

The Valuation of Corridors in Eminent Domain: The Chester Valley Branch

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THIS PAPER WILL ADDRESS THE CONFLICTS INHERENT IN EMINENT DOMAIN, the clash between competing theories of highest and best use and the search for methodologies appropriate to one important variety of special use property, the transportation corridor. The forum for this inquiry was a jury trial. As will be discussed in detail below, the condemnor presented the corridor as an abandoned rail right-of-way, with little value for adaptive uses. The condemnee considered its property to be a valuable regional transportation resource in a congested, urbanized hub of major development. The gatekeeper of valuation theories at a trial is the judge; the ultimate arbiter of proof is the jury.

CREs represent a treasure trove of experience to parties engaged in major condemnation disputes. In addition to a sophisticated land planner, the condemnee here engaged three CREs: one was the co-author of one of the methodologies for corridor valuation featured in the literature; another was experienced in the adaptive reuse of underutilized urban rail corridors; and the third, a veteran appraiser, was charged with synthesizing theory and practice to arrive at a coherent approach to the appraisal problem.

A jury trial is different from a bench trial in that the proof must persuade twelve jurors, representing a cross-section of the community. Each juror comes to the case with different histories, different viewpoints and different preconceptions. Lawyers and witnesses must be aware that nothing can be taken for granted. We are reminded of the motto of the Stoic philosophy: *admirari nihil* -- be surprised at nothing.

BACKGROUND

As urban land becomes more and more developed and traffic more and more congested, public agencies have taken a second look at acquiring underutilized rail corridors to solve critical transportation problems. Adaptive reuse of these corridors presents opportunities for solutions to congestion in urban areas throughout the nation.

Fundamentally, however, the value of corridors is intrinsic to their attributes, and what is said of land in general, quoting Will Rogers, "they're not making any more of it," can be said of corridors. But the truth is that they (i.e., condemnors) are making more corridors, but the costs of assemblage and other obstacles are formidable. So that when a ready-made corridor is available, a transportation agency may jump at the chance to make the acquisition, using the power of Eminent Domain if necessary. Reported cases demonstrate, however, that condemnors continue to try to acquire corridors on the cheap. Fortunately, courts in the few reported cases have been willing to require just compensation and permit valuation methods designed to address intrinsic value. In the few cases reported, juries have returned impressive verdicts.

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The valuation of corridors in Eminent Domain raises challenging questions of appraisal methodology. Two approaches seem to have taken hold in the literature: the across-the-fence plus enhancement factor method ("ATF Method") and the replacement cost method. The direct sales comparison approach has limited utility, primarily because corridors, properly viewed, are special purpose properties, meaning that comparable sales are difficult, if not impossible, to find.

A recent Pennsylvania case illustrates the challenge of valuing a corridor in an Eminent Domain trial in a state largely without caselaw guidance in valuation methodologies. The trial represented an opportunity to test the competing approaches in the real world in real time.¹

THE CHESTER VALLEY BRANCH

The Chester Valley Branch (the "Corridor"), a railroad right-of-way assembled in the 1850s, served Pennsylvania's Lancaster, Chester and Montgomery Counties in moving farm products to Philadelphia. After World War II its use declined as the construction of major highways and suburban development stimulated motor freight and automobile traffic. The Corridor lying parallel to heavily traveled Route 202, remained an important but underutilized physical link between the edge city hub of King of Prussia and major office, commercial and residential development to the west in the area known as Great Valley.

In the 1980s, as part of a corporate restructuring, Conrail was getting rid of rail lines as fast as it could under federal legislation that expedited the abandonment process, the Northeast Railroad Services Act of 1981. Abandonment of the Corridor would come with a price: title would revert to underlying owners and Conrail would have to dismantle four bridges and bridge structures, and remove nine street and other grade crossings and restore the underlying properties. In PECO Energy, however, Conrail found a captive buyer. PECO, a public utility providing electricity to the region, needed to assure the continuity of occasional freight service to move huge transformers to its Upper Merion substation. Management had in mind not only this service, but also the possibility of owning a resource for fiber optic cable, power lines and other uses.

