

EASEMENTS, RIGHTS OF WAY, SETBACKS AND ENCROACHMENTS

David A. Weissmann, Esq.



- I. Easements are usually of public record, but may be discovered by visible evidence only. Similarly, rights obtained by adverse possession and rights of parties in possession generally will not be revealed by a title examination.
 - A. Easements can occur by express agreement, by implication, by adverse possession/prescription or by necessity. Only express agreements are recorded. Physical evidence shown on a current survey closes part of the gap.
 - B. The fact that parties are in possession of property indicates a right or a claim, even without an express agreement or lease and may require court action to remove them. There may be no physical evidence, like the case of squatters in an office building not discovered until after foreclosure and a night visit to the property.
- II. Easements come in many types, such as easements for access, roads, driveways, parking, utilities, drainage, slopes, grading, encroachments, and gas pipelines. Expressly granted easements are not as problematic as those implied by law or arising by adverse possession.
 - A. Types of Easements

1. Utility and Drainage Easements
 - a. Utility easements are commonly found on title to most developed property. Sewer, water and power easements are essential for any improved property. If the property is adjacent to a public right-of-way (a road which is either built by the governmental authority (DOT, County or City), and there are utilities within the road bed, then an easement may not be necessary.
 - b. One of our functions is to review the presence and/or location of utilities serving property, and to seek assurance that the utility does not cross any “private” land. If the utility line crosses “private” land without a proper easement, then the owner of the “private” land has the right to cut off the utility line.
 - d. Georgia Power or affiliated electric membership companies routinely use “broad form” general or blanket easements when installing electric power. The record rooms are full of these documents which give the power company the right to enter into property for purposes of installing electric lines.
 - i. The problem is that the easement areas are not specified and broad rights of entry can impact future development. There are two solutions:
 1. Containment letters – routinely provided by

power companies limiting the easement repair, maintenance and replacement of existing facilities

2. Don't worry – if power companies exercised these rights broadly, we would have a revolution of sorts.

e. Florida Power and Light and other municipalities and counties use general utility easements for installation of all utilities to facilitate development.

2. Other Specific Easements

a. Cable easements – found generally in apartment complexes, condominiums, town homes. Might be accompanied by a reservation of rights to the installed cable equipment.

b. Natural gas or petroleum easements – these are often clearly marked, and permit surface development (parking areas, driveways)

c. Defined electric power line easements – the terms of the easement will control rights to develop at or near the utility lines

d. Drainage easements – all property needs drainage rights. All, development authorities monitor drainage as part of development approval.

i. By law, property owners have the right to drain

“downhill” but if a raw piece of land is development, the parking and other surface areas do not absorb as much water, and “runoff” increases. This can lead to detrimental effects on neighboring properties.

- ii. One solution is retention ponds and detention areas, which slows the rate of flow. Specific rights to use these areas is often granted, with a corresponding obligation to contribute to the cost of maintenance
- e. Sewer easements – generally described by a metes and bounds description, or by reference to a centerline, so a surveyor should be able to plot specifically

3. Creation by Recoded Plat – used to subdivide property with development authorities, and often also used to create easements or dedications of roads and utilities to the public.

- a. Easements can be created by drawing the easement areas on the plat with a description (i.e. “access easement”, “drainage easement”) sometimes with a note that the owner desires to create the easements shown thereon.
- b. Dedication is effected by express intent, and the plat is then signed by the owners and the various governmental officials who “accept” the dedication by express language. There may be certain maintenance bond requirements which extend beyond the date of dedication (often 1 year for new roads)

- c. Do not accept a recorded “plat” as an exception unless cross-referenced with specific survey exceptions. Ideally, the survey should incorporate all matters shown on the plat, and therefore, no additional information is added by excepting to the plat and it should be removed. At a minimum, you should require that the plat exception refer only to detailed items, and not to the plat generally.
- 4. Parking easements – obvious problem is if the easement area is over the area to be developed. Otherwise, be mindful of parking rights that could impact your property’s potential by taking up too much parking (restaurants, bars, pool halls are notorious parking hogs)
 - a. Parking easements can also impact zoning compliance. Your property may require parking to meet zoning requirements
- 5. Sign easements – often visible signage along a well-used thoroughfare is required for maximum exposure of businesses. A sign easement might give this advantage. It could be a right to be on a pylon in a shopping center, or a right to install signage on a street corner. Also would need maintenance and replacement rights. Sign should always comply with then existing codes and ordinances.
 - a. Obnoxious signage impacts development surrounding a site, so the easement should specify the kind of signage permitted, and limit offensive uses (i.e. no flashing lights).
- 6. Encroachment Easements – used to rectify encroachment problems. In

some cases, they are “anticipatory” in advance of development to permit minor encroachments over property boundaries. If an encroachment exists, an encroachment easement allows the encroachment to remain, subject to the limitations contained in the easement

