



THE FARMER and Rights of Way

BY OWEN M. NESS

The following piece is an edited republication of an article from the April 1964 issue of Right of Way Magazine. We hope you enjoy reading about where we've been, appreciate how far we've come and be inspired by where we'll go next.

Just in case you come to think that I am somewhat of an arsonist at a firemen's convention, I will admit at the outset that my training, experience and sympathy is primarily in farming, and it is only in recent years that I have been involved in the acquisitions of rights of way.

The reaction of farmers to rights of way can perhaps best be developed by using two approaches. I will first review the four basic steps and the consequence which each can have to the farmer in establishing a right of way. I will then discuss a specific case to show the effects of various servitudes.





For convenience, I have designated the steps in acquiring the right of way as follows: design, evaluation of rights to be acquired, negotiations, acquisitions.

Design

Despite the ever-present preoccupation with money, the aspect of right of way which is most important and hence of most interest to the farmer is the type and location of the utility to be installed. A few years ago, our company designed a pipeline project to transport waste from our plant site to a storage area location some 7 miles distant from the plant. The original location was based on a single premise, namely that a straight line is the shortest distance between two points, and hence the cheapest location. Our Property Department immediately objected to this proposal because it meant constructing a pipeline, much of which was on the surface, across the middle of all the farms which we would affect. After carrying out the necessary topography studies, it is now proposed to build the pipeline along the range line farthest from the farm buildings. This makes it possible to cross 24 lots without bisecting any farms, except one which is 2 miles in length and which we are forced to cross in the middle.

This route is considerably longer than the original straight line. Nonetheless, we feel that it would not make sense to complicate the operations of all of these farms simply to suit our convenience. However, I wonder if the same action would have been taken if the expropriation powers had been available for acquiring the land.

A great deal of trouble can be avoided at the design stage if the problems which will be created for the farmer are borne in mind while studying possible locations or routes. The various designs of pole and tower structures now available for transmission lines permit the spacing of supporting structures so that they cause very little inconvenience on the farms which they cross. This is particularly so when lines are constructed perpendicularly to the long axis of the farms.

Highways, on the other hand, can seldom be designed so as to avoid all problems for the farmer. This does not, however, relieve the highway engineer and right of way agent from their responsibilities in protecting the farmer as much as possible. A few months ago, I heard of a case of the State of Indiana where a limited access turnpike was built through the middle of a number of well-organized farms. After the turnpike went into operation, the only way the farmers could reach the remainder of their farm was by traveling up to 10 miles to the nearest overpass or a total of twenty miles to reach their land at the other end of their farm. This is an extreme case, but it does illustrate the type of abuse which is possible with inadequate planning.

Evaluation

The most difficult phase in the acquisition of a right of way is the evaluation of the effects on the properties concerned. I will try to take the approach or present the point of view of the farmer.

The method of valuation which seems the simplest to the uninitiated is what might be called "the present market value of the land." It seems completely logical to go to the registry office and examine recent sales of farms in the vicinity and calculate what amount was paid per acre. In making such calculations, the naïve assessor will probably make a realistic value on the buildings, deduct this from the total sale price and, if there is anything left, divide by the number of acres involved in the transaction. Frequently, after deducting the value of the buildings, there is very little left for the land system. It must be recognized that farm sales are frequently due to the fact that the farmer is retiring and is unable to carry on or due to economic factors which are forcing him out of the farming business. Therefore, these sales do not usually reflect the value which land has to an operating farmer.

Anyone who is familiar with the economics of operating a farm under present market conditions in eastern Canada is well aware of the fact that there are very few farms which show a satisfactory return or which would live up to the requirements of an industry





as being a satisfactory investment. However, we still have more farmers than the market justifies. We must, therefore, conclude that most farmers remain in the business because of the way of life it represents and the satisfaction to be obtained from farming. From this, we immediately see that any form of right of way must, by its nature, encroach on the thing which the farmer holds most dear. At the same time, it is an element of sentiment which cannot be evaluated in monetary terms. To this, the inexperienced right of way agent will reply, "So what! If it cannot be evaluated in dollars and cents, then I do not need to worry about it." The successful right of way agent will, I am sure, agree with me that this point is of great importance because the agent who is fully aware of this factor will approach the farmer in a much more sympathetic manner than the agent who believes that his sole responsibility is to carry out a financial transaction.

Generally, farmers are not unreasonable when it is necessary to establish a right of way on their property. However, the agent should be able to show the farmer the importance of the project, the need for his cooperation put these factors in context with the payment to be made.

Since the present market value does not represent the real value to the farmer, it is necessary to find some evaluation which will give an equitable value in relation with the economic return of the land. Perhaps the simplest way to do this is to calculate the gross return per acre of the farm and pay an amount of money sufficient to yield an equivalent return. Thus, if the return is \$30 per acre per year, then the payment would be \$500 per acre which, at a rate of 6%, would yield \$30 per year. There are a number of variations which can be adopted to this scheme ranging from that suggested to the use of the net return in establishing the return per acre.

In the case of transmission lines, this system has very little value, since the right of way usually affects only a small part of the total area, and the revenue will only be affected on the areas rendered inaccessible because of towers, poles or guy wires. Operating costs will, of course, be affected because of the inconveniences created by the supporting structures.

Another aspect of the effects of a right of way which must be borne in mind is the effect on the overall property apart from the area directly concerned within the right of way. The total value or salability of an 100-acre farm could be very seriously affected if a transmission line were built from one end of it to the other. Transmission lines crossing the farm have a similar, albeit lesser, effect.

