

## Chapter 12

### Right of Way

The following are changes, additions or deletions to the January 2003, Topic #625-000-007, Plans Preparation Manual (PPM) - English, for use on Turnpike projects only:

#### 12.1 General

*Add the following definition to the section*

**Non-monetary Benefit** is when an attorney represents a property owner, and the attorney secures a benefit for his client such as improved access, drainage or a re-design. When this benefit can be quantified in dollars, the attorney may add the value of this benefit to the acquisition price of the property when determining his statutory fee, which is based on the benefit achieved.

#### 12.2.3 Access Management

*Add at end of paragraph 1*

Access management criteria often affect the access to property after construction. This criteria should be discussed during the field review to lessen potential impacts. These issues can result in a non-monetary benefit for the property owner's attorney if they are not resolved during negotiations.

#### 12.4 Property Owner Contacts

*Add the following section*

All property owners should be contacted and given notice prior to entering their property for any reason. In many cases the design consultant's survey crew makes the first contact with an owner. The Department has received complaints from owners where survey crews were on the property unbeknownst to the owner. In some cases, school age children were home alone, in others the crews were disturbing livestock or cutting trees. When contacted, the company's response has been "we have the legal right to be there". While true, the Turnpike expects a more diplomatic and sensitive approach. A bad experience on the part of the property owner early in the process can sour the whole acquisition process.

Property owners often contact project managers by phone or at public hearings. There is a tendency to try to accommodate the needs of an owner, which can lead the property owner to believe they have a commitment from the Department. This is especially true with the initial design, access, and drainage. The Engineer/Surveyor should avoid conjecture and speculating on possible changes to avoid misunderstanding. The Turnpike Right of Way Office will be the point of contact with the property owner to discuss right of way impacts to the property. The Turnpike Right of Way Office should receive copies of any responses sent to property owners.

Throughout the life of a project, the project manager should refer any contact by the property owner to the right of way project manager. Concessions made to a property may result in a non-

monetary benefit to the owner's attorney. Right of way should be included in all discussions when a design change affects the land required or access to adjoining property.

## **12.5 Construction Issues**

*Add this section*

Fencing and encroachments are two issues that are repeated concerns upon letting a project to construction. The Department routinely pays for fencing in the right of way and for replacement fencing as a “cost to cure.” However, the property owner does not have to implement a “cost to cure” and therefore the contractor often finds a fence in place during clearing and grubbing. Construction may be concerned that if they take the fence down they will incur some liability for damages, like cattle roaming free or trespassing.

Right of Way routinely notifies the property owner in writing that a fence will be removed by construction and that the owner is responsible for replacing the fence. Often though, the owner’s inaction requires the Department’s legal staff to contact the owner’s attorney to get the new fence erected. Providing for temporary fencing in the construction contract can help avoid any delays caused by fencing.

Other encroachments such as mailboxes and signs are found from time to time and the Property Management Office in Right of Way is charged with facilitating their removal.