PECO and Conrail negotiated a deal. PECO would pay \$600,000 for a quit-claim deed and accept the risk that title would dissolve upon conveyance from Conrail, a railroad company, to PECO a non-rail company. The consideration included not only the cash payment, but also a

non-cash price, which included an indemnity against damages, costs and liabilities that might arise from the ultimate abandonment of the right-of-way, including the removal costs of the bridges and overpasses and restoration of streets and other lands. Had Conrail had not decided to get out of the freight business in the area as part of its business plan, it would never have sold the line to PECO. In any event, PECO's acquisition preserved the Corridor as a transportation resource for the region.

Following the 1986 quit-claim, an owner of an underlying fee interest challenged PECO's title, claiming (not surprisingly) that the transfer of the railroad right-of-way to a non-railroad company worked an abandonment of rail use and consequently revested title in underlying fee owners. The trial court sustained the challenge. On appeal, the Superior Court reversed the trial court and upheld PECO's position that there was no abandonment as a matter of law. The case was remanded to determine whether there was abandonment as a factual matter, but since the rail line had been in continued use there was no question of abandonment and the challengers did not pursue their claim.²

By March 9, 1993, the date of condemnation, increased development in the region had driven traffic volumes way beyond the capacity of the road system. Congestion in the King of Prussia hub, especially at Route 202, became intolerable and resulted in unacceptable traffic hazards and chronic gridlock. Regional planners and PennDOT identified the Corridor as a possible solution to the regional traffic crisis. In a study funded by PennDOT and other agencies, the Delaware Valley Regional Planning Commission ("DVRPC") commissioned a joint-use study (the "Joint Use Study") to consider alternative uses that could be made of the Corridor, including a roadway for high-occupancy vehicles ("HOV"), transit, commuter rail, a bus way and freight railroad, the latter to free up a parallel railroad for reuse for cross-county suburban transit.

Potential users of the Corridor included the Southeastern Pennsylvania Transportation Authority ("SEPTA"), which was charged by the Legislature to operate an affordable regional transit system, and PennDOT itself. At the time of the condemnation, PennDOT was considering building a by-pass to Route 202 at Route 422 as part of a plan to widen Route 202 to increase capacity and reduce congestion. In the early to middle stages of planning the Route 202 widening project, and even before obtaining 80% federal funding, PennDOT decided to acquire the Corridor. The decision on the re-use of the Corridor would be

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PennDOT's alone. Although some consideration may have been given to an HOV lane as a way to address the traffic crisis, sometime after 1993 PennDOT rejected HOV as a feasible solution.

THE CONDEMNATION

On March 9, 1993, PennDOT acquired 6.23 miles of the 7.6-mile Corridor as a transportation corridor and offered PECO \$400,000 as just compensation. In order to avoid claims by owners of the underlying fee interests, the taking encompassed only the easement estate. PennDOT and PECO had negotiated a Cooperation Agreement under which PECO would give up its right to challenge the taking, PennDOT would provide alternative rail transportation of transformers at PennDOT's expense and PECO would be entitled to obtain just compensation for the Corridor.³

ATTRIBUTES OF THE CORRIDOR

The physical attributes of the Corridor may be summarized as follows:

- Area: 65 acres.
- Area of the take: 51 acres.
- Length: 7.66 miles.
- Width: 66' average.
- Corridor improvements: 9 bridges and 4 grade crossings.
- Rail improvements: single track.
- Topography: level roadbed.
- End points: connects with (a) Conrail rail line to the west and (b) to the electrical utility's regional substation and then over an expressway to the east.
- Midpoints occur along limited access highway and a roughly parallel freight line, as well as corporate centers, office buildings, retail commercial developments and residential communities.

The Corridor presented a clear shot through some of the most highly developed land in the region. A major attribute was its connectivity: to highways, transit and a major regional commercial hub. This connectivity was recognized in the Joint Use Study, in which DVRPC recommended that the Corridor be shared between the utility's occasional use and the Highway Department's use of the

right-of-way for high-occupancy vehicle road along heavily congested Route 202 (as well as possible use by SEPTA for light rail, heavy rail, or bus way). The study recognized that the right-of-way provided "a rare opportunity to create additional capacity to move people in an area which is experiencing significant congestion." For damages to the Corridor, including the loss of 51 acres located in the midst of some of the most valuable real estate in the region, PennDOT, as stated above, initially offered the grand sum of \$400,000.

