Chapter 14

Old Right-of-Way, New Pipe:
The Right to Enlarge Pipelines and Related Equipment

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§ 14.01. Introduction.

The potential of increased natural gas production in the Ohio-
Pennsylvania-West Virginia region from the Marcellus Shale and the
Utica Shale cannot be fully realized until the increased production can
be transported to market. Although an extensive network of pipelines and
other facilities utilized to transport natural gas throughout the Appalachian
region has been developed over many years, substantial upgrades and
improvements to the existing network are necessary in order to handle the expected increased volume and pressure associated with shale gas production. In most cases, the gas company does not own the land through which the pipelines run, but merely owns a non-possessory right to use another party’s land for the limited purpose of transporting the gas.\footnote{Mark D. Bingham, “Access and Rights-of-Way: Overcoming the Difficulty in the Details,” 40 Rocky Mtn. Min. L. Special Inst. 11, pt. 1 (Jan. 1996); C.S. Patrinelis, Annotation, “Correlative Rights of Dominant and Servient Owners in Right of Way for Pipeline,” 28 A.L.R.2d 626, §§ 2, 3 (1953 & Supp.).}

In the Appalachian Region, many of the pipeline rights-of-way in use today were created in the early stages of oil and gas development. The physical boundaries of the right-of-way are not usually described by surveyed metes and bounds. Often, the granting instruments do not even mention the scope of permissible activities such as replacement of pipe, installation of additional pipe, expansion of pipeline capacity, or the addition of other necessary equipment such as drips, valves, fittings, meters and regulators. Easement owners may seek to add capacity and equipment to enhance operations. Easement owners may also seek to remove trees or structures in order to inspect, maintain and safeguard the integrity of a pipeline in accordance with modern safety regulations and practices. Landowners often object to such activities, particularly where such activities have never been undertaken previously or involve obstructions which have been allowed to remain in place without objection by the easement owner for a substantial period of time. It is not surprising that disputes over proposed improvements to existing pipeline rights-of-way that have been utilized for decades without change or incident occur. Resolution of these disputes requires a determination of whether the complained of activity is permitted under an original grant in which the rights of the grantee are often not well defined.

In attempting to determine the width of an easement which was not set forth in a 1907 pipeline right-of-way agreement, an Ohio Court addressed whether an easement owner could remove trees in a wider area than previously cleared to allow for aerial inspection. The court stated:
Aeronautics was in its infancy. The Wright Brothers had flown at Kitty Hawk only three (3) years before. In fact, it is doubtful if either party involved in the original easements had ever seen an airplane. Aerial inspection could not have been contemplated. . . . The trenches for pipeline laid in 1907 were probably dug with picks and shovels.2

In another case involving the determination of the width of an easement for a pipeline installed in 1916, an Ohio Appellate Court judge offered the following observations in a concurring opinion:

Today, of course, no one would grant an easement as broad as the one at issue here. The courts and the parties, however, are bound to follow the terms of the easement as originally granted and to construe it as the original parties intended. The current landowners took their property subject to what the prior landowners in 1916 would have deemed acceptable. Even though what the current landowners regard as acceptable is much more restrictive, they can no more rewrite history than this court can rewrite the terms of the easement.3

This chapter explores whether and to what extent the provisions contained in old pipeline right-of-way grants and reservations may be utilized to upgrade and increase the capacity of the existing pipeline network in light of the expected increased volume and pressure associated with shale gas production in the Appalachian Region.

§ 14.02. Background Principles and Terms.


An easement is the nonpossessory right to make some use of another’s property, often in a certain manner and/or for a certain purpose.4 An

An easement may be created by any one of several different means: (1) by express grant, reservation, or exception; (2) by implied grant, reservation, or exception; (3) by prescription; or (4) by estoppel.5

“A right-of-way is an easement to pass or cross the lands of another,” and, thus, “the terms ‘easement’ and ‘right-of-way’ are regarded as synonymous.”6

“The land benefiting from an easement is called the dominant estate; the land burdened by an easement is called the servient estate.”7

In effect, an easement authorizes activity that would otherwise be considered a trespass and/or a nuisance.8 Consequently, if and to the extent that the subject activity exceeds the scope of the easement, then the actor may be liable to the landowner for trespass and/or nuisance.9


The law on the interpretation of easements created by express grant or reservation is clear.

