Inquiring Minds Want to Know:
Questions Landowners Should Ask in Negotiations
with Companies Seeking Easements

As a property owner, you should make a decision about granting an easement based on the same level of information available to the company seeking an easement. Moreover, you should negotiate an easement agreement that is in your best interest.

What follows are some questions that you should ask with regard to the purpose and potential consequences of an easement. In addition, information is provided as to the kinds of issues that you should seek to include in an easement agreement. All sources will tell you that you should seek your own legal representation in an easement negotiation.

1. Who pays the property taxes on the easement land? If it is the easement owner, what surety does the property owner have that the property taxes will be paid in a timely fashion?

2. What effect (if any) will this easement have on my property values? Can you provide specific evidence from other communities on whether (and if so how) property values have been affected by those who have granted easements to your firm?

3. What effect (if any) will this easement have on my ability to refinance my mortgage? Can you provide specific evidence from other communities on whether (and if so how) the opportunity to refinance a mortgage has been affected for those who have granted easements to your firm?

4. What effect (if any) will this easement have on the ability of others to obtain a mortgage on this property if I chose to sell or transfer ownership to someone else in the future? Can you provide specific evidence from other communities on the impact of a pipeline on access to a mortgage?

5. How long does the easement last? Does the easement transfer to a new owner, or will they have the ability to withdraw the easement?

6. Why does the easement have to be 50 foot wide when the pipeline is only 24 inches? Does this mean that you or someone you give permission to can put in another pipeline or something else without my permission?

7. What will the pipeline be made of? What substance will be transported over the pipeline and what are the constituent chemicals and their toxicity? Where will the pumping stations be located with respect to my property? What will be the pressure through the pipeline? If there is a breach of the pipeline, how long will it take you to cut the flow to stop spillage?

8. If I grant the easement, what will you have to do to the land that is not a part of the easement as you construct the pipeline? Will you, for example, remove the topsoil and segregate it during

construction to minimize the effect on future crop and pasture production? Will you be responsible for restoring that land to its current quality? Who determines whether the restoration work is adequate?

9. Who is responsible for maintaining the easement land? Who determines how often it is maintained and to what degree of quality?

10. If there is a leak or other accident on your pipeline, who is responsible for the costs of clean-up? Who determines the appropriate quality of the clean-up?

11. If there is a leak or other accident on your pipeline, will the company cover any costs I must bear as a result of the incident? For example, what if the incident affects my groundwater and I must purchase water for my livestock (25 gals a cow, 10 gals a horse per day)? What if the incident affects my pastures or hay fields or crops, will I be compensated for lost revenues and expenses for replacement?

12. Will your company cover my attorney's fees if a neighbor (who does not have your easement and a pipeline) has property damage or other losses due to an incident with your pipeline on my property?

13. How often will the pipeline on my property be inspected? Will I receive advance notice that someone is coming onto my property to inspect the pipeline?

14. How will you determine the value of the easement? Does your method of estimating the value of the easement take into account differences in the use and market values of land in this community? How does the value of the easements in this community compare to the value of easements in other communities?

15. Is this a one time easement payment or will it be given every year for the life of the easement? Will the easement payment be increased over time to keep pace with inflation?

16. Is this a private development or a government-sponsored pipeline? Had the company gained a certificate as a common carrier for this project?

17. If during your construction a sinkhole develops on my property, what will you do to mitigate this situation?

18. Will you be seeking a subordination and non-disturbance agreement from my lender?

19. Will you provide mortgage assistance if I grant the easement and my lender calls my existing mortgage?

20. Will you provide property insurance if I grant an easement and my insurance company refuses to continue insuring my property?

What can a landowner negotiate in an easement agreement?
(From http://extension.psu.edu/natural-resources/natural-gas/news/2010/04/pipelineinfo)

No landowner should sign any agreement with a pipeline company without completely understanding the impact of the agreement for the short and potentially very long term. Many aspects of a pipeline easement are negotiable. Typically a pipeline representative will present the landowner with a pre-printed agreement. The standard easement form is an extremely powerful document specifically designed by the pipeline company lawyers to the company's benefit and may impact the land for many generations.

