

Valuation, Acquisition and Development of Conservation Corridors on Abandoned Railroad Properties

by Mark C. Ackelson

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A private foundation in Iowa solves a very complex land acquisition problem — the acquisition of railroad corridors for conservation/recreation purposes.

This paper will be on the valuation, acquisition, and development of railroad right-of-ways after their abandonment for further use as conservation/recreation corridors. A great number of opportunities exist here.

Before doing that it seems necessary for me to give you a little bit of background information on the organization I am with. The Iowa Natural Heritage Foundation is a private, non-profit Iowa corporation dedicated to the preservation and long-term wise management of Iowa's natural and recreational resources. The Foundation was incorporated approximately 5 years ago by leaders from around Iowa who were concerned that government could not and should not have the sole responsibility for protecting Iowa's dwindling natural and recreational resource opportunities. Since its incorporation, the Foundation has been directly involved in the protection of some 5,300 acres of lands around the state. These acquisitions

have ranged from small 0.5 acre tracts of native prairie to large (1260 acre), diverse natural areas and also includes several acquisitions of railroad properties. The Foundation does not permanently own or manage land, but acts as a catalyst, facilitator, and sometimes short-term financier for these acquisitions. Many of these acquisitions have involved extremely complex legal and technical negotiations.

Besides our land stewardship program, we're also involved in public education and awareness programs. One of the largest efforts is the book *Iowa's Natural Heritage*. We've been involved in the production of educational materials, including a booklet describing the legal means of permanently protecting lands in the state of Iowa. This booklet, entitled "Landowner's Options", was done in cooperation with the Iowa State Bar Association, Iowa Farm and Land Institute, and the Iowa Conservation Commission.

Our other program area includes long-range planning and research, in which we help to identify funding for projects to collect data so that local and state decision-makers can make better decisions regarding our natural resources.

We are not a political lobbying organization but spend our time rolling up our sleeves and taking direct action.

There are major differences between the Foundation and other conservation organizations: 1) We have a more balanced program addressing all the various facets of natural resources; 2) We are based entirely in Iowa. All of our funds are spent in Iowa and decisions as to how they're spent are made by Iowans; 3) We work very closely and effectively with both public and private organizations; 4) The track record that we have achieved in only five years far surpasses that of any other private organization in the state. Our business then is conservation. We try to frame our

decisions in a business-like manner.

Given that background of the Foundation, it seems also necessary to ascertain why the Foundation would be interested in the acquisition of abandoned railroad corridors and what factors we look at. First let me say we are not interested in *all* railroad abandonments.

Each abandonment has to be assessed individually and even segments within an abandonment must be evaluated to determine their real significance. Some of the elements that may make them significant to us are historical, archaeological, geologic, or ecological features such as native prairies or woodlands, depots, bridge structures, access to streams, connecting trail links, etc.

When we look at corridors we look at them for their conservation and recreational value. We do not look at them solely as bikeways, which is the perspective taken by many. These corridors provide for other forms of recreation (hiking, skiing, nature study, etc.), wildlife habitat, future utility and transportation corridors, and wind shelter belts.

Third, we look at the surrounding land uses and potential conflicts, both in ownership and use. Fourth, we look at the corridor in relationship to local and statewide needs for conservation and recreation purposes. Fifth, we look to see what type of local interest and support there might be for such a project. It is imperative that it be a cooperative effort between a local government agency and the private sector. The powers, capabilities, and limitations of both are needed.

You have probably all heard of successful conversions in states outside of Iowa. Some states are much more aggressive than others. There are many fine examples in Wisconsin, Minnesota, and Illinois. The Legislature of the State of Washington recently authorized funds to acquire 100 miles of abandoned railroad for conservation/recreation purposes. There have recently been several successful projects in Iowa, however, with Iowa's unique laws it is increasingly difficult to acquire such right-of-ways, either publically or privately for public conservation/recreation benefits. It's certainly fair to say that there is probably no other type of land acquisition which is more complex than the acquisition

of railroad corridors for conservation/recreation purposes. The emotions of adjoining landowners generally run quite high. The legal issues are complex and often times little understood. The technicalities involved in railroad real estate, managing linear properties and dealing with the sometimes ominous bureaucracy of railroads can easily overpower those who lack strong commitment and clear direction.

