Indiana Farm Bureau®

# Landowner Toolkit

## Landowners' Rights and Duties in the Roadside

*Created by Brianna Schroeder, Janzen Schroeder Law*
*and*
*Anthony Crowell, Gordon, Adler, Hayes & Greentree PC*

# Landowners' Rights and Duties in the Roadside

## I. Introduction.

Indiana landowners are often asked by utility companies, county highway departments, and public utilities whether the entity can install a line or wire under, on, or over the landowner's property. The county may suggest it already has a right-of-way ("ROW") across the land or may request a new easement right. What are a landowner's options in such a situation? Of course, each situation is different and may be controlled by a written grant from decades ago, so real estate owners should always check with their own attorney to see how these laws apply to their circumstances. But, Indiana case law and statutes provide valuable insight on how the law treats an easement or right-of-way across private property.

## II. The constitutional starting point: no taking of private property without just compensation.

The United States Constitution and the Indiana Constitution provide protection for the landowner. Neither a county, utility, nor other government entity can take private property for roads, utility pipes, or transmission lines without just compensation. U.S. Const. amend. V; Ind. Const. art. 1, § 21. A ROW is a type of easement—the right to pass over or use another's land for a defined purpose—and neither a public ROW nor a private easement transfers ownership of the land itself. A public ROW is broader than an ordinary easement in that it grants passage to the general public, but it remains limited to its defined purpose and extent. These limits are the landowner's principal leverage: the county or utility must prove both the existence and the scope of whatever interest it asserts.

## III. A ROW established by public use is limited to the traveled roadway.

Where no record shows that the county acquired a ROW by purchase or condemnation, Indiana law determines the width of the ROW by historical public use, and the resulting ROW is no greater than that use. *Contel of Indiana, Inc. v. Coulson*, 659 N.E.2d 224 (Ind. Ct. App. 1995)[1]. The width of a road established by use is limited to that portion actually traveled and excludes any berm or shoulder. *Id.* In *Contel*, a telephone utility relied on an existing state permit to bury fiber-optic cable along a rural state road. The utility did not request any rights from the landowner. Because no public record was produced showing the creation of the ROW, the court held the public ROW was limited to the paved roadway actually traveled by the public. The utility received from the State's permit only those rights which the State had, and no more. This meant the utility could not bury cable beyond the traveled portion without the adjoining landowners' consent.

[1] For a more in-depth discussion of Contel, see the case study presented by Anthony O. Crowell to the Farm Bureau 2023 Land Use School.

The Court also held that the government's periodic entry into the shoulder area alongside a road to mow or to maintain ditches and culverts does not create or widen a ROW. *Id.* That activity rests on an implied license to enter the land for a limited purpose, and use of land under a mere license cannot ripen into an easement, regardless of how long that use is continued. *Id.* A landowner should not concede ROW width based on a history of county mowing. The license does not include the right of the state or county to grant the use of the license to a utility.

## IV. Beyond the path traveled by the public, a ROW must be evidenced by a document of record that gives the landowner notice.

The county cannot expand a ROW by simply asserting it has a historical right to a wider ROW. In *Elder v. Bd. of Cnty. Comm'rs of Clark Cnty*., 490 N.E.2d 362 (Ind. Ct. App. 1986), the county cut trees on private property to widen a county road from roughly 20 feet to 40 feet, claiming a 40-foot ROW. But the court rejected the claim because the county's survey and maps were never recorded in a proper record which would be brought into the landowner's abstract as notice of the county's claim. The Court pointed out that a contrary rule would drastically disturb settled land titles. *Id.* The county therefore owned only that land physically occupied by the road and no more. *Id.*

The law, however, is not completely black and white. In *WorldCom Network Services, Inc. v. Thompson*, the court considered a dispute over the location of a buried communication cable. 698 N.E.2d 1233 (Ind. Ct. App. 1998). There, the road had been laid out by a Commissioners' Order under the 1905 Highway Act and was filed in the official records of the county auditor, the keeper of the records for the County Commissioners. *Id.* The court held that order was properly "of record," charging the landowner with constructive notice of a 30-foot-wide ROW. The Court explained that a complete title search should not be confined to the records of the county recorder; it extends to other documents maintained by the county, including the auditor's records. The upshot of these cases is that the traveled-portion ROW limit of *Contel* and *Elder* controls unless the county produces a recorded deed or a commissioners' order that would appear in the landowner's chain of title that establishes as specific width of the ROW.