But this document can serve as a starting point for a two-way negotiation. You can make changes to the easement by creating an addendum that is approved by both parties. Landowners should never enter into an easement agreement without negotiating each of its components to maximize current financial compensation, future compensation opportunities, and crucial property protections for now and for generations to come. This is a sampling of considerations that may be included in a pipeline agreement or addressed with an addendum:

- Establish the width of the permanent easement and time line for completion of construction.
- Define the nature and width of the temporary construction easement.
- Require a clause requiring the developers to defend and hold the landowner harmless from claims for any future loss or damage to persons or property arising from the developer’s use and occupation of the land.
- Require the developer to buy insurance to protect against damages arising from the development.
- Require identification of any independent and sub-contractors that the pipeline company will use and make the pipeline company responsible and liable for all acts on your property by independent and sub-contractors.
- Require the pipeline company to indemnify (not hold legally liable) the landowner from the acts and omissions of the independent and sub-contractors.
- Define and limit access to both permanent and temporary easements.
- Specify payments for trees, crops, and other plants damaged during the installation of the pipeline.
- Specify re-seeding requirements of easements, such as the types of grasses and other improvements.
- State the amount of time following completion of construction for surface restoration to be completed.
- Identify all stream crossings, state methods of stream crossings, and require restoration of stream crossings after construction.
- Require the landowner be provided an “as constructed” survey of the easement with an official seal by the surveyor within a stated period of time following completion of construction.
- Specify replacement or installation of fencing and gates, stating which gates will have locks and nature of the locks.
- Limit number of keys or number of persons with lock combinations.

- Identify the named person at the pipeline company who will be the landowner's contact. Require the pipeline company to give 30 days prior notice to landowner of any change in contact person or contact information.
- Define access post-construction to the easement with specific method and location of all access roads and methods.
- Prohibit or limit surface accessories to the pipeline.
- Require minimum depth to top of buried pipeline and require that this minimum depth be maintained at all times.
- Mandatory termination of the lease by stated number of days of no use of the pipeline.
- The conditions for the renewal of the easement and the right of the property owner to choose not to renew the easement with no negative outcomes for the property owner.
- Define "abandonment" of the pipeline as a termination of easement event and require the pipeline company to remove all abandoned pipeline.
- Require prior landowner consent for any assignment of the easement to another party.
- Limit the easement to one pipeline of a stated diameter, with no right to install additional pipelines and no right to increase the diameter of the pipeline.
- Require the same post-construction restoration of surface for pipeline repairs as for original construction.
- Reserve the right to seek surface damages for pipeline repairs as for the initial installation.
- Confirm whether gas to be transported will be scented or unscented.
- Ensure that the permanent and temporary easements are by metes and bounds descriptions and with official surveys – pre-construction and post-construction (as-built survey).
- Choose an alternative dispute resolution method that makes it the cheapest, quickest, and least burdensome way to resolve conflicts between landowner and the pipeline company.
- Negotiate what surface uses by the landowner will be prohibited, if any, on the easement.

(From http://shalegasreporter.com/news/considerations-prior-to-signing-pipeline-easements/17.html)

The Ohio Department of Natural Resources Division of Soil and Water Conservation has developed a model Pipeline Standard and Construction Specification document to provide guidelines for controlling and minimizing any adverse impacts of pipeline construction on Ohio's soil and water resources. Following is a review of items included in the agreement and provides landowners who may be considering the placement of a pipeline across their land with important considerations prior to, during, and following construction. If you are contacted to sign an easement for pipeline construction on your property, consult with an attorney and consider the following recommendations.

Planning phase

Construction plans and maps — General construction plan maps should include information about pasture, fence lines, cropland, unique agricultural lands and land enrolled in any Farm Service Agency or Natural Resources Conservation Service programs.

