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## Pipeline Corridors, Economic Units and Condemnation

By Judon Fambrough

A new concept in condemnation known as "pipeline corridors" was introduced when the Texas Court of Appeals for the First District decided a landmark case on November 30, 2000 (*Exxon Pipeline Co. v. Zwahr*, 2000 WL 175289). The decision is novel in that the appellate court took the method of valuating "economic units" and applied it to evaluation of new pipelines being placed in existing easements.

For the landowners in this case, the new application of the concept meant the difference between receiving \$30,000 and \$2,300.

The Zwahrs purchased 49 acres in 1989. Koch Gateway Pipeline Company owned a 50-foot easement on the property in which a 30-inch natural gas pipeline was placed. The Zwahrs were permitted to grow cotton on the right of way.

In 1995, Exxon began condemning a 50-foot easement alongside and within Koch's easement. The easement included 1.01 acres of the Zwahrs' property, 82 percent of which lay within the existing easement.

A special commissioner awarded the Zwahrs \$2,265 for the taking. Exxon deposited the funds with the court, took possession, laid the pipeline parallel to and within 25 feet of Koch's pipeline. The Zwahrs appealed the special commissioner's award to County Court at Law No.1 in Fort Bend County.

At trial, the Zwahrs' expert witness testified the portion of the 1.01 acres that fell within Koch's existing easement was a self-contained, separate economic unit (the established pipeline corridor) and that its value should be ascertained alone and independent of farmland acres owned by the Zwahrs.

This method of valuation is proper, according to *State v. Tigner*, 827 S.W.2d 611, as long as the use is physically



possible, legally permissible, financially feasible and maximally productive.

Furthermore, Texas case law dictates that a presumption exists in favor of valuing the land based on its current use (*McAshan v. Delhi Pipeline Corp.*, 739 S.W.2d 130). In this instance, 82 percent of the 1.01 acres was currently used for locating pipeline. Comparable sales for existing pipeline easements were \$26,398. The right to assign an area within an easement sold for \$9,679.

A jury awarded the Zwahrs \$30,000 for the easement plus \$10,000 for the right to assign the easement. Exxon appealed to the First District Court of Appeals, lodging several concerns about Zwahrs' expert witness.

Texas Rules of Evidence require all expert testimony to be relevant and reliable. Exxon contended the expert's opinion was based on sheer speculation and flawed methodology and thus inadmissible under Texas case law. Exxon further claimed the trial court abused its discretion by admitting the testimony because it lacked relevance and reliability.

Finally, Exxon contended that valuating the existing pipeline corridor as a separate economic unit was improper and that the valuation should have been based on its use as farmland or rural residential property.

In ruling against Exxon, the court stated, "In determining reliability, the trial court is not to determine the truth or falsity of the expert's opinion, but is to determine whether the expert's opinion is relevant, and whether the methods and research

underlying the opinion are reliable (*E.I. du Pont de Nemours and Co. v. Robinson*, 923 S.W.2d 549). Whether the trial court properly admitted testimony is a matter within the trial court's discretion and will not be disturbed absent an abuse of discretion."

The court pointed out, "It is a recognized principle that real estate appraisal is not an exact science and requires the exercise of a person's judgment" (*Parrallax Corp., N.V. v. City of El Paso*, 910 S.W.2d 86.)

Further, the court noted that during the trial the Exxon manager in charge of the pipeline construction testified that Exxon prefers to lay new lines next to old ones. The existing line on the Zwahrs' property attracted Exxon to the location. The ruling stated, "It seem disingenuous that, on one hand, Exxon admits the reason it chose the property was because it was already being used as a pipeline easement, but then attempts to discount the importance of this fact."

Exxon also contended that while the right of assignment has value, it is not recoverable under Texas case law. On this point, the appellate court agreed and removed that component from the landowners' award, leaving them with \$30,000.

The importance of this case goes beyond the large monetary award granted the landowners. The recognition of the pipeline corridor as an independent economic unit imparts a warning to entities using existing easements without landowner consent.

Numerous landowners suspect companies are laying unauthorized fiber optic lines within easements on their land. Technology makes it possible for companies to run optic lines within the existing pipes without disturbing the surface, making them virtually impossible to detect.

In the past, companies faced minimal liability if caught. The fair market value of an easement for laying a small line would be insignificant. If the company

had to pay the full market value for the existing pipeline corridor, however, the damages could be monumental.

By the same token, this case could affect cities like Sweetwater, which condemns land for the city's water supply. If the property has an existing water extraction facility in place, the courts could recognize the installation as an independent economic unit and assign a monetary value far exceeding its use as farmland.

Who got the money is another interesting aspect of this case. Although the pipeline easement was owned by Koch, that company evidently received none of the award. The Texas Supreme Court may yet hear the matter. ♣

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