With a valid written document, Indiana law recognizes two types of easements: fixed and floating. *Town of Ellettsville v. DeSpirito*, 111 N.E.3d 987, 990 (Ind. 2018). A *fixed* easement is one where either the instrument creating the right-of-way specifies its location or the law specifies its location based on history, use, or consent. In the first instance, the instrument might plainly specify a thirty-foot swath of land for purposes of a driveway, thus fixing the location in that manner. In the latter instance, the law may require that an easement has been fixed by practice. An easement fixed by practice would lack a definite location and description in the instrument creating it, but it becomes fixed and certain by the exercise of the easement with the consent of both parties. In contrast, a floating easement (also known as a blanket easement) is one that is not limited to any specific part of the servient estate (the land subject to the easement). Blanket easements historically have been common tools for utilities, pipelines, railroads, and other infrastructure. These ROWs traditionally allow easement holders to place such infrastructure anywhere on the property of concern. *Id.*; *Close Armstrong LLC v. Trunkline Gas Co*., 434 F.Supp.3d 658 (N.D. Ind. 2000).

By statute, when a ROW or easement for a state, county, or municipal highway is acquired, an accurate description must be filed in the office of the recorder and recorded in the deed records. I.C. § 8-23-23-1.[2] A county executive's power to establish an apparent ROW, established by use and not by specific grant, is capped: the width may not exceed 20 feet on each side of the center line of the road. To do so still requires notice to abutting owners, a public hearing, an ordinance, and recording. I.C. § 8-20-1-15.5. If the apparent ROW exceeds the legal ROW, eminent domain procedures must be followed to expand the ROW. I.C. 36-1-4-5 and IC 8-20-3-1.

## V. A utility facility within a valid ROW generally imposes no additional burden — but only if it serves the ROW's original purpose.

Where property is already subject to a valid public easement for a road or highway, Indiana allows a utility to place facilities within the public ROW without the abutting owner's consent, and such use is generally not treated as an additional, separately compensable burden. *Fox v. Ohio Val. Gas Corp*., 235 N.E.2d 168 (Ind. 1968). In *Fox,* the Supreme Court allowed a gas utility to lay a pipeline in a public highway over the abutting owners' argument that it added a burden to his land and was a trespass. The Court rejected the landowner's argument and held that a new pipeline installed under an existing road in an existing ROW did not increase the burden on the landowner, so it was no trespass.

Our federal courts apply the same compatibility principle. In *West v. Louisville Gas & Elec. Co*., 951 F.3d 827 (7th Cir. 2020), the Seventh Circuit Court of Appeals held Indiana recognizes a historical ROW may grant permission for installation of modern technology if it was compatible with the original grant. For instance, in *West*, the Court considered an original ROW grant permitting a utility to place a tower carrying high-voltage electric lines on a property. Nearly 60 years later, that utility allowed a telecommunications company to install a fiber optic cable on the existing towers in the ROW. The landowner objected and filed a federal lawsuit. The Court recognized the utility's argument that the existing easement allowed the installation of wires that carry *photons* (that is, fiber-optic cables) along with the wires that carry *electrons* (electric power) in the ROW. The Court explained that Indiana law treats easements as permitting new uses compatible with the original grant and held that a fiber-optic telecommunications cable is compatible with an electric-transmission easement. *Id.* Because the cable merely replaced an existing lightning cable on existing towers, it was not a new occupation of the servient owner's land and worked no injury to the fee. *Id.* This "piggybacking" principle is a company or utility's strongest argument for routing fiber or other technology along an existing electric corridor.

