Public Utility Easements in Railroad Rights of Way

When valuing public utility easements within a railroad right of way, an appraiser can employ several approaches to value. In this article, the series of mutually exclusive decisions prerequisite to selecting the most appropriate valuation technique is explored. A decision model is used to guide the reader as the author examines the status of a utility with regard to the right of eminent domain and discusses defining the larger parcel, selecting the corridor's highest and best use, and identifying the related valuation techniques.

■ **GEORGE R. KARVEL**

In this article, the issues relevant to valuation of public utility easements in railroad corridors are discussed. On first examination, the problem and solution consist of valuing a partial interest in real estate. The adversarial interests of the parties, however, differ significantly regarding proper application of partial taking or condemnation valuation concepts. Areas of difference include right of eminent domain, value to buyer or seller, definition of the larger parcel, fee simple ownership, highest and best use, and "across-the-fence" (ATF) value.

Further, some right of way valuation models include application of questionable assemblage or corridor enhancement factors to determine corridor value. Although disputed, a useage or occupancy factor is often incorporated in lieu of before-and-after valuation to determine the value of the utility's right of way.

Relying on valuation theory, a schematic decision model was constructed to assist the appraiser in resolving the valuation problem (Fig. 1). The model is applicable in all corridor valuation situations regardless of the entity negotiating to acquire or maintain an easement in a preexisting right of way. Each decision point is discussed in the sections that follow.

George R. Karvel is professor and holder of the Minnesota Chair in Real Estate at St. Cloud State University, where he also acts as Director of the Minnesota Real Estate Research Center. He received his DBA, MS, and BS degrees in accounting and finance from the University of Colorado. He has written for the Journal of Property Management, Real Estate Review, The Appraisal Journal, *and coauthored* Real Estate Principles and Practices, *8th edition.*

Public Utility or Private User

Valuation of easements in railway corridors first requires that the appraiser determine the lessee or buyer's right of eminent domain. The status of the user has a significant effect on the valuation approach and values determined, regardless of the appraisal assignment.

Generally, public utilities have the right of eminent domain and power of condemnation; private corridor users do not. This distinction is important in deciding whether to adopt a valuation approach that measures value in terms of the buyer (taker) or seller (owner).

Value to Buyer (Taker)

Private transportation-communication corridor users have few options but to obtain necessary easements by acquiring new rights of way, parcel by parcel (1). An alternative is to negotiate for an easement with owners of an existing corridor such as a railroad. The maximal value of an existing corridor easement to a private corridor user, though, is the cost of acquiring an easement for a new alternate route plus administrative, legal, and time costs of acquisition.

When acquisition costs of a new corridor are divided by the market value of an existing corridor, an assemblage factor or multiplier may be calculated. ATF sales, or sales of adjoining land, are used to establish the market value of the existing corridor.

John P. Dolman and Charles F. Seymour have reported values for such right of way assemblages as being " 'two to three times' the prevailing price of farm land acreage. . . . A higher multiplier (value) was reflected in urban areas. . . ." (2) From their own experience, multiples ranging from two to six were reported (3).

Dolman and Seymour maintain that it is important to

> distinguish the "assemblage" costs incurred in assembling a new "custom corridor" from the usually lower enhancement factor realized in the sale of an already existing corridor.
>
> In the market approach to enhancement factors, actual sales of existing corridors are researched and compared to ATF value on the date of the sale (4).

Summarizing corridor assemblage and enhancement factors may be calculated as follows:

Corridor Assemblage Factor

$$= \frac{\text{Cost of "New" Corridor + Legal \& Admin. Costs + Time}}{\text{ATF Value of Existing Corridor}}$$

Corridor Enhancement Factor

$$= \frac{\text{Actual Sale of Existing Corridor}}{\text{ATF Value of Existing Corridor}}$$

Each factor is presumed to represent a premium over the ATF value of an existing corridor. Also, assemblage factors are presumed to be greater than enhancement factors.

The assumption when valuing an existent right of way is that the corridor has

some value in excess of the value of adjacent land. Justification for the assemblage or enhancement factor is found in the concept of plottage. Appraisers generally agree that small parcels combined into a larger one with greater utility result in a value greater than the sum of the parts.

The status of the user of the railroad corridor has a significant effect on the valuation approach and values determined, regardless of the appraisal assignment.

Value to the buyer based on the cost of alternative corridors or income to be earned is relevant to private entities. Assemblage or enhancement factors may be used to establish the maximal negotiated price or rent to be paid by a willing and knowledgeable private user.

Regardless of the benefits to be derived or costs to be avoided, a public utility with the right of eminent domain is responsible only for the diminution in value or loss to the principal corridor occupant. The basis of the valuation measurement when a public utility with the right of eminent domain acquires an easement within an existing right of way is value to seller.

Value to Seller (Owner)

The principle that public utilities with the right of eminent domain have the power of condemnation is well established and accepted. Negotiations for purchase or rental of existent rights of way to a public utility are limited by the utility's status as a potential condemnor.

