

"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 ap-

proval 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/drive-way 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