

The Property Value Protection Program - How the Compensation Plan is Working and Evolving to Meet Changing Needs – 13149

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ABSTRACT

The Property Value Protection (PVP) Program offers an innovative approach to address the risk of individual property value loss resulting from the cleanup and long-term management of historic low level radioactive waste in the Port Hope area in Southern Ontario, Canada. This cleanup is taking place through the Port Hope Area Initiative (PHAI), a federally sponsored waste remediation project.

The PVP Program came into effect on October 1, 2000, having been established as a key element of the PHAI Legal Agreement between the Government of Canada and the municipalities of Port Hope and Clarington. The PVP Program was designed in direct response to the concern expressed by the agreement's two municipal signatories that protection of local property owners from the risk of property value loss was critical to their acceptance of the Port Hope and Port Granby projects.

The PVP Program compensates owners of residential, commercial or industrial properties for a loss in fair market value on the sale or rental of their properties. Increased mortgage refinancing costs and expenses incurred as a result of delayed sales that can be attributed to the Port Hope Area Initiative are also compensated.

INTRODUCTION

The PVP Program, delivered by the Port Hope Area Initiative Management Office (PHAI MO), came into effect on October 1, 2000. It was established as a key element of the Legal Agreement¹ for the PHAI, which was signed by the Government of Canada and the municipalities of Port Hope and Clarington. The PHAI includes two separate projects, the Port Hope Project and the Port Granby Project. The PVP Program applies equally to each Project.

The PVP Program was designed in direct response to the concern expressed by the municipalities that protection of local property owners from the risk of project-related property value loss was critical to their acceptance of the projects. The establishment of the PVP Program, therefore, is regarded as an integral component of the PHAI. It reflects the desire and commitment of the municipal councils and the federal government to mitigate potential, interim economic effects that may arise from the projects when cleaning up the historic low-level radioactive waste.

¹ An agreement for the cleanup and the long-term safe management of historic low-level radioactive waste situated in the Town of Port Hope, the Township of Hope and the Municipality of Clarington was finalized between the Government and Canada, the Municipality of Port Hope and the Municipality of Clarington on March 29, 2001 to launch the Port Hope Area Initiative. (The Town of Port Hope and the Township of Hope amalgamated in 2000 to form the Municipality of Port Hope.)

Together, the Port Hope and Port Granby projects will address the cleanup and long-term management of approximately 1.7 million cubic metres of contaminated soil and refinery wastes resulting from the past waste management practices of Eldorado Nuclear Limited, a former Canadian Crown corporation, and its private sector predecessors. The waste was generated between the 1930s and late 1980s from the refining of radium and, subsequently, uranium. Today, more than 12 years since the inception of this unique, socio-economic effects management program, the PVP Program continues to build stakeholder confidence by mitigating the risk of economic vulnerability of current and prospective property owners, thereby contributing to stability in the local real estate market.

PROTECTING PROPERTY OWNERS FROM POTENTIAL LOSS

Few precedents across North America or globally have been found for a property value compensation program as comprehensive as the PHAI's PVP program which has the potential to compensate hundreds of property owners, totalling millions of dollars, over its lifespan.

The PVP Program compensates owners of residential, commercial or industrial properties for a loss in fair market value on the sale or rental of their properties if that loss can be attributed to the plans or activities of the PHAI. Increased mortgage refinancing costs and expenses incurred as a result of delayed sales, which arise from the projects, are also compensated. In the more than 10 years during which the PVP Program has operated, all but one claim for compensation have been for loss on the sale of residential properties.

The PVP Program compensates sellers for loss of sale due to the cleanup of the waste but does not compensate for the presence of historic low-level radioactive waste on a property. This is because the federal-municipal agreement (Legal Agreement) specifically addresses potential value loss arising only from the plans or activities of the projects to remediate and manage the wastes for the long term. The Program encompasses an area of approximately 92 km², referred to as the PVP Zone (Figure 1). This zone comprises a total of approximately 5,800 properties that could potentially be affected by the projects. The PVP Program will remain in effect for the duration of the Initiative, retroactive to October 6, 2000, and up until two years after the completion of the long-term waste management facilities. During the post-construction period, the real estate market will be monitored to confirm that any diminished values that materialize recover from effects of the projects. Therefore, with the clean-up and construction phase scheduled to begin within the next year and extend for approximately 10 years, the PVP Program is expected to have been in place for more than 20 years by the time it ends.