From our studies of railroad corridor conversions from around the country, they essentially all follow the same patterns. There is strong, negative reaction by adjoining landowners because of their concern for potential vandalism, theft, rape, and other crimes. More importantly, it gets down to an issue of what they might feel is *their* land, land that was taken from them or their families originally and in which they feel they still might have some rights. Some are concerned about access needs. Removal of corridors that split farms may add to the value of the farm. Our studies also show that over time, generally 3-5 years, these emotions subside as projects become successful and they realize that conflicts with users are minimal. Some adjoining landowners become project users and many become entrepreneurs.

The legal aspect can take an overwhelming proportions, however. Iowa law, Chapter 327G.3, requires the owner of railroad property to be wholly responsible for fencing the property and not just responsible for 50% as in other adjoining land ownerships. In addition, generally prior to abandonment there is little activity by railroads to meet the needs of adjoining landowners for fencing and access or to solve drainage problems.

Iowa law, Chapter 327G.77, specifies that properties originally taken by condemnation will revert to the adjoining landowners at the time of abandonment, the contention being that condemnations were generally for easement purposes only. Several pending and existing lawsuits are addressed at the heart of this matter, not the least of which is the constitutionality of taking land away from railroads and giving it to other parties without just compensation.

There is also the questions of rever-
sionary interests to those properties from which the railroad property was

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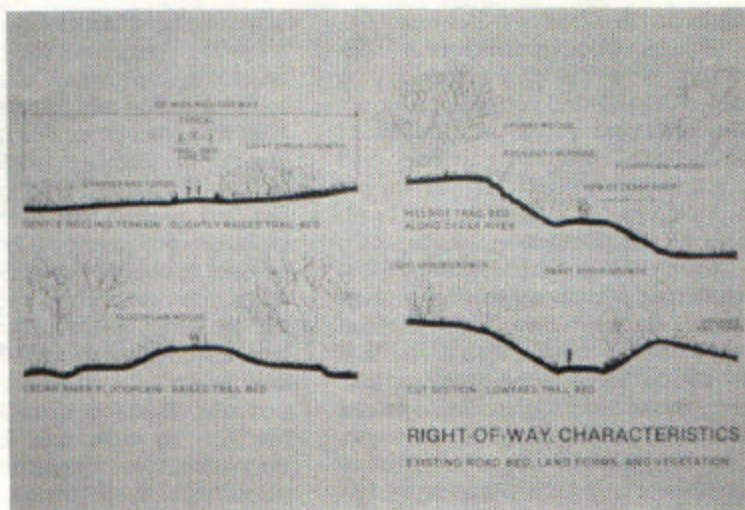
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originally taken and the fact that the Iowa statutory limitation provisions of Chapter 614.24 specifically do not apply to railroad corridor reversions. In other words, reversionary interests in railroad property may not be extinguished if the terms of the deed are not rerecorded by the Grantor, such as with other properties in the state.

Add to these state law complexities now some dimensions of the federal law, some of which are being discussed here today as far as abandonments and definitions. The Railroad Revitalization and Regulatory Reform Act of 1976 (commonly called the 4R Act) provides for and authorizes the acquisition and conversion of railroad properties to recreational trails. The same legislation also modifies the definitions of abandonment as used by the Interstate Commerce Commission to provide that in fact railroad properties may not be really abandoned, but instead held in public trust and used on an interim basis for conservation/recreation purposes until such time as they are needed in the future for reactivation of rail or other utility services. This law has never been tested in a court of law. Recent changes in Federal Law, PL9B-11 amended the National Trails Act to encourage conservation/recreation uses as a continuation of transportation, thus overriding reversionary interests. And if those problems aren't enough, how does a buyer assure himself that the railroad's title to the property is generally good, and how do you determine a fair acquisition price.

Despite these apparent overwhelming negative factors, there are many individuals, agencies, and organizations who are willing to work towards the acquisition of these corridors for present and future public benefits. What is the process to use in acquiring such properties?

The uses and complexities associated with the corridors have a great influence on the process needed to acquire them. The first thing that is necessary is a small organization of 3-5 local people who are willing to quietly go about the necessary groundwork. The key is moving quickly. It is necessary to move quickly to avoid as much as possible the high emotions of the situation and the difficulties that may subsequently arise. The organization must first determine what exactly is for sale and the railroad is generally very cooperative in this effort. This requires specific locations and not just discussions in general.

From this, the group should then determine what area is of general interest to them. Is it the rail right-of-way itself only, which may vary considerably in width? Or does it include some of the odd, irregular shaped pieces that may be adjoining it? Does it include properties in town? Does it include sidings, depot building, structures, or other features?

After the area of interest is determined, the group must then do some courthouse work to review the conditions of the title: Which of the properties did the railroad take by Warranty Deed? Which by condemnation? Which have reversions clauses?

