The Appraisal of Easements
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In recent years, the increased level of easement acquisition, particularly by energy and telecommunication companies, has prompted a number of reasons for easement appraisal to include proposed easement acquisition, appraisal of property encumbered with one or more easements, and analysis of property sales already encumbered with easements. This article primarily focuses on easement acquisition across individual properties: the methodology rather than application. The scope of the article also includes some background consisting of definitions, a discussion of proper easement valuation methodology, and finally some comments on misused alternative methodology.

BACKGROUND
A brief discussion of basic terms related to the eminent domain valuation framework will probably prove helpful before addressing easement valuation methodology. There are many excellent sources for valuation-related definitions, and several have been included in the references at the end of this article. No attempt has been made to advance precise definitions in this article, but rather to relate the terms to each other and to show how they fit within the easement valuation framework.

MARKET VALUE — The appraiser should be aware of the market value definition of the particular jurisdiction of the subject property. Any proper definition will include the willing seller/willing buyer concept. The courts are seeking just compensation and market value is generally accepted as a basis for just compensation. When appraising the impact of an easement on a particular property, care should be exercised not to arrive at a conclusion of value other than market value. Market value is related to the value of the subject property itself (in rem) to typical market participants and not to the individuals or entities (in personam) that own the property.

Examples of other types of value include use value (value particular to the owners of the property) usually associated with a special use property, and investment value (value to the buyer).

HIGHEST AND BEST USE — This is probably the single most important appraisal principle and is fundamental when estimating market value. Land is always appraised based on its highest and best use as theoretically vacant and available for development at the date of the appraisal. The existing (current) use, particularly of improved property, is not necessarily the standard; rather it is the physically possible, appropriately and legally supported, financially feasible, and resulting in...
In the valuation of easements for public acquisition, the measure of value is always the loss in the value of the burdened property, not the value of the easement to the taker.
Rights of way across an individual property are typically in the form of an easement; however, the user may own in fee some portions in a given length of right of way (across multiple properties). Only when the land across a given length of right of way is in the absolute control of a one entity, may the length be defined as a right of way corridor (and this assumes that other tests are met as well). In some circumstances, the individual existing rights of way easements are not in the control of an individual entity, and changes and sale of the corridor for additional users is not possible without the additional consent of the individual owners of the underlying fee simple estate. For example, if a railroad is situated within a physical corridor but owns only the right to use as a railroad, and the individual fee owners control other uses (such as laying a pipeline or fiber optic line), then that right of way cannot be defined as a marketable corridor in an economic sense.

A corridor has a number of characteristics. Any corridor connects important demand points while an easement extends to the boundaries of only one property. A corridor avoids congestion to the extent that it bypasses many properties, allowing a user to avoid buying right of way from many different owners. That is to say a corridor provides a distance advantage due to transport across many ownerships. The corridor owners provide services such as engineering, maintenance and surveillance. Corridors are typically marketed as an entity.

Owners of corridors rent or sell right of way within the corridor to users who wish to place their user improvements within it. However, the physical corridor is not classified as a right of way corridor unless the rights to use can be obtained from a single entity without the necessity of getting also the same rights from all the basic fee owners of the land. There is considerable literature on the subject of corridor valuation and some has been included in the bibliography.

**Valuation Considerations**

The proper valuation methodology for easements is the “before and after” rule. A variation of this rule is the “take plus damages” rule. Generally, case law and appraisal literature support this methodology. Strictly speaking, the appraiser does not appraise an easement but rather measures the impact of the easement on the burdened property. The measure and impact (value) of an easement is the loss in value to the remainder property after imposition of the easement. This diminution is comprised of both the easement acquisition and damage (if any) to the remainder. Different jurisdictions have different laws governing the valuation of partial takings and the appraiser should be careful to use that methodology applicable in the subject property’s jurisdiction.

In the valuation of easements for public acquisition, the measure of value is always the loss in the value of the burdened property, not the value of the easement to the taker. Appraisal methodology is focused on the market value of the property and should be consistently applied. The valuation methodology used should not vary regardless of the nature of the proposed project, who the buyers will be, or who the owner is. Additionally, it should not vary whether a governmental agency is involved or if it takes place in the private sector.

**Valuation of the Whole Property** — The whole property is appraised before any consideration of the proposed project. The whole property is not burdened by the proposed project in the before scenario and the market data collected for the whole property value estimate should not reflect any project influence.

