

Annual Payments For Easements?

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The consumer movement in our country has had its definite effects on the way we live and on the manner in which businesses can operate and exist. Utilities have not been spared and because the life style of the majority of the public is affected to a certain degree by the services and products the utilities provide, they have been a special target for such movements. When vacant lands were plentiful and relatively cheap, property owners were not overly concerned when utility right-of-way agents approached them for easements or fee purchases of parts of their lands for the construction of transmission or other lines across their properties.

In recent years, however, there has been a reluctance on the part of many property owners to quickly acquiesce to such utility occupations, especially in the agricultural sector. Opposition in some cases has been highly organized as portrayed, (even though not very factually) by the movie "Ohms" seen by many of you on television last year. There have been an increasing number of complaints that such utility lines have adversely affected property uses and accusations have been made that the utilities have not adequately paid for the rights they enjoy. There are some who feel that even though a utility made payment at the time of utility line construction, the present owners and operators of such property are adversely affected without having received benefit of compensation that went to a former property owner. Some people have said it would be more equitable for the utilities to make annual payments for the rights they enjoy in lieu of one-time lump sum payments. It has been suggested that if utilities make annual payments to railroads for license fees, why can't the same method be employed on other private property.

During the last several years there have been discussions and comments in various parts of the United States and Canada concerning the merits of annual payments for easements with proposed legislation having been considered or attempted in

some places to make such payments mandatory. The state of Iowa is a case in point in which several attempts have been made over the last several years to adopt legislation. This proposed legislation has failed in each session. There are a few states and/or provinces, however, that have passed laws requiring annual payments, one of them being the state of Wisconsin.

In 1974 captions of certain newspaper articles in Wisconsin read like this: "McKenna Proposes Yearly Rental for Power Companies' Corridors," "Asks Rent For Towers Annually." About that time, or prior thereto, the State Department of Transportation was buying right-of-way for a new interstate highway through a relatively good agricultural part of the state and there was considerable organized resistance to the route chosen. Some years before that Wisconsin Electric Power Company had used its rights of eminent domain to enable the construction of a transmission line across a certain rural transitional property which was so vigorously opposed that several court cases resulted. Certain property owners involved in those and similar situations were instrumental through their legislators in exerting considerable pressure on the State government.

Both highway and utility condemnations are under the same chapter of the Wisconsin statutes, and the governor of the State at that time appointed a blue ribbon committee to study and make recommendations for changes in the condemnation law of the state which supposedly was to better protect the property owner, especially in agricultural areas. The makeup of this blue ribbon committee was such that most members leaned toward the consumer and property owner viewpoint. The only utility representation on the committee was an attorney from one local electric cooperative, and when matters before the committee were put to a vote the results were usually two votes opposed, the vote of that attorney and one more, and all the rest for a change in the statutes beneficial to the property

owner and adverse to the utilities and other condemning agencies. Included among many committee recommendations at the time was a provision to put a 15-year life on an easement for a transmission line and that all costs for appraisals and attorneys' fees should be borne by the condemner.

The recommendations of the governor's committee resulted in the introduction in the State legislature of proposed changes to the condemnation law which involved, among other changes, annual payments. Such changes were in the form of two amendments which passed and became effective in 1978. These amendments increased benefits for persons affected by public acquisition and ensured citizen access to basic information. A requirement was included that the State Department of Local Affairs and Development, in cooperation with the Attorney General, prepare a pamphlet to be given to property owners or their representatives by a condemner prior to initiation of negotiations for the acquisition of property or rights therein. It is entitled "The Rights of Landowners Under Wisconsin Eminent Domain Law." Included in the amendments were the following important changes in the method of compensation:

- In the case of a taking of an easement in lands zoned or used for agricultural purposes, for the purpose of constructing or operating a high voltage transmission line, (which is defined as more than 100 KV) or any petroleum or fuel pipeline, the owner was given a right to select annual payments, rather than a lump sum, as compensation. The annual payment is defined as the amount representing just compensation for the taking for one year.
- That succeeding annual payments after the first year shall be determined by multiplying the amount of the first annual payment by the quotient of the State assessment under s. 70.575¹ for