Figure 1: PVP Zone

ESTABLISHING THE PROGRAM

The Government of Canada provided initial guidelines for the PVP Program's design, which were subsequently formalized through Section 8 of the PHAI Legal Agreement. The agreement sets out specific requirements for the Program by defining three main components: a claim process, an appeals process and the appointment of independent, citizen Compensation Officers to adjudicate appeals. Procedures were established with the objective of ensuring fairness and consistency in the determination of claims for compensation. An independent consultant was engaged to develop operational details, staffing requirements and estimate initial costs. A small staff with expertise in property valuation, financial analysis and stakeholder communications launched the PVP Program. The citizen Compensation Officers - local individuals with a history of civic involvement and legal or real estate experience - were nominated by the two municipalities and appointed by the Government of Canada to hear appeals and to maintain an arm's length relationship from the day-to-day operations of the Program.

THE CLAIM PROCESS

The compensation process is engaged when an owner believes s/he has experienced a loss on the sale or rental of a property that can be attributed to the plans or activities of the PHAI. When a claim for loss of value on sale is submitted, the PVP Program first screens the claim to ensure certain fundamental eligibility criteria have been met. These eligibility criteria include confirmation that the property is located within the PVP Zone, that the sale occurred within the designated time frame (October 6, 2000 to two years past completion of the long-term waste management facilities) and that the sale was the result of an arm's length transaction.

With eligibility confirmed, Program staff analyzes the claim for three key factors, all of which must be present for compensation to be awarded. These are:

1. The diminished sale price can be attributed to the effects of the PHAI (project effect);
2. The property has been adequately exposed to the open market; and
3. The property sold for less than its fair market value.

Each of these factors is explained in greater detail as follows:

Demonstrating project effect

To receive compensation, the real estate loss must be directly attributable to the plans or activities of PHAI, which are defined as the excavation/cleanup of the waste, transportation of the waste to one of the long-term waste management facilities and/or the construction of the facilities (Port Hope or Port Granby project). Loss on sale attributable to factors unrelated to the PHAI (bankruptcy, divorce, etc.) is not covered by the Program.

The first 10 years of the PVP Program occurred during the *pre-construction* Phase 1 and Phase 1A periods. During these phases, each Project underwent an environmental assessment (through the *Canadian Environmental Assessment Act*), and detailed designs were completed. However, with the exception of a trial remediation for the Port Hope Project in the fall of 2010 and the construction of the dedicated access route into the site of the Port Hope Project long-term waste

management facility in summer 2011, there was no visible evidence of the projects. No excavation or movement of the waste or construction at the site of the long-term waste management facilities occurred during phases 1 and 1A.

The PHAI entered Phase 2, construction and cleanup, on January 13, 2012, with the announcement by the Minister of Natural Resources of \$1.28 billion funding over 10 years. Construction has begun, including road upgrades in Port Granby, noticeable to neighbouring rural residents, and the new water treatment plant at the long-term waste management facility site in Port Hope. Although no movement of historic low-level radioactive waste is scheduled until 2015, when the new long-term waste management facilities are ready to receive waste, this construction work has the potential for project-related nuisance effects.

The PVP Program deems properties that lie within a "zone of influence," as described in the Environmental Assessment (EA) Study reports² for each of the projects, as having the potential to be affected by the projects, thereby causing a possible diminution in sale price upon the disclosure of this information.

The EAs make highly conservative predictions for potential nuisance effects, such as increased noise, dust or traffic, within zones established for each, specific remediation activity. When a claim is received, PVP staff measures the distance between the property and the source of the potential effects and confirms if a potential project effect based on these measurable criteria exists. It was in this manner, during both the pre-construction and construction phases, that the PVP Program could confirm that the marketing and ultimate sale price of a property were affected by the plans and activities of the PHAI.

The Port Hope Project offers several examples of potentially affected neighbourhoods. These locations include lands surrounding 18 large-scale remediation sites, the site of the long-term waste management facility and properties adjacent to three designated, project transportation routes, along which approximately 80,000 to 90,000 trucks transporting low-level radioactive waste will travel over the life of the Project. The PHAI MO has always actively disclosed this information through a map made available to the public at its Project Information Office, on its website (www.phai.ca) and by distribution to real estate offices. As well, PVP Program staff members have, and continue to, provide information for posting on the real estate boards' internal websites and give presentations to real estate professionals and other stakeholder groups to increase understanding of where project activity will occur.

