

# How Much Is A Railroad Crossing Easement Worth? — A Consensus

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To briefly summarize, Chapter 15 presented an expert panel to review a proposed utility crossing of a railroad right-of-way, and posed several questions. The exercise was published in the October, 1980, issue of *Right of Way*, with a questionnaire for the readers to complete and return.

The questions basically were:

1. There was a great discrepancy between the appraised value of the proposed easement area (\$50 according to utility estimates; \$1750 according to railroad estimates). There was an alternative offered by the Railroad Company—namely, a revocable license with an annual rental figure, the amount of which was also widely disputed. There was also the possibility that the utility redesign its job, to avoid the railroad crossing. The first question was—with the given input, would you condemn the railroad for a permanent easement, redesign the job, accept the revocable license, or pursue some other course of action?

2. The point of the entire exercise was to establish value of a proposed easement. Therefore, the second question was—based on the assumption that the matter was going to condemnation (regardless of how the first question was answered), how much would you offer to the railroad for a permanent easement?

3. The third question was based on the premise that the utility's offer in Question 2 was not accepted by the railroad, and the matter did proceed in condemnation—what would you consider to be a reasonable award to the railroad in exchange for the easement?

4. The question of damages came up, and the readers were asked what amount should be awarded over and above the easement consideration, to compensate for damages suffered?

5. and 6. The last two questions dealt with the affiliation of those responding—whether there was or had been association with a utility or other entity having the power of condemnation and similar background information with respect to railroads. The intent was to establish whether affiliation had impact on the level of suggested award.

It is not surprising that the consensus

figure, with respect to the amount that the utility should offer to the railroad for a permanent easement, was somewhat 'to the left of center' (i.e., on the low side of a point mid-way between the appraised value as determined by the condemnor and by the condemnee). In the subject case, the midpoint was \$900.

Eighty-five percent of the responders had at some time been associated with a utility or some agency with the power to condemn—about 21 percent had been affiliated at some time with a railroad (some of the responders had experience with both, and some with neither).

The average suggested offer was about \$513. Interestingly enough, those who attended the program had previously suggested an average offer of more than \$600, and the responders from the rest of the country averaged something more than \$400, which points out something that we who live in New Jersey have known for some time—things come dearer here than they do in lots of other places.

The responding readers felt that if the matter did proceed into a formal condemnation proceeding, the award to the rail-

road ought to be \$797 on average, and about 40 percent of them felt that it should proceed. Fifty-two percent felt the utility company should accept the railroad's revocable license, and the rest recommended some other course of action (all of which urged further negotiation, or 'work it out somehow'—it's not worth condemning, and you shouldn't have to take the revocable license—no one considered redesigning the job to avoid the crossing).

We broke down the responses into four categories: Those who had some affiliation with a utility or other agency with the power to condemn, those that had some affiliation with a railroad, those with experience with both, and those with neither. We then looked at their responses individually by background category, and prepared the following chart showing the average amount of money suggested, by category of responder:

First, regardless of which category we looked at, the feeling as to what course of action should be followed was the same. Slightly more people felt the utility should accept the license, rather than to proceed with condemnation. This split (50-50 for

CATEGORY	SUGGESTED INITIAL OFFER TO RAILROAD	FINAL AWARD TO RAILROAD BY 'JURY'
Utility/Highway Etc. Experience—No Railroad	\$553	\$730
Railroad Experience—No Utility/Highway Etc.	\$435	\$1420
Both Utility & Railroad	\$666	\$934
Neither Utility or Railroad	\$633	\$800
COMBINED TOTAL	\$513	\$797
We also broke down the responses into four different categories—geographically, without regard to the individual's affiliation or background. The next chart shows the same information, depending on whether the reply came from the Northeast, South, Midwest or Far West:		
Northeast	\$587	\$846
South	\$322	\$357
Midwest	\$332	\$906
Far West	\$586	\$991

all practical purposes) remained constant among those who attended the meeting as well as all the responders, regardless of where they live.

Granted that the results published here, representing responses to the exercise

questions, are too small to be truly representative of the universe involved. However, it is interesting that there is a noticeable difference in the suggested initial offers for the easement, and an even more noticeable inconsistency in the high and low



suggestions of what the final award should be. It is possible that the broad differences may be attributable to local experience with respect to awards in railroad condemnations. We also found it interesting to compare the differences reported between the initial offer and the final award. Generally we would expect the initial offer to be closer to the condemnors appraisal figure—if the condemnor did not feel his appraisal was reasonable, he would probably not be in court. It would seem that the closer together the two figures are, the stronger the condemnor's case is.