> Acquisition attempts for public and quasi-public easements usually begin with negotiation efforts, but all parties are aware that the agency (utility) can and will resort to authorized eminent domain proceedings if negotiations are not successful (5).

In addition to assembling the new corridor, parcel by parcel, or negotiating to use an existing corridor, public utilities may also condemn an existing corridor to acquire the necessary right of way. Because condemnation, real or probable, affects the valuation of an existent corridor, it is reasonable to expect standards of value in line with condemnation case law.

The most extensive valuation of railway corridors involved a Special Court's decision in the U.S. government's acquisition of 16,000 miles of rights of way to form Conrail (6). A summary of the Special Court's opinions was presented by William R. Perlik and David R. Johnson (7).

The court affirmed that "value to the owner not value to the taker . . . should determine the basic measure of just compensation" (8). Thereby,

> the entire case proceeded on the basis that the condemnee must show what value he would have been able to realize from his property if it had not been taken for public

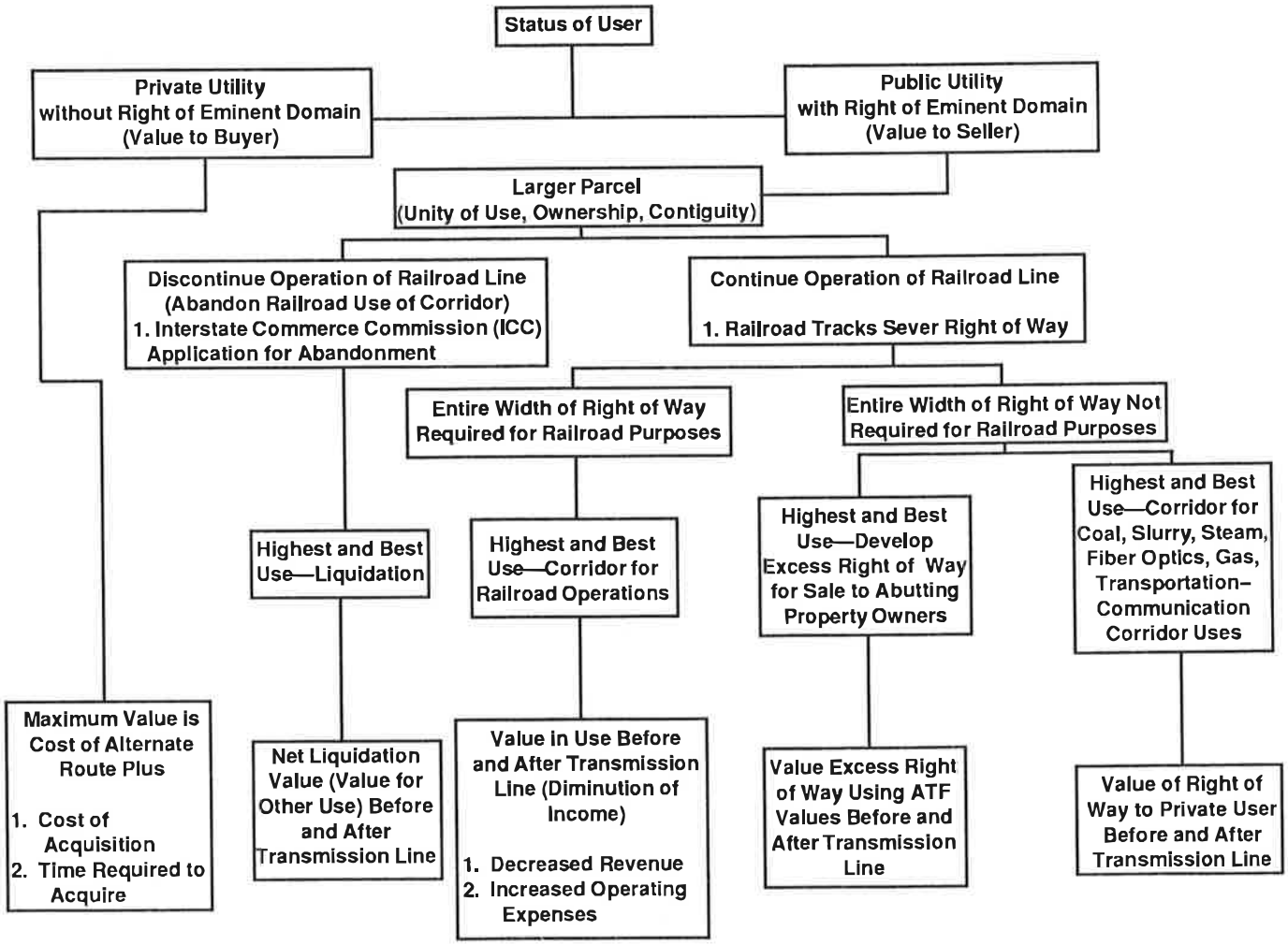

Figure 1. Decision–valuation model for valuing public utility easements.