**Valuation of the Partial Acquisition** — The proposed acquisition area to be burdened by the easement is appraised in the before situation and will have the same per unit value as that of the whole property. All easement acquisitions are partial.
acquisitions because some beneficial interest remains with the underlying fee owner. Accordingly, the value of the proposed easement impact on the remainder will be less than the value of the fee simple that it burdens, and cannot be more. The market value of the easement acquisition is directly related to the market value of the property it burdens. If the purchase price of an easement exceeds that of the underlying fee simple value, this is an indication of the presence of other considerations, such as damages to the remainder, business decisions, time restraints, administrative settlements, improvements within the acquisition area, unusual physical characteristics, engineering factors, etc. If the area of the proposed easement were worth more on a per unit basis than the value of the fee simple estate, then it would follow the properties burdened with easements would sell for more than properties having no easements. The market does not bear this out.

**VALUATION OF THE REMAINDER** — The remainder is appraised in the after scenario because it is now burdened with the easement. The remainder consists of all property outside of the acquisition area and the underlying fee simple interest. Paired sales analysis is the proper way to measure the impact of the easement. By comparing properties similar to the subject with an easement to similar properties without an easement, an estimate of the differences can be abstracted.

**TOTAL BEFORE AND AFTER METHOD** — When the law of the subject property’s jurisdiction requires a before and after valuation, the appraiser performs an appraisal of the property before considering the impact of the take and the project. Next, a new appraisal is made of the remainder property under the theoretical assumption that the proposed project has been completed. The appraiser takes into account in the after value the impact upon value of the use of the easement area by the project and the benefits of the easement area remaining to the underlying fee owner. Also taken into consideration is the impact on the

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remainder of the taking. Sales of properties burdened by a similar easement are compared with similar properties not affected by the same type of easement.

**ALTERNATIVE METHODOLOGIES**

On occasion valuation methodologies other than the “before and after” method are advocated both in practice and in appraisal literature. These alternative methodologies have arisen in part from the hectic nature of utility right of way (telephone, electricity, pipeline, fiber optic, etc.) acquisitions in recent years and some have serious flaws. Three of these alternative methods will be discussed: use of easement transactions as comparables, linear rules of thumb, and incorrect use of corridor valuation theory.

**EASEMENT TRANSACTIONS COMPARABLES** — Generally speaking, easement transactions are not reliable for use as comparable data and should not be used when appraising the impact of an easement on the burdened property. Even though the use of easement transactions seems very straightforward, there are a number of reasons why they should not be used to estimate market value.

Easements are not economic units in and of themselves. An economic unit must stand alone on its own. They are not traded individually on the open market. A user purchases easements in order to assemble a system and most easement transactions represent gain to the buyer as opposed to loss in value to the burdened property. Because the buyer is putting together a right of way system, many non-realty considerations could be involved in an easement transaction including administrative costs, engineering factors, project timing and other business decisions. For example, a natural gas supplier facing a contractual deadline might pay an inflated price for a particular easement in order to complete the project. Another example would be when valuing partial acquisitions for a road-widening project; sales of strips of land to the condemnor on other road projects are not used as comparable sales. The appraisal methodology should be consistent regardless of the type of project.

For some types of easements, such as those acquired by utility companies for electric, telephone, cable lines and pipelines, there may be an established going rate per pole, per line-mile, per rod, and the like. In appraising a similar type of easement for government acquisitions, the appraisal should not be based on such going rates but should be based upon the usual “before and after” appraisal method. It therefore goes without saying that sales of easements based on such measures cannot be considered valid comparable sales.

The use of easement sales introduces project influence (an after scenario) to the before valuation. Any valuation of an easement impact should be done in the after situation. In the before scenario, there is no easement. Using easement transactions as comparables might indicate a pre-determined opinion that the proposed easement area represents an economic unit (separate highest and best use). The probability of an easement being placed on a particular property at the precise location across the property in anticipation of a project in the future is probably remote. Accordingly, the reasonable probability component of highest and best use is violated.

Easement transactions are complex and obtaining all of the information necessary to make a direct comparison to the subject easement is extremely difficult. Confirmation by the appraiser of the amounts paid for each easement along a right of way project is very difficult. Even if the sales prices are available, identifying and abstracting the various components of each transaction such as land value, damages to the remainder, business decision, etc. are hard to obtain. Accordingly, the comparison is usually unreliable.

