

Right-Of-Way In The Future

By ARLEN M. HARDISTY

Today's right-of-way people are involved with many challenges, opportunities and problems. One of the problems is acquiring right-of-way in today's atmosphere of seeming negativism. The overall public attitude towards right-of-way now seems to be negative, and the news media, policy forces, environmentalists, special interest groups, Congress, and State legislators all seem to present it this way. Freeway interstates can't be completed, transmission lines are blocked, gas and oil pipelines are refused franchised rights. The attitude that we hear and read about presents a skeptical feeling toward right-of-way and makes the job difficult; yet, most right-of-way agreements are satisfactory to all parties.

The public attitude towards right-of-way should be positive because rights-of-way have brought enormous benefits to our nations and the people. Right-of-way was first acquired for the railroads which provided the major transportation for the westward development of the United States. Rights were then acquired for roads that our automobiles and trucks travel on, for communication lines, electric lines and pipelines. There are many other types of rights-of-way all providing a major benefit to our nations as well as to those parties involved in the right-of-way negotiation.

The thought of "right-of-way" suggests a benefit to the user, the seller, and the buyer, otherwise there would be no need for right-of-way. The landowner who objects to the right-of-way that is crossing his land may be objecting to the right-of-way that is providing his electricity, the road he uses to transport his needs or the telephone lines that he uses to call his children, parents or business partners. Today's property owner is proud of his property and when we talk to him about using it for our rights-of-way, we must have a positive statement if we want a favorable reaction. There are a whole wealth of positive right-of-way reactions.

The nations' growth emerged through the avenues of right-of-way. Our local communities enjoy the benefits of common services, city water, sewer, gas, electricity, telephone and roads, all through the avenues of right-of-way for the distribution of these services.

Some of these services can be provided individually, but not without a great amount of effort and cost. Most people in today's society want these services provided through the avenues of right-of-way; prospective homebuyers expect and demand these services. Our nations' future growth will require reuse of existing, and wise use of future rights-of-way.

Our attitudes (also that of the landowner) are influenced by what we hear and see. For example, here is a simple conditioned response regarding the quality of telephone service in one of the telephone company operations:

On a sample basis, a group of people were deliberately told that different kinds of telephone interference would be introduced into their telephone service. Starting Monday, for one week, they would get delayed dial tone, noisy circuit, poor transmission, etc. The telephone company simply wanted to try to determine what was most irritating and wanted the people to report each problem as they experienced it. Starting Monday, trouble reports went up. It seemed that since they had expected more trouble on their telephone lines, they had increased their reporting of these troubles. The only thing that did not change was the quality of telephone service. They received the same quality of telephone service that they had in the past. What kind of conditioned responses are you presenting to your people, the landowners, and the public whom you come in contact with for right-of-way today?

Title opinion attorneys, abstractors, recorders, auditors, and others can help formulate the reputation of right-of-way and build a positive response.

How does the landowner perceive the right-of-way people? Are they seen as selfish, greedy land grabbers, only interested in their own projects? Are they willing to play the role of being a nuisance, a bother, a problem? Or, are they perceived as business representatives for a project beneficial to society and true representatives for both the landowner and the telephone company. The role of the right-of-way representative is truly the company's representative to the landowner, and the landowner's representative to the company.

It would be desirable for the landowner's attitude about right-of-way to be the same at the beginning of the project that it is at the end of the project. By the end of the project the right-of-way representative has developed a positive and mutually satisfactory business relationship. All parties should be totally satisfied because right-of-way is the avenue of access to our modern necessities and conveniences which are so much a part of our everyday life and, without which our nations could not enjoy the benefits of modern technology.

Do you as a right-of-way agent express the statutory attitude that says, in essence, "everyone is entitled to just compensation and fair treatment"? This fair treatment and just compensation is the message that needs to be communicated to all parties in a right-of-way project. The following statements explore this attitude further:

- The property owner is entitled to fair payment for his or her right-of-way.
- The common good or public benefit should be fairly considered.
- The buyer as well as the seller, should be treated fairly and is entitled to a fair price.

