Proximity Damages From Transmission Corridors And Transmission Lines

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Don’t be unduly swayed by the generalities — arriving at damages will be a little bit different in every case.

IN THE LAST DECADE a number of experts have attempted to demonstrate that utility corridors or high-voltage power lines have little or no effect on property values of the homes surrounding the lines or corridors. See e.g., Interstate Natural Gas Association of America Foundation, Natural Gas Pipeline Impact Study, 1990; James A. Chalmers and Frank A. Voorvaart, High-Voltage Transmission Lines: Proximity, Visibility, and Encumbrance Effects, The Appraisal Journal, Summer 2009. But see, Peter F. Colwell, Power Lines and Land Value, The Journal of Real Estate Research, Spring 1990. Their methods have varied, but their findings have been quite similar — there is no appreciable impact on value. The studies then explain the ways in which their findings are limited.

Cutting through the complex, dizzying, and impressive mathematical analysis, one finding appears to be emphasized across these studies — their findings should not be generalized outside of the data sets on which they rely. For example, in 2009 an article appeared in the Appraisal Journal, High-Voltage Transmission Lines: Proximity, Visibility, and Encumbrance Effects, drew the following conclusions from the data analyzed:
• There is no evidence that proximity to or visibility of a 345kV transmission line has any impact on residential real estate value;

• Encumbrance of the transmission line on adjoining properties has a consistent negative effect on value, though the effect is usually quite small, the study cites a one percent impact on total value;

• There is no evidence of a greater effect on value during down markets;

• Higher-valued properties show no greater vulnerability to transmission lines.

The author of the article concludes that “[a]n opinion supporting [high-voltage tension lines] effects would have to be based on market data particular to the situation in question and could not be presumed or based on casual, anecdotal observation. It is fair to presume that the direction of the effect would in most circumstances be negative, but the existence of a measurable effect and the magnitude of such an effect can only be determined by empirical analysis of actual market transactions.”

Broad statistical studies of residential home sales simply cannot accurately reflect all of the variables that are at play in the sale of a particular, individual home or any other property. Property owners with property damaged by power lines or utility corridors, or, more accurately, the appraisers analyzing such properties, must examine the specific facts of the case and the particular ways in which the specific property is affected by the project.

The just compensation trial is intended to quantify the diminution in value between the before and after conditions that are attributable to the placement of the utility on the property and in some instances near the property and the damages created by the presence of the utility or project. Case law around the country varies regarding the degree, to which, if at all, a jury may consider the visibility of a line or project from the subject property, fear in the marketplace about the presence of the line or corridor, and their proximity to the subject property.

A starting place for these considerations is the state constitutions and statutes and the requirements they set forth for the payment of just compensation. In all states the owner must be compensated for the land or property taken by the easement. But how are damages to the remainder calculated for just compensation? Can or must owners abutting the subservient estate be paid just compensation or are they excluded from payment because no physical taking has occurred on their property? The answer depends on a number of factors, including whether the state constitution provides that just compensation must be paid when property is “taken or damaged” for a public use. (See the Appendix at the end of this article for a list of state just compensation statute references.)

It is rare that a power line or utility transmission line or corridor taking requires the complete acquisition of a property, making such acquisitions in nearly all partial taking cases. As with other partial takings, the standard valuation rules apply to the property over which the easement is taken, which requires an appraiser to determine the value of the whole on the before, the value of the easement taken and the value of the remainder after the easement has been taken. The burden rests with the property owner to prove any damages to their property.

In proving damages to the remainder, the owner typically focuses on three causes of damage:

• Damage caused by impairment of the use of the property (access, circuity, change of grade, severing of the property, etc.);
- Damage caused by aesthetic impacts/visibility of the power line or utility corridor from the property/disruption of viewshed;

- Damage caused by the fear of or danger from proximity to the power line.

**Valuation**

Owners are to be paid just compensation reflecting the diminution in value of the remainder:

- “The measure of damage caused by an easement acquisition is the loss of salable utility both to the area encumbered and to the unencumbered portion of the larger parcel.” J.D. Eaton, Real Estate Valuation in Litigation 357 (Appraisal Institute 2d ed. 1995) (emphasis added);

- “[C]ompensation must be made once for all and must be estimated according to the full measure of the right acquired.” United States v. 2,648.31 Acres of Land, 218 F.2d 518, 523 (4th Cir. 1955);

- “The Government must pay just compensation for those interests ‘probably within the scope of the project from the time the Government was committed to it.’ It may not take advantage of any depreciation in the property taken that is attributable to the project itself.” Almona Farmers Elevator and Warehouse Company v. United States, 409 U.S. 470, 477-78 (1973) (citations omitted);

