

Appraisals of Pipeline Right of Way

by Carr T. Dowell, III

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There are different approaches for appraising pipeline rights of way. The problem for appraisers is that pipeline rights of way are not normal market transactions in keeping with normal land utilization.

In this paper, the appraisal of pipeline right of ways will be discussed, with particular emphasis on the rules and laws of Louisiana.

It should be noted that many appraisal problems are imposed by legislative bodies and courts and can also vary substantially from area to area. It has been our experience that pipeline right of ways tend to cost more in Louisiana. The absence of a "quick taking" statute, together with the generous nature of our judiciary may be responsible. It is also possible that pipeline appraisals in Louisiana are more of a problem.

I will not delve into procedures for making an appraisal per se, but, will be limited to the particular requirements of pipeline right of way appraisals.

Pipeline right of ways are typically negotiated on the basis of so much

per rod without benefit of formal appraisals. The resulting consideration paid usually has only limited relationship to the market value of the property rights acquired, but, rather relate to the going price per rod paid in the vicinity for such rights and upon the urgency of prompt acquisition of the right of way. The price paid can of course be greatly influenced by whether or not the pipeline company has the right to acquire the property by eminent domain.

It has been seriously argued that the per rod prices paid for right of way should be utilized in estimating the market value of pipeline right of ways. This approach has been rejected in most jurisdictions with limited exception. In the Federal Courts it has been held that such transactions should only be used where there are no other land sales in the area upon which to

make a before and after appraisal. At the same time it is my understanding that the Bureau of Land Management is advocating this procedure in the appraisal right of ways across lands under their jurisdiction. This is particularly interesting in light of the fact that the U.S. Department of Justice has vigorously and successfully opposed this appraisal procedure in a pipeline case emanating in Texas. It is our belief that such acquisitions do not meet the test of "market value" because they involve neither the "willing seller and willing buyer" nor the "under pressure" concepts. Further the price paid per rod for identical takings on the same project may and often do vary substantially. For these reasons we will not go any farther into the price per rod appraisal approach here.

If the right of way appraised em-

braced the entire property and the taking was in fee, then the appraisal process would be the same as that for any similar property. Such a taking, while unusual, would clearly indicate why the per rod prices paid in the area are not market, but such an appraisal would not require the special expertise which a right of way appraiser needs. The primary problem facing the appraiser is that pipeline right of ways are not normal market transactions in keeping with normal land utilization. They are typically narrow strips bisecting a property and which limit or restrict the future use of it, but, do not take all of the bundle of rights which make up the value of the property. The surface of the land may still be used for growing crops, grazing livestock, lawns, parking, and similar uses, but, you are not allowed to erect buildings on it or use it in any manner which might jeopardize the underlying pipeline. In addition, the right of way may affect the future use or utility of the real estate outside of the actual right of way area.

The basic method of estimating the value of the right of way will vary depending on the legal jurisdiction in which you are appraising. If you are appraising under the "Federal Rule", then the proper procedure is to estimate the market value of the whole property before the taking, then estimate the value after the taking with the difference between the two being the measure of compensation to the property owner. Theoretically, it is possible under this procedure to have near zero just compensation. If for example, the right of way crosses a tract of grazing land that has no potential of ever having a higher type use and the surface of the land is to be restored to its identical condition after the pipeline is laid as it was before, then, in all probability, the property would sell for the same price after the taking as before. The only compensation due in this case would be for the brief period which the surface was being used for construction.

In a majority of jurisdictions you are required to pay just compensation for the part taken together with damages, if any, to the remainder. The procedure in this case is to first appraise the whole property, second the part taken, third the remainder, and fourth the

value of the remainder is subtracted from the before value, less the value of the part taken, to determine if any damages to the remainder will result from the taking.

The proper way to appraise any pipeline right of way is to estimate the value of the whole property in the same manner as you would normally appraise the property. Unless specifically required to do so or unless there is a possibility that improvements outside will be affected, it is usually not necessary to appraise the unaffected improvements. In estimating the market value of the part taken other than by a pure before and after approach, there are at least three possible approaches depending once again on legal jurisdiction.

