51.35%	3,666	\$109,980	\$55,020	\$14.22	47.39%

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Urban Residential Land Encumbered by Hydro right of way



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Hydro Encumbered Rear Yard - Single Family Residential Use Context (Properties back onto Hydro Corridor with Towers)												
		Lot Size	S.P./ft2	Estimated Unencumbered	Encumbered Site Area	% of site encumbered	Unencumbered Site Area	Value of Unencumbered	Imputed Value of Encumbered Area	Imputed Encumbered Unit	Indicated % of fee	
Encumbered Indices												
6303 125A Street	Apr-98	\$102,000	4,392	\$23.22	\$25.00	587	13.37%	3,805	\$95,125	\$6,875	\$11.71	46.85%
6291 125A Street	Apr-98	\$102,000	4,327	\$23.57	\$26.00	764	17.66%	3,563	\$92,638	\$9,362	\$12.25	47.13%
6333 125A Street	Apr-98	\$102,000	4,564	\$22.35	\$24.00	552	12.09%	4,012	\$96,288	\$5,712	\$10.35	43.12%

How do other jurisdictions compensate?

- Our study wouldn't be complete without comparison to our neighbours across the pond.

London City Hall



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The "Walkie Talkie"

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The "Tower Bridge"



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The "Walkie Talkie" the "Cheese Grater", and "The Gherkin"



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The Differences (Cont.)

United Kingdom

- Lands Clause Consolidation Act of 1845.
- Land Compensation Act of 1961.
- Compulsory Purchases Act of 1965.
- Land Compensation Act of 1973.
- Electricity Act of 1989.
- Up to ten pieces of legislation guide the process.

British Columbia

- Expropriation Act of BC.



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The Differences

United Kingdom

- Compulsory Purchases →
- Wayleave →
- Indefinite Wayleave →
- Material Detriment →
- Promotors of the Undertaking →

British Columbia

- Expropriation
- Right of Way
- Permanent RoW
- Injurious Affection
- Taking Authority



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The Differences (Cont.)

United Kingdom

- No minimum compensation provision
- Subsurface rights are not generally linked with claims of Material Detriment (IA)

British Columbia

- Section 40(3), minimum compensation payable
- Section 40(1)(b)(i), reduction in value to the remainder



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Stynes v. Western Power (East Midlands) PLC, UTLC ACQ/130/2011



Sec. 44, Land Compensation Act 1973

Stynes v. Western Power (East Midlands) PLC, UTLC ACQ/130/2011

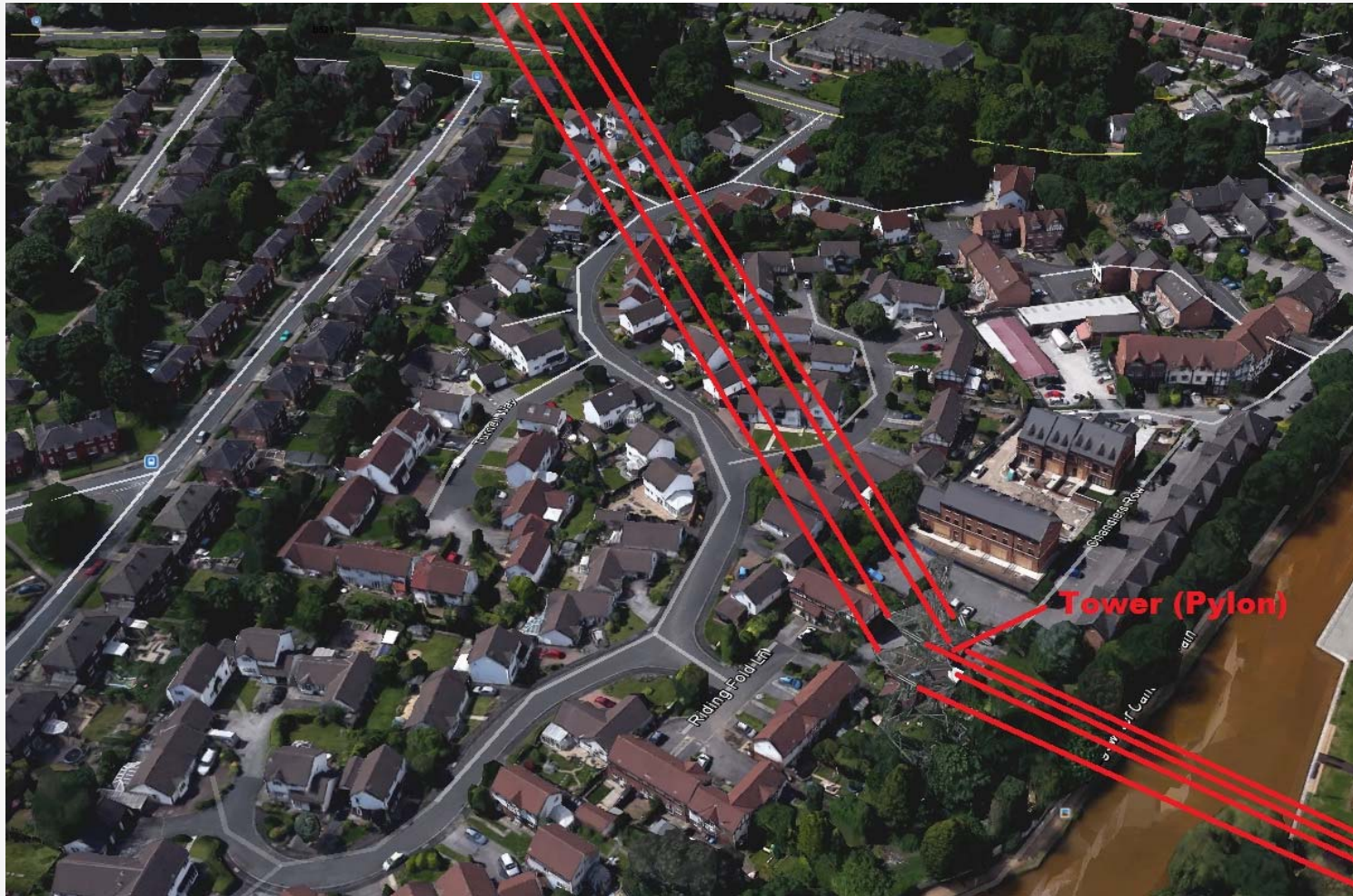
Reasons for decision:

- The provisions for compensation under Sec. 44 are predicated on “land” being “acquired or taken” from someone.
- What the compensating authority acquired was authorization to trespass in the airspace above the property. This is not tantamount to the taking of land.
- The works in question must be “partly” on land owned by the Claimant, and if they are not, Sec. 44 does not apply.
- Compensation for IA should not be awarded for injury to the use of land acquired from others.

Turris Investments Ltd. v Central Electricity Generating Board, (1981) 258 EG 1303



Turris Investments Ltd. v Central Electricity Generating Board, (1981) 258 EG 1303



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What have we learned?



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Questions?



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