Based on this general awareness, the PVP Program has recognized in Phases 1, 1A and 2, a causal link between a buyer's knowledge of the plans and activities of the Port Hope Area Initiative and the potential for a buyer to be unwilling to pay full, fair market value for a potentially affected or affected property.

² The Environmental Assessment Study Report, P011 Hope Long-Term Low-Level Radioactive Waste Management Project (Rev. 1dl, January 2006) and the Environmental Assessment Study Report, Port Granby Long-Term Low-Level Radioactive Waste Management Project (Rev. I, July 2007), along with their supporting documents, describe predicted effects of the projects.

Assuring adequate market exposure:

Communicating how the PVP Program works, especially to buyers, sellers and the real estate sector, is an important function of the PVP Program. Through discussions and publicly available information, the PVP Program actively advises sellers and their real estate agents of the need to demonstrate that the property was adequately exposed to the open market prior to its sale.

The Program is funded by the Government of Canada through a grant appropriation, and its operations are subject to audit. The PHAI MO must be able to demonstrate accountability for the responsible use of federal taxpayers' dollars in the awarding of each PVP Program claim. This is achieved, in part, by requiring the claimant to show good faith and make his/her best effort to secure the highest possible price for the property. To satisfy this requirement, the seller must publicly expose the property by listing it on the Canadian Real Estate Association's Multiple Listing Service for a *minimum* of the average days on market for the month of listing for the subject municipality. (This statistic is published by each local real estate board.)

An improvement to the PVP Program was recently put in place in the form of a controlled marketing plan that is designed to help stabilize the market, discourage “low-ball” offers and serve as a guideline for sellers who intend to make a PVP claim. This plan proposes that price reductions be made in increments no greater than 5% and no more frequently than every two to four weeks (depending on the original list price of the property). In addition, at any point during the property's listing, sellers should not accept an offer greater than 10% below the current asking price. By providing these marketing guidelines, the intent of the PVP Program is to facilitate the efforts of property owners and their realtors to demonstrate that they have made their best efforts to secure the highest possible price, thus increasing the likelihood that their PVP claim will be successful.

Determining unaffected fair market value

At the heart of the PVP Program lies the assurance that property owners who experience a loss in value arising directly from the projects will receive *unaffected* fair market value (UFMV) on the sale (or rental) of their property. In other words, the PVP Program commits to put sellers affected by the projects on an even playing field with unaffected sellers. Simply stated, unaffected fair market value represents the value of the property as if the PHAI did not exist.

When a claim for compensation for loss on sale is received, the PVP Program engages an independent appraiser, certified by the Appraisal Institute of Canada, to complete an appraisal using sales in areas *unaffected* by the projects. In the Municipality of Port Hope, where broad market effects have not been detected, the appraiser would sample comparables in neighbourhoods away from large-scale remediation sites, project transportation routes and the site of the future, long-term waste management facility. In Southeast Clarington, sales of comparable properties away from the area of the existing and future Port Granby Project waste management facilities would be sampled.

Establishing the UFMV of a property permits the PVP Program to determine if the seller realized a loss on sale. The appraiser's selection and use of current, comparable sales also enables the Program to exclude other external market factors for which the Program does not compensate. For example, the PVP Program does not compensate a seller for an unrealistic expectation of

what the property is worth. Similarly, the PVP Program does not compensate sellers for poor market conditions that may prevail within the broader marketplace (for example, the 2008-2009 recession). To ensure that current market conditions are factored into the evaluation, the PVP Program considers an appraisal older than three months to be not fully representative of those conditions (stale) unless time adjustments are considered.

Thus, through this analytical process, the PVP Program satisfies its three primary criteria to establish loss of value on sale based on the following:

- Project effect has been determined;
- Adequate market exposure is confirmed; and
- Loss is established if the property sold for less than the UFMV, as appraised.

To determine the amount of compensation to be paid to the claimant for loss of value on sale, the PVP Program starts by examining the difference between the selling price and UFMV. This is the maximum compensation that is available to the claimant. If other conditions exist that have caused the sale price to be lower than the UFMV (compelled sale as a result of bankruptcy or divorce, etc.) these will be taken into account and factored into the decision.

The entire decision-making process takes about 70 days, and a cheque is usually delivered to the claimant within 15 days of closing of the sale, provided that the claimant accepts compensation offered, signs a release, and submits a certified copy of the new transfer/deed.