The first approach would be to estimate the value of the part taken using the average unit price of the whole tract, i.e., if a 100 acre tract has

Typically, pipeline rights of way limit the future use of a strip of property, but do not take all the bundle of rights.

an estimated market value of \$100,000 or \$1,000 per acre, then the land in a 5 acre right of way would have a contributory value of \$5,000. This would not be the value of the part taken, since, in all probability the right of way area would still have some use or value to the owner after imposition of the servitude.

The second approach is where the laws of the jurisdiction require that the taking be appraised on the basis of its contributory value to the whole. This approach has been termed "front land-rear land" premise in some areas. An example of this would be where the same 100 acre tract fronts on a major road and the highest and best use of the front 20 acres would be to develop for residential homesites and the 20 acres would sell for \$3,000 per acre or \$60,000, leaving the rear 80 acres having a contributory value of \$40,000 or \$500 per acre. If the 5 acre right of way is taken from the front land then the market value of the area within the right of way is \$3,000

per acre or if taken from the rear \$500 per acre.

The third approach would be to appraise the 5 acre right of way areas as a 5 acre tract. Using the same 100 acre example, if the highest and best use of the front 20 acres is to sell off 4 five acre tracts as rural homesites and such homesites would sell for \$5,000 per acre, then the value of the land in the 5 acre servitude would be \$5,000 per acre.

Once you have estimated the value of the land within the right of way limits, the next step is to estimate the value of the rights taken. The most acceptable approach, theoretically, is by analysis of sales of similar properties with and without pipelines to determine the difference in the market value of such whole tracts. There are two primary limiting factors which must be thoroughly analyzed in order to use this procedure. First there must be no possible damages to the property outside of the pipeline right of way and second the similarities between the tracts with and without pipelines must be sufficient so as to leave no doubt that any differential in price is due to the presence of a pipeline right of way. A simple example of this would be where there are a series of 10 ten acre tracts measuring 660' x 660', and fronting on the same road and all being identical except that 3 have pipeline easements across the extreme rear embracing .25 acre. If the seven unencumbered lots sold for \$10,000 each and the 3 lots with pipeline right of ways sold for \$9,875 each, it would be reasonable to assume that the difference in price is the result of the pipeline across the three that sold for less. The unit value of the unencumbered land is \$1,000 per acre and it follows that the front 9.75 acres of the unencumbered tracts is also \$1,000 per acre or a total of \$9,750. This leaves \$125 as the contributory value of the .25 acre area in the easement. If there were no easement, this land would be worth \$250, therefore, it can be reasonably concluded that the taking for the pipeline was 50% of the value of the land within the easement area. If the land you are appraising is similar and has the same highest and best use, then this comparison would be a reasonable indicator of the market value of the rights taken.

Unfortunately, seldom do such clear



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cut comparisons exist in the market and frequently, reasonable comparisons do not exist at all. Under these circumstances, the appraiser must rely on an analysis of the highest and best use of the property, both currently and in the future. Here are examples of such analysis:

1. A pipeline right of way crosses a timber tract that has recently been clear cut. The highest and best use of the land currently and in the foreseeable future is for growing timber. Under these factual conditions, the value of the pipeline right of way would approach 100% of the value of the land since it could not longer be used to grow timber.

2. A pipeline right of way crosses a tract of tidal marsh. The highest and best use of the land is to hold for potential oil and gas development, and hunting and trapping leases. This will

remain the highest and best use in the foreseeable future. Disregarding any environmental considerations, the value of the pipeline right of way would approach 0%. It has, however, been the practice of many appraisers to estimate the value of right of way at 50% of fee on the basis of joint utilization of the land.

In between these extremes are various degrees of takings; such as a taking from a commercial tract where the taking area can still be used for necessary parking areas or a taking from a residential lot where you can still build a house on the remaining land and use the right of way for lawn. Care must be taken not to confuse the value of the part taken with damages to the remaining property.

