

East-west road project goes south

As Kansas bedroom communities swell with businesses that serve owner needs of the five or 10 acre ranches that checkerboard the suburban landscape, two-lane county roads often morph into more efficient, high capacity four-lanes. The growing pains for these road expansions typically extend far beyond the asphalt edge.

That two-lane suburban roadway has for decades been the convenient symbiotic host to a constantly growing multitude of utility lines. Both overhead and underground, these essential service lines wend their way up and down each roadside and cross the road in a 25 to 30 foot county right-of-way – except for one.

Rural water districts in Kansas have always tried to install their pipelines on private property. Rural landowners have and continue to donate easements for the installation of their community water system. The fact is that these systems had difficulty obtaining financing to construct their projects, much less pay for rights-of-way. Plus, having the water lines installed on private property ensured that future relocation because of road widening projects would need to be paid by the agency wanting to expand the public right-of-way.

Rural water districts that satellite large metropolitan areas are no strangers to the choreographed hard-hat ballet of utility workers relocating pipe, wire, cable, fence and poles along a stretch of growing roadway. The funding for these two-lane to four-lane expansion projects many times is shared by the Kansas Department

of Transportation (KDOT) and the individual county – with KDOT usually paying the lion’s share in a 80-20 split.

From harmony to calamity

For Sedgwick RWD 3, located in Mulvane, Kan. a routine six-mile, two-lane expansion of 63rd

RWD 3 manager. “The county has always required us to have a plan. We’ve always gone to our water district engineer for that plan and delivered a cost estimate to the county to do the job. When he took it to the Sedgwick County Engineer’s office this time, they

For Sedgwick RWD 3, located in Mulvane, Kan. a routine six-mile, two-lane expansion of 63rd Street South, in Butler and Sedgwick Counties, experienced a plunge from harmony to calamity when the project hit the Sedgwick County line.

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said that it was not necessary to move all of our lines. They agreed to pay in part, but then said, ‘It was not necessary to get out of the right-of-way anymore. There is no



Operator/Manager Larry Smith is a working manager and isn't usually in the office but stopped for a picture with Bookkeeper Joyce Humbolt in the RWD office east of Mulvane, Kan.

“And so when the 63rd Street Project moved to the next phase, the five miles running west from the Butler County line to Rock Road, things changed,” explained Larry Smith, Sedgwick County

problem.’ On the Butler County part of the project, we are mostly in private easement and Frank Parker, RWD 3 operator, and I affected the line relocations without a hitch – paid for by Butler County.”

The KDOT estimate sheet for the \$10 million Sedgwick County project portion includes a \$200,000 estimate for “adjustments to utilities located on private easements.” With the exception of a

Easement encroachment

Despite this documented and longtime history of county governments statewide recognizing private waterline easements and paying for pipeline relocation

“In a November 26, 2005 meeting that our engineer attended with three Sedgwick County engineers, he was informed that the RWD easement was merely a ‘utility easement’ and therefore any



pair of gas lines that are fairly new and adjusted years ago for this type of project, the rural water district is the only utility with private easements in the project.

expenses, the Sedgwick County engineers reiterated that moving lines was not necessary and that they could see no problem at all, even though it was pointed out that severe encroachment on RWD lines was occurring.

Left: A water jet crew working for the electric utility jets a hole on top of the RWD pipeline to keep from hitting it. The RWD's blue flag at their feet accurately shows pipeline location.

Above: One of eleven pipeline hits to date causing a repair to be made on the pipeline can be seen at the curve in the row of blue flags. Fixing breaks in such a tight neighborhood is hard enough during construction but becomes impossible later on.

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utility can locate within that space. They were not going to respect the district easement,” explained Smith.

“We asked the County why it was different this time and they replied that, ‘We don’t have deep pockets, and we’re trying to save money.’ They were not going to spend the budgeted money to relocate RWD lines out of the public right-of-way even though other utilities were instructed to (be installed) move on top of our lines,” noted Smith. “We feel that being in a private easement has an explicit meaning and contend that the easement has a restricted usage of only to install, maintain, repair and replace water line,” said Smith. “Because the RWD owns the easement, other utilities occupying our space, as seen on most of this project, make it impossible for future maintenance of our water lines. In the 18 years I’ve worked on KDOT/Sedgwick County projects, they have always wanted us to get out of the road right-of-way the best we could – and they pay for it.”

When utilities occupying a county road right-of-way are asked to move utility lines into an expanded right-of-way to accommodate widening, it is done without question and paid for by that utility as part of the cost of using public property for conducting utility business.

Private easements, even though they may abut a county right-of-way are different, are legally treated much the same as private property rights. In the 63rd Street project, Sedgwick County has chosen to ignore RWD 3’s easement rights.

Who’s roosting on the waterline?

