

Consideration of enhancements in the appraisal process

by Lawrence D. Dupree

... in order for enhancements to be applied to the property being appraised, the appraiser must determine that benefits are permanent, not temporary.

Larry Dupree joined the Arkansas Highway and Transportation Department in February, 1978 as a Real Estate Staff Appraiser. Since joining the Department, he has attended various courses presented by the American Institute of Real Estate Appraisers, as well as, courses offered by the Society of Real Estate Appraisers and the National Association of Independent Fee Appraisers.

Prior to joining the Department, Dupree built single-family and multi-family structures, as well as, commercial and light industrial structures. He received his degree from the University of Arkansas at Little Rock in 1971.

The consideration of enhancement or, if you will, the importance of enhancement under the Constitution of the United States and delegated to the various States, places the appraiser in a position where he must consider enhancement in his estimated value and appraisal of the property in question when a part taken is required.

You know, as professionals in the Right of Way field, that this puts the appraiser in a position where he must seek legal advice from attorneys in the area as to whether or not enhancement can be considered and, if it can, how can it be considered. The breakdown of general and special benefits under the appraiser's known situation will lead him to conduct his investigations of the facts in one of several ways.

There are four states and one territory

which do not allow the consideration of benefits, either general or special, in determining just compensation under an eminent domain action. These are Iowa, Mississippi, Oklahoma, Kentucky (except as consequential damages) and Puerto Rico.

Other states do allow the consideration of enhancement under varying conditions. These conditions range from special benefits being offset against damages to the remainder, but not the value of the part taken, to both special and general benefits being set off, not only against the damages to the remainder but also the part taken. The former condition exists in twenty-one states and the latter condition exists in five states. The state from which I hail (Arkansas) is one of thirteen states which allow only special benefits to be offset. But these special benefits may be offset against both the damages to the remainder and the value of the part taken. This leaves only one category in which benefits may be handled differently from those already mentioned. This is the situation where both special or general benefits may be offset against damages to the remainder and not the part taken. This situation applies to two states only.

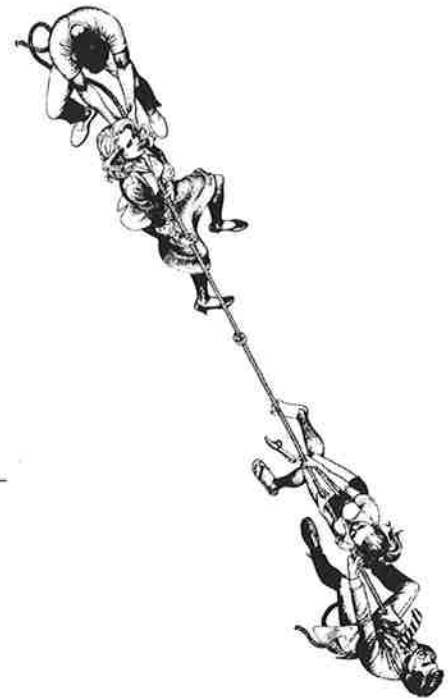
The difference between special and general benefits are held out to be that special benefits are those benefits which

cause the land value to increase due to its particular location when related to the improvement or project. General benefits, on the other hand, are those benefits which cause the value to increase due to the project or improvement which is common to the properties located along or adjacent to its route or location.

In the process of making a determination of whether or not enhancements should be applied to the property being appraised, the appraiser must consider permanent and not temporary benefits. But, at the same time, he must not disregard the benefits of the project just because there is a possibility that the project may be terminated. She or he must take into consideration that benefits to other tracts cannot be taken into consideration just because of the project or improvement.

Also, the appraiser must consider only a specific property involved in the part taken and the damages purported to this specific property due to the project or improvement considered in the application of enhancement.

The property to which the consideration of benefits are applied must be one ownership, and further, these benefits, whether general or special, must come as a result of the project or the improvement in order for them to be considered.



The fact that properties along, say a newly located roadway, have increased in value to a degree above those properties that do not enjoy this frontage, is that measure of general benefits enjoyed by these properties as a result of the project. This degree of general benefit is enjoyed by all properties along the newly located roadway and any property that enjoys a greater degree of benefit due to its specific location along the newly located roadway may, in fact, be enjoying special benefits.

The appraiser must go back into the real estate sales market at this point, talk to brokers, investors, bankers, and individual buyers and sellers, to gather material facts that can be relied upon for his opinion as to whether or not the property he is appraising enjoys *special* rather than general benefits.