7. Party wall easements and agreements – describes rights and obligations of neighbors who share a wall. Used in tight urban environments, or in condominiums, or any circumstance where you have a wall separating two properties.
 - a. Maintenance and repair of the wall is the large issue, requiring care and forethought. If one party fails to repair, the other should have the right. Lateral support must be maintained by each party to prevent damage or destruction of the wall.
 8. Construction and temporary easements – these often accompany other easements granting the right to construct the actual facilities described in the easements. The area usually extends 10 or 20 feet around the perimeter of the easement areas, and terminate at a specified date, usually within a year of the date of the easement, which grants time for construction to be completed.
- D. The “Reciprocal Easement Agreement” or “REA” provides for mutual easement rights flowing to the benefit of owners of adjacent properties. Used often in shopping center development to coordinate between the main center and outparcels. Can be used in any other context. “Declarations” of

easements or other covenants and conditions (“CCR’s”) often contain easements with obligations for repair, maintenance and assessments which should be analyzed thoroughly.

1. Larger developments anticipate easement needs and incorporate them into an REA or CCR.
2. Look for express easements contained in the REA or CCR benefiting or burdening your property.

E. Other issues in easements:

1. Anticipate repair or maintenance obligations and how costs are prorated
2. Might see lien rights on failure to make payment towards shared costs. May also contain indemnities and insurance provisions.
3. Best to have one party responsible for maintenance to avoid inaction.
4. Duration should be stated as “perpetual.”
5. Relocation rights; Right to tap-in - A good pre-planning tool is to reserve to the grantee a “relocation right” and a “tap in right” whereby the grantor reserves the right to relocate to easement areas and to use and tap into the easement facilities to accommodate future improvements or alterations. Capacity of the facilities may remain an issue, although today, most governmental agencies have capacity requirements which can accommodate additional users.
6. Fees or cost sharing – sometimes easements require contributions toward construction or maintenance; Affirmation by estoppel

certificate may required.

7. Plan approval – a good easement requires plan approval by the grantor, although rarely does anyone require evidence of approval after the fact

F. Rights of Way and Condemnations

1. Right of Way Deeds grant to a public governmental authority (county or city usually) actual acreage or easement rights for use by the public.
 - a. Typically used for roads, water and sewer lines
 - b. Never accept a “right of way” to a road as a title exception.

Once the right of way deed is granted, the acreage ceases to be part of the property description. If the right of way deed is excepted, then there is acreage potentially missing from your property. The surveyor should be able to limit the applicability of a right of way deed to easements contained therein, typically slope and drainage easements.
 - c. Sewer right of way deeds are acceptable, but should be located on the survey to assure that the development or improvements do not encroach. A sewer line that goes directly under a building might be difficult to repair without destroying the building.
2. Condemnations perform the same function as a right of way deed, but are used when there is a dispute between the property owner and the government (usually over costs, but could be other issues). Once the property is condemned, then the acreage condemned ceases to be part

of the property, so the same issues involved with rights of way deeds are applicable to your analysis of the impact on the property.

G. There is a substantial body of statutory and case law surrounding the creation and use of roadways in Georgia. The presence of a road or access way on a survey is a red flag indicating perhaps that another adjacent owner(s) has rights over the subject property or that the public has acquired rights thereto.

1. The absence of a condemnation or express deed or grant does is not dispositive.

III. Private Roads

A. Created by express grant, by prescription and by necessity

1. Express grant

a. Contract

b. Deed or reservation in deed

c. Other written instrument (e.g. lease memorandum, recorded affidavit with contract)

2. By prescription

a. Prescription confers “rights in land” while adverse possession confers title.

b. Elements of prescription – O.C.G.A. §44-5-161:

“§ 44-5-161. *Adverse possession; effect of permissive possession*

(a) In order for possession to be the foundation of prescriptive title, it: (1) Must be in the right of the possessor and not of another; (2) Must not have originated in fraud except as provided

in Code Section 44-5-162 [actual fraud prevents time period from running but not constructive or implied fraud]; (3) Must be public, continuous, exclusive, uninterrupted, and peaceable; and (4) Must be accompanied by a claim of right. (b) Permissive possession cannot be the foundation of a prescription until an adverse claim and actual notice to the other party.