- “[B]efore the Kilvert Street project, Bruzzese was enjoying the highest and best use of the property as a wholesale distribution and processing operation but that following the alteration the property’s use was limited to warehousing and processing.” Bruzzese v. Wood, 674 A.2d 390, 394 (R.I. 1996);

- “Texland Corp. was located in the manufacturing and warehousing district, an area zoned for heavy industrial uses. Texland Corp. fronted on two streets with South 17th Street as the primary ingress and egress into the property. The viaduct, supported by piers five feet in diameter, elevated vehicular traffic over Texland Corp.’s property. Texland Corp. was in the business of warehousing and transporting stored goods, which involved the use of large commercial trucks. Testimony revealed that the piers supporting the viaduct interfered with the trucks’ ability to maneuver in backing and parking to such an extent that the warehouse could not be used for its intended purpose because the trucks could not access the property. Although the property could still be accessed, the court determined there was a material and substantial impairment of access because the access for which Texland Corp.’s property was specifically intended was rendered unreasonably deficient.” State v. Northborough Ctr., Inc., 987 S.W.2d 187, 190 (Tex. App. 1999) (internal citations omitted).

**Legal Treatment Of Proximity**

Proximity of a power line or transmission corridor to the property being considered is a factual consideration that plays a role in supporting just compensation for an increase in fear and loss of aesthetics, which are discussed later in this article. Generally, when damages are permitted for fear and aesthetic loss, the more remote a property becomes from the power line or transmission corridor the more remote the owner’s ability will become to prove their property is damaged by the power line or transmission line corridor.

In interpreting the addition of the provision of just compensation for property “damaged” by a taking, the Virginia Supreme Court, quoting from section 227 of Lewis on Eminent Domain, has stated:
“It was asked in argument, where are the claims to compensation to stop, if the rule is so applied? The answer, I think, is that in each case the right to compensation will accrue whenever it can be established to the satisfaction of the jury or arbitrator that a special value attaches to the premises in question by reason of their proximity to or relative position with the highways obstructed, and that this special value has been permanently destroyed or abridged by the obstruction. If this limit be thought to be a wide one, and the number of claimants under it likely to be numerous, that is only the misfortune of the undertaking, for the limit does not exceed the range of the injury. On the other hand, all claim for compensation will vanish as, receding from the highway, the case comes into question of lands of which (though their owners may have used the highway and found convenience in so doing) it cannot be predicated and proved that the value of the lands depends on the position relatively to the highway which they occupy.”


Courts have also found that when a power line exists on abutting property, but makes a particular use of the owner’s property more difficult or impossible, just compensation should include the damage due from the physical restrictions the line imposes. See, e.g., *United Power Association v. Heley*, 277 N.W.2d 262 (N.D. 1979).

The greatest proximity of a power line to a property is when the power line is actually on the property. Power lines present on a property have the potential for impairing an owner’s use of the property in a number of ways, discussed below.

**Diminution In Value Of Remainder Due To Change In Access Or Access Issues**

The owner must understand the condemnor’s right to ingress and egress the easement acquired:

- “[D]estruction of access or substantial impairment thereof may form a basis for recovery.” *Ark. State Highway Comm’n v. Billingsley*, 444 S.W.2d 259, 260 (Ark. 1969); *see also, Bruzzese v. Wood*, supra;

- “If the restriction or alteration of access from subject property to a public road diminishes the value of the property remaining after the taking, then such loss of access becomes a compensable element of damage.” *Trustees of Wade Baptist Church v. Miss. State Highway Comm’n*, 469 So. 2d 1241, 1245 (Miss. 1985);

- “[D]iminution in the value of property resulting from a loss of access constitutes damage…. property has been damaged for a public use within the meaning of the Constitution when access is materially and substantially impaired even though there has not been a deprivation of all reasonable access.” *Northborough Ctr., Inc.*, supra, 987 S.W.2d at 190.

**Diminution In Value Of Remainder Due To Change In Grade**

If the condemnor’s initial construction plans and cross sections are not reviewed, change of grade and its impact will not be measurable until construction is completed:

- “We are of the opinion that the authorities thoroughly establish the doctrine that under a constitutional provision guaranteeing compensation to the owner of private property damaged for public use a municipality is liable for damage done by raising or lowering the grade of a street, otherwise the language of the Constitution would be meaningless.” *Dickerson v. Town of Okolona*, 135 S.W. 863, 864-65 (Ark. 1911).