ENHANCEMENTS TO FACILITATE SALES OF IMPACTED PROPERTIES

The Legal Agreement foresaw the PVP Program process starting at the point at which a property was sold. The sale would then be analyzed as described above. What the initial program designers failed to anticipate was that the first and clearest sign that a property might be experiencing a project effect would be difficulty encountered by an owner to realize a sale.

PVP Program staff recognized this problem early in the Program when properties that were listed for sale in very close proximity to major clean-up sites lingered on the market with little to no buyer interest being shown. These sellers could not avail themselves of the PVP Program compensation process because they could not realize a sale.

To address this problem and assist owners of directly impacted properties, the PVP Program instituted a service called pre-sale appraisals. Instead of waiting for the property to sell to engage the independent certified appraisal, as the normal claim process requires, the Program provides the appraisal to the owner, on request, *prior* to sale. The intent is to assist the seller to ensure the property is being competitively marketed at a realistic price. This eliminates uncompetitive, overpricing as a possible contributing factor in the marketing difficulties.

Pre-sale appraisals, the full cost of which is borne by the PHAI MO, are not available to all sellers. In order to qualify for a pre-sale appraisal, a number of criteria must be met. First, the property must be directly affected by its proximity to future project activities. Second, the property must have been listed for an overly long period, which the PVP Program defines as one-

and-a-half times the average days on market during the original month of listing. Third, the owner must show s/he has tried to actively market the property by reducing the price at least once during the listing, and, finally, the owner must commit to a marketing plan as set out by the PHAI.

This marketing plan is similar to the plan set out in the claim process but starts by requiring the claimant to lower the asking price for the property to the UFMV as established in the appraisal; this removes any 'price-effect' on the property. Following this, the marketing plan sets out a stepped-down price reduction plan: the owner must lower the price in increments no greater than 5% and cannot accept an offer greater than 10% below the asking price at any time during the stepped-down process. Failure to follow this marketing plan could jeopardize the claimant's ability to make a successful claim once the property sold.

Because properties that receive pre-sale appraisals are those directly impacted, the price may have to be reduced several times after the pre-sale appraisal before the property sells. Pre-sale appraisals give owners the confidence to do this, as they realize, ahead of time, that they have met the requirements of the PVP Program and will receive compensation once the property sells (as long as all eligibility criteria, such as an arm's length transaction, are satisfied and a loss is suffered). Working cooperatively with staff of the PVP Program, owners and their real estate agents are able to make gradual reductions in the list price over a period of time until an offer is realized.

The PVP Program has worked closely with over 20 owners and their agents to achieve sales of impacted properties through the pre-sale appraisal process. In every case where the owner has lowered the list price to meet the appraised value, as promised, the property has sold and, if a loss occurred, compensation has been awarded. Pre-sale appraisals have become an effective instrument in the Program's tool kit to assist owners of impacted properties to realize a sale and receive compensation.

MONITORING THE MARKET

The PVP Program conducts ongoing monitoring of the local and area real estate markets. The Program analyzes a variety of indicators of real estate health such as sales activity, average selling price, sales turn-over time, and sales-to-listing price ratio. To enhance this knowledge, in Spring 2011, the PHAI MO engaged an independent expert to conduct an in-depth analysis of the Port Hope real estate market over the previous 10 years, comparing it to neighbouring markets. It is intended that this information will be updated regularly. The results of the analysis indicated that differences between average property prices in Port Hope and neighbouring markets was largely due to factors unrelated to the PHAI.

The PVP Program's research, to date, has not identified a quantifiable, generalized market effect in the case of either the Port Hope or the Port Granby projects. In the western portion of the PVP Zone, where the Port Granby Project is located, it is anticipated that only those properties within a small, rural area situated in the immediate vicinity of the existing and future waste management facilities are likely to ever exhibit project-related property devaluation. Although a small number

of claims have been paid in this site-specific Port Granby Project area, other properties have sold in this same geographic area with no demonstrated project effects, in spite of full disclosure.

The urban area of the Municipality of Port Hope poses greater challenges with respect to monitoring the market for site-specific vs. broader, project effects. The PVP Program uses the adjacent community of Cobourg, six kilometres to the east, against which to compare these indicators. Cobourg serves as a good "control zone" for monitoring the Port Hope market, as Cobourg is a socio-economically similar community without the presence of historic, low-level radioactive waste.