- c. The time period required for the ripening of a prescriptive easement is 7 years for improved lands and 20 years for wild lands:

“§ 44-9-54. *Establishment of private way by prescription - Generally* Whenever a private way has been in constant and uninterrupted use for *seven* or more years and no legal steps have been taken to abolish it, it shall not be lawful for anyone to interfere with that private way.”

“§ 44-9-1. *Methods of acquiring private ways* The right of private way over another's land may arise from an express grant, from prescription by *seven* years' uninterrupted use *through improved lands* or by *20 years' use through wild lands*, by implication of law when the right is necessary to the enjoyment of lands granted by the same owner, or by compulsory purchase and sale through the superior court in the manner prescribed by Article 3 of this chapter.”

- d. Burden is on one claiming the easement right. Use of a roadway without other elements of adverse possession will not ripen into an easement. Strict compliance with §44-9-1 is required because of the harsh consequences on the burdened property owner.

- 3. Easements by necessity – Court ordered easements – “private condemnation”

- a. If a landowner has no means of access (i.e. is landlocked), O.C.G.A. §44-9-40 authorizes the superior court to grant a “private way” (i.e. easement), not in excess of 20 feet in width, to be maintained by the benefited party, or his successor in title.
- b. The statute details requirements for advertisements, appointment of assessors and payment of compensation, which may be fixed by agreement, but otherwise by a jury.
- c. The private way must be an indispensable means of access, although proof that existing access ways are not economically feasible may be sufficient for a court to grant relief .
- d. An important caveat to enforcement is that a landowner may not avail himself of the statute if he voluntarily landlocked himself. The statute cannot be a reward for his own failure to reserve an easement.
- e. Georgia likely does not recognize easements by implication which might otherwise be available to provide relief to a landlocked seller.

IV. Public Road – “a highway, road, street, avenue, toll road, tollway, drive, detour, or other way open to the public and intended or used for its enjoyment and for the passage of vehicles in any county or municipality of Georgia” O.C.G.A. §32-1-3(24).

- A. Created by dedication, by prescription, express grant, special statutory proceeding or by condemnation.
 - 1. May be created by express right of way deed, permanent easement or dedication language in a recorded plat or survey.
 - 2. Rights of the public to use the roadway, and maintenance by the applicable governing body, are hallmarks of public roads (known as “rights-of-way”).

- B. Dedication requires both a “dedication” or conveyance, and an “acceptance. Surprisingly, both dedication and acceptance may occur by implication.

- C. Even in the absence of an express deed, other actions by an owner may be construed as a grant, such as a subdivision plat showing lots with designated streets or sale of lots with reference to a plat that evidences common use of a road (See *Cobb County v. Crew*, 267 G. 525 (1997)).
 - 1. The issue revolves around the intent of the parties. Parol evidence is admissible.
 - 2. Evidence must show a manifest intention to effect a dedication for public use. Physical acts of the parties, rather than implied intent, will be more persuasive.
 - 3. Acquiescence by a landowner may indicate tacit approval to public use.
 - 4. Implied dedication is fact driven: occasional maintenance by the county may not imply acceptance. Purchase by a new landowner acquiescing

to local governing authority maintenance may constitute dedication. The mere fact that the road is depicted on governmental map is not enough to establish dedication. The more continuously the public uses the road, the more likely dedication will be implied. Public use is what puts the owner on notice of an adverse claim.

D. Acceptance can occur by act of the county or city commissioners, by statutory obligation or by implication.

1. Acceptance by implication generally occurs when the road is accepted by the public rather than by the public governing body – mere use by the public following dedication, for an unspecified period of time, may constitute “acceptance” especially if interruption would materially affect the public.

E. A road may become public by prescription:

“§ 33-3-3(c) . . . any state agency, county, or municipality is authorized to acquire by prescription and to incorporate into its system of public roads any road on private land which has come to be a public road by exercise of unlimited public use for the preceding *seven* years or more.”

or by adverse possession, which requires satisfaction of the elements of adverse possession and 20 years use (O.C.G.A. §44-5-161 cited above).

2. The public needs to overcome the presumptions created by the fact that the landowner did not take any affirmative, express acts to constitute a dedication.