To ascertain the nature of the easement created by an express grant we determine the intention of the parties ascertained from

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7 O’Dell, 703 S.E.2d at 576 (emphasis in original) (internal quotation marks omitted); accord McCumbers v. Puckett, 918 N.E.2d 1046 (Ohio App. 3d 2009), at ¶ 14; see also Riverwatch Condo. Owners Ass’n, 980 A.2d at 686 (“existence of a servient tenement for the beneficial use of a dominant tenement is a prerequisite to the creation of an easement appurtenant.” ((quoting Brady v. Yodanza, 425 A.2d 726, 727 (Pa. 1981))).


9 Id.
the language of the instrument. Such intention is determined by a fair interpretation and construction of the grant and may be shown by the words employed construed with reference to the attending circumstances known to the parties at the time the grant was made.10

“In the case of an express grant or reservation, the extent of the right depends upon the terms of the instrument conveying the interest, as interpreted by applying general principles of contract law.”11 It is settled that the same rules of construction apply to deeds granting easements as to contracts generally.12

[a] — Restrictive Grants and Reservations.

A right-of-way grant that expressly defines and limits the grantee’s rights in some manner is referred to as a restrictive grant. For example, the location of the right-of-way may be described by surveyed metes and bounds or restricted to a certain width. Examples of other matters that may be subjects of restrictions contained in pipeline right-of-way grants include the type, manner and means of accessing and maintaining the right-of-way; the size and number of pipelines; the types of equipment and facilities that may be installed and utilized; and the particular product or products that may be transported. When the nature and extent of the rights granted are unambiguously specified, there is no need to look beyond the language contained in the grant in order to determine the intent of the parties.13

13 See Moody v. Allegheny Valley Land Trust, 976 A.2d 484, 491 (Pa. 2009) (applying the plain meaning of the language in a deeded easement to determine the scope thereof); Patterson v. Paul, 863 N.E.2d 527, 534 (Mass. 2007) (noting that the plain meaning of the language in an express easement determines the parameters of the rights of the owner of the dominant estate in making use of the easement); see also Christiansen v. Schuhart, 951 N.E.2d 107 (Ohio App. 2011) ¶ 39 (“common words appearing in a written instrument will be given their ordinary meaning unless manifest absurdity results, or unless some other meaning is clearly evidenced from the face or overall contents of the instrument.”) (quoting Alexander v. Buckeye Pipe Line Co., 374 N.E.2d 146 syl. pt. 2 (Ohio 1978)).
Generally, a court will not consider extrinsic or parol evidence when it is offered in an attempt to vary the terms or to show that the parties intended something other than that which is unambiguously specified in an express grant or reservation of a right-of-way. “Where the width of an easement is unambiguously specified in the grant, the grantee is obviously restricted to that width even if it is insufficient for his purposes and enjoyment.”14 Likewise, if the pipe size is specified, or if the number of pipelines is limited, the grantee is restricted to utilizing the specified size and number of pipelines.15 However, evidence of a general custom or trade usage is admissible to show that parties to a written agreement employed terms having a special meaning within a certain geographic location or a particular trade or industry not reflected on the face of the agreement.16

[b] — Unrestricted or Ambiguous Grants and Reservations.