THE TRIAL

At trial, PECO moved to exclude the use of the direct sales comparison approach, because each of the appraiser's sales failed to pass muster as "judicially" comparable, especially the sale of the subject in 1986. That sale was problematic for PECO if treated as a comparable. Consideration paid was \$600,000 in cash and the indemnity. In any event, Conrail, the seller, was in liquidation mode. Accordingly, Conrail was not a "typically motivated seller."⁴ It was clear that the non-cash consideration in the 1986 sale, especially by reason of the title cloud addressed in the indemnity, could not be reduced to cash equivalency.⁵

The case presents a test of three appraisal methodologies for corridors: direct sales comparison; ATF Method; and replacement cost. The ATF Method and the cost approach may be said to be industry standards for valuing corridors. Each recognizes that corridors are valuable—or not—depending upon their utility. But the fact that few reported decisions were available—and none in Pennsylvania—requires going back to first principles to determine what appraisal methodologies work.

We start with definitions as set forth in *The Dictionary of Real Estate Appraisal* (Fourth Edition), Appraisal Institute, 2002:

corridor—A long, narrow strip of land or real property rights for which the highest and best use is to provide an economic benefit by connecting the end points, and sometimes serving intermediate points along the way. Most corridors provide these connections for energy (oil and gas pipelines, electrical power transmission lines), transportation (road, rail, aqueducts, canals, navigation, aircraft overflight), or communications (fiber-optic lines) purposes. Abandoned corridors may or may not have a highest and best use of continued corridor use.

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corridor factor⁶—In the valuation of existing corridors, a factor that expresses the ratio of the price paid for a transportation or communications corridor (i.e., the sale price of an existing corridor) and the across the fence (ATF) value. Typically used in the valuation of existing corridors and not the assembly of new corridor. Also called *railroad factor*, *synergism factor*, *enhancement factor* and *continuity factor*. See also **across the fence method; corridor valuation**.

corridor valuation—The process of estimating market value of the right to use corridor real estate. According to the Bureau of Land Management and U.S. Forest Service, relevant valuation approaches include land-based methods such as the across the fence method, going rate (sales comparison) approach, alternate route (cost avoidance) approach, and before and after method, and non-land-based methods such as liquidation value, replacement, income value, and competitive bid methods.

across the fence method⁷—A land valuation method typically used to estimate the value of a real estate corridor, including railroad or pipeline rights of way, highways, or other corridor real estate. The price of value of land adjacent to the corridor (i.e., "across the fence") is considered for the valuation. Other considerations include corridor factor and usage factor adjustments. See also corridor valuation.

across the fence (ATF) value⁸—In the valuation of real estate corridors, the value concluded based on a comparison with adjacent lands before the consideration of any other adjustment factors. The ATF value accounts for location and market conditions. Accordingly, this is an intermediate value without (or prior to) the consideration of the corridor factor.

A condemnee is entitled to just compensation for the taking of its property by Eminent Domain as a matter of constitutional law.⁹ Under normal circumstances, just compensation means fair market value of the property taken before and after the condemnation. The fair market value of the property need not be based on the property's present use, but may be based on all potential uses, including the property's highest and best use. 26 P.S. § 1-603; *Pennsylvania Gas & Water Co. v. Pennsylvania Turnpike Comm'n*, 428 Pa. 74, 77, 236 A.2d 112, 114 (1967).

Under Pennsylvania law there are two requirements for proving highest and best use: the land must be physically adaptable to the use, and there must be a need for the use as reflected in the market for the use in the area at the

time of condemnation.¹⁰ As confirmed in the Joint-Use Study, the Corridor was physically adaptable to transportation use, indeed, many valuable uses. Conrail used it as a transportation corridor until PECO acquired it. PECO continued to use it as a transportation corridor until condemnation. PennDOT's use of the Corridor, indeed, its very ownership, depended on its continuing PECO's use for transportation purposes. While PennDOT avoided condemning the underlying fee ownership, nevertheless the abandonment of transportation use along the Corridor might work a reversion of title to underlying fee owners.¹¹

STRATEGIC POSITION

The value of a corridor is a function of the areas through which it passes and the points it connects. A condemnee can show that demand for a corridor exists where the property occupies a strategic position, which is of probable value to others for use as a corridor.¹² The demand for a transportation corridor was reflected in the market in Montgomery and Chester Counties at the time of condemnation.

