



10.1 SIGN STATUS AND SIGN CATEGORIES

To evaluate a sign for acquisition or appraisal purposes, WisDOT must first determine the legal status and category of the sign involved. The result of this analysis will determine the steps to follow before the sign is appraised, acquired, realigned, removed or relocated. Several questions need to be answered as part of the analysis, such as:

- Could sign be relocated to a different site or realigned on the same property?
- Is a real property interest going to be lost, and if so, should the appraisal of the real property include the sign site?
- Is sign conforming or nonconforming under local zoning or sign ordinances?
- Is sign conforming or nonconforming under Wis. Stat. §84.30?
- Is sign grandfathered?
- Is sign legal?
- What are terms of lease, if any?
- What is the sign's category (e.g., religious notice, directional, on-premise, off-premise, etc.)?

A sign's category is important because it affects whether the sign can be relocated to a new site or realigned on the same parcel. Its category may also affect the extent to which the sign site contributes to the value of the real estate. The WisDOT regional outdoor advertising sign coordinator can identify a sign's category, offer an opinion on its legal status, and help determine if the sign needs to be addressed in the appraisal and acquisition process. Keep in mind, the legal status and category of a sign can change during the life of a project, so an initial determination may need to be changed.

10.1.1 On-Premise vs. Off-Premise Signs

Under state, federal and many municipal and county laws and regulations, signs advertising a business conducted at a location (on-premise signs) are generally regulated differently than signs advertising products or businesses that are not located on the property. On-premise signs are often owned by the person who also owns the underlying fee interest in the real estate or a long-term tenant. Off-premise signs are often owned by a business located elsewhere and are erected on the fee owner's land pursuant to some type of easement, lease or verbal permission.

Signs are considered "on-premise" under Wis. Stat. §84.30 if they are constructed at a business location, advertise a business conducted at the property, and are located within the area bounded by the buildings, driveways and parking areas in which the activity is conducted or within 50 feet of that area.

Signs are considered "off-premise" under Wis. Stat. §84.30 if they do not meet the conditions described above. For example, a sign is an off-premise sign if it is located on an area across a street or road from the area where the business is conducted or any area developed for erecting a sign. (Trans 201.02(9)).

10.1.2 Illegal Signs

A sign that was erected or maintained in violation of the law is considered an illegal sign. Wisconsin Statute §84.30, and [Trans 201](#), are enforced by WisDOT's regional outdoor advertising sign coordinators. Local ordinance violations are enforced by local government authorities. In the context of a highway project, illegal signs may be removed without any compensation and are not eligible for relocation benefits. Before the sign may be removed, however, a process must be followed. See REPM 10.3.4.

10.1.3 Conforming Signs

A conforming sign is one that meets the provisions of the state highway beautification laws, Wis. Stat. §84.30 and [Trans 201](#). Wisconsin Stat. §84.30 generally prohibits the erection and maintenance of off-premise outdoor advertising signs along the state highway system. However, the statute allows signs to be erected at specific locations for specific purposes. The significance of conforming status is that the sign is lawfully in existence and is not subject to removal, unless there is a change in certain circumstances. Examples include:

- A conforming sign may become a nonconforming sign. For example, if zoning were changed from commercial to residential where an initially conforming sign was lawfully erected, the change in zoning would make the sign nonconforming.
- A conforming sign may become an illegal sign. For example, conforming signs are limited to 1,200 square feet. If a sign was properly erected and permitted and is later enlarged to 1,500 square feet, it would become illegal. Its permit is subject to revocation, and the sign is subject to removal.
- Physical changes can affect the status of a sign. For example, the relocation of a highway may result in a sign becoming visible from the new highway and therefore subject to regulation.
- The construction or extension of a turning lane might result in a sign violating intersection spacing requirements, thereby making the sign nonconforming.

Under the federal Highway Beautification Act, states cannot consider local zoning specifically adopted for the sole purpose of permitting billboards when determining whether an area qualifies for billboard erection. WisDOT occasionally encounters a property that has been rezoned for the specific purpose of allowing construction of a billboard sign. WisDOT cannot recognize such zoning for outdoor advertising purposes. Conforming signs may only be erected and permitted if local zoning is enacted for legitimate development purposes and not merely to allow the erection of a billboard. If this occurs, WisDOT RE staff should contact the regional outdoor advertising sign coordinator, BTS-RE, and OGC. Signs in this situation may be illegal, even if permitted and may be removed without compensation following issuance of a removal order and a hearing, if requested. (23 CFR §750.708(b); and Wis. Stats. §§84.30(2)(b) and (2m)).

10.1.4 Special Sign Categories

Under state and federal sign statutes and regulations, some signs are given special treatment, usually because the signs benefit the public. For example, to direct the public to tourist attractions, "directional signs" may be erected. ([Trans 201.05](#)) Some of the more common categories of signs that are given special treatment include political signs, real

estate “for sale” signs, directional signs, utility signs, and service club or religious meeting notices. A sign that was permitted or allowed to exist because it fell into one of these special categories may become illegal if its message is changed to a message that does not qualify for the exemption. A sign that qualifies for one of these special categories may be eligible to be relocated.

10.1.5 Nonconforming Signs

A nonconforming sign is a sign that lawfully existed on March 18, 1972, and is located outside of a business area, or is a sign that was lawfully erected after March 18, 1972, but subsequently did not conform to Wis. Stat. §84.30. Signs can also be nonconforming under local ordinances; however, in this chapter, nonconforming refers to nonconforming with Wis. Stat. §84.30, unless otherwise indicated.