3. It is difficult to establish a “claim of right” to public use. Public, as opposed to private, claimants, do not often make improvements to claimed property, which improvements would otherwise put the landowner on notice of the claim of right.

V. Railroads – in the mid 1800’s, railroads connected the country and the continent. In many places, the rail lines remain but the source of the right of way is missing or illegible. This leads to confusion as the rights granted to the railroad and residual rights reserved by the grantor. Pertinent issues today are (i) determining the status of the track line as an “easement” or “fee simple right of way” and (ii) granting access over the line for crossing traffic.

A. Pursuant to the Pacific Railroad Acts (also known as the “Charter Acts”) from 1862-1871, Congress established a system of railroad throughout the western United States, “chartering” railroad with immediate or “present” grants of land, usually 400 feet in width (although some were 200 feet) where tracks could be laid at a future date.

1. The title grant was not “perfected” until the track was constructed and a survey of it delivered to the Department of the Interior.
2. The track would “relate” back to the original grant from Congress and therefore, take priority over any homestead or other claim.
3. No title conveyance other than the Congressional grant was needed. Since grants made pursuant to the Pacific Acts were not “recorded” in

the public records, and title search would not disclose the existence of the railroad company's rights.

4. Courts have limited the scope of these grants to exclude mineral rights and to mandate "reversion" to the Federal government when the rail lines are no longer used for railroad purposes.
 5. "Checkerboard Sections" which are alternate sections of land adjacent to the track line were also provided for in the Charter Acts, giving the railroads needed land for ancillary and accessory facilities (station houses, maintenance facilities, switching stations, coal bins, water tanks).
 - a. These sites were patented (i.e. deeded) to the railroads in fee simple (with no reservation other than for minerals), with the intention that they would be sold by the railroad to finance further construction.
 6. Railroads could grant easements over the track line unless this would cause interference with railroad use. It could grant an easement for utility use, or for road purposes, as it saw fit.
- B. Rail lines could be sold to other rail companies, but abandonment required submission of an application with the Interstate Commerce Commission ("ICC"), followed by consent by a Federal District Court or Congress.

1. After abandonment, the Federal government has one year period to accept the land for highway purposes.
2. If abandonment happened between 1922 and 1998, land within the limits of a municipality reverted to the city, and not, then to adjacent land owners. If the adjacent land is still owned by the Federal government, then it reverts to the Federal government.
3. After 1988, regardless of the existence of a municipality, the land reverts to the Federal government, subject to further disposition under the “Rails to Trails” statute.

C. Other Railroad Acts

1. Pacific Railroad Acts (1971 – 1975) – reduces width from 400 to 200 feet; adjacent land included, but not with “patents”.
2. General Railroad Right of Way Act of 1975 – 200 foot rights of way, further limited by court action decreeing that the vesting right was only an “easement” rather than limited fee title.
3. Abandonment handled same as under Charter Act.

D. Private deed or action can also create rights. The deed must be examined for scope, reversionary interest, retained rights, consideration paid, and other factual considerations.

1. Courts have shown a preference for “easement” determination rather than fee title. See e.g. Jackson et al., Executors, v. Sorrells, 212 Ga.

333, 92 S.E.2d 513 (Supreme Court 1956) [grantor retained rights to cultivate and to keep all stock gaps, with railroad given the right “to have and hold said tract or parcel of land to... for Railroad purposes, forever in fee simple”, for nominal consideration, held to be an easement]

- E. The National Trail System Improvements Action of 1988 (the “Rails to Trails Act”) provides that abandoned rail rights of way can be converted to hiking, biking or nature trails if it is in or adjacent to federal lands, and if now, local agencies or organizations may be substituted.
 - 1. Does not apply to private rail grants, only to grants that originated with the federal government.
 - 2. The law also modified prior law and adjacent property owners no longer have a reversionary interest in abandoned rights of way.

- VI. Title companies will grant utility or affirmative coverage to sewer lines which cross the property of others if the local government acknowledges maintenance and repair obligation. Such acknowledgement is generally evidenced by government maps indicating which lines are maintained by the body public. Acknowledgement may also be by conversation followed by email or written confirmation.

- VII. Encroachments and Setbacks:
 - A. Boundaries are established by legal descriptions and physical on the ground evidence referenced in recorded legal descriptions. Today, almost all legal

descriptions are established by recorded plat or metes and bounds descriptions taken from on the ground surveys.