In the old case of the North Shore Railroad, one railroad condemned a 5,100-foot-long, 30-foot-wide section of the another railroad's five-mile-long corridor. The condemnee railroad had graded and ballasted the right of way but had never used it. Furthermore, the condemnee had lost its railroad franchise and could not itself use the property as a railroad at the time of condemnation. The condemnor argued that the highest and best use was therefore limited to farmland. The Pennsylvania Supreme Court, however, affirmed the trial court's holding that the land could be valued for railroad purposes. The Court determined that there was a market for railroad use of the property mainly because the property was in a "strategic position":

[T]here was ample evidence tending to show that its property as a whole occupied a strategic position, which was not merely of possible, but of probable value to others as well as to [condemnor], by reason of its availability for the location and construction thereon of a line of electric or steam railway. *Id.*¹³

At the time of condemnation, as the date of trial, the Corridor was strategically located in an area of rapidly increasing residential and commercial density and traffic congestion. As DVRPC found, and as PECO's planning expert testified, the Corridor occupied a strategic position that was of value to others by reason of its availability as a

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site for an HOV lane, busway, railway, highway or freight line to alleviate congestion on U.S. Route 202 in the King of Prussia area. The Corridor would have provided a needed transportation link for people and goods between other existing and planned corridors—including U.S. Route 202, U.S. Route 422, Interstate 76, Interstate 276, the proposed Schuylkill Valley and Cross County Metros, and Conrail's Trenton Cutoff—and the many residential areas and commercial and industrial facilities along the right-of-way. Therefore, there was demand for the Corridor as a transportation corridor.

DEMAND FOR CORRIDORS: NO NEED TO SHOW ACTUAL BUYER

Because it had shown that demand existed, PECO need not have identified an actual specific buyer. The law *assumes* that an actual buyer existed as the normal rule for condemnation valuation. Even where the property is regularly traded in the marketplace, there is no need to show an actual buyer:

Market value, essentially, is based on assumption, not fact. To establish market value, it is not necessary to point out any designated person able and willing to buy the property at the price alleged (or at any price), or to show that the owner is in fact willing, or even has the legal capacity, to sell it.

Julius L. Sackman, 4 *Nichols on Eminent Domain* § 12.02[2], at 12-80 (Rev'd 3d ed. 1998). With seldom-traded properties especially, this result is essential to achieve just compensation. Corridors are "special use" properties. J.D. Eaton, *Real Estate Value in Litigation*, at 238 (2d Ed. 1995). By definition, special use properties are seldom traded, and few special use properties would have any value if value depended on proving the existence of an actual buyer. But since special use properties do have value in condemnation proceedings, there is no need to show that an actual buyer exists.¹⁴

DEMAND NOT LIMITED TO PRIVATE BUYERS

It is also important to note that demand is not limited to private buyers. The crux of corridor value is utility. As one of PennDOT's appraisal witnesses admitted, a market exists "where there is an economic, social or market demand." At condemnation, the Corridor was still useful as a transportation corridor. Therefore, it does not matter whether the most probable buyers for the Corridor were governmental or quasi-governmental authorities or utilities or other private sector purchasers.¹⁵ PennDOT's valua-

tion expert at trial used as one of his Conrail liquidation sale "comparables" a sale to a governmental authority, thus conceding that public bodies can be part of the market.

THE ATF PLUS ENHANCEMENT-FACTOR AND COST METHODS ARE APPROPRIATE METHODS TO VALUE THE CORRIDOR.

Because of insufficient data for sales of comparable corridors, the ATF Method and replacement cost methods are appropriate for valuing the Corridor.¹⁶ The traditional sales comparison approach does not work because there are so few comparable sales.

An owner generally is entitled to receive what a willing buyer would pay in cash to a willing seller at the time of the taking.¹⁷ In the usual case, market data is competent evidence of the value of the condemned property.¹⁸ But the normal market data approach does not suffice here because sales data are not sufficient. Appraisal Inst., *supra* at 418. ("[T]he reliability of the sales comparison approach is diminished if substitute properties are not available in the market"). The direct sales comparison approach is seldom used in corridor valuation due to the lack of comparables that are meaningful with respect to location and geography. See Gary S. Valentine, "Appraising a Transportation Corridor," *Right-of-Way* (November/December 1998) at 6-10.