In cases involving older rights-of-way created by express grant or reservation, the particular matter of immediate concern to the parties involved in a current dispute is oftentimes not even mentioned in the agreement under consideration. Generally, “where an easement is created by express grant . . . but it is not specifically defined or bounded, the rule of construction is that the [grant] refers to such right-of-way as is necessary and convenient for the purpose for which it is created and it includes any reasonable use to which it may be devoted, provided the use is lawful and is one contemplated by the grant[.]”17 In other words, “[a]n unrestricted right-of-way is subject to a determination of reasonable use,” which is a “question[] of fact to be arrived at by considering all of the surrounding

16 See Alexander, 53 Ohio St. 2d at 248.
circumstances, including location, the uses of both parties’ properties and the advantage of one owner’s use and the disadvantage to the other owner caused by that use.”18 Even in the absence of an express right . . . “there is, arising out of every easement, an implied right to do what is reasonably necessary for its complete enjoyment, that right to be exercised, however, in such reasonable manner as to avoid unnecessary increases in the burden upon the landowner.”19 “[T]he touchstone is necessity and not convenience.”20

Even where a matter of immediate concern is addressed in an older grant or reservation, there can still be some ambiguity regarding the precise nature and extent of the parties’ respective rights. “The term ‘ambiguity’ is defined as language reasonably susceptible of two different meanings or language of such doubtful meaning that reasonable minds might be uncertain or disagree as to its meaning.”21 “[T]he terms of a contract are ambiguous if the terms are reasonably or fairly susceptible of different constructions and are capable of being understood in more than one sense.”22

Courts will sometimes resort to rules of construction in their effort to resolve ambiguities. One general rule of construction is to construe ambiguous words in favor of the grantee.23 However, it is also “a well settled rule of construction that in cases of ambiguity, leases and grants should be construed most strongly against the drafter,”24 which in pipeline

right-of-way cases will most often be the grantee. Mere application of such rules to a particular pipeline right of grant will rarely, if ever, be appropriate or dispositive.

Older pipeline right-of-way grants were frequently made on standard, preprinted forms prepared by the grantee. The addition of handwritten phrases which conflict with the otherwise broad, unrestricted preprinted language utilized in such forms, or deletions made by striking though preprinted language, can result in ambiguities. In such cases, even if it is known which party actually drafted the inserted language, or struck through a deleted phrase, it would still be necessary to inquire into all of the surrounding circumstances in order to determine precisely what the parties meant to accomplish by altering the standard form right-of-way agreement.

Where prior to execution of the grant, an ambiguity was created by the grantors’ deletion of terms contained in a standard form grant prepared by the grantee, the Pennsylvania Supreme Court declined to construe the resulting ambiguous grant in favor of the grantee as doing so would have given the grantee the same rights as it would have had under the grant in the absence of the deletions.25

Rules of construction can be useful interpretive guidelines, but they should never be applied so as to result in a construction that appears contrary to the intent of the parties, in light of all of the surrounding circumstances. In construing unrestricted or ambiguous grants or conveyances a court’s primary object is to give effect to the parties’ intent, and it is the parties’ intent “at the time of the transaction that governs.”26 Courts will construe ambiguities to result in a reasonable outcome and will reject interpretations that have unreasonable or absurd consequences.27

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§ 14.03. Specific Issues Regarding Unrestricted Pipeline Right-of-Way Grants.


Where the dimensions of the easement are not expressed in the granting instrument, the court determines the dimensions from: (1) the language of the grant, (2) the circumstances surrounding the transaction, and (3) that which is reasonably necessary and convenient to serve the purpose for which the easement was granted.\(^{28}\) A grant of a right-of-way on and over a parcel of real estate described by metes and bounds does not necessarily create a right-of-way over all of such parcel but ordinarily creates only the right to a reasonably convenient and suitable way over that parcel.\(^{29}\) Therefore, when the intended dimensions of an easement are not expressed in the grant itself, determining the dimensions becomes largely a question of fact.\(^{30}\)

Where the dimensions of the easement are not apparent from the language of the grant, the dimensions may be established by use and acquiescence.\(^{31}\) When the width of a right-of-way is not specified in the grant, nor determinable therefrom, if the grantor or grantee, at the time of the grant or soon thereafter, practically locates the width thereof at any point by the erection of fences, gates, or other structures, and this practical location is acquiesced in by the other party and is used by him without objection for many years, it will be considered that the width thus fixed was intended by the grant.\(^{32}\) When the width of an easement is not specified in the grant, the


\(^{30}\) Id. Citations omitted.