- The landowner is entitled to fair, ongoing treatment, with just compensation for any inconvenience.

Landownership is a recognizable right that must be justly and fairly cared for, but so is the common good for the benefit of the public. Our society should benefit fairly by the goods and services that are available within its grasp.

Right-of-way practitioners must do everything possible to promote the fair benefits and advantages of right-of-way. When we fail to acquire the necessary right-of-way, the people of the nation may suffer the inconvenience of lack of service. Here are two examples:

- A. Interstate 78 in New Jersey has a short void near Berkeley Heights. The entire interstate across New Jersey is complete except for this small segment. The adjoining parallel Highway 22 is overcrowded. Highway 78 was constructed five years ago to relieve the congestion of Highway 22, but this incomplete section has created a severely hazardous road condition. A similar example is available in Cleveland, Ohio, where a segment is not complete on an interstate. Many other locations throughout the nation have similar problems.
- B. New power plants are idle or operating at fractional capacity because of right-of-way problems. Power plant energy is available but cannot be transmitted because construction of new power lines is held up for lack of right-of-way acquisition.

The positive attitude of right-of-way needs to be shared with everyone so that the public will be able to enjoy the benefits of improved service. The public suffers when right-of-way has not been acquired. There have been many right-of-way transactions where the news media carried stories of "inequity of treatment." However, when the right-of-way was acquired and the dust settled, those same owners and adjoining owners said that they wished

that they had had more land to sell for an easement, because it was the highest and best possible use of the land. The sale represented far greater revenues than could be acquired through any other use of the land.

What exactly is a right-of-way person? He or she is a many faceted personality. Each person must be:

- A sales person, who is able to sell himself, her company and the project.
- An abstractor, who is familiar with court procedures, able to locate and identify land holdings and to determine ownership.
- An appraiser, who is familiar with the basic concepts of land usage, farming, subdivision development and industrial development. Also, he must know how to appraise the fair market value of the property and to determine the diminution of land value.
- An attorney, who is familiar with the legal formalities required in connection with preparation of documents pertaining to real estate.
- An engineer, who is able to understand and interpret engineering concepts and drawings, construction prints, aerial photographs and maps, and highway plans.
- A surveyor, who is able to understand land measurements, surveying terminology, survey plats, and meets and bounds descriptions.
- A claims agent, who is able to calculate crop loss, determine the value of timber and livestock, ascertain damage to tile, fences, wells, outbuildings, forecast future crop deficiency, settle special claims such as motor vehicle accidents, personal injury, personal property, and trespassing.
- A title examiner, who has a knowledge of how real estate is acquired, various types of conveyances, estates and property

interests, dissent and distribution property encumbrances.

- An accountant, who has a working knowledge of company accounting practices.
- A psychologist, who is able to assess perceptions, points of view, and analyze people's responses, reactions and attitudes. Also, she must understand their emotions, feelings, motivations and needs.
- A mediator, who is able to harmonize, bring into common action requirements of the job, engineer, property owner, government bodies and agencies, communities and construction forces.
- A negotiator, who is able to use the foregoing skills together with his/her ability and knowledge to effect the feeling that everyone won, everybody got a square deal, all these and perhaps a few more.

As you can see, right-of-way involves subjects where each discipline requires many months or years of study. The true right-of-way person is able to coordinate this wide variety of knowledge into a single, workable discipline called right-of-way; not the various individuals such as salesman, abstractor, lawyer, accountant, etc., but a profession called right-of-way.

- A right-of-way agent must operate freely in the mainstream of the business community and formulate judgments which are often unsheltered by company policy—the agent should have an extensive business acumen and a good working knowledge of related law and legal terms to be conversant with lawyers, insurance adjusters and other professional people. The agent deals with actual, final costs. The majority of the agent's contacts are with people, companies and agencies outside his/her industry; decisions and commitments are often irrevocable and frequently made without the benefit of counsel.