Which have easements? And which have special provisions of one sort or another? This should be mapped out to determine any potential problem areas.

The next phase would then be doing an accurate inventory of the features within the corridor, such as the natural features, the condition of the structures, the fences, drainage appurtenances, use patterns that may have developed since the time of abandonment and adjoining land uses. Once this is done, you're then ready to sit down and make some judgements as to how viable a project you might have and if viable you can then begin determining in your estimation what the fair market value might be.

When I talk about fair market value here, I'm referring to that price that I as a negotiator feel is fair and reasonable price by putting myself in the role of the sometimes mythical "willing buyer".

The previously gathered background information is critical in determining value. Let me give you two cases to illustrate some of the extremes.

- A. The abandoned railroad property is adjoining state, county or municipal property (such as along a roadway which is relatively common) and the property was originally taken by condemnation. The market value to the local unit of government may be \$0 or at most 50% of the value of the adjacent property on the other side of the corridor. This would be because portions or all of the property would be by

Iowa law revert back to the local government anyway.

- B The abandoned railroad property was taken by fee title, the road bed is almost level with the adjoining high quality commercial or residential property in moderately size town. This property could be very expensive — \$10-100,000/acre.

We determine value in a rather straightforward manner. We classify the abandoned railroad property into categories commensurate with the adjoining land uses. In other words, we look at what the land could be possibly converted to. For each category of land we establish the going price. From this price we discount the following: 1) the cost of conversion (i.e., bulldozing, draining, reshaping, etc.); 2) areas of potential title problems (don't pay for full fee title interests — ranges from 0-100% depending upon wording of deeds and the adjacent landowner's opposition); and 3) estimated costs to the railroad to parcel out the property in many separate transactions. From this discounted price we then add back in the salvage value of any structures or appurtenances that we want to remain. (See Chart I)

Chart I Determining Value

- Cost of similarly converted land
- Estimated conversion costs
- Areas of potential title problems
- Cost to railroad to parcel out
- + Salvage value of structures, etc.
- Estimated value for conservation/recreation purposes

Now the other cost of ownership (i.e., fencing, structure modification, development, potential lawsuits, etc.) must be summarized. These costs in conjunction with acquisition costs really determine the total cost.

The question then becomes, is it worth it? Sometimes yes, sometimes no. And sometimes it is hard to not let the emotions and enthusiasm of the potential project overcome common sense and objective business judgments. A third party evaluation is sometimes helpful.

Once the area has been acquired, the development can proceed. Sometimes it may be desirable to lease the property prior to its acquisition to enable more timely development, head off problems with adjoining landowners and curtail undesirable activities.

The development standards vary according to the projected uses. "Development" may range from only fence and drainage structure repairs and wildlife plantings on one extreme (or a few \$100 per mile) up through regarding, trail surfacing, planking bridges and installing guard rails, restoring historic structures and installing access control structures (at a cost of \$3-10,000 per mile). It is important to get portions developed up to standards quickly and open to the public to provide a demonstration area and encourage public use and support.

Abandoned railroad corridors can provide numerous conservation/recreation opportunities for the public. Their acquisition can also safeguard the corridor's availability for other future public needs. The valuation and acquisition can become very complex but a well-organized strong local effort coupled with an understanding of the process can lead to successful conversions ■



**Union Station
@ \$84.7 Millions?**

Railroad Wins Largest Ever Eminent Domain Jury Award

Last January, a Superior Court jury ruled that California and Los Angeles transportation officials would have to pay a consortium of railroads, headed by Union Pacific and Santa Fe, a record \$84.7 millions for the fifty acre Union Station site, one mile from downtown Los Angeles.

The land is located in the historic old Pueblo and Olvera Street tourist area and currently is not highly valued. But, Union Station may become the hub of a system of subways, buses, trains and trolleys planned for the Southern California region. Potential profits derived from the shops and offices built within and above the transportation center convinced the jury to make the record-setting award. The city and State had offered \$25 millions. The railroads asking price of \$76 millions was also below the jury award.

Public ownership of the land was desired to avoid protracted bureaucratic snafus and lengthy, individual negotiations with the railroads over prices and access rights. A half dozen agencies want to participate in the transit center. Public ownership would have given the city rights of determination on what would be built on the site.

On the other hand, the railroads do need the transit center to make their elaborate development plans, which swung the jury, successful. Even, if agreement is made between the railroads and government officials, the Union Station property may be slow to attract interest due to the availability of land in the "best market in the country", Bunker Hill downtown Los Angeles, one mile away.