



2.1 GENERAL APPRAISAL POLICY

The requirements for developing an appraisal report are established by the Bureau of Technical Services-Real Estate (BTS-RE) and are based on a number of state and federal laws and regulations:

- [49 Code of Federal Regulations Part 24](#)
- [The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970](#)
- Wisconsin State Statute Sections [32.05](#) and [32.09](#)

Definition of appraisal - The Code of Federal Regulations defines an appraisal as: “A written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information (Subpart A – General 49 CFR 24.2[3]).” Note: See definitions of fair market value, larger parcel, part taken, and scope of work explained in detail in Section 2.6 of this manual; also see REPM/Definitions.

Requirements - The United States and Wisconsin Constitutions provide that no private property can be taken for a public use without just compensation. The Uniform Relocation Act (URA) sets forth requirements for acquiring agencies when property is to be acquired for projects using federal funds or federal-aid projects. Appraisers entering into contracts to perform eminent domain appraisal work will adhere to URA appraisal requirements. The appraiser must also be in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP). The agency may have appraisal requirements that supplement these requirements, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. The URA requires:

- Acquiring agency to establish an amount believed to be just compensation for acquisition before initiation of negotiations.
- Acquisition of equal interest in all buildings, structures or other improvements.
- An appraisal of real property to be made before the initiation of negotiations.
- An offer to acquire uneconomic remnants.
- Appraisers shall not give consideration to, or include in their appraisals, any allowance for relocation assistance benefits.
- Owner or a designated representative shall be given opportunity to accompany appraiser on property inspection.
- There be an exclusion of consideration for increases or decreases in the before value determination caused by a planned public improvement.
- Valuation of tenant owned buildings, structures or other improvements.

WisDOT has the responsibility to assure that the appraisals it obtains are in compliance with its program requirements; reflect established and commonly accepted state, federal and federally-assisted URA program appraisal practice; comply with the definition of appraisal and include the following five components, as stated in the URA:

1. An adequate description of the physical characteristics of the property being appraised. A statement of the known and observed encumbrances, if any, title information, location,

- zoning, present use and analysis of highest and best use, and at least a five-year sales history of the property.
2. All relevant and reliable approaches to value consistent with state and federally assisted program appraisal practices.
 3. A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing and verification by a party involved in the transaction.
 4. A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining property.
 5. The effective date of valuation, date of appraisal and signed certification of appraisal.

Effective February 2005, federal regulations regarding appraiser qualifications changed. The specific governing language is found in 49 CFR 24.103, Criteria for Appraisals. In sub-paragraph (d)(2), the regulation now reads: "If the Agency uses a contract (fee) appraiser to perform the appraisal, such appraiser shall be State licensed or certified in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331 *et seq.*)." This requirement applies to all federal aid projects. Therefore, WisDOT requires that any consultant hired to appraise on a WisDOT project be state licensed or certified, under Chapter 458 of the Wisconsin Statutes. Wisconsin statutory requirements include:

1. [Sec. 32.05\(2\)\(a\), Wis. Stats.](#) – Appraisal must be made of all property to be acquired and the appraiser must confer with one of the owners or their personal representative, if reasonably possible.
2. [Sec. 32.05\(2\)\(b\), Wis. Stats.](#) – Acquiring agency must provide the owner with an appraisal.
3. [Sec. 32.05\(3\)\(m\), Wis. Stats.](#) – Acquiring agency must offer to acquire uneconomic remnants concurrently with the required purchase. An uneconomic remnant is defined as "... the property remaining after a partial taking... of such size, shape, or condition as to be of little value or of substantially impaired economic viability."
4. [Sec. 32.09, Wis. Stats.](#) – Sets out standards which govern the determination of just compensation such as:
 - Allocation of damages.
 - Appraisers are not to consider an increase or decrease in value prior to valuation caused by proposed public improvement.
 - Appraising a property based on its most advantageous use but only such use as actually affects present market value.
 - Concluding damage figure based upon higher of before and after appraisal, or value of property taken as a separate entity. For separate entity information, see sub-section 2.2.1 of this manual.
 - Defining a comparable sale.
 - No compensation for police power action.
 - Proper easement appraisal techniques.
 - Special benefits and how they can offset damages.

Appraisals performed for federal or federally assisted real property acquisition must follow the URA requirements. An appraiser encountering conflicting requirements between the URA and USPAP may be able to work within USPAP standards via the [Jurisdictional Exception Rule](#) as found in USPAP. If any provisions of the Uniform Act or Wisconsin Statutes, case law or regulations conflict with USPAP, then the requirements of the Uniform Act or state statute or regulation take precedence. This is allowed under the jurisdictional exception provision of

USPAP. An appraiser encountering conflicting requirements between the Uniform Act and USPAP can still be consistent with USPAP standards via the Jurisdictional Exception Rule. The Jurisdictional Exception Rule states if any part of USPAP is contrary to the law or regulation of any jurisdiction, then the conflicting part of USPAP is void and of no force or effect in that jurisdiction, but only that part of USPAP becomes void for that assignment. Invoking the Jurisdictional Exception Rule will in no way undermine the intention of USPAP. If relying on the jurisdictional exception, the appraiser must:

1. Identify in the appraisal report, the law or regulation that precludes compliance with USPAP;
2. Comply with that law or regulation; and,
3. Clearly state in the report the part of USPAP that is voided by the law or regulation.

The income approach is generally not allowed in eminent domain valuations, and so a jurisdictional exception would likely be used in most eminent domain appraisals produced for WisDOT. When the appraisal does not include the income approach, the appraiser should cite *Leatham Smith Lodge v. DOT*, 94 Wis. 2d 406, 288 N.W. 2d 808 (1980). For this, the appraiser would need to insert language on the order of one of the following examples:

Example 1: If the subject is an income producing property, the valuation analysis of the subject by the Income Capitalization Approach and Standards Rule 1-4(c) of USPAP would normally apply. However, Wisconsin case law pertaining to eminent domain states that “evidence of net income is ordinarily inadmissible for purposes of establishing property values in condemnation cases involving commercial enterprises because income is dependent upon too many variables to serve as a reliable guide in determining fair market value.” Source: *Rademann v. DOT*, 2002, WI App 59, 252 Wis.2d 191, 642 N.W.2d 600, 00-2995. In accordance with Wisconsin case law, the Income Capitalization Approach has been omitted from this appraisal report.

Example 2: Based on a Wisconsin Supreme Court decision in *Leatham Smith Lodge, Inc. vs. State of Wisconsin* (1980), the income approach is considered inapplicable in eminent domain valuations (so long as sufficient market data is available). Therefore the income approach will not be developed in this appraisal report. The omission of the income approach is not considered to be misleading or inappropriate for this valuation assignment.