An ideal comparable would have been the sale of a 60-foot-wide transportation corridor with good title in a nearby densely developed, congested area. A good comparable would have had some of these attributes, enough to make adjustments that would satisfy the requirements of the sales comparison approach. At the very least, a comparable corridor would have utility for road or transit use in an urbanized area. There were not enough sales of suitable properties, however, to perform a traditional comparable sales analysis. This dearth of comparable sales does not, however, impair the value of the Corridor.

PLOTTAGE

A key to understanding corridor valuation is "plottage." An assemblage of land gives the land an enhanced value over and above the sum of the values of the individual component lots.¹⁹ This enhancement is called the "plottage." Functional corridors are intrinsically valuable because they are assemblages, and assemblage enhances the value of the component lots. See John P. Dolman & Charles F. Seymour, "Valuation of

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Transportation/Communication Corridors," *The Appraisal Journal* ("Dolman & Seymour") 509, 515 (October 1978). Two recognized appraisal methods are founded on the concept of plottage: the ATF Method and the replacement cost method.

THE ATF METHOD

Recognizing the special nature of corridors, the appraisal industry and the courts have approved the ATF method for valuing corridors.²⁰ The method is based on the recognition that a useful corridor's value exceeds the value of the land over which the corridor passes. To apply this method, the appraiser divides the corridor into segments based on the zoning of non-corridor adjacent land.²¹ The appraiser then values each segment by reference to sales of comparable non-corridor parcels, and adds the values of the segments to yield the "ATF value."

To account for plottage, the appraiser multiplies the ATF value by an "enhancement factor" or "corridor factor," which is a multiple derived from the factors by which sales prices of other corridors exceeded the ATF values of the bare land. By examining sales of other corridors, the appraiser may derive an enhancement factor for the Corridor. Factors may vary from 1.25 to 2 or higher. In effect, the ATF Method is a derivative approach.

THE REPLACEMENT COST METHOD

Another valuation method is replacement cost. Where property by its nature is infrequently traded, such that there are insufficient comparable market sales, the condemnee may introduce cost²² as evidence of fair market value.²³ Such property is called special use or special purpose property.²⁴ A transportation corridor is such a property and, as with other special use properties, one measure of a corridor's value is its replacement cost.²⁵

An appraiser valuing a transportation corridor must calculate the cost of assembling an equally desirable corridor, i.e., a corridor of comparable dimensions, utility, topography, location and environs. The appraisal industry and at least one court have adopted the cost approach for valuing corridors.²⁶

To calculate the replacement cost of the Corridor, PECO's appraiser started with the same land value—the ATF value—that he calculated under the ATF Method. To account for plottage, he multiplied the ATF value by an "assemblage factor," derived from the factor by which the

assembly costs of similar corridors exceeded their bare land costs. Assemblage factors typically run from 3.74 to 14.09.²⁷

Since there were few sales comparable to the Corridor, the traditional direct comparison method was a doubtful method for valuing the Corridor, consideration of the few available comparables was used to confirm the condemnee's appraiser's final valuation conclusion.²⁸

These three methodologies were tested by court review on the eve of trial and in the course of the jury trial. The court excluded the replacement cost method as too speculative; approved of the ATF Method; and over PECO's objection allowed PennDOT's appraiser to testify to the direct sales comparison approach based almost entirely on Conrail liquidation sales.

The challenge for PECO was to bring the corridor to life. By the time of trial, the rail and ties had been removed, portions were an active highway and sound barriers occupied substantial length of the right-of-way. Other areas were overgrown. In order to illustrate the value of the Corridor, PECO, over PennDOT's objection, presented to the Jury an animation of the Corridor, showing its context in the region, its connectivity to the road system and various modes of transportation uses considered in the Joint Use Study. Central to the value of a corridor is utility. To be sure, the Corridor had been underutilized at the date of the taking, but its "strategic" position could not be denied. Fortunately for PECO, the Joint Use Study determined that the Corridor represented "a rare opportunity to create additional capacity to move people in an area which is experiencing significant congestion."

THE VIEW

The view itself was extraordinary. The Judge, Jury and the lawyers and appraisers traveled by bus for 2 1/2 hours on, over, under, around, and beside the Corridor. The view, 11 years after the take, demonstrated the value of the Corridor for transportation purposes. One and a half miles of the Corridor had become a major bypass from the limited access highway to the expressway, PennDOT's solution to a portion of the congestion problem. Other portions of the Corridor contained two miles of segments of sound barriers. Some remnants were put to service for rails to trails.

