"WHAT HAPPENED TO *MY* RIGHT-OF-WAY?"

by Jan E. Rosholt

Since I have been associated with several public works departments, my thoughts naturally relate to road right-of-way. The land I call *my* right-of-way representing a government agency does not belong to the *agency,* it belongs to the public. If you do not believe it is owned by the public, look closely at the dedication or deed and see for what purpose the right-of-way was obtained. The government agency doesn't own it, it simply sees that it is utilized to the best interest of the public. As a caretaker or steward of this public right-of-way it is, therefore, imperative that it be utilized for both transportation and utility purposes.

In order to better understand the terms I think we should review the definitions of *right-of-way, transportation* and *utilities* as defined by the Thorndike-Barnhart Dictionary:

> Right-of-Way 1) The right to pass over property belonging to someone else. 2) A strip of land on which a public highway, power line, railroad, etc. is built.
>
> Transportation 1) To carry from one place to another. 2) To carry people or goods, especially as a business.
>
> Utility 1) Usefulness; power to satisfy peoples' wants. 2) A useful thing. 3) A company that performs a public service; public utility.

Both the agency responsible for transportation, (including design, construction, and maintenance) and the utilities exist primarily for the purpose of delivering a service to the public in the most efficient and economic manner. In today's society of more demands for public services this means more and more joint use of the public's right-of-way.

The theme of the 1981 International Right-of-Way Association Conference was "Future Horizons" and the key note address was "Thinking in the Future Sense." There is nowhere in which this theme is more applicable than in the area of underground utilities in road and street right-of-way. Think for a minute how long the life is of your "buried plant" and reflect for a moment as to how often it will be repaired, expanded, connected to and damaged between today and the year 2031—fifty years from now.

We who are in the right-of-way field are dedicated to serving the public and our customers. Unfortunately, we serve these customers from a common right-of-way that is not actually *owned* by any of us. We can *communicate, cooperate* and *coordinate* all of our efforts and fulfil the purpose of our existence, or oppose and fight each other and make the public pay more and receive less.

In many states throughout the country and particularly in the State of Washington, all parties directly concerned with the activities in the public right-of-way are working together to make things happen in a positive manner.

The Revised Code of Washington (RCW) in sections 80.32 and 80.36 allows the public and private utilities to use the public rights-of-way. At the same time section 36.55 provides for the County, as a government agency, to regulate the installation through the granting of franchises and permits. The law, however, does not say how the permit issuing agency is going to administer the program nor where the utilities are to be located within the actual right-of-way.

Recognizing a need for a coordination program involving those concerned with utility installations in public rights-of-way, a state Utility Coordinating Council has been formed. Each town or city or the county itself acts as a clearing house for utility installations in its right-of-way by issuing underground utility permits, providing inspection for the placement of utilities and acting as an arbitrator in cases of conflict in location between the utilities. To assure a standard location for all the utilities, a Standard Utility Location Plan has been developed by local councils following approval by all concerned and adopted by the Board of County Commissioners.

Simultaneously with the adoption of the Standard Utility Location Plan, each agency developed a permit and fee system, if one did not already exist.

In addition to playing an active role in the local utility coordinating council there has been an effort to develop a general policy dealing with the use of public right-of-way for non-transportation purposes.

The Washington Association of Counties does have an adopted policy pertaining to utilities in County rights-of-way which was developed in response to regulations of the U.S. Department of Transportation and was based on the policy of the Washington State Department of Highways. This policy is applicable in all counties and controls the design, installation and maintenance of utilities as a prerequisite for the allocation of Federal highway funds in county road projects on any Federal aid system.

Activities other than just utility installations occur in the public right-of-way and therefore a general policy dealing with all uses of the right-of-way also must be developed from both the county's vantage point and that of the utility. For instance, the following is a list of the many uses of public right-of-ways: electric power lines, telephone lines and cables, telegraph lines, water pipelines, gas pipelines, steam pipelines, petroleum pipelines, and sewer lines. Also irrigation, landscaping, visual buffers, noise buffers, merchandising stands, business facilities, road/driveway approaches, curb cuts, and street lighting.

Those uses which are not specified as lawful or unlawful by resolution or policy statement include the following: sidewalk and pedestrian pathways, agricultural production, recreational devices, residential parking, bikeway facilities, banners and Christmas decoration, drainage ditches, and residential and agricultural structures. Also bus shelters, telephone

booths, private fences, street dances, street closures, gardening, relinquishment of right-of-way, conditional use for unique conditions, equestrian, and mailboxes.