## VI. Indiana rejects the shifting public use doctrine.

Notwithstanding the "piggybacking" principle outlined above, the compatibility rule has a firm boundary, and it can be an avenue for landowners to protect themselves against increased traffic along an existing ROW. In *Howard v. United States*, 964 N.E.2d 779 (Ind. 2012), the Indiana Supreme Court held that Indiana has never recognized the "shifting public use" doctrine. The Court explained that a new use falls "within the scope of the easement" if the new use "is compatible with the original purpose" of the easement. There, the Court addressed a "rails to trails" project converting railroad tracks to public trails; landowners argued that recreational trail

[2] Formerly I.C. § 8-13-22-1.

use fell outside the scope of the existing easement for transportation. Our Supreme Court agreed with the landowners, concluding that the purpose of the easement was for *transportation* and "[t]he transformation of a line of railway to a public trail imputes a different purpose." The scope of an easement is directly correlated to its *purpose* rather than a specific use. A new use compatible with the original purpose—gas by pipe rather than truck, or communications by telephone line rather than mail—stays within scope and adds no burden; but a use serving a different purpose does not. The court in *Howard* concluded that converting a railroad easement to a public recreational trail exceeded the scope because train transport and recreation are different purposes. This limit applies regardless of how the easement arose (whether by a taking through condemnation or through a written easement voluntarily granted). Thus, whether a new transmission or fiber line is permissible turns on whether it shares the original ROW's purpose — not merely on whether it fits within the ROW's footprint.

## VII. Recent authority sharply confines condemned utility easements to their stated purpose.

Two recent decisions strengthen the landowner's position against over-broad utility takings. A utility's eminent-domain power reaches only accommodations, rights, and privileges necessary to accomplish the use for which the property is taken. I.C. § 32-24-4-1(b); *701 Niles, LLC v. AEP Indiana Michigan Transmission Co., Inc*., 191 N.E.3d 931 (Ind. Ct. App. 2022)). In *701 Niles*, a utility filed a condemnation action against a landowner seeking to obtain easements via eminent domain for a public electric transmission line and then sought to let a private university install a separate line in the same duct bank. The landowner acknowledged the "public use" of the electric line, but the parties could not agree on the amount of compensation owed. During the appraisal process, the landowner learned the utility had entered into an agreement allowing a private university to concurrently use the duct bank with the placement of a separate private transmission line. The court held the private line was "not incidental" to the public use but a separate property right that could not be taken by eminent domain; the third party could not piggyback on the easements acquired by the utility through the power of eminent domain and had to negotiate privately with the landowner for an easement. *Id.* In other words, the Court held the university was not allowed to piggyback on the easements acquired by the utility through the power of eminent domain. The university's separate line was private and offered no material benefit to the public. *Id.*

The *701 Niles* case was reinforced in 2026. In *Lingle v. Citizens Water of Westfield*, *LLC*, 280 N.E.3d 848 (Ind. Ct. App. 2026), the court held that an easement is not defined solely by its physical dimensions but equally defined by the scope of its permitted uses. It held that a utility condemning land for a water-line easement could not bootstrap additional sewer, gas, or other regulated utility uses into the same footprint. Instead, a utility must show an immediate or present need and may not maintain an action of condemnation for purely speculative future needs. *Id.* The court in *Lingle* distinguished the *Howard* compatibility language as applying only to *existing* easements. For a new proposed easement, Indiana landowners have the ability under statute to object to a taking where the condemnor lacks "the right to exercise the power of eminent domain for the use sought." I.C. § 32-24-1-8(a)(2).

