

Appraisal And Uses Of Abandoned Railroad Rights-of-Way

By Arch Blackard, SR/WA

Throughout the history of right-of-way acquisition, appraisers have continually encountered new and complex appraisal problems. All of these have been challenging and invigorating. Now some of us have been fortunate by having had some fairly recent experience in appraising abandoned railroad rights-of-way. Others of us will probably get the opportunity in the not-too-distant future.

The main reason for this is that not all railroads have been operating profitably in the past years. Many have had to declare bankruptcy and many are still losing money on their branch lines and main lines. Because of this unfortunate situation, Congress has recently enacted four laws which aid the railroads and many users of them.

The first was the Regional Rail Reorganization Act of 1973 (The 3R Act). This was enacted to reorganize the operations of the bankrupt northeastern railroads (principally the Penn Central) into Conrail. In addition to the conveyance of property and operation to Conrail, the Act allowed for the continuation of service on lines through State and local purchase or subsidy. Any lines that were not taken over by Conrail or subsidized could be abandoned. It is my understanding that the suit is still pending on the value of the railroads taken over by Conrail.

Second was the Railroad Revitalization and Regulatory Reform Act of 1976 (The 4R Act). This act extended the branchline assistance program to all states as an alternative to abandonment. In essence, it provided subsidies or acquisitions to keep some lines operating if the Interstate Commerce Commission (ICC) ruled an abandonment was justified.

Third was the Local Rail Service Assistance Act of 1978, which establishes eligibility for program assistance to light density lines (less than 5 million gross tons per mile). It provided funds for rehabilitation rather than acquisition.

Fourth is the Staggers Rail Act of 1980. This act requires railroads to sell rail lines under certain circumstances to a finan-

cially responsible applicant, who may be either an individual, a group, or a governmental body. The purpose is to provide shippers and communities with an alternative to inadequate rail service or future abandonment of a line. The act provides that the purchaser must pay the "Constitutional Minimum Value," which is presumed by the statute to be not less than the net liquidation value of such line or the going concern value, whichever is greater. The Interstate Commerce Commission recently invited comments on the methodology to be used in establishing these two values or if the interested parties should be allowed to submit what they feel is adequate data to support their estimate of value. As far as I know, this has not been resolved.

As appraisers, we will probably be more involved with railroads under the 4-R Act. One provision of the Act is for a railroad to make an application to the ICC to abandon a certain line or a segment of a line. Then an ICC hearing is held and all interested parties are permitted to testify either in favor of or in opposition to the abandonment. If a state, local agency or shippers feel the line is needed, they will oppose the abandonment. When this happens, part of their testimony is for the value of the real estate in the right-of-way. The railroad will also present valuation testimony. From our own experience, divergence in the testimony concerning value in such a hearing has been as wide, if not wider, than most testimony you will hear in condemnation cases.

After hearing and weighing the testimony, the ICC will rule on the abandonment. If, as a result of their ruling and possible appeals, the abandonment is allowed, two things then can happen. First, the State, local government or shippers can subsidize the railroad to keep the line in operation. Part of the subsidy is based on the value of the real estate, upon which testimony had been given during the hearing. The ICC determines the value based upon this testimony. Second, if the line is not subsidized, then the line is abandoned

and can be sold on the open market by the railroad. Appraisals are needed for these sales.

There have been several lines abandoned, and it appears that more will be in the future. States, utility companies and possibly railroads have been and will be looking at these abandoned rights-of-way for future transportation, communication, energy and recreational corridors.

Vermont acquired two such lines a few years ago and is leasing them for continued railroad use. I understand they are operating economically now. Illinois is presently subsidizing three segments for a total of about 150 miles.

Wisconsin has probably been the most active of any State in acquiring abandoned rail lines. There is a relatively new statute that gives their Department of Transportation the authority to acquire these rights-of-way for railroad, highway or recreational use. During the past two and one-half years, they have acquired approximately 500 miles (about 20 segments) of abandoned branch line railroads through negotiations and condemnation. Most of this will be utilized for some types of continued railroad use.

With this brief background and look at the future, it appears evident that more abandoned railroad rights-of-way will be available for sale. If so, appraisals will be needed and we, as appraisers, should be prepared to handle the assignments. Here are some of my ideas.

