Right of Way
Legal Issues

Rapid City LTAP
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First Some History!

“Way” - Traces back to Latin word - “Veho”

Veho means to carry/pass

The “Right” to Pass

- Acquired by:
  - Contract
    - Fee Simple
    - To Fee or Not to Fee – That is the question
      - Easements
        - Expressed or
        - Prescription

Fee Simple - Cleanest

- Maybe off the table because:
  - Cost or
  - Eminent Domain Limitations
Eminent Domain

• The power belongs to the use not the player

• BUT ED has limitations…..
  o No transfer to the state of North Dakota or any of its political subdivisions of property for **highway purposes** shall be deemed to include any interest **greater than an easement**
  o NDCC 32-15-03 & 32-15-03.2

Easements

• Easements are burdens on lands

• Must generally satisfy **Statute of Frauds**
  o i.e. must be written conveyance

• Rule of law will satisfy the **Statute of Frauds**
  o i.e. Section lines statutes

Easements by Prescription

Easements by prescription
1. Continuous
2. Uninterrupted
3. Adverse use of the road by the public
4. For a set period of time. Generally 20 years

Easements Limitations

• R/W Easements do not convey ownership!
  o Adjacent landowner continues to own the land subject to the easement on behalf of the public.
  o Rutten v. Wood, 57 N.W.2d 112 (1975)

• Easements disappear when public purpose terminates!
  o Marvin Brandt Revocable Trust v. United States 134 S.Ct 1257
The Problems

Encroachments

- Generally, ANY obstruction in the easement is prohibited
  - Unless written permission by authority*
    - Remember that is only permission for the encroachment
    - NOT permission to grant a new easement
    - THAT is the land owner's RIGHT
  - Or exempt by law
    - i.e. perpendicular fences with cattle guards
- Criminal Penalties
- Civil Penalties
  - To be added to the tax

Utilities

Reclamation
- Planting trees should be prevented
- Excessive tree growth
- Shrubs
- Weeds
- Invasive species
- Agriculture

Point of Contact
- Contact the pipeline company
- They will be in touch with you
- Through the entire process

Pipeline Reclamation Problems: WE CAN HELP!
- The North Dakota Department of Agriculture pipeline reclamation program releases two to three million dollars each year to help landowners replace the loss of income that occurs when pipelines cross, disturb, flood or destroy land.
- Pipeline reclamation problems addressed in the NDA program range from higher degree of installation to the effort to recover land that used to support crop production for food and feed.
- Contact the North Dakota Department of Agriculture at (701) 573-5252 or go to our website at www.ag.nd.gov

Landowner Tips for Successfully Working with Pipeline Companies

North Dakota Department of Agriculture
515 Northeast Ave., Suite #101
Bismarck, ND 58501
(701) 573-5252
FAX: (701) 573-5205
www.ag.nd.gov

We North Dakota landowners of agricultural enterprises—encourage cooperation and kindness.

30th Annual Local Roads Conference, 2015
Drainage Issues

**Water**

- Not addressed in encroachment statutes
- Future issue??
- Should this affect spring road restrictions?

Any Questions?

Thank You and keep up the good work!

Aaron Birst

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