

Imperfect Assessment of Market Values of Land Allocated to Roads

Property valuers preparing valuation reports should have a thorough understating of the contents and application of legal regulations binding in Poland and regarding assessment of value of properties taken over by the State Treasury or local governments for a construction of roads as they serve as a basis for determining a compensation for this take-over.



Binding Provisions

The basic legal tools containing rules and principles that should be followed by property valuers in Poland when dealing with such properties are, among others, the following:

- the Real Estate Act of 21 August 1997 (REA),
- the Ordinance of the Council of Ministers of 21 September 2004 regarding property valuation and valuation reporting.

In the above legislation, special attention should be paid to Article 134 of REA, which reads as follows:

1. *The basis for a compensation, with reservation of Article 135, is the Market Value of the property.*
2. *In the assessment of the Market Value of the property, the following must be taken into consideration: its type, location, use and zoning, existing technical infrastructure, overall condition of the property and current market prices.*
3. *The Market Value of the property is assessed for its current use provided that its zoning, consistent with the purpose of expropriation, does not increase its value.*
4. *If zoning of the property, consistent with the purpose of expropriation, increases value of the property, the Market Value is assessed for an alternative use resulting from this zoning.*

In the above mentioned Ordinance of the Council of Ministers rules for assessment of value are contained, among others, in § 36 Clause 1:

„Market Value of land allocated for or used as public roads is assessed based on the market approach the comparative method of valuation, using prices from transactions of selling land respectively allocated for or used as public roads.“

The objective of the above provisions was that valuation reports providing market values, necessary for a determination of a compensation for properties.

Price Data from Notary Deeds

In the current legal environment, instituted by many factors, one of them being the Act of 10 April 2003 on special rules of a preparation and implementation of projects in the area of public roads (special purpose act), transaction prices of such properties are no longer recorded in notary deeds. Properties are purchased by the State Treasury or local governments by the operation of

the law. In practice, the Market Value of properties allocated for roads is assessed solely to determine the compensation amount for taken-over land, to which also provisions of the said REA are applicable.

Impact of Legal Regulations on Setting Transaction Prices

Taking into account the above, §36 Clause 1 of the Ordinance of the Council of Ministers cannot be applied because its current wording seems to be in conflict with Article 134 of the REA. Even before this provision caused a lot of controversy. Its restrictive use could lead to extreme and remote values of similar plots of land located close to each other, as the reference was made to prices agreed in covenants/negotiations with owners or set in the expropriate process. Such prices were different, depending on the advancement of the road construction process.

The lowest prices were paid to property owners at the beginning of the road development process, at the stage of taking decisions where the road would be located. Sale transactions frequently were initiated by owners, who wanted to sell quickly. Then land prices grew in subsequent stages of the project. The highest prices per sqm were paid for small pieces of land necessary for the project to get started. They were much above market prices and more often were higher than prices of development sites in the neighborhood.

As a consequence, a possible scenario is that land values in valuation reports are either under or overestimated. Whereas the latter case is not directly harmful to the society, nevertheless the amount of compensation for land allocated for a construction of public road determined based on underestimated value was not adequate to the actual value of the asset.

Valuation of Land for Public Roads

Under the binding legislation, value of land for public roads should be established based on value of properties from which such land was carved out, using provision of article 134 and 135 of the REA. Undoubtedly, §36 clause 1 of the Ordinance of the Council of Ministers should be amended, as it should not be applied in the current wording.