\(^{31}\) Id. citing Munchmeyer v. Burfield, No. 95CA7 (Wash. App. March 26, 1996) (citing Bruce and Ely, Law of Easements and Licenses in Land (1988), Sections 7.02(2)(b) and 7.06.

\(^{32}\) Palmer v. Newman, 112 S.E. 194 (W. Va. 1922) (the scope and purpose of the deed creating it, the situation and use of the property, and the intent of the parties will be considered, so as to provide a reasonable, safe, and convenient way for the purposes for which it was intended).
easement will be held to be of such width as is reasonable and necessary in relation to the original purpose of the grant and within the intention of the original parties to the grant.33 “A grantees subsequent agreement, use, and acquiescence has some value as evidence of the original intent or purpose of the grant. In fact, in many cases it may be the only evidence. However, it should not be the sole extrinsic evidence considered by a court when the written agreement is ambiguous.”34 The fact that the easement holder may not have immediately exercised a right that is implicit in an unrestricted grant “does not prove that the parties construed the grant as precluding him from that right.”35

In Ashland Pipe Line Co. v. Donald J. Lett, the Fifth District Court of Appeals of Ohio determined that the original parties to a 1907 pipe line right-of-way agreement could not possibly have anticipated aerial inspection, and as no other evidence was offered regarding the need for the easement to be 50 feet wide, the court prohibited the easement owner from removing trees beyond the established width of 25 feet.36 The Third District Court of Appeals of Ohio reached a similar conclusion in Lakewood Homes, Inc. v. BP Oil, Inc., where the width of the right-of-way was not restricted in a 1937 grant, and the existence of mature trees and other evidence showed that aerial inspection was not anticipated by the parties at the time of the original grant.37 However, in Crane Hollow, Inc. v. Marathon Ashland Pipe Line, LLC, another Ohio case involving the removal of trees to permit aerial inspection of the pipeline, the Fourth District Court of Appeals distinguished Ashland Pipe Line Co. and Lakewood Homes, Inc. on their facts and noted that several Ohio courts have construed similar unrestricted

33 Zettlemoyer, supra, 540 Pa. at 345 (citations omitted).
34 Id.
35 Zettlemoyer, supra, 540 Pa. 337 at 345 (citations omitted).
37 Lakewood Homes, Inc. v. BP Oil, Inc., 1999-Ohio-851, 99-LW-3532, 5-98-29, Ohio Ct. App. 3d D., August 26, 1999 (the removal of trees to widen the visible surface area to permit aerial inspection was an added use that imposed an additional burden on the servient property which required the right-of-way owner to pay damages pursuant to the original grant).
rights-of-way and “determined that a width of 50 feet is reasonably necessary and convenient for the maintenance of a pipeline.”

Consideration of subsequent use and acquiescence is limited to establishment of the rights and privileges contained in the original grant, and should not be confused with the concept of abandonment. Mere non-use of the easement by the easement holder is insufficient to demonstrate abandonment. In order to extinguish an easement by abandonment, the owner of the servient estate must prove an affirmative intention on the part of the easement owner to abandon the easement. Although owners of the servient estate often raise claims of abandonment in pipeline right-of-way cases, abandonment is rarely proven. Consequently, in almost all cases, once the original dimensions and rights granted to the easement holder have been established, whether by express terms contained in the grant or as inferred by subsequent use and acquiescence, “such right still exists notwithstanding the easement holder’s exercise of a lesser privilege.”