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PECO'S CASE

The highest and best use was urban transportation corridor, and potentially a solution to regional traffic congestion. Examples abound of the adaptive reuse of underutilized rail corridors to transit and other uses. The ATF Method is a recognized and appropriate method for corridor valuation. The market for rail corridors was too limited to permit the direct sales comparison approach. The 1986 sale of the subject property -- the Corridor itself -- was not a comparable because it included non-monetary consideration that could not be reduced to cash value. The Conrail sales were not relevant because Conrail, seeking to get rid of excess assets for purposes of corporate restructuring, was not a typically motivated seller. PennDOT's appraiser demonstrated the inapplicability of the market data approach because all he could find were five sales by Conrail out of liquidation mode and one sale of a 10-foot wide subterranean pipeline easement 250 miles away from the subject.²⁹ Using the ATF Method (even without factoring in the cost approach), damages were in excess of \$10 million.

PENNDOT'S CASE

The railroad right-of-way was not much of a corridor. It didn't have sufficient end points to be valued under the ATF Method. The Corridor itself sold to PECO in 1986 for only \$600,000. The Corridor has no economic use as a transportation corridor because additional takings would have been necessary to connect end points to other land to make the corridor valuable. In any event, there were enough comparable sales to support a theory of market without using more sophisticated methods. In sum, PennDOT's appraiser concluded that the highest and best use was a recreational pedestrian and bicycle trail. Finally, there was no value-in-use because the utility's rail service had been relocated to a parallel rail line at no cost to the utility.

VERDICT

The Jury's verdict was approximately \$5 million, over 12 times the original offer, and almost \$9.5 million with delay damages. After the verdict, lawyers for both PECO and PennDOT spoke informally to the members of the Jury. The Court's rulings and the Jury's comments shed light on the practical use of the appraisal methodologies.

Over objection, the Judge had permitted PennDOT's appraiser to testify on the direct sales comparison approach (using the five Conrail sales and an under-

ground pipeline easement). The Jury preferred this approach; it's simpler. Nevertheless, the Jury disbelieved PennDOT's "comps" and used its own values.

The Court approved the use of the ATF Method and found it logical. The Jury, however, discounted this approach. They found it hard to understand. Interestingly, the Jury's conclusion of value approximated the ATF value, but without the enhancement factor.

As stated above, the Court rejected the cost method as too speculative, using its gatekeeper function.³⁰ The Jury didn't hear testimony on this methodology, but after the fact several expressed interest in hearing evidence of the cost of assembling a hypothetical, parallel corridor, which they believed relevant.³¹

SUMMARY

Our system of justice brings to bear the collective common sense of twelve citizens, drawn from a cross-section of the community. Ultimately, legal theory and appraisal methodology are tested in the crucible of fairness and common sense. Nothing compares to a jury trial as a test of appraisal theories in the real world, real time. ■

REFERENCES

1. Any lawyer worth his salt would not proceed in such a difficult case without sound advice from qualified experts. We were lucky to have three CREs on board: our appraiser, Reaves Lukens, Jr.; John Pinto, an expert on valuation of rail corridors; and Charlie Seymour, senior consultant, the co-author of the *ATF Method*. So armed, we can only say that any mistakes or shortcomings are those of the undersigned.
2. *Quarry Office Park Associates v. Philadelphia Electric Co.*, 394 Pa. Super. 426, 576 A.2d 358 (1990)
3. The taking triggered preliminary objections from an adjacent landowner, this time to challenge PennDOT's title, claiming that the taking worked a condemnation of the underlying fee interests. PennDOT was able to defeat the objections by establishing through pleadings that it held good title to a public transportation corridor by its acquisition to PECO's railroad title.
4. Frequently in discussions with appraisers the question is posed as whether a sale is arms-length. This is a misnomer. Even arms-length sales can be excluded if one of the parties is not "typically motivated."
5. This concern was a prophecy fulfilled when one of the underlying fee owners challenged the transfer in court and got the trial court to grant summary judgment that the transfer from a railroad company to a non-railroad company worked an automatic abandonment and reversion of title. After extended litigation, the Superior Court reversed and remanded for a determination as to whether there was abandonment in fact.
6. Note in original states that the term may be defined differently in different jurisdictions and is subject to pending federal legislation and judicial interpretation. Id.
7. Notes in original state that these terms may be defined differently in different jurisdictions and are subject to pending federal legislation and judicial interpretation. Id.