As stated previously, the number of dollars under discussion in the subject case is relatively insignificant. However, when you consider that there are no doubt hundreds of this type of crossing Agreement executed each year, and countless thousands in existence that were executed during the past hundred years or so (many of which are eligible for conversion from a license—annual rental arrangement to a permanent easement), the matter takes on considerable importance. We would like to share with you some of the many comments that were received with the responses to the questions, that are not reflected in the above statistics.

One common thought expressed in several different ways from many areas was that the entire subject is not only interesting but critical. It appears that in some areas, the railroads have taken the attitude that they are in essentially the same boat as the utilities, and they have somewhat of an obligation to not only provide top quality service to the public at a reasonable cost, but also to cooperate with others in their efforts to do the same with whatever their product or service might be. However, this approach is by no means universal, and in other areas railroads make what seem to be unreasonable requests for crossing and/or occupancy rights. Basically, there is little problem in determining what the fee value of any given piece of railroad right-of-way is, by comparing it to lands 'across the fence.' What is needed is a consistent approach to the next two steps that are taken in this area—namely, what factor is to be applied to the above fee value because of the unique nature of the railroad right-of-way, and what factor should be applied because of value removed from the fee by virtue of the presence of an underground or an aerial easement crossing the right-of-way, or following it longitudinally. If those two matters could be resolved in a manner

satisfactory to both parties, the problem would not exist.

One responder pointed out that such a taking (easement) technically requires an appraisal of the entire railroad line. Since this could involve literally thousands of miles, it is not feasible, and one local concept is to consider the value of the right-of-way only between the two cross streets nearest the taking.

One political entity pointed out that the 'liability clause' included in standard railroad agreements (if there is such a thing) was unacceptable to the City, and felt the railroad was unreasonable for not being willing to negotiate a fairer one.

There is a strong feeling that the utilities need the assurance of a permanent easement for their facilities, from two standpoints. One is the increasing frequency of abandonment of railroad right-of-way, the occasion of which puts the utility in an extremely vulnerable position if they do not have permanent rights running with the land. The second is the 'revocable clause' which railroads insist on in most agreements, apparently in most areas. Although there is, to our knowledge, no history of this clause having been invoked (and it would probably be difficult to enforce for an important utility crossing), its very presence is onerous to those whose business and responsibility is to provide continuous service.

One comment was that the article reads like railroads are in business to sell permits rather than to earn a fare hauling freight and/or passengers. The authors are aware of this, and it appears that 'permitting' is becoming an increasingly important factor with respect to railroad income.

One response (from a utility company) pointed out that the article did not indicate whether the proposed crossing was for transmission or distribution purposes. The reasoning was that everyone benefits from the system distributing a utility service to the customers, and that particular company "cannot pay one property owner for an easement to extend the system to the adjoining property." The response went on to suggest that the presence of the utility service to real property creates an amenity and not a detriment to property value. While there is no question that the availability of utility service to real property makes it more valuable, it is the authors' opinion that the increase in value cannot reasonably be experienced at the expense of an adjoining property that has to be crossed. With

respect to the 'distribution—transmission' question, that differentiation was not made in the article because it was our opinion that the same argument can be made for the transmission system as has been put forth for the distribution system—both are vital to the provision of service, and without either, there would be no service at a given point.

There were numerous references to the feeling that railroads today in some areas have adopted what is almost an adversary position (e.g., 'nuisance fees' for reviewing a crossing proposal, arbitrarily increasing annual rents or occupancy fees, non-negotiable 'conversion' rates (cost of converting rentals to permanent rights), unreasonable liability clauses, insistence on revocable clauses, etc.). In this respect, one of the more intriguing comments was made at the discussion following the mock condemnation. The suggestion was to the effect that all entities considered to be utilities, or 'utility types,' use as a yardstick in evaluating their land the amount they paid for it at the time of acquisition. Thus any such body—including a railroad—would set the value of a proposed encroachment on their lands by another similar body by determining the extent of the encroachment and applying it to the amount they paid for the lands in the first place. The question "why should not companies in basically the same business treat each other in an even manner?" is a difficult one to argue.

One final note—it was fascinating to see how IR/WA members in all areas arrived at their conclusions. Generally, the 'initial offer' was based on the condemnor's appraisal, the fair annual rental figure (when given) more on the condemnee's appraisal, and the suggested 'final award' was something less than half way between the two. By far the most comprehensive appraisal we received came from the Senior Appraiser of one of the nation's railroads, and we cannot help but point out that he hit the consensus figure almost right on the nose. We appreciated receiving all the responses to our questionnaire and are grateful to all of you who showed interest in our program.