In considering the dimensions of a right-of-way granted to lay, operate and maintain a pipeline through a tract of land described only by adjoining properties, the general conditions that existed in the geographic area at the time of the execution of the grant can probably be demonstrated in most cases, even as far back as the 1800s. However, the older the right-of-way, the less likely it is that any evidence still exists concerning the particular facts and circumstances surrounding the execution of a particular grant. Consequently, in the absence of extrinsic evidence of subsequent use and acquiescence showing that the parties to the original grant intended a lesser width, the extremely broad and unrestricted nature of the grant should permit the easement owner to expand its operations over any portion of the tract subject to the easement which is reasonably necessary and convenient to access, maintain and operate the pipeline under current conditions.

38 Crane Hollow, Inc., 740 N.E.2d at 328.
40 Strahm, 2011 Ohio at 1171.

An easement has been defined as an interest in the land of another which entitles the owner of the easement to a limited use of the land in which the interest exists. The owner of the land may use the property in any way not inconsistent with the limited use permitted the easement owner, but the landowner may not interfere with the easement owner’s rights with respect to use of the easement. “[T]he servient owner may make any use of the land that does not unreasonably interfere with the use and enjoyment of the easement.” Similarly, it has been recognized that an easement holder may not increase the burden upon the servient estate by a new and additional use on such property. The language of the easement, considered in light of the surrounding circumstances, is the best indication of the extent and limitations of the easement.

Where a property owner unlawfully obstructs or interferes with the rights of an easement holder, including the right to engage in appropriate pipeline maintenance operations, then the holder of the easement rights has the authority to remove those obstructions without compensation to the land owner. In Rueckel v. Texas Eastern Transmission Corp., the Court interpreted damage clauses in two rights-of-way to apply to damages to stock, crops, fences, timber and land incurred in the original construction, and thereafter, only to those matters which do not interfere with the rights

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UPGRADING PIPELINE RIGHTS-OF-WAY

of the easement holder.47 “The proper test would be to determine whether
the existence of the object or activity within the rights-of-way, for which
compensation is claimed, represents the exercise by the property owner of
a retained property right or an infringement upon the easement-holder’s
rights.”48

It has been held that the grant of a natural gas pipeline easement
implies the right to operate the pipeline in accordance with the applicable
federal safety laws.49 However, it should be noted that since no evidence
was presented to demonstrate that maintenance and inspection could not
be carried out in a manner which did not impose additional burdens on
the servient property, the Court in Lakewood Homes, Inc. v. BP Oil, Inc.
rejected a claim that the federal requirement to inspect pipelines at least
26 times per year pursuant to the Federal Pipeline Safety Regulations
created an “implied right” to clear any obstructions over the pipelines for
the purpose of aerial inspection.50 It has also been held that language in
an indenture which gives a power company the right to cut and remove
trees, overhanging branches or other obstructions that endanger the safety,
or interfere with the use of the power company’s lines on the right-of-way
granted by the indenture does not authorize the power company to apply
toxic herbicides to that right-of-way by aerial broadcast spraying.51

Pipeline right-of-way grants which are otherwise generally unrestricted
often contemplate the grantor’s use of the surface for a particular purpose,
such as farming, and contain provisions which place restrictions on the
grantee’s incidental use of the premises. For example, a pipeline right-of-
way agreement may grant a right-of-way to lay, maintain, operate, and repair

47 Id. at 158-159.
48 Id. at 159.
49 Swango Homes, Inc. v. Columbia Gas Transmission Corp., 806 F. Supp. 180, 185
(holding that federal pipeline safety regulations enacted after grant of easement created
implied right to take actions required by safety regulations, including removal of trees and
vegetation from easement area); Panhandle Pipe Line Co. v. Tishner, 699 N.E.2d 731, 738
and remove a pipeline at below plow depth. Under such an agreement, the
grantee would be prohibited from interfering with the grantor’s reasonable
access to and use of the surface for planting and harvesting. Likewise, in
the absence of contrary provisions contained in the agreement, the grantor
would be prohibited from interfering with the grantee’s conduct of pipeline
operations under the grant, and the grantee could remove buildings placed
in the right-of-way that interfere with the maintenance, operation, repair
or removal of the pipeline, without compensating the grantor. However,
whether and under what circumstances the grantee would be required to
pay for damages to crops, fences or other structures caused by installation,
operation, maintenance, repairs, replacement or removal of the pipeline,
would depend upon the precise language utilized in the granting and
damages clauses contained in the right-of-way agreement as applied to the
particular circumstances under consideration.


