

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ROCKIES EXPRESS PIPELINE, LLC,

Plaintiff,

v.

Case No. 2:08-cv-554

JUDGE GREGORY L. FROST

Magistrate Judge Terence P. Kemp

**4.895 ACRES OF LAND, MORE OR LESS,
IN BUTLER COUNTY, OHIO
(PIPELINE RIGHT-OF-WAY SERVITUDE), et al.,**

Defendants.

OPINION AND ORDER

This matter came on for a trial to the Court on April 6-7, 2010, to consider compensation due David Hedges, owner of 2.32 acres in Pickaway County, Ohio.

The Court heard the testimony and received exhibits. Jason Harral, Susan Beckley, David Hedges, and Jay Whippel testified on behalf of the landowner. Charles Porter, George Podolski, and Jesse Brantley testified on behalf of Plaintiff. At the conclusion of the trial, the Court and the parties identified three issues that were disputed: compensation due to David Hedges for the taking of the easement; damages due David Hedges for past and future crop damages; and damages due David Hedges for past and future drainage issues. The parties were encouraged to explore settlement of all three matters, and after some discussion, the Court was informed that the parties had reached an agreement on two of the three matters in dispute. The parties agreed to a settlement of the crop loss damages and the drainage issue damages. The settlement agreement was placed on the record, both parties acknowledged their acceptance of the agreement, and the Court specifically accepted the settlement agreement. The only issue left for this Court to decide is the amount of damages to be awarded to David Hedges as and for

compensation for the taking of his property for the pipeline easement.

The Court approached its deliberations and its decision in this case in the same manner as the appointed Commission. First, the Court decided from the testimony and evidence presented the highest and best use of the subject property prior to the taking of the permanent, non-exclusive easement by Plaintiff. Second, the Court evaluated whether the highest and best use had changed as a result of the taking of the easement. Finally, using the findings from the first two steps, the Court decided on the difference in value of the subject property before and after the easement. In determining the highest and best use prior to the taking of the easement, the Court applied the standard that the use must be financially feasible, lawful, and reasonably capable of being accomplished within a reasonable time.

This Court finds that the pre-taking highest and best use of the Hedges property as a whole is agricultural. Although the landowner presented some testimony and admitted a proposed plat map concerning a contemplated residential development, the testimony was inconclusive, speculative, and, at times, incredible. There was no evidence that convinced this Court that the property can be developed within a reasonable time given the applicable zoning laws as they now exist and the infrastructure hurdles that face Mr. Hedges. As in other cases presented to the Commission, the plan is incomplete and impracticable in its present form.

Mrs. Beckley's testimony was similarly unhelpful. First, she based her valuation testimony on the plan that has been previously described as incomplete and impracticable. Second, the comparable values presented of lots in today's real estate market were suspect and not, in the Court's opinion, realistic. For example, in an apparent effort to establish stigma damages, Mrs. Beckley testified that a Walnut Creek Pike lot had a pipeline, necessitating the discounting of that lot, but she did not know what type of pipeline was involved. Such a lack of

information renders this testimony unhelpful in informing the value of Mr. Hedges' property. Moreover, Mrs. Beckley did not perform a before-and-after analysis of the Hedges property to assess any effect of the pipeline.

Charles Porter, a certified real estate appraiser and broker who testified on behalf of Plaintiff presented the most credible testimony. This Court credits the testimony of Mr. Porter and relies on his testimony in arriving at the highest and best use, as well as the valuations of the real estate involved. Unlike the testimony presented by Mr. Hedges' witnesses, the testimony of Mr. Porter was forthright and supported by reasonable and objective background information.

In contrast to the landowner's witnesses and in contrast to Mr. Hedge's own testimony, Mr. Porter recognized that there is a demand for single-family homes on minimum five-acre sites but because of the overall economic downturn and the collapse of the single-family real estate market, the conversion of the farm land is not economically feasible at this time. Mr. Porter therefore found that the highest and best use of the subject site before the taking is for low density, single-family development with agriculture as an interim use. Mr. Porter went on to dismiss the cost approach and the income capitalization approach as a means to determine the value of the property before the taking. Rather, the appraiser utilized the sales comparison approach and arrived at a market value of the subject property, before the take, as of April 14, 2008, to be \$223,020 for the entire 37.17 acres tract, which equals \$6,000 per acre.

Mr. Porter then analyzed the take and recognized that there are multiple gas lines that already traverse the property. The Rockies Express pipeline easement will run parallel to the other pipelines that cross the Hedges property. The take consists of a non-exclusive pipeline easement that is fifty feet wide and that traverses across the property in generally a west to east direction 814 feet along the south side of the existing pipeline easement. Additionally, there are

temporary construction easements that are fifteen feet wide on the north side of the permanent easement and sixty feet on the south side of the permanent easement. Finally, there is an additional temporary workspace easement on the south side of the easements totaling .85 acres of land.

Taking all of the above analysis into account along with legally permissible uses of the land, the physical possibilities that the land provides, the financial feasibility of generating income from developing the land, and the maximum productive use of the land, Mr. Porter concluded that the highest and best use of the land after the taking continues to be for low density, single-family development, with agriculture as an interim use.

Mr. Porter again rejected the cost approach and the income capitalization approach as a means to value the subject property after the taking. He noted that the property involved is not income producing. Instead, Mr. Porter relied on the sales comparison approach. Using that method, Mr. Porter found that a sufficient number of land sales with characteristics similar to the Hedge's property were available for the expert to develop an opinion concerning value. In his opinion, Mr. Porter testified that the market value of the property is \$220,230 after the take. He arrived at the evaluation by first concluding that the residue of the property, 36.24 acres, should still be appraised at \$6,000 per acre, which equals \$217,440. He then found that the land encumbered by the proposed easements should be appraised on a 50% burden valuation. Therefore, .93 acres at \$6,000 per acre times a 50% burden ($.93 \times \$6,000 \times 50\%$) equals \$2,790. Adding the \$217,440 value of the 36.24 acres to the \$2,790 value of the .93-acre take, Mr. Porter arrived at a \$220,230 valuation figure.

Mr. Porter then reasoned that the temporary construction easement and the temporary workspace easement was much like renting the property for a short period of time to enter onto

the property, perform work on the property, and then exit the property leaving the land in the same condition as it was before entering onto the land. The temporary construction easement of 1.38 acres was valued at 10% of its \$6,000 per acre appraisal for a period of use of two years. The same formula was applied to the .85 acres of additional workspace easement.

Mr. Porter's valuation testimony can be summarized as follows:

0.930 acres of permanent pipeline easement:	\$2,790
1.390 acres of temporary construction easement:	\$1,668
0.850 acres of additional temporary workspace easement:	\$1,020

Unlike the testimony offered to support Mr. Hedges' proposed valuation, Mr. Porter's testimony was not based on speculation. The Court rejects Mr. Hedges' plat plan as a litigation sketch plan unaccompanied by support indicating economic feasibility and lacking accompanying testimony as to the costs of developing the alleged subdivision plan.

This Court therefore agrees with Mr. Porter that the total compensation due David Hedges for the taking of the property is \$5,478.00, which includes the land taken and the temporary construction easements.

It is therefore the Order of this Court that a judgment is entered in favor of David Hedges and against Rockies Express Pipeline, LLC in the amount of \$5,478.00 as and for compensation for the pipeline easement and the temporary easements.

IT IS SO ORDERED.

/s/ Gregory L. Frost
GREGORY L. FROST
UNITED STATES DISTRICT JUDGE