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8. Notes in original state that these terms may be defined differently in different jurisdictions and are subject to pending federal legislation and judicial interpretation. *Id.*

9. U.S. Const. amend. 5; Pa. Const. art. I § 10 and art. XVI § 8; Pennsylvania Eminent Domain Code, 26 P.S. § 1-601.

10. Pennsylvania Gas & Water Co., 428 Pa. at 81, 236 A.2d at 116 (emphasis supplied). Appraisal technique identifies four similar criteria: physically possible, legally permissible, financially feasible and maximally productive. Appraisal Inst., *The Appraisal of Real Estate*, at 307 (12th ed. 2001).

11. See Quarry Office Park Assocs., *supra*.

12. North Shore R.R. Co. v. Pennsylvania Co., 251 Pa. 445, 449, 96 A. 990, 992 (1916).

13. In cases not involving corridors, courts have held that strategic location is evidence of a market for condemned property. See, e.g., Chandler-Dunbar Water Power Co., 229 U.S. 53, 77 (1913) (holding that the location of a property such that it would probably be desired for canals and locks was evidence that the highest and best use was as a site for canals and locks); *In re Condemnation by the Pa. Turnpike Comm'n of 79.42 Acres of Land in Jefferson Twp.*, 1 Pa. Commw. 66, 71, 272 A.2d 279, 281 (1970) (considering proximity to areas of population density as evidence of need for recreation facilities); Appeal of Andorra Assocs., 128 Pa. Commw. 6, 12, 562 A.2d 953, 955 (1989) (considering proximity to areas of population density as evidence of need for retail shopping).

14. See, e.g., Redevelopment Auth. of Washington County v. Faith United Presbyterian Church, 7 Pa. Commw. 490, 496, 298 A.2d 614, 617 (1972).

15. At least four of the 12 sales that PennDOT's expert considered, and two of the five sales that he analyzed as comparables, were to entities with condemnation authority (PECO, the Canadian Pacific Railroad and the Lackawanna County Railroad Authority). Recognizing this reality, courts treat sales to condemnors as market sales where the sales are (1) sufficiently voluntary, or (2) the only recent sales of comparable property in the area were to condemnors. See, e.g., State v. Pioneer Co. Mill, Ltd., 637 P.2d 1131, 1137 (Haw. 1981).

16. 26 P.S. § 1-603, cmt. to clause (1) and §1-705, cmt. to subdiv. (2)(iv); Pennsylvania Gas & Water Co., 428 Pa. at 83-84, 236 A.2d at 117; State v. Southern Pacif. Transp. Co., 749 P.2d 1233, 1236 (Or.Ct.App. 1988); People ex rel. Dept. of Transp. v. Southern Pacif. Transp. Co., 148 Cal.Rptr. 535, 540-41 (Ct.App. 1978).

17. United States v. Miller, 317 U.S. 369, 374 (1943).

18. See 26 P.S. § 1-705(2); Appraisal Inst., *supra*, at 419-21.

19. Appeal of Elgart, 395 Pa. 343, 346-467, 149 A.2d 641, 643 (1959). In Appeal of Elgart, the court wrote that: "[A]n increment of value (plottage value) arises as a consequence of combining two or more sites, thereby developing a single site having a greater value than the aggregate of each when separately considered. There is a recognized economic advantage in larger real estate holdings. Substantial sums are paid by developers for the acquisition of larger plots of land because the advantage of contiguous lots is always reflected by a larger square foot value." *Id.* at 346-47, 149 A.2d at 643. See also Appeal of John Wanamaker, 360 Pa. 638, 641-42, 63 A.2d 349, 350-51 (1949); Moore v. Montgomery County, 22 Pa. Commw. 262, 265, 348 A.2d 762, 764 (1975).

20. Dolman & Seymour at 509; State v. Southern Pacif. Transp. Co., 749 P.2d 1233, 1236 (Or.Ct.App. 1988); Southern Pacif. Transp. Co. v. Santa Fe Pipelines, Inc., 88 Cal. Rptr. 2d 777, 783-88 (Ct. App. 1999).

21. *i.e.*, the land "across the fence" from each segment.