The Supreme Court of Ohio has found that a 1911 right-of-way grant
to lay a pipeline for the transportation of “oil and gas” included the right
to transport gasoline, fuel oil, propane and butane since the terms “oil”
and “gas,” at the time of execution of the grant, included products in both
refined and natural states.52 “A restriction of these terms could easily have
been achieved by use of a qualifying adjective such as ‘crude’ or ‘natural.’
Because the parties executing this agreement did not choose to qualify the
terms of ‘oil’ and ‘gas,’ we must therefore assume that they intended no
restrictive meaning.”53

Occasionally, an unrestricted grant of the right to lay a pipeline is
encountered which does not specify any type of product which is to be
transported. A grant of this nature is so broad that the pipeline could be
utilized to transport oil or gas, in both their natural and refined states, as
well as any other substance capable of being transported through a pipeline.

52 Alexander v. Buckeye Pipe Line Co., 374 N.E.2d at 151 (Ohio St. 2d 1978).
53 Id.
Pipeline right-of-way grants authorizing the transportation of “gas,” without further qualification of the term “gas,” are frequently encountered. The word “gas” has several meanings and is sufficiently ambiguous to require inquiry into all of the circumstances surrounding the execution of the grant in order to determine the intent of the parties. Use of the word “gas,” without further qualification, arguably permits the transportation of any substance in a gaseous state. However, in the context of pipeline right-of-way grants in the Appalachian Region, the term “gas” is ordinarily intended to refer to “natural gas.” Consequently, a grant which authorizes the transportation of “gas” is probably restricted to the transportation of “natural gas” in both its natural and refined gaseous states. A grant that is restricted to the right to transport “gas” does not authorize transportation of crude oil or fuel oil. Even though the word “gas” is also used in common parlance to mean “gasoline,” it is not typically so used in pipeline right-of-way grants. A pipeline right-of-way grant that authorizes transportation of “gas” that does not also authorize the transportation of other liquid hydrocarbons was probably not intended by the parties to authorize transportation of “gasoline.”

A pipeline right-of-way granted for the purpose of transporting “natural gas” is also sufficiently ambiguous to require inquiry into all of the circumstances surrounding the execution of the grant in order to determine the intent of the parties. The term “natural gas” is commonly used and understood to include both the volatile mix of gaseous hydrocarbons found in a naturally occurring state in underground deposits, as well as methane which has been obtained from “natural gas” for use as fuel. A grant of the right to transport “natural gas” will in most cases authorize both the transportation of “natural gas” in its unprocessed, naturally occurring state, as well as the transportation of gaseous methane obtained from “natural gas.” However, the term “natural gas” is not generally used to refer to any other volatile hydrocarbons, other than methane, after such substances have been extracted from “natural gas” and captured during processing. Consequently, an authorization to transport “natural gas,” without more, would not likely have been intended to authorize transportation of processed ethane, butane, propane or other gaseous or liquid hydrocarbons after such
substances have been extracted from “natural gas,” unless the term “natural gas” had some special meaning within the particular geographic location or industry at the time of execution of the grant.