“In some places along the roadway, the phone company went under us, so we’re two feet over them. In one of those places a new box culvert is going in and we’ll need to go deeper to accommodate that – and yet the phone company is underneath our pipeline. We would have to directional bore under the phone line, or do as we should have months ago, move our

line outside of the right-of-way on the property side, and be out of everyone’s way. The width of our easement would allow us to move that five feet and still be in our original easement. But the county



Property owners along 63rd St. south of Wichita were not notified of any need for the RWD pipeline to move to the outside of the new road right-of-way with a new pipeline easement, so most all property owners built fencing right up to the pipeline’s blue flag markers (as seen above).

Good fences do not make good neighbors when one has to be removed so a water leak can be dug, repaired and recovered.

refused to admit that we need to move,” said Smith.

The electric utility on the Sedgwick County portion of the project is Westar. They have hired Parr Electric to handle their portion of the roadway utility relocation. With Sedgwick County Engineering plans in hand, the utility has drilled holes in the RWD lines so often that they’ve resorted to water jetting pole holes in order to not damage those water lines. “The county engineers told these utilities to move on top of us,

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A legal note

by Gary Hanson, JD



The standard form water line easement used by most RWDs is not exclusive – that is, it does not by its terms prohibit use by other utilities. Instead, the easement authorizes the District's use for the intended purposes and by, implication recognized by the courts, prevents "unreasonable interference," so that Sedgwick County may believe that its use of RWD 3's easement as part of new road right-of-way (and use by other utilities for installation of their lines) is not as unreasonable interference while the District believes it is. A court may have to determine their respective rights.

An alternative may be to make future easements "exclusive." This will not help with current easements, and can result in a lot of land being used for utilities (especially in platted subdivisions) with valuable real estate committed to utilities. Landowners may object to signing such easements.

giving them plans to reference. We work well with the contractors, but we've been drilled and hit eleven times on this project. The Sedgwick County Engineer finally called the Westar project manager about this and heard, 'I assure you that we are five feet away from their water lines.' And yet they drill a hole through our line. If that's so, why are they hitting us? Why are they water jetting? They are that close," recounted Smith.

"We probe and flag our lines to get an accurate location. On this project we've been through the entire project four times doing locations. The first was for the preliminary engineering, then locates for SWB and Butler Electric, Westar and then a final. In these five miles we have \$18,000 in this project for time, mileage and materials for locates and flagging – even more money for line repair,

and we haven't even started on the line relocation," said Smith.

Because of where the new county right-of-way set back is marked with border stakes, landowners have spent a ton of money moving many welded steel fences, with posts set in concrete, right on top of the water line.

"With property owner fences right on top of us – other places where the phone and cable companies have dug in their lines with a backhoe or directional bore, in order to miss us and with every utility so close in, we can't expect to be able to make a repair here. We will have to abandon the line in this area," lamented Smith. "The County does not see any problem with the situation the way it is now – even with all these utilities on top of each other."

Communication – also gone south

The one planning meeting that RWD 3 personnel were asked to attend, no other utility people showed up. At that meeting it was reiterated that RWD 3 likes other utilities to maintain at least five feet on each side of the water line. That has not been the case on this project. There's been very little cooperation at all. No utility has asked for nor did they receive any permission to be closer than the five feet. The easement has been ignored with other utilities being directed to share the RWD easement.

"The County has put one utility against the other. The county knows our position and it is that the RWD won't do anything on this project until it's agreed that our water lines are not to be located under fences, under the bicycle path or utility poles or phone lines," stated Smith. "In all of my years as manager, I know what normal operation is and what abnormal operation is. This is definitely not normal."

"There's more than just lack of communication – I feel there's an attitude problem. We're out here working in the real world and a lot

of times people doing the planning never come on the job to see what's out here. I brought our engineer out here and we drove the project. He has been told there's no problem. The county says there's no problem; Southwestern Bell says there's no problem. When he saw this mess, he agreed, 'There is a problem.'"

Resolution

When the article was written during the first week of December, the resolution of the easement question hinged on a Sedgwick County Commission meeting to be held on December 21.

The Sedgwick County Engineer took the question to that meeting in the form of a signed contract from Sedgwick RWD 3. The contract detailed a plan where Sedgwick County would pay the water district's expenses for moving district water lines from new county road right of way. Sedgwick County Commissioners signed the contract.

It is now the middle of February and Sedgwick 3 is moving ahead to finish trenching and replacing roadway pipeline along 63rd Street South. They are using their own equipment but have a couple of subcontractors helping in the project.

"We wanted to get started on this project five months ago and right now April 15 is still bid letting cutoff for the county to choose a contractor to do the road project," Smith said. "We're going to be out from under fences and sidewalks. The new easement that we're using includes verbiage that does make it more exclusive. One new property owner that we've signed saves us two road crossings."

"RWD member's taxes helped make the 80/20 KDOT funds available to Sedgwick County for private easement relocation. If RWD customers would have had to pay to move the line, they would have been paying twice," he said. "It's only fair."