



## 2.2 RULES OF JUST COMPENSATION, THE PART TAKEN AND GENERAL REPORT INFORMATION

In all matters involving the determination of just compensation in eminent domain proceedings, [s. 32.09, Wis. Stats.](#), must be followed. Reference either the Wisconsin Statutes or the "Highway and Transportation Laws and Rules" book for specific detail. For a partial taking other than an easement, [s. 32.09, Wis. Stats.](#) requires WisDOT to pay the greater of either the fair market of the property taken or the sum determined by the difference in the before and after values.

### 2.2.1 Separate Entity

All appraisals require a statement addressing the issue of "separate entity." The part taken is either a separate entity and is to be appraised as a separate entity or it is not a separate entity and it is to be appraised as the contributory value to the larger parcel. The acquisition, subject of the appraisal, is a separate entity if it can be recognized by the market as an independent marketable entity. A true separate entity meets the requirements of the highest and best use analysis to be considered a separate saleable site. The subject exhibits size and shape characteristics that make it marketable to a third party. The appraiser must consider all the characteristics which affect marketability including such things as zoning and its restrictions, location, soil suitability, demand for the considered use, access, etc. The subject's relation to the remainder cannot be considered. If the appraiser determines that the part to be acquired has the potential to be independently saleable, he/she must make a separate analysis of the part. The same rules regarding support and documentation apply to this situation as if this were a separate whole taking. There may be instances where one portion of the taking could be separately saleable whereas other parts are not. In these cases the contributory value of the other portions of the acquisition may be severely diminished.

### 2.2.2 Contributory Value of the Part Taken

The value of the part taken lies in its contributory value to the value of the larger parcel. The value of the larger parcel determines a unit value (acres, feet, hectares, etc.) that is applied to the part taken. This value is arrived at using the federal rule before and after appraisal method. In these cases, unit value of the part taken shall be considered to be the same as unit value of the property in the before condition. A simple statement to the effect that it is your opinion the value of the part taken is no more than equal to its contributory value as part of the whole will suffice to satisfy the separate entity issue for these appraisals. In cases where both the separate entity and the contributory value are analyzed, the state will pay the greater of the two.

### 2.2.3 Special Benefits

Special benefits accruing to the property that effect its market value can be considered and used to offset the market value of the property acquired and any severance damages occurring to the property as detailed under [s. 32.09\(6\) Wis. Stats.](#) However in no event shall these

special benefits be allowed to exceed the damages to the property as measured by either the before and after basis or the part taken.

### **2.2.4 General Information Required**

Limiting conditions - Clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions used in the assignment. An extensive list of conditions that remove responsibility from the appraiser for areas where the appraiser has control and expertise shall be avoided because this reduces the credibility of the report. The professional should determine limiting conditions.

Reports and recordkeeping - Only one appraisal for each parcel shall be obtained except in those cases where the acquisition presents a complex appraisal or negotiation problem, or when the owner has their own appraisal done. The complexity of the situation, extreme divergence of value between the owner's report and the state's report, or other situations can be cause for ordering an additional report. If possible, the need for an additional report and the timing of that report should be discussed at the project management conference. Regional Real Estate management, with concurrence from the central office review appraiser, will make the determination as to whether a second report is need and whether that report should be secured right away or after receipt of the owner's appraisal. Rejection of a report by the Bureau of Technical Services-Real Estate review appraiser is a determining factor in ordering a second report.

Subject property sales history - A chronological listing of all sales of the subject property in the last five years is required. Recent sales of the subject are important since the sale of the subject (other things being equal) will be its own best comparable. A sale of the subject property that took place beyond five years might still be one of the best comparables available if there are very few other sales of a similar nature. Carve outs of portions of the present subject property may also be extremely relevant and important as comparables. A detailed discussion by the appraiser is necessary if the recent sale of the subject is not considered a comparable property.