This determination of whether or not a property enjoys a general or special benefit should result in the appraiser going into as much detailed research of each comparable sale as he can. It is the opinion of the appraiser, based upon the facts surrounding the properties situation,

that determines the type and measure of benefits or damages. Therefore, it is the appraiser's obligation to gather all the relevant facts that he can surrounding each sale.

Such a gathering of information could lead an appraiser to discover that a lot, which was once an interior lot has been made into a corner lot by a project or improvement, and as a result of this particular project or improvement the land increased in value. This would, upon further investigation by the appraiser, be found to be classified as a special benefit under several jurisdictions. Similarly, if the property being appraised enjoyed this same distinction of being transformed from an interior lot into a corner lot, then it follows that there is a high possibility that the property being appraised has received special benefits as a result of the project which transformed it.

There are several instances where certain benefits occurring to a property have been classified as special benefits. Some of these are as follows:

1. The draining of low lands as a

result of the construction of improvements.

2. A water course opened or made available for irrigation as a result of the construction of an improvement.
3. Where a parcel of land has been filled, leveled, and made more usable as a result of surplus dirt being used.
4. Where the improvement has made ingress and egress better and more usable.
5. Where a particular property was made more desirable and salable.
6. Where a property was rendered better suited for billboard advertising.

These instances are but a few special benefits I have come across in my investigation of the subject of enhancement.

General benefits, on the other hand, may be those benefits such as increased real estate sales along the project, or just the reduced time it takes to reach a property as a result of the project. Under Arkansas law, it has been held that the

(see *Enhancements*, pg 21)

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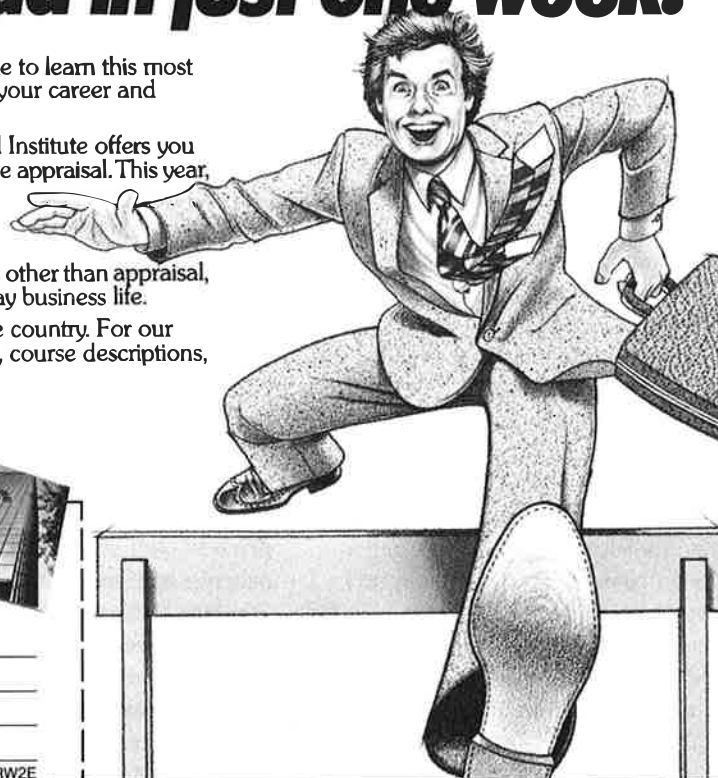
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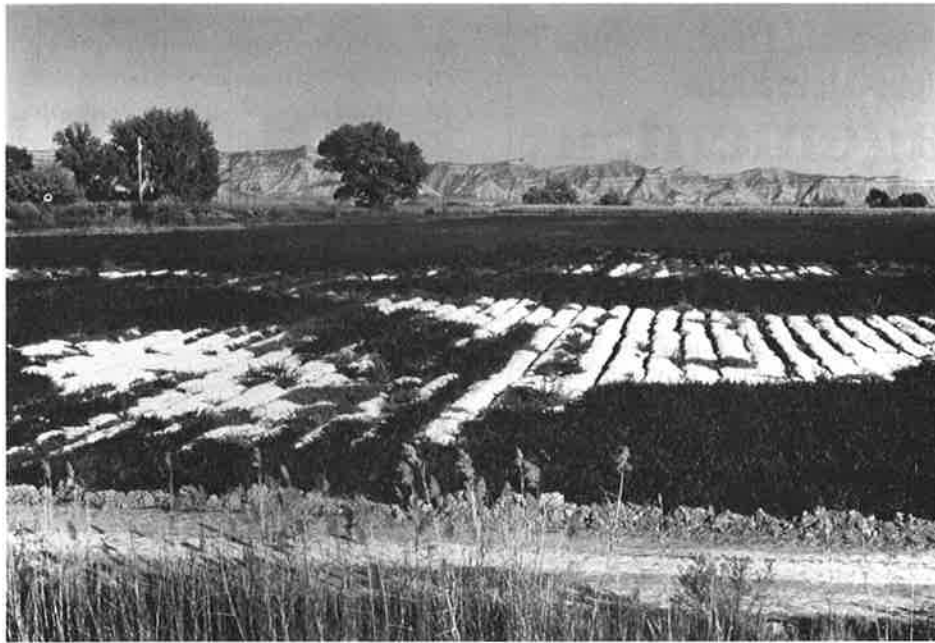
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Salt deposits along the proposed corridor.

