



A Question of Disclosure

I am a member of IRWA Michigan Chapter 7 and have been actively involved in eminent domain matters during my 30 years of legal practice. My work in the eminent domain area has been primarily devoted to representing landowners affected by public improvement projects.

During the course of my legal practice, I have represented a number of landowners relating to projects involving gas transmission lines, as well as electrical transmission lines. With that background in mind, I read with great interest the article titled, "The Effect of Natural Gas Pipelines on Residential Value" published in the January/February 2011 edition of Right of Way Magazine. After reading it, I felt compelled to offer my comments from the perspective of landowners' counsel.

The article indicated that, by use of a "paired-sale analysis," the market value results were inconclusive. However, my personal experience is that the presence of natural gas pipelines does have a substantial impact on market value—specifically on properties that are on or adjoin the line—once full and complete information about the implications of the gas transmission line are made known to the purchaser and known in the marketplace.

I bring this to your attention because I believe the authors of that article missed an absolute and fundamental point relative to measuring the impact of a gas pipeline. Namely, whether or not the purchaser (and/or the market) truly had accurate and complete information as to the nature and extent of the gas transmission line and the potential detriments associated with being in close proximity to a pipeline, including being in the area identified as the Potential Impact Radius (PIR).

According to Chapter 49 of the United States Code and under Section 49 of the Code of Federal Regulations, Section 192.903, a gas pipeline company must

identify a PIR relating to gas transmission lines, and the size of the PIR is impacted by the maximum allowable operating pressure of the pipeline. In these regulations, the PIR is defined as "...the radius of the circle within which the potential failure of a pipeline could have significant impact on people or property."

Certainly, pipeline companies are aware of the Federal Standards and Federal Regulations, but in my opinion, the general public is not aware of such items or the implications of those items. The existence of a PIR relative to a gas pipeline is rarely known to the public, unless appropriate investigation and due diligence is done by the purchaser.

A review of the right of way documentation available through public records rarely reflects the nature and extent of a gas transmission line and rarely provides adequate information for a purchaser to truly appreciate the nature and extent of the gas transmission line which might be on, across or near their property. From what I have seen, the easements typically include simple language which merely reserves the right to place a gas transmission line.

But rarely is there any disclosure as to the size of the specific gas transmission line, the number of lines or other information, including the size and maximum pressure of the line which will allow a purchaser to engage in due diligence and discover relevant information, such as the PIR attributable to the gas line as mentioned in the regulatory codes.

I have represented a number of landowner

clients who have stated words to the effect, "...I knew there was a gas pipeline easement on my property, but I surely did not know that it contained a high-pressure gas line or the implications of the high-pressure gas line on my property." In short, without disclosure and discussion, in my experience, property owners are rarely advised or appreciate that any such parameters like a PIR even exists along a gas transmission route.

Even if the public records reflect the existence of a pipeline easement or a pipeline fee alignment area, true and accurate disclosure of the nature and extent of the underground activity, the implications of the pipeline, such as the PIR is not disclosed in public record documents. A prospective purchaser must truly investigate and uncover details and information about the actual pipeline, and once information like the PIR comes to light, the purchaser's interest in the property is substantially impacted and, often times, there is no interest, at any price, once full information is known to a prospective purchaser.

The use of the paired-sales analysis makes the assumption of a knowing purchaser, but I believe this analysis is not meaningful unless it can be determined that the purchaser had true, accurate and appropriate information concerning the nature and impact of the gas pipeline on, near or across their property. While I appreciate the article's intent concerning the effects of gas pipelines, I believe that the author's failure to confirm that the purchasers in any of the paired-sales transactions had full and complete knowledge of the details concerning the gas transmission line totally undercut the authors' work product and the conclusions set forth in the article. I do offer this point of view from the perspective of landowners' counsel.

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