Negotiations

I have already mentioned that a sympathetic approach to the farmer's problem is highly important in carrying out successful negotiations. Genuine understanding can only be based on a full realization of the economic problems faced by the farmers in the area with which the agent is dealing.

An engineer located in Montreal recently told me that he thought he should abandon his profession and go into farming because that was where it was possible to make money quickly. It is amazing that anyone could entertain such notions under present-day economic conditions, I agree that it has been possible for some people to make a quick profit on tobacco farming, poultry raising or some other very specialized farm operations, but such profits are usually on a short-term and quite unreliable basis. Even the most successful farmers would probably be better off if they were to sell their farms and obtain other work with shorter hours and with great security which, combined with the investment of the money realized with the sale of their farm, would give them a very high standard of living.



A recent publication of the Provincial Department of Agriculture reports the financial operations on 25 average-sized farms located in different regions of the Province. A very complete accounting was kept over a 25-year period on these farms. The most recent results summarize the revenues from the production for potatoes, corn, hay, root crops, grain, forage, oats, barley, pastures, sugar bushes and woodlots. The farms studied showed a loss in at least one year out of most recent 5 years on all of these crops, with the exception of sugar bushes. This, in spite of the fact that all capital input was charged at the rate of less than 4% per year.

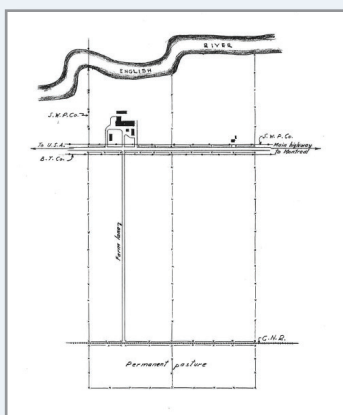
I do not need to discuss human relations and ethics of negotiations, since all of you are exposed to this, either in your work or through parts of the Association's program.

Acquisitions

The completion of the acquisition of the right of way involves two things, the notary and the legal documents. If at all possible, complex documents should be avoided so that the proprietor is fully aware of the contents of the document which he is signing. The documents should cover the rights required without abusing the privileges of the owner.

We recently moved a transmission tower on a line which was built a number of years ago. The change resulted in a tower being placed on the corner of a lot on which we had a servitude but where there had not previously been any tower. No additional clearing was required, and the tower was constructed on a rock outcrop so that no tillable land was affected. However, according to the terms of the original servitude, we should have paid the farmer the amount usually allowed for the installation of a tower. He was so unhappy because he did not understand the original servitude that he refused to accept payment for the tower. He was afraid that he might be giving away more of his rights by signing a receipt for the money.

Wherever possible, it is preferable to allow the proprietor to choose his own notary. This will alleviate many of the proprietor's fears and, if final discussions are reviewed in the notary's presence, the landowner will not be able to complain later that he has been the victim of a dishonest transaction.



I have had a sketch prepared showing the farm on which I grew up and which is now operated by my brother. This farm is located at Hock, in Chateauguay County, and as you can see from the sketch, it is subject to a number of servitudes. This is a highly specialized dairy farm. There are electric distribution lines, telegraph lines and telephone lines constructed across the farm. However, these cause

very little inconvenience and are not a substantial problem. Nevertheless, a number of apple trees were lost a few years ago when the electricity lines were moved to permit widening the highway. Although the highway has not been widened as yet, it appears that it will be widened on the opposite side, so that this loss appears to have been unnecessary. The transmission company was successful in placing the posts in fence lines, and this fortunately avoided inconvenience in operating the farm.

The greatest problem, as can readily be seen on the sketch, is the problem of moving cattle to and from pasture fields. The land along the river is used for pasture at night, and the land beyond the railroad tracks for daytime pasture. This means that every morning and afternoon, the cattle must cross the highway and the railroad to get to the pastures. In the time of steam locomotives, it was possible for one man to herd the cattle to the pastures because he could see evidence of the train soon enough to stop the cattle if necessary. However, crossing the cattle has become a serious problem with diesels which can only be seen for one mile, and which can travel at 45 to 60 miles per hour at this particular place. In addition to the continuous cost in man hours, we also suffered the loss of a purebred cow worth \$400 a few years ago.

The problem which is of greatest concern at the present time is the proposed widening of the highway. This widening has been completed to the neighboring farm and will probably be continued in the near future. Although traffic is not a problem at the present time for crossing the cattle, the widening of the highway will increase the speed of the traffic, and eventually, the density will become such that it will be impossible to cross the highway. This represents a crippling and expensive problem in operating the farm. Yet, because of existing expropriation powers, the payment will probably be on the basis of so much per acre with no provision for the underpass, which will inevitably become necessary when the traffic reaches a certain density.

This farm, which is not particularly different from many others, will be very seriously affected by future changes. Yet, it is doubtful if it will receive the same treatment as would be accorded to a major industry if a highway were built through the middle of its properties. The highway and other public services are very necessary for the common good, but I wonder if we do not frequently ask the farmer to bear more than his share of the cost. ✪



Owen M. Ness spent the early part of his life on the family dairy farm southwest of Montreal. In 1952, he obtained a bachelor's in science in agriculture from Macdonald College, McGill University. After 2 years post-graduate studies, he joined the Aluminum Company of Canada Limited, where he is now the superintendent — Agricultural Section of the Property Department. In 1960, Mr. Ness attended a one-year course in industrial management at the Centre d'Etudes Industrielles in Geneva, Switzerland. He has been a member of Chapter 34 since his return. He also a member of La Corporation des Agronomes de la Province de Quebec and the president of the Commission des Loisirs d'Arvida.