Most signs that were lawfully in existence prior to the enactment of Wis. Stat. §84.30, but that do not fall within any of the exceptions for conforming signs are considered nonconforming signs. For example, signs that were lawfully in existence in areas zoned agricultural or residential at the time the law took effect on March 18, 1972, do not meet any of the exceptions in Wis. Stat. §84.30, and therefore would be nonconforming. It is necessary in most cases to review records to determine if a sign lawfully existed as of that date. The regional outdoor advertising sign coordinator can make this determination. If there is uncertainty as to the status, contact the BTS-RE acquisition facilitator.

If a structure is classified as a nonconforming sign, even if the sign has been legally maintained, it is subject to removal upon order by WisDOT. Unless the sign is illegal, Wis. Stat. §84.30(6) requires WisDOT to pay just compensation to the sign owner and the owner of the sign site when the sign is removed. This is significant in a real estate context because signs acquired under Wis. Stat. §84.30(6) are not Wis. Stat. §32.05 acquisitions by WisDOT, and are not subject to eminent domain provisions, such as eligibility for attorney fees under Wis. Stat. §32.28.

Failure to abide by the restrictions applicable to nonconforming signs can result in the sign becoming illegal and therefore subject to removal without compensation. If a sign is nonconforming, the regional outdoor advertising sign coordinator must investigate whether any conditions have been violated that would render the sign illegal. WisDOT policy is to remove illegally maintained signs following the procedures in Wis. Stat. §84.30.

The following requirements are for nonconforming signs:

- It must remain substantially the same as it was on the effective date of the state law. For example, adding lights to an unlighted sign, changing the materials from which the sign is constructed, or adding support poles, may result in a sign that is no longer substantially the same as the original structure.
- It cannot be relocated to another nonconforming site; however, may be moved to a conforming site.
- It cannot be enlarged.
- It may continue as long as it is not abandoned. Under a subjective test, a sign is abandoned if there is evidence that the owner intended to abandon the sign. This might happen if a landowner refuses to renew a lease and the tenant sign owner decides to walk

away. Under an objective test, a sign is considered abandoned if it carries obsolete or no advertising material for 12 months, is in substantial disrepair for 12 months, if the owner's name is not on the sign or in WisDOT's records, or if the sign owner fails to pay annual sign fees.

- It may be reasonably repaired and maintained (for example bolt tightening and structure painting), but repairs cannot exceed 50% of the sign's replacement cost (see below). Repairs must leave the sign substantially the same as it was when it became nonconforming. Message changes are permitted, but wholesale replacement of the face of the structure would need to be evaluated.
- It may continue as long as it is not destroyed. A sign is considered destroyed if it is damaged in excess of 50% of its replacement cost. The Wisconsin Department of Administration's Division of Hearings and Appeals has held that replacement cost is the actual cost to erect an identical sign and includes the cost of the identical material and labor necessary to reconstruct an identical sign. The evaluation requires determining the cost to reproduce the sign as it existed when it became nonconforming. This amount is then compared with the amount it would cost to repair the damaged sign using identical materials and expected labor costs. Regional outdoor advertising sign coordinators use a template to calculate this amount and should be contacted in this situation. See APPENDIX E: Worksheet for determining ratio of outdoor advertising sign repair costs to replacement costs (RE2240).

The nonconforming status of a sign depends mainly on the pertinent zoning. A legitimate change in zoning may enable a sign to be conforming where it was once nonconforming. For example, a previously rural location containing a nonconforming sign in a farm field could be annexed into a municipality, zoned, and developed as a business area. Investigation is warranted to determine whether the change in zoning is legitimate. See REPM 10.1.3 for more on this subject.

It is possible for a sign that was erected as a conforming sign after March 18, 1972 to become nonconforming because of a change in the underlying zoning. For example, a legally permitted sign located in an area zoned as business may become nonconforming if the area is rezoned for condominiums after business development fails to occur.

10.1.6 Grandfathered Signs

Grandfathered signs are similar to nonconforming signs in that these signs lawfully existed on March 18, 1972, when Wis. Stat. §84.30 took effect. However, this category is limited to signs that were located in business areas and did not conform to the size, spacing, and lighting restrictions required to be considered a conforming sign. (Wis. Stat. §84.30(3)(d); Trans 201.02(4)) Grandfathered signs are subject to the same conditions and restrictions as nonconforming signs. Like nonconforming signs, they can lose their status if they are changed in violation of the statutes and regulations. Such violations render them illegal and subject to removal without compensation.

The difference between nonconforming signs and grandfathered signs is that grandfathered signs are considered one of the exceptions to the general prohibition of signs in Wis. Stats. §§84.30(3) (intro) and 84.30(3)(d). Therefore, they are not subject to removal under Wis. Stat. §84.30 as a part of a regulatory scenic improvement program. This is consistent with the underlying policy that outdoor signs are less of a scenic problem in business areas. Grandfathered signs that are removed qualify for compensation under Wis. Stat. §84.30(6).

It may be possible for a grandfathered sign to become a conforming sign. For example, a grandfathered sign in a business area along a state highway might be too close to another sign to be eligible for permitting. If one of the signs is removed, then the spacing problem for permitting would be eliminated, and the grandfathered sign could be permitted and brought into conforming status.

Along Interstates, “business areas” are limited to areas that are within the incorporated boundaries of the municipality, as those boundaries existed on September 1, 1959. If those boundaries did not exist on that date, the sign cannot be permitted along the Interstate.

10.1.7 Determining Sign Status and Category - Summary

In summary, it is important to determine a sign’s legal status and category accurately. This should be completed at the corridor planning stage, but no later than at the 30% design stage of a highway project to allow sufficient time to analyze and relocate, remove or realign any signs as needed under state or local laws. The process of determining the status of each sign may be lengthy and involve the regional outdoor advertising sign coordinator, BTS-RE, and OGC.