In none of the above illustrations did we discuss anything in the taking area other than the land. Obviously, if

there are crops, timber, or improvements in the taking area, you must compensate the owner for these items.

The next consideration is damages which may be caused by the pipeline. Damages as used therein refers to any diminution in the value of the property outside the pipeline right of way that might be caused by the easement. It does not refer to the possible reduction in value of the right of way itself, nor does it refer to damages caused by disruption of soils, loss of crops, or improper construction of the line.

Some of the real or imaginary damages which have been attributed to pipeline right of ways include: loss of value due to severance of one part of a property from another, loss of utility of remainders, fear of explosion, and cost of casing to provide future road crossings.

Once again, the best method of estimating damages to remainders is by comparison of sales of similar properties with and without pipelines. Another method is to study the effect of the easement on the utility of the remainders.

The use of comparable sales to estimate damages, if any, to the remainder has been used many times. The following are examples of the use of this appraisal procedure.

1. In conjunction with a pipeline right of way project through a metropolitan area, studies were made of a series of sales within subdivisions in the area. Both vacant lot and improved lot sales were studied. The sales of properties without pipeline influence were compared with sales of properties with multiple pipelines running across or abutting the rear of lots. Not only were comparisons made to determine if the pipelines affected sales price but also to determine if they took longer to sell. Sales of properties in commercial areas were also studied. Not only were the sales price of the lots abutting or traversed by the pipelines compared, but, also the land utilization was studied.

2. In a rural but developing area, sales of tracts with the potential for development of small acreage lots were studied and comparison of the sales prices of tracts with and without pipeline right of ways were made.

3. In an industrial park where there were large lots, sales of lots with and

without pipeline easements were compared to determine the effect on the land utilization and the market value of the lots with and without pipelines.

4. In another study, sales of large suburban lots in a residential subdivision that was bisected by several pipelines were analyzed to estimate the effect of the pipelines on the market value of the lots. The placement of residences on affected lots was also studied.

All of these studies tended to show that there was little or no resistance in the market to the purchase of lots as a result of fear of a future catastrophe.

There remains the question of damages due to the effect on the future utilization of the property because of the location of the right of way. A simple example of this would be where there is an 80' wide residential lot with 10' sideline set back restrictions and a 30' right of way down the middle of the lot. Obviously this lot can no longer be utilized as a building site and in all probability has been severely damaged.

If this same pipeline crosses the extreme rear of the lot, little or no

utility has been lost and there will probably be no damages to the remainder.

A less certain situation would be where the pipeline cuts diagonally across the rear 1/2 of the lot and would require that any residence that was placed on the lot would have to be designed to conform to the configuration of the unencumbered land. The utility of this lot has been affected. The problem here is to measure the effect of this loss of utility on the market value of the lot.

A situation which the appraiser is frequently confronted with is where a right of way bisects a tract of land that has a highest and best use for developing as a residential subdivision. In this case the location of the right of way is highly significant in the determination of the effect on the utility of the tract. If the easement runs along the rear of the tract parallel to the rear line, the prospect of adverse effects are obviously much less than if it enters at the northeast corner and cuts diagonally across to the southwest corner. In these cases, it is usually advisable

to lay out possible development plans of the land with and without the pipeline. Usually, this will indicate the adverse effect on future development of the land, if any. One factor which may complicate the development after the pipeline is laid is the requirement in some jurisdictions that all road crossings be cased. Obviously, when the pipeline must be cased by a developer his cost of developing the land will be substantially increased. It is often advisable in such cases, where possible, to work around such crossings. Fortunately in an increasing number of jurisdictions the casing of crossings is no longer required.

From the foregoing, it can be seen that it is essential when estimating damages, if any, as a result of a pipeline easement, to study the effect on the future utility of the property. In every case, you must determine the highest and best use of the property before and after the taking. You must be familiar with zoning regulations, land use requirements, subdivision development regulations, and any other factor that might affect potential use of the land. ■

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