The major concerns for the regulatory agency in the utilization of right-of-way is maintaining services and providing public convenience at reasonable costs. More specifically, most agencies do not want to have the right-of-way used in such a manner as to 1) create a safety hazard from construction of the right-of-way, 2) restrict the sight distance to those using the right-of-way, and 3) prevent or restrict maintenance equipment from performing the necessary maintenance activities on the right-of-way.

Based upon the primary concerns of providing a safe and well maintained transportation facility the following policy statement was developed by the Clark County Board of Commissioners in the early 1970s.

Scope of Statement

The scope of this policy statement is to address the issue of right--of-way utilization. It will not treat the issue of easements for public purposes. The central issue is treated in this statement by identifying the various uses of the right-of-way, the fee structure and the types of permits, one of which is required for *any* use of the public right-of-way, except for the transportation of people, goods, and services. The intent of this statement is to utilize the right-of-way to a maximum without binding the services provided by the County.

Purpose of Statement

The policy statement is to permit the desirable, safe, economic, efficient and effective utilization of the County right-of-way and to deny uses which would be detrimental to the transportation of people, goods and services or result in costly maintenance for the County. The purpose of this policy statement is to identify the allowable and prohibited uses of the County right-of-way, define the level of administration and identify the roles of the staff and the Board of Commissioners. Any use which is not identified herein shall be considered non-typical and will be handled as a miscellaneous use.

Permits

There are three types of permits which may be issued for the utilization of public right-of-way or have a direct effect thereon. These permits consist of utility services, street use and building. The Utility Permit regulates electric power lines, telephone and telephone cable, telegraph line, water pipelines, gas pipelines, and steam pipelines. Also petroleum pipelines, chemical pipelines, sewer lines, irrigation and drainage facilities, and telephone booths.

The Street Use Permit regulates private and commercial uses including: agricultural production, gardening, and private fences. It also regulates recreation uses including: equestrian trails, bikeway facilities, recreation devices (i.e. basketball back boards), and street dances.

It regulates public service uses including: bus shelters, drainage facilities, mailboxes, residential parking, and sidewalks and pedestrian pathways. Miscellaneous uses include: conditional use for unique situations, temporary relinquishment of right-of-way, and street closures.

The building permit is to regulate the setback from the right-of-way for structures contemplated for construction and sidewalks. In addition the building permits are concerned with the drainage from the property into the county public drainage facility. It shall be unlawful for any agency, utility or individual to utilize the county right-of-way without becoming familiar with an understanding of this policy statement.

It shall be unlawful to utilize the right-of-way in such a manner as to create a public hazard such as restricted sight distance, obstruction of maintenance equipment or facilities. It shall be unlawful for anyone to locate, install, or maintain any device which appears similar to that of a legal traffic control device such as a traffic signal, or a traffic sign. Other unlawful uses of right-of-way include, but are not limited to, the planting of shrubbery, location of fences and structures, covering drainage ditches, covering soil with material transportable by rainfall, including chemicals.

The above section sets forth how one county views the public right-of-way and their responsibility to control its use.

The public right-of-way is, in my opinion, for the purpose of installing and maintaining transportation and utility systems to meet the needs of the people. Through the cooperative efforts of all parties charged with some aspect of a transportation or utility function we should all be striving to maximize the use of this right-of-way.

In response to the question "What happened to my right-of-way?" I must say that, "Good things happened to my right-of-way." Through planning, communication and coordination the public is receiving the maximum public utility and transportation service at the least cost with safety and convenience. I think the same response can be made by everyone in all parts of the U.S. and Canada where utility location and coordination councils exist and are actively supported by all concerned.

Canadian Study On Highest and Best use

Highest and best use, as the concept has become known, is the subject of a study commissioned by the Research and Development Fund of the Appraisal Institute of Canada.

Author of the study, Lincoln W. North, AACI, states in the introdution: "The overall objective of this study is to examine the fundamental issues which govern the determination of a property's highest and best use in order to foster a better understanding of this concept." He discusses the parameters involved and the factors that govern the determination of a property's most beneficial use.

The Concept of Highest and Best Use will be of greatest interest to real estate appraisers and other professionals who are involved in or affected by the valuation of real estate.

In addition to being a designated member of the Appraisal Institute of Canada, North has lectured extensively for professional and academic organizations on real estate investment and appraisal techniques. He is the author of *Foreign Investment in Canadian Real Estate,* an earlier publication of the Research and Development Fund, and a text, *Real Estate Investment Analysis and Valuation,* and a graduate in civil engineering of Michigan Technological University.

The Concept of Highest and Best Use is available at $5 a copy from the Appraisal Institute of Canada, 309-93 Lombard Avenue, Winnipeg, Manitoba, R3B 3B1.