Potentially contrary authority exists. A broadly worded original grant can hurt the landowner. Indiana enforces "floating" or "blanket" easements. (These are easements not limited to any specific part of the servient estate.) A ROW agreement granting an easement will be considered valid even if it is silent as to scope. *Close Armstrong LLC v. Trunkline Gas Co. LLC*, 434 F.Supp.3d 658 (N.D. Ind. 2020). In *Close,* the federal district court considered a 1959 pipeline grant which allowed one or more additional gas lines. The ROW expressly recognized that the pipelines may not always be fixed by location or total number. The Court concluded that the ROW therefore allowed additional gas lines across the entire rural parcel. The owner of the servient estate can use their property in any manner and for any purpose, but it must be consistent with the enjoyment of the easement. Thus, a landowner who builds over such an easement does so at their own peril. *Id.* The original grant language therefore must be examined in every case.

## VIII. Statutory notice for former rail corridors and broadband corridors.

For former railroad corridors created by an easement or a ROW for so long as it is used for railroad purposes, a railroad's interest terminates on abandonment; a utility/fiber easement or license survives only if granted *before* abandonment, and the ROW-fee owner retains the right to demand compensation from a railroad or a utility for the value of an interest taken and used or occupied after abandonment. I.C. § 32-23-11-11. In other words, a railroad cannot grant a license after abandonment because a railroad with no remaining interest has nothing to license. *Calumet Nat. Bank as Tr. Under Tr. No. P-3362, Dated Sept. 1, 1986 v. Am. Tel. & Tel. Co*., 682 N.E.2d 785 (Ind. 1997).

A separate, recent statutory development concerns state highways only: Indiana's dig once broadband-corridor program directs INDOT to manage fiber-conduit deployment within limited-access highway ROWs and to charge no more than fair-market-value fees. I.C. § 8-23-5-10. It does not govern private rural easements, but landowners should be aware of it where a corridor abuts a limited-access highway.

## IX. Remedies and practical steps.

If a county or utility proceeds without legal justification, the landowner has remedies. Inverse condemnation lies where there is (1) a taking or damaging; (2) of private property; (3) for public use; (4) without just compensation being paid; and (5) by a governmental entity that has not instituted formal proceedings. I.C. § 32-24-1-16. Trespass exists when a defendant does work outside the ROW or outside the easement's scope. Before resorting to litigation, landowners should take certain steps, which may include (1) requesting the documents "of record" which purportedly establish an existing ROW or easement; (2) obtaining the utility's permits or applications for permits; (3) appearing at the relevant governing body's meetings or hearings—this may be the county commissioners, the Indiana Utility Regulatory Commission, or another body; and (4) comparing the original grant and the proposed use for consistency in location, width, and purpose. If the utility or company proceeds beyond the recorded ROW or beyond the easement's scope, the landowner may consider a claim for inverse condemnation or trespass.

A rural landowner facing a transmission or fiber line is not powerless. The county or utility must first prove it holds a ROW and establish its width through a recorded document that puts the landowner on notice; absent that, the ROW is confined to the traveled roadway. A line that serves

the ROW's established purpose generally adds no compensable burden, but Indiana's rejection of the shifting public use doctrine and its recent decisions confining condemned easements to their stated use mean that any new, separate, or out-of-scope installation — a distinct private line, a different utility service, or use of an abandoned rail corridor — requires the landowner's consent or triggers a compensation or injunction.

## X. Responsibilities of the adjoining landowner toward the road.

Most of this memorandum is concerned with the landowner's rights in the roadside; but landowners have certain corresponding duties toward the traveling public. The Indiana Supreme Court adopted a bright-line rule in *Reece v. Tyson Fresh Meats, Inc*., 173 N.E.3d 1031 (Ind. 2021). A landowner owes a duty to passing motorists on adjacent highways not to create "hazardous conditions that visit themselves upon the roadway;" but when a land use or condition that may impose a visual obstruction is "wholly contained" on a landowner's property, there is no duty to the traveling public. *Id.* This rule can cut both ways in that it may protect them from liability for most conditions contained upon their own land but it may expose them to liability once a condition reaches the road or the ROW.