22. "Cost" may mean reproduction cost, which is the cost of obtaining an exact replica of the property. Appraisal Inst., *supra*, at 350. Or "cost" may mean replacement cost, which is the cost of substitute property with the same utility. *Id.* Courts usually make no distinction between the two terms. Nichols, *supra*, § 12C.01[3][b], at 12C-30 (3d ed. June 1998); Eaton, *supra*, at 161, 232.

23. 26 P.S. § 1-603, cmt. to clause (1) and §1-705, cmt. to subdiv. (2)(iv) (cost approach applies to property that has a special value but for which normally there is no market price); Redevelopment Auth. of Washington County v. Faith United Presbyterian Church, 7 Pa. Commw. 490, 496, 298 A.2d 614, 617 (1972); Appraisal Inst., *supra*, at 353-356; Eaton, *supra*, at 232.

24. 26 P.S. § 1-603, cmt. to clause (1) and §1-705, cmt. to subdiv. (2)(iv); Nichols, *supra* § 12C.01[1], at 12C-2, 12C-8; Appraisal Inst., *supra*, at 25-26.

25. 26 P.S. § 1-603, cmt. to clause (1) and §1-705, cmt. to subdiv. (2)(iv); Eaton, *supra*, at 238. The value of a special use property like a church, a factory or a museum, derives primarily from the improvements. The appraiser values the special improvement at its replacement cost less depreciation. 26 P.S. § 1-705(2)(iv); Appraisal Inst., *supra*, at 356. Since comparable market sales are generally available for the land in such cases, the appraiser values the land using the comparable sales method. 26 P.S. § 1-705(2)(iv); *Appraisal of Real Estate* at 356-57. With properties like corridors, parks and reservoirs, however, the land itself, not the improvements, is the special use. Pennsylvania Gas & Water Co., 428 Pa. at 83, 236 A.2d at 117 (holding that owner was entitled to replacement value of land suitable for a reservoir because no market exists for reservoir land); Nichols § 12C.01[1], at 12C-2, 12C-8 ("[P]arks, highways, . . . railroads and turnpikes have been held to be special purpose properties."); Eaton, *supra*, at 238 (railroads and streets are special use properties).

26. Eaton, *supra*, at 238 (2d ed. 1995); Gary S. Valentine, *Appraising a Transportation Corridor, Right of Way*, at 6, 8 (Nov./Dec. 1998); People ex rel. Dept. of Transp. v. Southern Pacif. Transp. Co., 148 Cal.Rptr. 535, 540-41 (Ct.App. 1978). See also Pennsylvania Gas & Water Co., 428 Pa. at 83, 236 A.2d at 117 (holding that owner was entitled to replacement value of land of a type for which no normal market exists). In *People v. Southern Pacif. Transportation*, the Department of Transportation condemned a one-and-a-half-mile-long portion of Southern Pacific's R Street Line, an urban railroad corridor. Because there was "no relevant market" for the condemned property, the court held that the jury could consider the cost of replacing the Corridor as evidence of the property's value. 148 Cal. Rptr. at 540-41. This case is in accord with Pennsylvania law. Because corridors are special purpose properties, replacement cost is a proper measure of value of a condemned corridor. Also see, Arthur G. Rahn's "The Cost Approach in Corridor Valuation," International Right-of-Way Association, January 2004.

27. As discussed later, the trial court granted PennDOT's motion to exclude testimony on the cost method.

28. Were an appraiser to attempt a comparable sales valuation of the Corridor, however, the obvious starting point would be what are perhaps the only true comparable sales: (1) Conrail's 1995 sale of an existing corridor, the 1.85 mile long City Branch in Philadelphia, to SEPTA; and (2) PennDOT's assembly of a new corridor, the 5.32 mile long Exton Bypass in Chester County.

29. Interestingly, within several years before the 1993 taking, PennDOT assembled a 5-mile corridor 10 miles to the west in land substantially less valuable than that in the area of the take of the utility's assembled corridor. The cost of assembling that corridor—land only—was \$44 million dollars.

30. See *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

31. Using the cost method, the Corridor was valued by PECO's appraiser (before averaging with the ATF Method) at \$30 million. A five mile corridor assembled from scratch by PennDOT to the west of the Chester Valley Branch several years before the taking had cost \$44 million by the time of trial.