A granting clause which includes “the terms ‘operate’ and ‘maintain’ . . . [is] at least broad enough to include the right to remove and replace the original pipe with pipe of the same size when necessary.”54 It has been held that a right-of-way grant that included “the right to reconstruct or remove conduits, cables and fixtures as the grantee may from time to time require” authorized the grantee to substitute a single 12-inch pipe for two old 8-inch pipes.55 “[I]f the easement document is quite broad, the pipeline company may go so far as to relocate the pipeline in a wholly different trench several feet from the original.”56 However, the owner of the dominant estate would be liable to the owner of the servient estate if and to the extent that such change resulted in damage or injury to the servient estate.57

Where a pipeline right-of-way grant specifically describes the location of the pipeline easement by surveyed metes and bounds or otherwise unambiguously restricts the location of the pipeline easement to a particular area, the pipeline cannot be relocated outside of the specified area. However, removal and replacement of the original pipe with pipe of the same or a larger size within the limits of the easement specified in the grant is permissible in most cases, provided that expansion of the easement beyond the limits specified in the original grant is not required in order to replace, maintain or safely operate the new pipeline.

55 Id. at 343-44.
57 See Williams v. N. Natural Gas Co., 136 F. Supp. 514 (D. Iowa 1955) (where changed conditions necessitated laying of larger pipe at greater depth, landowner was entitled to damages for damage to land resulting therefrom), appeal dismissed, Williams v. N. Natural Gas Co., 235 F.2d 782 (8th Cir. 1956).

Where unambiguous language contained in the grant authorizes installation of additional pipelines, then laying an additional pipeline will be permitted as being necessary to the original purpose of the easement. Likewise, where unambiguous language authorizes only a single pipeline, a second pipeline laid alongside an existing pipeline constitutes a continuing trespass. Where the right to install additional pipelines is unclear, neither unambiguously permitted nor prohibited, there must be at least some arguable expression within the grant in order to give the owner of the dominant estate the right to lay additional pipelines within the right-of-way.

The Ohio State Supreme Court determined in Alexander v. Buckeye Pipe Line Co. that a 1911 agreement which provided that “the grantee has the right ‘ * * * to lay additional lines of pipe alongside of the first line as herein provided’” did not limit the number of pipe lines that could be installed. In Alexander, the owner of the servient estate contended that the agreement allowed the installation of a total of only three pipe lines, that is, one additional pipe on each side of the first pipe laid. However, the court determined that:

the term “additional” has a numerical connotation, and the term “alongside of” has a geographical connotation. Specifically, when the term “alongside of” is read in conjunction with the preceding phrase “to lay additional lines of pipe,” it is apparent that the term “alongside of” does not contain a numerical limitation, but simply indicates that the parties intended that additional lines be laid side by side or adjacent to the first line. If the parties had intended that an additional line could only be placed on either side of the first line, they could have easily so stated.

58 Zettlemoyer, 657 A.2d at 923-24.
59 Sigal, 299 A.2d at 646.
60 See, e.g., San Jacinto Sand Co., 426 S.W.2d at 343.
61 Alexander, 53 Ohio St. 2d at 247.
62 Id. at 246.
It is not at all unusual to encounter pipeline right-of-way grants in the Appalachian Region with provisions similar to those considered by the Ohio State Supreme Court in Alexander. A right-of-way grant that authorizes installation of a single pipeline which also includes the right to lay additional lines of pipe alongside of the first line, and does not otherwise restrict or define the limits of the easement or number of permissible pipelines, permits the installation of any number of additional pipelines over the tract subject to the right-of-way, subject to the requirement that additional pipelines must be installed adjacent and approximately parallel to the original pipeline, and further subject to payment of any additional consideration or damages as may be specified in the agreement.


An unrestricted right-of-way grant “includes any reasonable use to which it may be devoted, provided the use is lawful and is one contemplated by the grant[.]”

“In the absence of specific language to the contrary, the easement holder “is entitled to vary the mode of enjoyment and use of the easement by availing himself of modern inventions if by doing so he can more freely exercise the purpose for which the grant was made.” Ohio Oil Gathering Co. II v. Shrimplin (July 23, 1990), Coshocton App. No. 89-CA-20, unreported, citing 28 Corpus Juris Secundum. (1941) Easements, Section 95. See, also, 28A Corpus Juris Secundum (1996) 391, Easements, Section 173, citing Hash v. Sofinowski (Pa. Super. 1985), 487 A.2d 32, 34, and Boydstun Beach Ass’n v. Allen (Id. App. 1986), 723 P.2d 913, 922. Generally, the court should presume that the parties contemplated that normal development would result in some changes in the mode of use of the easement, even if it were unlikely that the parties anticipated the specific developmental changes. 28A Corpus Juris Secundum (1996) 371, Easements, Section 160; see, also, Knox v. Pioneer