### a. Roadside maintenance.

An abutting owner owes no general common-law duty to maintain the roadside or to keep fully contained conditions from obscuring views. In *Reece*, tall grass growing in a ditch was confined to the owner's land, but it obscured a motorist's view at an intersection. The motorist was injured in an accident and filed suit against the landowner. The Supreme Court concluded the property owner owed no duty to the motoring public since the land use or condition was wholly contained on the landowner's property. The question of whether the condition was natural or artificial did not matter. The landowner's duty arises only if the owner creates a hazard that enters upon the roadway or where a condition causes physical contact with a traveler rather than a mere visual obstruction. *Id.*

The *Reece* rule was further defined in *Martinez v. Smith*, 277 N.E.3d 68 (Ind. 2026), where the Supreme Court explained that the landowner's duty encompassed not just the paved portion of the roadway but also traffic control devices within the public ROW. There, a bush grew from the owner's land into the county ROW and obscured a stop sign, causing a traffic accident. The Court held the condition was not wholly confined to the owner's land and instead had visited itself upon the road, rendering the bush an impermissible encroachment. The Court held the landowner could be held liable. Further, the county's duty to place and maintain signs did not, by itself, absolve adjoining landowners from liability for interference with sign visibility caused by conditions on their land.

### b. Obstruction of the sight triangle at intersections.

A visual obstruction wholly contained on the land, such as the tall grass in *Reece*, creates no common-law duty, and there is no common-law duty on the county to clear intersection vegetation to improve visibility. *Hurst v. Bd. of Comm'rs of Pulaski Cnty*., 476 N.E.2d 832 (Ind. 1985). A statutory duty does exist in certain circumstances at intersections: the owner of a hedge, live fence, or other natural growth at a highway intersection, or adjacent to a view-obstructing curve, must maintain it at not more than five feet above the road's center for 100 feet (hedge or

live fence) or 50 feet (other growth), and no view obstruction exceeding five feet may be maintained at such an intersection. I.C. § 32-26-4-1. Recent legislation has been proposed which would shift liability for farmers whose crops may impact the sight triangle at an intersection, but as of this publication (2026), no such law has been adopted here in Indiana.

**c. Trees.**

Trees are a recognized exception to the general rule of non-liability for natural conditions. A tree owner may owe a duty of reasonable care (including, in some circumstances, periodic inspection) to prevent an unreasonable risk of harm from trees near the highway, and liability attaches where the owner has actual knowledge of a dangerous condition. *Reece*, 173 N.E.3d 1031. Whether the duty applies turns on a factual consideration of such factors as land use and traffic patterns, not just whether the land is urban or rural. As to trees in the ROW itself, a utility may trim any tree along the road or highway but may not cut down and remove the tree without the consent of the abutting property owners, unless an IURC rule or order requires it. I.C. § 8-20-1-28. The owner of a tree growing within 50 feet of certain highway intersections must trim the tree so the intersection view is not obstructed. I.C. § 32-26-4-1.

**d. Crops.**

The contained-condition rule from *Reece* and *Martinez* applies to crops too. Corn or other crops confined to the land that grow tall enough to block a motorist's view at a rural intersection create no common-law duty, because the obstruction is wholly contained on the property. The liability exposure arises when crops encroach into the ROW or beyond the traveled portion in a way that creates a dangerous hazard. In addition, the intersection-trimming duty for natural growth within the statutory setback reaches encroaching crops at highway intersections. I.C. § 32-26-4-1.

**e. Debris on the road.**

Indiana common law has long considered it unlawful to place or leave continuously in a public highway anything which impedes or endangers public travel, and that rule applies to the whole width of the highway, and not merely to a worn portion of it commonly used for passage. *Martinez*, 277 N.E.3d at 72. Mud, manure, soil, crop residue, or other material deposited on the traveled way falls within this principle and could expose the responsible landowner to liability if it endangers travelers. The prudent course is to remove any material deposited on the roadway.