As far as I know, there have not been any new techniques invented for the appraisal of abandoned railroads. Due to the "nature of the beast," however, special attention should be given and emphasis should be placed on three items in the appraisal. These are (1) the type or types of title owned by the railroad, (2) the Highest and Best Use of the property, and (3) the approaches to value to be used. Each of these will be covered in more detail.

Types Of Title Owned By Railroads

There may be some variations, but, basically, railroads obtained the right to use

property three ways. These are (1) by fee simple title (2) by a deed with a reverter, or (3) by an easement.

If the railroad owns fee simple title, the appraiser's task is the easiest of the three. This is the type of title we are normally asked to appraise. The owner owns all of the sticks in the bundle, and he can do whatever he pleases with these sticks. Normally, the whole bundle is sold at one time.

The second way is that the railroad obtained title through a deed with a provision which states title will revert to the grantor when the property ceases to be used for railroad purposes. This sounds simple, but *beware*. There apparently are statutes in some states that waive this reversionary right after the railroad has used the property for a certain length of time.

The third way was to obtain an easement for railroad purposes. This is very similar to the way most right-of-way was acquired in the old days for State highways and local roads. This, too, sounds simple, but who owns title when the railroad use is extinguished? Does the railroad own an easement it can sell or does title automatically revert to either the own-

er of the underlying fee or the owners of the abutting lands? Needless to say, this can also vary from state to state.

During my conversation with Ben J. Mullin, Director of the Bureau of Real Estate for the Wisconsin Department of Transportation, he said that one of their major problems in the acquisitions over the past two and one-half years has been in determining the type of title owned by the railroads. It seems that although the railroads may have thought they had fee title for an entire segment of line, it is not unusual to find a substantial number of parcels on which their title was for railroad use only, and once this ceased, the title apparently reverted to either the owners of the underlying fee or the abutting owners. It seems that in some states, the courts have held that a conveyance which states "for railroad use" means an easement and railroads have no rights in the property after an abandonment.

So what does all this mean to an appraiser or someone interested in buying the property? Simply stated, it means you had better know what you are appraising or buying.

Our experience has been that railroads

have not been overly cooperative in furnishing title information in the past. On most lines they have "Valuation Maps" and these usually have recording data showing how the right-of-way was acquired from the individual properties. This is a good place to start a title search. In all cases, we recommend legal advice and a title commitment or some other evidence of title before the appraiser begins. *You must know what rights you are appraising.*

All of the following are being made on the assumption that the railroad has merchantable fee simple title.

Highest And Best Use

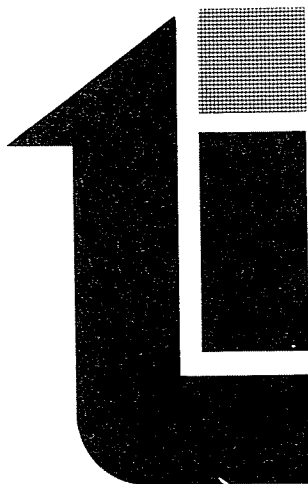
This is normally the most important item in estimating the value of any piece of property. In valuing railroads, I feel it is even more important. Depending solely upon the Highest and Best Use, a segment of line could vary from a very minimal value to thousands of dollars per mile.

This is true because of the many uses to which such right-of-way is being put. Sales we have gathered show numerous uses by the purchasers of the right-of-way. Some lines have sold for a continued corridor use, but most are sold off in small segments.

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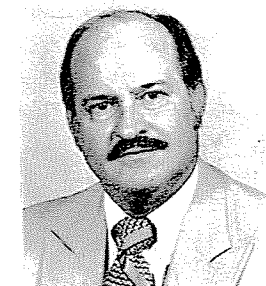
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The vast majority have sold in small parcels to private individuals for use with abutting lands. Some purchases have been solely to keep others off the right-of-way, some have been to link up their property to a highway, some have been so the area can be farmed, some are used for field roads, some connect fields divided by the railroad, some merely to keep someone else from buying it, etc. The reasons behind these purchases apparently can be infinite.