COMMUNICATING WITH STAKEHOLDERS

Increasing awareness of the PVP Program and communicating its requirements to potential claimants are the Program's primary communications objectives. Key stakeholders include all owners within the PVP Zone and professionals working in the real estate sector. The Program's emphasis on clear, user-friendly and accessible information has been a fundamental part of its development. Since the Program's inception, it has included dedicated communications staff that is available to meet with members of the public on a walk-in basis. Additionally, a series of six, plain-language fact sheets (Figure 2) describes the Program's purpose, eligibility requirements, steps involved in making a claim, special tools for assisting clients with difficult sales and the appeal process. All public information is available in print at the Project Information Exchange (PIE), through distribution to real estate and developers' sales offices and electronically on the Initiative's website. PVP Program information is also provided to the area real estate boards for posting on their own intranets.



Figure 2: PVP Program Fact Sheets

From the earliest days, the PVP Program has acknowledged the key role of the real estate community to disseminate information about the Projects and the PVP Program. The goal of this stakeholder engagement was to facilitate full disclosure about the Projects when properties are bought and sold. Recognizing the Initiative's transition to the next phase, which will involve excavation and trucking of the waste to the respective long-term waste management facilities, a revised and updated version of What You Should Know, the PHAI MO's flagship brochure,

provides future buyers and others with a greater level of detail about what to expect during the implementation phase of the projects.

PVP Program staff communicates the Program to buyers, sellers and real estate agents at the PHAI's PIE (open weekdays), through presentations to community groups and through participation in trade shows and community fairs. The demand on staff to speak with visitors to the Information Exchange increased when the PHAI shifted from the planning phase to implementation and staffing levels were increased accordingly.

CLOSE TO A DECADE OF CLAIM EXPERIENCE

No one could have predicted with any degree of certainty what community reaction would be when this one-of-a-kind program was initiated. Looking back, the limited claim activity experienced during the first eight years - which ranged from one to a maximum of four claims per year - is not entirely surprising. With no excavation or transportation of waste yet underway, and with a buoyant national, regional and local real estate market from 2001 until mid 2008, sellers felt little need to seek out assistance from the PVP Program.

In these first eight years, the Program received only 14 claims of which eight were accepted, six were denied, and a total of approximately \$145,000 in compensation, all for loss of value on sale, was approved.

Suddenly, in the fall of 2008, world-wide confidence in the real estate market fell sharply. The mortgage collapse in the United States and accompanying global economic recession resulted in a dramatic downturn in markets everywhere, Port Hope being no exception. During late 2008 and early 2009, housing prices fell at a rate of between 0.5 and 1 per cent per month, caused by factors entirely unrelated to the PHAI.

At the same time, other pressures were being exerted on the Program. In the fall of 2007, 2008, 2009 and 2010, and again in early 2011, negative coverage about the nuclear industry and Port Hope's low-level radioactive waste situation was carried by major print, on-line and other media outlets across Canada. The combined influences of a slowed general economy/market and these recurring media events exerted pressure on the PVP Program, resulting in an increase in the number of claims received - 88 in total from 2008-2012 - and the amount of compensation paid – nearly \$3.2 million in the same period.

Although the market has stabilized since the recession, project-related activities, such as the building of the access road and the Phase 2 funding announcement, have kept the PHAI in the news and the number of PVP claims submitted has continued to rise.

The earlier experiences came at an interesting time for the PVP Program: poised on the threshold of the construction and cleanup phase - when increased claim activity had always been anticipated. Now in Phase 2 and with more than a decade of experience to review, the PVP Program offers many lessons. The earlier-than-expected surge in claim activity and appeals provided an opportunity - prior to the real test of Phase 2 - to analyze the Program's strengths and its weaknesses, resulting in process improvements.

CONCLUSION

As an integral element of the Legal Agreement, the PVP Program provides buyers and sellers with assurance that if their properties are affected by the plans or activities of the Port Hope or Port Granby projects, their values will be protected.

Since its inception, the PVP Program has evolved significantly. Modifications have been made and tools added to address the challenges faced by sellers of impacted properties. All of these adaptations have resulted in a more effective, transparent and accountable process.

In its first 12 years of operation, the PVP Program has fulfilled its mandate. Through the approval of 59 claims for compensation (as of November 2012) for loss of value on sale, the Program has protected impacted owners against demonstrated, project-related, real estate loss. By assuring buyers today that the investment in their property will be protected if they sell when construction and cleanup are underway, the PVP Program continues to strengthen support for the PHAI.