- B. Setbacks are established by zoning or private covenants. Zoning setback ordinances may permit encroachments for “accessory structures” such as sheds, decks and parking lots. Private covenants need to be consulted for permitted encroachments.
1. Some REA’s contain “general encroachment easements” allowing for small variances if buildings or other structures are slightly over the building setback line or boundary to prevent a calamity on a construction error.
 2. Fence encroachments to and from property are common. While some consider them a case for an alarm, the solution of removing a fence is relatively cheap and painless. There is an issue of whether a person can acquire property by installing a fence, but unless the use is “adverse”, it cannot ripen into actual prescriptive title.
 3. Driveway encroachments can be serious of access will be impaired without use of the encroaching area. The preferred solution is acquisition of an easement over the area being encroached upon. Tradeoffs may be required. The fact that surveys have come out of fashion in residential practice may mean that some of these encroachments are in fact missed for years.

4. Overhang encroachments, for awnings or decks create easement needs as well. If there is a setback violation, a zoning variance may be required necessitating consent of property owners within the defined radius (i.e. 500 feet in Dunwoody).
5. Building encroachments over setback or boundary lines are the most serious because of the potential dollars involved.
 - a. It is not uncommon for a construction lender to require a foundation survey at the time that the foundations are completed to insure that there are no violations.
 - b. In older properties, encroachments are often present due to revised setback requirements of newer zoning codes. An inquiry should be made to determine if the improvements when constructed complied with the prior zoning code and whether they are “grandfathered” in the new code.
 - i. Additional inquiry into whether restoration following a casualty will require compliance requirements with the new code, and how it will be paid for. Units or square footage may be lost as a result. Law and Ordinance insurance may be required to offset the increased cost of

compliance and to offset the loss resulting from the newer code requirements.

- ii. Law and ordinance coverage may be “excluded” from the insurance policy without a rider, which could mean (x) the cost of tearing down or modifying undamaged portions of the building to meet new code may not be covered, (y) cost of demolition of undamaged parts may not be covered, and (z) increased cost of construction may not be covered.

- 6. Property line encroachments that cannot be resolved by private negotiation may be subject to forced removal. Adverse possession as a potential defense is available if all elements of adverse possession are met, but to be adverse, the use must be objected to and not be merely permissive or unknown.

VII. Water Rights and Related Issues: Accretion and Reliction - Definitions

- A. Accretion is the gradual addition of soil to land adjacent to water (riparian land) by operation of the water body. Oceans and waters deposit silt and soil over time leading to increased acreages of useable property.
- B. Reliction is when additional land is exposed by the withdrawal of water from the shoreline, revealing previously submerged land.

- C. Mean High-Tide Line is the mean or average of all available high tides over an 18.6. Land claimed by a state (or nation) depends on what is below the mean high-tide line in its natural state or condition. “Below” the mean high-tide line is “submerged” and above the man high-tide line is “upland.”
- D. Title to tidally affected lands has generally owned by the federal government by deed from the state at the time of creation of the state. Other conveyances from the federal or state government would be handled by deed.
1. Land arising by natural accretion generally belongs to the upland owner. Land arising by artificial accretion may belong to the government. Various state and federal law needs to be consulted. In California, artificially accreted land belongs to the state.
 2. Title can be lost through “erosion” just as it can be obtained by accretion.
- E. Navigable waters are those that are capable of being used in their ordinary condition as commercial highways, and as such belong to the public. Various states may have their own definitions of navigability, but the federal definition is often used:
1. Under the Federal Rivers and Harbors Act (33 U.S.C. 403), a water way is navigable if it is used in the past, is now used, or could be used to transport interstate or foreign commerce. If a waterway is usable “in fact” it is generally considered navigable under law.

F. Riparian rights are the right of a landowner adjacent to and in contact with a body of water to use the water for any purpose for the use and enjoyment of his land unless such use materially affects the rights of others. These rights were created by common law, and are capable of being severed from title and separately conveyed.

1. Riparian rights include the right to build a dock so long as the dock does not interfere with the use of the waterway by others.

G. Georgia Riparian Rights Statutes

§ 44-8-1. Ownership of running water; right to divert or adulterate water

Running water belongs to the owner of the land on which it runs; but the landowner has no right to divert the water from its usual channel nor may he so use or adulterate it as to interfere with the enjoyment of it by the next owner.