Some of the sales to individuals of small parcels have been for individual sites. We have seen these used for residential, commercial and industrial purposes.

Some parts of the corridors have sold for recreational use. Normally a government body makes such purchase and uses the right-of-way for bike paths, hiking trails, snowmobile trails and equestrian trails. Apparently these have been well accepted in some areas but not in others. We have heard some opposition to such trails because abutting owners are worried about the type of people that will be using them; they think users may get off of the right-of-way and cause destruction on their own property; they think users will throw debris on their property, etc.

Some have sold for a continued corridor use to a utility. These have been for sewer lines, power transmission lines, telephone lines and pipelines. Believe it or not, but some have even sold for a continued railroad use. These are normally for branch lines, spur tracks, sidings and children's train rides.

If the intended use will not be for a railroad, the track and other appurtenances are usually salvaged or sold separately. When the track sells, the price depends mainly upon the weight and quality of the rail.

It is evident that the right-of-way could have various uses. Some type of a continued corridor use normally would bring the highest price, but you must determine if there is a need for such use.

In determining the Highest and Best Use, start by contacting all parties that could have a use for a right-of-way corridor. This includes the utility companies that are authorized to operate in the area, highway agencies, all agencies responsible for providing recreation to the public, private organizations that acquire property for preservation or recreational uses, other railroads and anyone else you can think of. Make these inquiries in writing and ask for replies in writing.

If you have covered all facets, the replies will tell you if there is a need for a corridor use and, if there is a need, what type. If there is no such need, the Highest and Best Use will have to be for sell off as smaller parcels to abutting owners or to individuals wanting sites for residential, commercial or industrial sites.

One word of caution. Title III in the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" states in part . . . "Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property."

This may be difficult to determine in some cases, but must be disregarded by the appraiser. An example of how this could happen in the appraisal of railroads would be where a highway abuts an abandoned railroad for several miles and it is decided to widen the highway and acquire a few miles of the railroad property as right-of-way. You, as the appraiser, decide that the Highest and Best Use of the railroad right-of-way is not for a corridor use unless it is used in the subject project. If the public improvement was not being made, the railroad right-of-way could have only been sold to abutting owners; therefore, a Highest and Best Use for a highway or a corridor use would have to be disregarded by the appraiser. This would be considered an increase in value caused by the proposed improvement.

The Approach To Use

As you know, the cost, market and income approaches to value are normally considered by the appraiser in valuing any property. The cost approach is a useful tool when the improvements on a property are new. It is also relied on when there are no sales comparable to the subject property, as improved. Abandoned railroads do not fall into either category.

The income approach is useful when the property produces rental income and is the type that investors are interested in. Abandoned railroads normally do not produce income.

The market approach is considered by most of the appraisal profession and the courts to be the most reliable of the three approaches when adequate market data

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is available. In fact, in many jurisdictions, market value and market approach are synonymous except on special purpose properties that do not sell on the open market. Abandoned railroads sell on the open market so how can they be considered special purpose property?

Earlier it was mentioned that there is a case pending on the bankrupt railroads under the 3-R Act of 1973. A Special Court was appointed to hear the case. Although the case has not been finalized, the Court has ruled that it will not permit valuation testimony based on reproduction cost, assemblage value, value of material in place, trended original costs, gross liquidation value or going concern value. The methodology for appraising lines under the Staggers Rail Act of 1980 has not been determined.

All of this has led me to feel that the market approach should always be used. The cost and income approaches would seldom, if ever, be applicable.

The Appraisal

Practically all case law dictates that property should be appraised as a unit. We have all heard of the "Unit Rule" - you value the whole as a unit rather than valuing the parts separately and adding them together to arrive at the value of the whole. Why should it be different with railroads? Unless there is something unusual that would cause the entire length to be divided into two or three segments, the entire right-of-way should be valued as a unit.

As previously mentioned, the abandoned railroad right-of-way could have a Highest and Best Use for either a non-corridor or a corridor use. Let's take a look at these two cases separately.

Non-Corridor Highest And Best Use

The appraiser is confronted with the problem of finding sales. If he is lucky, he will be able to find sales where abandoned railroads have sold off parcels in the subject area or a similar area. If he is not so lucky, he will not be able to find such sales.