63 Ledley, 643 N.Y.S.2d at 676.
Natural Gas Co. (Tex. App. 1959), 321 S.W.2d 596, 601, citing Restatement of the Law of Property, Sections 482 and 484.64

A right-of-way agreement that provides for a right-of-way to lay, maintain, operate, change, and remove pipelines with necessary fittings and appliances for transportation and regulation of gas would authorize installation of a meter site.65 A general pipeline right-of-way grant that includes the right to install telephone and telegraph lines would permit the installation of an electric line for use in connection with operation of the pipeline.66

The concept of reasonable use includes a consideration of changes in the surrounding area and technological developments.67 For instance, courts have held that easement holders may replace a low-pressure gas pipeline with high-pressure equipment, clear additional space and replace 20-inch pipeline with 36-inch pipeline, and change from static telephone line to fiber optic cable.68 An easement will be interpreted to accommodate advances in technology that relate to the original purpose of the grant, but not a new technology that serves a different purpose.69

64 Strahm, 2011 Ohio at 1171.
66 Buffalo Min. Co. v. Martin, 267 S.E.2d 721, 725-26 (W. Va. 1980) (an 1890 mineral severance deed that contained comprehensive language concerning surface use, including right to “telephone and telegraph lines” and general grant of “all proper and reasonable rights and privileges for ventilating and draining the mines and wells,” could be construed by implication to permit a surface easement for an electric line for purposes of ventilating the coal mine).
Many pipeline right-of-way grants specifically authorize the installation of particular external devices such as drips, fittings, regulators and meters. Provided that the right-of-way grant does not explicitly limit external devices to those devices specified in the grant, the installation of other non-listed devices, such as cathodic protection systems and pig launchers, would also be authorized as being within the type of reasonably necessary measures contemplated by the original purpose of the grant of the right to operate and maintain the pipeline.

§ 14.04. Conclusion.

An unrestricted or ambiguous pipeline right-of-way agreement should be construed as including rights which are reasonably necessary and convenient to serve the purpose for which the easement was granted. Whether these rights include rights to enlarge the pipeline or install additional pipelines and equipment depends upon the intent of the parties to the transaction at the time the agreement was executed. The same rules of construction apply to deeds granting easements as to contracts generally. The language of the easement, considered in light of the surrounding circumstances, is the best indication of the extent and limitations of the easement.

An unrestricted or ambiguous pipeline right-of-way agreement should be interpreted to include the right to implement new technology that relates to the original purpose of the grant. Generally, courts will presume that the parties were cognizant that technology would advance and circumstances would change. Consequently, consideration of the circumstances surrounding the transaction includes consideration of subsequent changes in the surrounding area and technological developments.

Once it is determined that installation of larger pipe or new equipment is authorized pursuant to an unrestricted or ambiguous pipeline right-of-way

70 "Pig-launchers/receivers are combinations of valves, gates, doors, and pipes that are used to insert and remove mechanical devices called ‘pigs.’ The pigs travel through gas pipelines in order to test, clean, and treat their interiors for the purpose of staving off microbiological corrosion." Columbia Gas Transmission Corp. v. Gwin, No. 98-3569, 1999 WL 1023728, *1, 198 F.3d 244, 357 (6th Cir. Nov. 5, 1999) (unpublished table disposition).
agreement, such rights must be exercised in a reasonable manner so as to avoid unnecessarily increasing the burden upon the servient estate. In many cases, the granting instrument will require surface owner compensation, and in all cases the owner of the dominant estate would be liable to the owner of the servient estate if and to the extent such changes result in damage or injury to the servient estate.