

July 27, 1998

All About Access

Washington law allows for a private right of condemnation for access to landlocked properties, termed a private way of necessity.

Although not recommended, the law is consistent and well- established that owners of landlocked property have a right to access public roads. The courts, however, will not necessarily grant the condemnor's preferred route.

Moreover, our courts will require the condemnor to pay the fair market value for the access, along with costs and attorney fees. If the access route is already improved, the court can use the original cost of improvements as a factor in determining the fair market value of the property subject to the private condemnation.

Washington's Court of Appeals, Division II, recently affirmed the award to the condemnee of fair market value for the access road along with attorney fees and costs. Sheilds v. Garrison, 957 P.2d 805 (1998). The condemnor argued that she should only pay nominal damages because the easement was over an existing roadway and there was no damage to the remaining property; and that attorney fees were not appropriate. The court cited constitutional and statutory law along with long-settled case law in its opinion. The condemnor further argued that the condemned property suffered no loss in market value, and therefore the trial court erred by awarding more than nominal damages. The court on the other hand held that proper consideration of this issue begins with the understanding that this action is condemnation of improved property. The court considered the following factors: Sales of similar property in the market, rental value of the property, reproduction or replacement costs less depreciation, original price paid, improvements, desirability of the property, the demand, the use to which the property could be put, and any other factors affecting value.

If you own or seek to own landlocked property, consider the cost you are likely to pay if you initiate a private condemnation action for access. Then, consider offering to purchase access along the most reasonable route to the nearest public road. Even then, if your heart is set on the landlocked property and the condemnee is unwilling to make a willing buyer/willing seller exchange, a private way of necessity action is an actual possibility.

However, do not try this narrow strategy for access to your subdivision. The rules for subdivision access roads are separate from the rules for a private way of necessity.

Likewise, as a condition of subdivision approval, the platting authority (local government) cannot require access roads through your property unless the government shows a reasonable relationship between the proposed road requirement and the identified public problem.

In another recent case the Court of Appeals overruled Clark County, which required a road through a short plat to alleviate traffic congestion. However, the proposed solution did not reasonably relate to the public problem. The record did not indicate when, if ever, the road would connect with two streets, and therefore the road lacked the tendency to solve or even alleviate the public problem that the County identified. Burton v. Clark County, CA II, No. 20372-3-II, July 10, 1998.