

A Practitioner’s Glimpse on the Assessment of the Compensation Amount for the Easement of Access

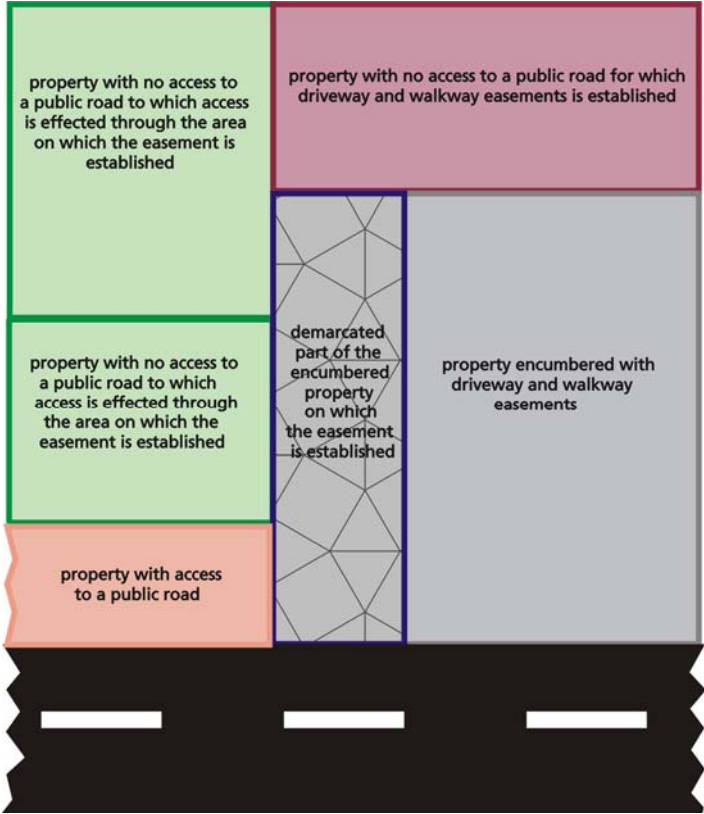
Case study: Setting the Compensation for the Easement of Walkway and Driveway

In order to gain a better understanding of the issue it is worthwhile to consider a simple case of establishing the right-of-way. Let us assume the easement is not going to be limited in time. Vehicles will use a demarcated part of the property only, the traffic will not be burdensome and will not have a negative impact on the remaining part of the property.

When the right-of-way does not cause damage in the servient tenement like cutting down trees or demolition of buildings and needs only the use of a portion of land as a driveway to the dominant tenement, the compensation could be based on the Market Value of the portion of land used to exercise the right. When establishing the Market Value of the land, all factors impacting the value of the servient tenement, such as its location, zoning in the local development plan, existing technical infrastructure, condition of its improvements, etc. should be taken into consideration

Under such scenario it is fairly easy to establish the Market Value of the portion of land allocated for a walkway to a property that does not have access to a public road.

The next step is to consider existence of any important special considerations affecting the amount of compensation. What should be taken into account among other factors is that the land used for a driveway easement serves also as an access road to other properties deprived of access to a public road and that the owner of the servient tenement is also going to use the road. The amount of compensation should reflect the degree in which the owner of the property with no access to a public road uses the portion of land on which the easement is instituted in relation to the degree of use by other property owners. Below are three cases showing the diversity of factors affecting the amount of compensation for establishment of the right-of-way.



Case 1

When properties to which access is effected through the area on which the easement is established are:

- of similar size,
- of the same type and their owners use the easement land with the same intensity,

the amount of compensation for the right-of-way may depend solely on the number of properties which are accessed through the land on which the easement is established.

Case 2

When properties to which access is effected through the area on which the easement is established are:

- of different type and their owners use the easement land with different intensity,

in order to determine the amount of compensation for the driveway and walkway easements it is necessary to define a criterion for an assessment of intensity of use of the easement by owners of properties with no access to a public road, e.g. number of vehicles, number of dwelling units on such properties, size of buildings developed on the properties. The criterion should allow for a correct assessment of the degree of use of the easement land by owners of properties with no access to a public road.

Case 3

When properties to which access is effected through the area on which the easement is established:

- cannot be compared in terms of their type and intensity of use of the easement by their owners,

the most appropriate comparison criterion for setting the amount of compensation for use of the driveway and walkway easement is the size of properties/plots accessed by the easement land. It reflects the intensity and the potential of using the easement land by individual owners of properties with no access to a public road.

Owner of the encumbered property uses the land on which the easement is established

Please note that if there are premises that the owner of the encumbered property is using the easement right and will continue to do so in a degree similar to that of owners of properties with no access to a public road, such circumstance should be taken into account by setting an appropriate compensation for establishing the easement.

Summary

The above thoughts on practical aspects of determining a compensation for the driveway and walkway easements spring out from real life situations faced by property owners in our country. The example given above of the driveway and walkway easement is a small fragment of a much wider practical issue. In every case, reasonable consideration of all aspects affecting the amount of compensation for the right-of-way requires that all situations are approached on an individual basis.