Let's look first at where the appraiser is lucky. In comparing any sale to the subject property, certain adjustments must be considered. The same is true in this case. Time and location must always be considered, but some additional items should also be considered. Some of these are: The cost to restore the right-of-way to a usable condition on the sale as compared to the subject; the amount of deep cuts

and fills on the sale as compared to the subject; for farming purposes, will the subject land be as productive after restoration as the sale; and the length of time required to sell off the entire length of right-of-way. All of these, plus any others that may be necessary, must be considered. This should lead you to a realistic estimate of value.

From past experience, we know that it is the exception, rather than the rule, when we are able to find good comparable sales. The same may be true in this case. When this happens, it makes the job of appraising more difficult, but not impossible.

I first suggest that when sales of parcels of abandoned railroads have not occurred in the area that the appraiser go to other areas where such sales have happened. In these areas, he should get the railroad sales and compare them to sales of other properties that have sold in the areas to determine the ratio of the unit selling price of the railroad sales to other properties. The ratio can then be applied to sales of property in the area of the subject railroad.

An example would be where it was found that railroad sales sold for approximately 50 percent as much as other property in the area. This 50 percent could then be used as the basis of an adjustment to sales of property in the area of the subject railroad. After this is done, the appraiser should still consider the other possible adjustments previously mentioned when sales of railroad right-of-way are used.

There is another method that may be used by an appraiser if he cannot find any sales of railroad right-of-way that have sold in small parcels. In this manner, you start with the value of abutting land and adjust for such things as cost to restore the right-of-way so it will be usable, the percentage that may be unusable because of deep cuts or high fills, the productivity after restoration, the sell off period, etc. Although this may be acceptable, I feel it should only be used as a last resort.

I would like to elaborate on the "Sell Off" period that the appraiser should consider. Two states have made studies on this. Some of the interesting facts of the

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studies are: Occasionally an entire line will sell to a speculator who then tries to sell to abutting owners; after several years, there have been no sales off of some lines; and on most lines, a percent of the right-of-way has sold after a few years, but the entire line has not sold.

This indicates that it takes time to sell abandoned right-of-way to individuals as separate parcels. It seems logical that the longer a line, the longer it will take to sell off all of the parcels. Keep in mind also that all of it may not ever sell. The railroad may be stuck with it. Fellow appraisers, this affects the present value of a property and must be considered by the appraiser.

To sum up my suggestions when the Highest and Best Use is not for a corridor, first look for railroad sales in the area. If none are available, go to other areas where there have been some and compare them to sales of other property in the area. As a last resort, use sales of other property in the area. Make the adjust-

ments necessary to arrive at a realistic estimated value of the subject property.

Corridor Highest And Best Use

The first step after determining that the Highest and Best Use was for a specific corridor type use is to find sales that have sold for this use. There are sales available if you look hard enough for them. We have found that other agencies, appraisers, utilities, etc. are very cooperative in exchanging sales data. It takes some time, but it can be done.

Next, you must know what is to be included in the appraisal of the subject. Does it include track, buildings, signals and other appurtenances?

After you have the sales and know what is to be included, you proceed with the market approach the same as for any property. I feel that the cost per mile is best unit of comparison to use for this type of property. You must consider such things as time, location, length, condition of bridges, condition of tunnels, and, if ap-

plicable, condition of rails, ties, ballast, buildings, etc. If you apply sound reasoning, your estimate of value will be realistic.

Summary

The appraisal of abandoned railroad rights-of-way may be relatively new, but no new gimmicks are needed by the appraiser. He must, however, be more concerned with the rights being appraised and the Highest and Best Use of the property than may be normal. It may also take more time to gather good market data, but it is available. An abandoned railroad right-of-way is a unit and should be appraised as such. You must consider what it will bring *today* on the market for its Highest and Best Use.

This may sound very simple, but it is not intended that way because it will take considerable time and effort. The main thing is that the appraiser must apply good old common sense to his data to arrive at an estimate of value. This is not a new ball game. It is simply a different kind of property that we may be asked to appraise.

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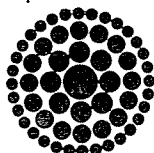
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