Each burdened property is unique. An easement across one property will probably reflect a different impact when compared to the impact of an easement acquisition on the subject property. For example, there may have been improvements within the easement areas of one easement sale and none in the subject easement area. There may be damages to the remainder as a result of the easement on one property and no damages to the remainder on the subject property. The highest and best use of one property may be different than that of the subject whole property.

Each easement is unique. For example, one easement may involve a 50-foot right of way compared to only 30-feet for the subject easement. Another easement may extend diagonally across one property unlike the subject easement that may extend along the property boundary. One easement may have a term of ten years while the subject easement may have an indefinite term.

Each user improvement is unique. The size of the pipeline, the number of pipelines allowed, the product, etc. all may differ between one easement transaction and the facility to be built on the subject easement area.
Accordingly, the linear measurement will usually be a market value decision rather than a market value decision. In a linear system, prices paid for individual easements may reflect a value to the buyer that is quite unique and a linear measurement (per unit of value such as, per rod, per mile, per foot, etc.,) is inappropriate appraisal methodology. As pointed out earlier, each easement is individual property is only one component of a right of way project that may extend for many miles across dozens, if not hundreds, of individual properties. Often, the linear measurement represents value to the buyer. To the extent that the buyer is assembling a right of way system, prices paid for individual easements may reflect a business decision rather than a market value decision. Accordingly, the linear measurement will usually represent a use value such as investment value, rather than market value.

**LINEAR RULES OF THUMB** — Although in practice, easement purchases are often made based on linear units of value such as, per rod, per mile, per foot, etc., this is not appropriate appraisal methodology. As pointed out earlier, each easement is quite unique and a linear measurement (per unit of value) does not take into account the differences between properties. An easement across an individual property is only one component of a right of way project that may extend for many miles across dozens, if not hundreds, of individual properties. Often, the linear measurement represents value to the buyer. To the extent that the buyer is assembling a right of way system, prices paid for individual easements may reflect a business decision rather than a market value decision. Accordingly, the linear measurement will usually represent a use value such as investment value, rather than market value.

**IMPROPER USE OF CORRIDOR THEORY** — In those cases where highways, pipelines, electric transmission lines extend from one point to another, there obviously exists a physical corridor. The user of the land areas in the physical corridor may own fee title to the lands in the right of way, for example, the state highway department. In such cases, the land from one point to another is a true, salable or rentable right of way corridor providing the user the right to sell or lease rights to others to place their improvements, such as a coaxial cable, in the corridor. In some cases, the land was acquired from the landowners for the sole purpose of the highway and the state may not have the right to sell or lease the restricted corridor to others.

There are instances where railroads, with fee title to the right of way, abandon their service to a particular right of way and then sell or lease the land to others. Roads owned in fee may be undedicated and the fee lands become available for sale or lease to others. Frequently, there is no demand for the rights of way abandoned by the utility or railroad and the land is divided and sold (where possible) to the adjacent owners. Where railroads own the fee title to their right of way, they may be able to lease or sell portions of the right of way to others such as a pipeline. Interstate highways probably are the largest supply of true, merchantable corridors.

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SUMMARY

In the final analysis, the traditional, land-based, before and after methodology is the best measure of the impact of an easement on a particular piece of property. If market value is being sought, then the impact on the value of the property and not gain to a buyer (whether individual or entity) is the appropriate measure. To use other techniques will almost invariably lead to an estimate of some value other than market value. This is a particularly important consideration in the eminent domain framework.

The market value of easements does not relate to the value to the user. The “use” of highest and best use is the economic use of the property without regard to the benefits to the condemnee. Typically, the partial acquisition may involve specifically defined interest over the total property, such as an avigation easement covering the entire property, or it may involve certain rights to merely part of the whole property, such as a driveway access.

The market value of a corridor can be totally owned in fee by a single entity, such as a railroad or state highway, or, the physical corridor can be a number of parcels with the underlying fee owned by individual property owners. There may be a plotage increment above the “across the fence” value when portions of the total corridor can be sold or rented to others by a single owner; however, there is no rationale for a value increment when every property in the corridor must be acquired from the individual owners.

In the direct sales comparison approach, transactions involving rights of way acquired by others are not considered valid because they are not open market transactions. Such acquisitions are by a condemnor forced to acquire and by a condemnee forced to sell under the threat of eminent domain. The price per rod, per acre, or per mile under these conditions is not bona fide data that can be used to arrive at market value.

REFERENCES


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