Landowners should also require that the company, on the construction maps and plans, note the following information:

- Subsurface drainage areas that can be identified, open ditches, diversions, terraces, buried utility lines, water sources, and unnamed water flows.
- Depth of cover if it differs from the construction specifications.
- Any off right-of-way roads, work, or storage areas.
- Planned location of any compressor or valve stations, metering or regulating stations, and any other proposed facilities.
- General location of trench breaks.
- Locations for subsurface drains.

Sensitive agricultural soils — These are lands defined as cropland, hay land or pasture that are more prone to disturbance during construction than other soils. Information on these soils can be found by consulting your county Soil Survey available through your local Soil and Water Conservation District.

Point of contact during construction — Your agreement should provide you with contact information for the representative assigned to your project.

Construction specifications
In the agreement you develop with the pipeline company the following areas need to be addressed:

- Ingress and egress routes — It is important to have a mutually agreed upon plan for where the company can and can't access the land prior to, during, and following construction.
- Temporary roads — whenever possible, existing roads should be used. If temporary roads are established provisions should be in place for what will happen to these roads following installation.
- Cleaning of brush and trees on the right-of-way — consideration should be given as to how these will be cleared and disposed.
- Topsoil removal and protection — all topsoil should be removed, stockpiled, and returned to restore the original soil profile.
- Depth of Cover — pipelines should be buried as deep as possible, with the minimum being 36 inches.
- Rock removal — backfill materials should not include rocks greater in size than those originally removed.
- Repair of damaged and adversely affected tile lines — it is suggested that all repairs and/or replacement of tile lines be completed prior to the replacement of topsoil.
- Control of trench washouts, water piping, and blowouts — trench breakers should be installed to minimize these problems.
- Pumping of water from open ditches — no backfilling should occur in open ditches and provisions should be in place for water removal.
- Subsoil decompaction, soil shattering, and stone removal — the cost of applying fertilizer or other necessary soil amendments should be included in the damages paid. Landowners may want to consider providing a stated time in which subsoil decompaction and soil replacement may not occur.
- Backfill profile and trench crowning — on lands where materials excavated during trenching are insufficient in quantity to meet backfill requirements, it is suggested that the soil of adjacent agricultural land not be used as backfill or cover material.

Remediation and monitoring. The Pipeline Standard and Construction Specifications document also provides for a minimum two year period of general and specific monitoring and remediation and a point of contact for questions related to remediation and monitoring.

Other resources

A meta-analysis of the effect of environmental contamination and positive amenities on residential real estate values (2006) at http://aux.zicklin.baruch.cuny.edu/jrer/papers/pdf/past/vol28n01/05.71_104.pdf

A variety of research-based studies are available from Forensic Appraisal at http://www.forensic-appraisal.com/valuation_issues

Homeowners and gas drilling leases: Boon or bust? (2011) at http://www.s-oacc.org/resources/NYSBA_Journal_nov-dec2011_lead_article_with_reprint_info.pdf

Natural Gas Pipeline Right-of-Ways: Understanding Landowner Rights and Options at http://extension.psu.edu/natural-resources/natural-gas/news/2010/04/pipelineinfo

Negotiating Wind Energy Property Agreements by Farmers' Legal Action Group at www.flagunc.org

The effects of environmental contamination on real estate: A literature review (2001) at http://www.real-analytics.com/literature_review_2.pdf

The effect of pipeline ruptures on noncontaminated residential easement-holding property in Fairfax County (1999) at http://www.highbeam.com/doc/1G1-55343439.html

The impact of oil and natural gas facilities on rural residential property values: A spatial hedonic analysis (2004) at http://ideas.repec.org/p/wlu/wpaper/eg0039.html

This information has been compiled from the identified sources by Dr. Lori Garkovich, a professor in the Dept. of Community and Leadership Development, College of Agriculture, Food and the Environment at the University of Kentucky.

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