

# Disposal of Surplus Rights of Way, or A Case for 'Across-the-Fence Value'

by William R. Lang, MAI

## WHAT IS "ACROSS-THE-FENCE" OR "OVER-THE-FENCE" VALUE?

"**A**cross-the-fence" value is a term used to describe a method of valuing narrow strips of property used as rights of way, and special purpose property lands. Rights of way are inherently narrow strips of land bought from larger parcels of land.

The larger parcel is the original parent parcel from which the right-of-way parcel was (or is to be) taken or severed. The larger parcel may not be large, it can be of any size. What differentiates it from the right-of-way parcel is that it usually can be utilized on its own. That is, it has value to a wide range of potential users for some non-right-of-way purpose such as agricultural, industrial, commercial or residential use.

When the right-of-way parcel is purchased, its value is measured as a part of the larger parcel. (There are legal nuances in the ownership and

location of pieces of land comprising the larger parcel). What this means is that if a powerline easement is taken from the rear of a residential house lot, the value of the part taken is measured as a part of comparable house lot sales. If a highway easement is taken from an irrigated farm, the value of the right of way taken is based on comparison with irrigated farmland sales of similar size to the larger parcel.

Every agency or entity owning rights of way is faced from time to time with disposing of surplus right of ways through sale, either because too much land is acquired (as in the case where the entire larger parcel is purchased to avoid paying excess damages), or when a right of way is abandoned (as in the case of a railroad, alley, street or road), or in the more common case of sharing rights of way through joint use. The multiple use of existing corridors, or sharing right of way, is another type of valuation problem, one which is not always consistent or fair.

Highway Department Right-of-Way divisions have agonized for years over developing a policy for the sale of surplus properties. Recently, in a large city, a dispute over the method of appraising the value of a closed street almost resulted in an ethics complaint to a major appraisal organization. In another instance, a city followed one policy when they valued the land to be disposed of (in a trade with a private party) and then followed another policy for the property to be acquired (from the same party in the same trade). Then the city bullied the trade through by threatening to hold up the owner's building permits.

The whole process of valuing rights of way cries for consistency among right-of-way agencies around the country, and even within the same agency. It cries for consistency over time from one administration, or property manager, to the next. This is crucial if the public is to perceive the right-of-way industry as fair and professional.



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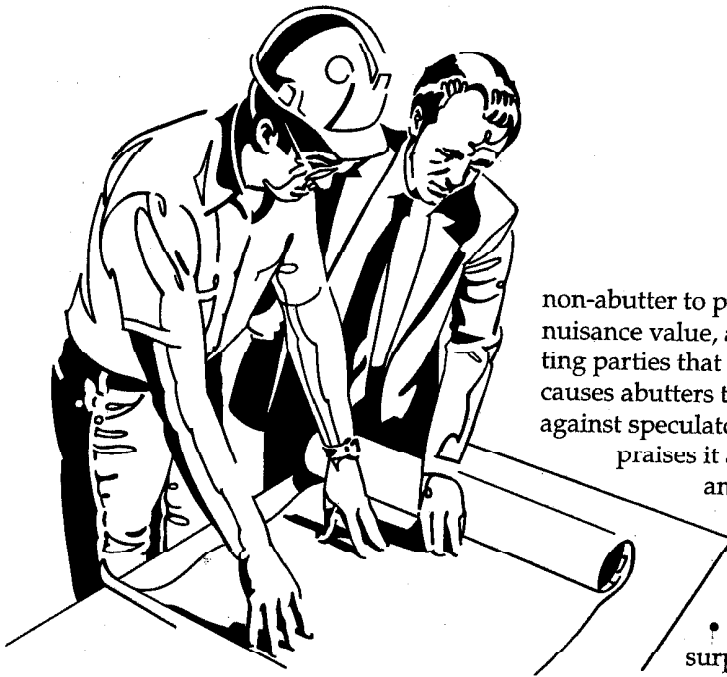
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**The potential options for a disposing agency are:**

- to appraise the strip for sale as a small inutility parcel, which it is for independent development, and put the parcel out to bid. This method potentially allows a

non-abutter to purchase the strip for nuisance value, and hold up the abutting parties that can actually use it. It causes abutters to bid higher to hedge against speculators. If the agency appraises it as an inutility parcel and then sells it directly to an abutter, it does not recover its investment.

- develop a file of surplus property sales, and research that file for comparable sales in this submarket. Real comparisons are difficult to draw between these comparables and the subject property.
- appraise the parcel on the basis of across-the-fence value that is the

current value of the adjoining land from which it was (theoretically) originally taken, and sell to one of the abutting owners.

This raises the question of benefits to the larger parcel by combination with the surplus parcel (plottage). This is also a submarket, i.e., value for direct sale to an abutter.

The problem with the first choice's open bid option is that there could develop a speculator's market with buyers whose motive is to spoil legitimate purchases and hold up abutting owners for a profit. This method may prevent direct sale to an abutter for the surplus property's most likely, or highest and best, use. The parcel's development can be postponed, and

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conflicts potentially created. At the least it causes the abutter to bid high as a protection, which is not a desirable public policy.

If no open bid process is followed, and direct sale to an abutter is consummated on the basis of the surplus right of way standing on its own, the agency has little hope of recouping its investment.

The second choice is difficult to implement, and takes a long time. The lack of comparability in data collected, short of a very large sample, renders this option questionable as a cost-effective agency policy. Lack of direct comparisons suggest that individual studies should be made contrasting the surplus sale to sales of undistorted parcels in the

same location and time frame. This is difficult and, hence, expensive.


The third choice is to appraise and sell the property in the same but opposite manner from the way it was theoretically acquired. It has the problem of valuing benefits to the larger parcel (the reverse of the question of damages when the parcel was originally severed).

Potential benefits are difficult to measure. They are called plottage, i.e., "How many stories will acquisition of an abutting 12-foot strip allow to be added to a high rise building site?" Plottage, like damages, is hard to value and so, hard to agree on. Payments for potential benefits are difficult to collect from a buyer for this reason. If we disregard the ques-

tion of potential benefits we have, in the third choice, across-the-fence value which is the fairest, most consistent method of valuation of a right of way to be sold.

This method has the virtue of selling to an abutter from whom the parcel was theoretically taken. It has the positive benefit of putting the parcel to its highest and best use. It also avoids the problem of "nuisance value" bidders distorting the submarket. The value requested of the appraiser should be across-the-fence value rather than fair-market value. This will avoid confusion as well as having incompatible values submitted to buyer and seller by different appraisers.

The advantage to the agency is that it will have a defensible policy because it is selling the property on the same value basis by which it was acquired. All abutting purchasers will be treated the same over a period of time. Political or personal considerations will be excluded. The selling agency gets current across-the-fence value which is theoretically what it paid, disregarding damages or special benefits. It does not have to sell for penalized landlocked or inutile (small strip) values. This is the best long-term policy because it is fair, consistent and supportable.

*Note:* In developing this article, property managers, clients, appraisers and attorneys were interviewed. They suggest an interchange of practices in the field. While drawing up a questionnaire, other questions relating to disposal were found. When discussing disposal of small tracts, interviewees had questions relating to acquisition of small tracts. The subject grew into the questionnaire that follows. Agencies are welcome to participate in an exchange of ideas on actual practices that will be beneficial to all. 

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