- The right-of-way agent must possess the ability to feel at ease with a dirt farmer or a bank president and also match wits with attorneys and specialists—countless cases of dissatisfied and very irate property owners have been dealt with and satisfied by right-of-way people.
- The right-of-way agent must be a diplomat, employ psychological skills, and adjust rapidly to change of circumstances or variable personalities. The agent must deal with reliable, factual information to satisfy a knowledgeable public. Right-of-way agents have traditionally accepted unforeseen responsibilities and irregular hours without hesitancy. Appointments after five and on weekends are regarded as routine job requirements.
- The candidate for this position should be a person of keen perception, mature judgment, and one adept at listening. The individual should possess the composure to quickly appraise alternative proposals and confront hostility with a disarming calm—to operate freely within the parameters of his or her responsibilities. A candidate to develop as a professional should have a generalized business exposure and specialized training in the following areas: engineering, sales, real estate, written communications, psychology and business ethics.

In the end, the individual right-of-way agent bears a strong personal responsibility in the treatment of the "property rights" of the landowner and the "interests" of the company. The performance of these duties will guarantee the mutual rights of both parties in proportion to the agent's knowledge and appreciation of the basic tenets applicable in this field.

What is the profile of today's right-of-way people? They are at work before eight, willing to work after five, on Saturdays and during the lunch period, also willing to learn the necessary mechanics of the many disciplines discussed.

Tomorrow's right-of-way person will require self-discipline and total commitment. Continuing education will be the challenge of the right-of-way practitioner—education in the art of communication, salesmanship, real estate courses and the disciplines of right-of-way involvement. Most importantly tomorrow's right-of-way person will require the development of new attitudes and philosophies towards the total right-of-way concept.

Tomorrow's right-of-way involvement will require a complete liaison program within the engineering and construction groups and with the governmental bodies of municipalities, counties, states and Federal agencies.

This involvement will require more than the basic necessary commitment to complete a specific job. It will require promoting positive benefits of right-of-way and developing a workable system to perpetuate a mutual agreement for maximum benefits to all parties involved with right-of-way.

The most important issue regarding today's right-of-way is one of total awareness of the impact, or the lack of impact, of right-of-way on the land, on the property owner, and on the public. The impact is often one of improved land beautification, business opportunities and service to the public.

It would be a difficult challenge to find a right-of-way project that has a negative effect on the nation, the public or the landowners. The right-of-way practitioners must tell their positive story to everyone—the story of right-of-way for highway projects, for energy projects and communication projects. We must educate the judges, lawyers, jurors, landowners, business enterprises, and household users, about the positive advantages of right-of-way throughout the land. The thrust must be just and fair compensation for all parties involved in the right-of-way negotiation.

Eliminate the negative and accentuate the positive. This is most especially true with right-of-way projects because there need be little or no negative involvement with right-of-way. *All rights-of-way projects are beneficial and should yield a positive reaction for everyone.*

Letter to the Editor:

David Levin's, "Plea For Concept Expansion," (*Right Of Way*, November, 1979, Pages 9 and 10), reconfirms his pre-eminence among our periodical's enlightened contributors. His article, "New Federal Environmental Policy Legislation," (*Right Of Way*, June, 1970) which introduced us to the National Environmental Policy Act, together with Dexter MacBride's "The Right of Way Practitioner: Does He Have a Professional Future?," (*Right Of Way*, August, 1973), provide AR/WA with a framework for survival for which we should all be grateful.

Dr. Levin's observation that we have been unable to cope easily with new demands and that we could do a lot better are verities which we would do well to admit and move to correct.

Conspicuous in the AR/WA "Code of Ethics" is appraisal of real property and competent court testimony, and conspicuously absent is any professional responsibility to tenants or to an environment which will be inherited by generations yet unborn. Here is an excellent opportunity, by revising the "Code of Ethics," for AR/WA to demonstrate its resolve to accept the social, economic and legal changes which have overtaken the profession. Would this not be a mature, progressive and confident attitude to assume on the threshold of a new and beckoning decade?

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Conference Announced

"The Planning and Engineering Interface with a Modernized Land Data System" will be held June 2-4, 1980 at the Stouffer's Denver Inn. This conference is sponsored by the American Society of Civil Engineers Surveying and Mapping Division. Sessions will include background and use of computers for land data, planning and engineering functions, and prospects for the future.