struction phases. Preferred corridors and alternatives will be selected based on feedback from further studies and public meetings in the project area.

To date, Reclamation and Aquatrain, Inc., have conducted numerous informal meetings and briefings to identify public and environmental group concerns associated with the project. These concerns have been taken into account in formulating the project, and through this effort, many potential undesirable aspects have been eliminated or minimized. Also, the potential has been reduced for unknown concerns surfacing during preparation and review of the project environmental impact statement which could cause considerable cost increases and time delays. Reclamation and Aquatrain will continue to identify concerns with formal EIS scoping and an active public involvement program through construction. Reclamation will prepare the project EIS, satisfy all National Environmental Policy Act requirements, and obtain Federal and state permits. These activities will be done in parallel and are scheduled to run from January 1985 through December 1986.

Also scheduled to begin in 1985 are design and construction of a demonstration facility to confirm the liquid carbon dioxide transport technology. The feasibility of this technology has been

established by a small pilot test loop, and a commercial-size demonstration system is needed to obtain design, operation, and maintenance data. The facility will be sited at an existing powerplant, and discussions with other groups have been initiated to determine possible cooperation.

Western Resources Transport is a pioneering effort between the public and private sectors, joining the respective talents and resources of each to achieve benefits for the Nation. Incorporation of the diverse needs and desires of government, industry, and the public will lead to a viable project with widespread support.

Enhancements

(cont. from pg. 17)

substitution of a hard-surfaced road for a gravel road enhanced land value and is considered special benefits. (Herndon V. Pulaski County). (Ball V. Independence Count 217 S.W. 2d 913) (Bridgman V. Baxter County 148 S.W. 2d 673).

Each jurisdiction within which the appraiser works may be different and it is the appraiser's responsibility to find out what conditions apply to each project being appraised. The best way to find out about these conditions is to discuss with the attorney involved the points of law that affect the appraisal.

Opportunity

(cont. from pg. 5)

paper money of very high value but no significant weight. Who should pay the most? Does the landowner share in the potential profit of all highway users? Of course not, and no one would suggest such an idea and be considered legitimate.

Newly coined titles like "opportunity cost doctrine" are catchy. They seem to acquire validity with mere use. Further when men of letters prepare articles for magazines which present only a biased accounting principle with inapplicable examples, we are lulled into the belief that such may be reasonable.

No one likes to lose his land or land rights to expropriation. Due to the development of valid utilities, which are constructed for the good of all, we accept the notion. Our legislators have control, through valid laws, to protect against indiscriminate taking of lands and the gaining of huge profits. We do not need creative accounting techniques to complicate this process.

The market value approach to land value has some problems and limitations. Recently in Canada the government enacted legislation to provide in part for such problems. It too has limitations, however, it does afford the owner of potential pipeline or power line right-of-way with a means to protect against future losses. The notion is one of periodic payment based on market value and renegotiable every 5 years. With a properly applied term of payment and interest rates to reflect average business conditions such an approach would protect the owner who believes his long-term interests have been lost.

Finally, in the process of obtaining right-of-way for a linear project it is conceded by experienced landmen that equitable treatment of adjacent owners is imperative to both obtaining easements and for good ongoing relationships. The "opportunity cost doctrine" absolutely defies the principle of equal treatment. By its name it is "opportunistic" and not realistic.

Experienced and knowledgeable land people should neither condone nor accept such narrow and ill-conceived doctrines. Neither the profession nor the public would be so served.