§ 44-8-2. Nonnavigable streams -- Rights of adjoining owners; principles when stream is boundary; accretions

The beds of nonnavigable streams belong to the owner of the adjacent land. If the stream is a dividing line between two parcels of land, each owner's boundary shall extend to the thread or the center of the main current of the water. If the current changes gradually, the boundary line follows the current. If from any cause the stream takes a new channel, the original line, if identifiable, remains the boundary. Gradual accretions of land on either side accrue to the owner of that side.

§ 44-8-3. Nonnavigable streams -- Exclusive possession by owner; interference by legislature with lawful use of stream

The owner of a nonnavigable stream is entitled to the same exclusive possession of the stream as he has of any other part of his land. The legislature has no power to compel or interfere with the owner's lawful

use of the stream, for the benefit of those above or below him on the stream, except to restrain nuisances.

§ 44-8-4. Nonnavigable streams -- Construction of dams, canals, and appurtenant works; liability for resultant damages

It shall be lawful for all corporations and individuals owning or controlling lands on both sides of any nonnavigable stream to construct and maintain a dam or dams, together with canals and appurtenances thereof, across the stream for the development of water power and for other purposes; provided, however, this Code section shall not be construed to release individuals or corporations constructing such dam or dams and appurtenant works from liability to private property owners for damages resulting from the construction and operation thereof either by overflow or otherwise.

§ 44-8-5. Rights of adjoining landowners in navigable streams

(a) As used in this chapter, the term "navigable stream" means a stream which is capable of transporting boats loaded with freight in the regular course of trade either for the whole or a part of the year. The mere rafting of timber or the transporting of wood in small boats shall not make a stream navigable.

(b) The rights of the owner of lands which are adjacent to navigable streams extend to the low-water mark in the bed of the stream.

§ 44-8-6. Nonnavigable tidewaters; title; rights of adjoining landowners; principles when tidewaters are boundaries; accretions

The title to the beds of all nonnavigable tidewaters where the tide regularly ebbs and flows shall vest in the owner of the adjacent land for all purposes, including, among others, the exclusive right to the oysters, clams, and other shellfish therein or thereon. If the water is the dividing line between two parcels of land, each owner's boundary shall extend to the main thread or channel of the water. If the main thread or channel of the water changes gradually, the boundary line shall follow the same according to the change. If for any cause the water takes a new channel, the original line, if identifiable, remains the boundary.

Gradual accretions of land on either side accrue to the owner of that side.

§ 44-8-7. Rights of owners of land adjacent to or covered by navigable tidewaters

(a) A navigable tidewater is any tidewater, the sea or any inlet thereof, or any other bed of water where the tide regularly ebbs and flows which is in fact used for the purposes of navigation or is capable of transporting at mean low tide boats loaded with freight in the regular course of trade. The mere rafting of timber thereon or the passage of small boats thereover, whether for the transportation of persons or freight, shall not be deemed navigation within the meaning of this Code section and shall not make tidewaters navigable.

(b) For all purposes, including, among others, the exclusive right to the oysters and clams but not other fish therein or thereon, the boundaries and rights of the owners of land adjacent to or covered in whole or in part by navigable tidewaters shall extend to the low-water mark in the bed of the water.

§ 44-8-9. Construction of levees and ditches; diversion of watercourses

All persons owning lands on any watercourses are authorized to ditch and embank their lands in order to protect the lands from freshets and overflows in the watercourses, provided that the ditching and embanking does not divert the watercourse from its ordinary channel; but nothing in this Code section shall be so construed as to prevent the owners of lands from diverting nonnavigable watercourses through their own lands.

§ 44-8-10. Construction or establishment of private bridge or ferry; grant of franchise to construct or operate public bridge or ferry; compensation to landowner for interference with possession; when franchise exclusive generally; exclusive franchises pertaining to streets or sidewalks

The right to construct a bridge or to establish a ferry for private use across a watercourse within or adjoining one's lands is appurtenant to the ownership of the land; but the right to establish and operate a

public bridge or ferry is a franchise to be granted by the state. Where the grant of such a franchise interferes with an owner's right of exclusive possession, just compensation must first be paid to the landowner. No such franchise granted by this state shall be held to be exclusive unless it is plainly and expressly declared to be exclusive in the grant; except, however, that any municipality of this state having a population of more than 200,000 according to the United States decennial census of 1930 or any future such census is authorized to grant an exclusive franchise pertaining to streets or sidewalks for a period of three years, but not subject to renewal, to any person, firm, or corporation under this authority to grant such a franchise whether or not it is plainly or expressly stated in the charter of the municipality.