



## 10.2 COMPENSATION AND RELOCATION BENEFITS

### 10.2.1 Background

There are separate legal bases for compensation and/or relocation benefits for the acquisition, relocation, realignment or removal of a sign, depending on whether the sign is nonconforming, or conforming. Wisconsin Stat. §84.30 provides the basis for compensation for nonconforming signs. By contrast, conforming sign compensation is determined under Wis. Stat. §32.05: whereas relocation benefits are determined under Wis. Stats. §§32.19 – 32.195(4) and Adm 92.64.

Relocation benefits are provided under Wis. Stat. §32.19 as a reimbursement, which may include actual move payments and search expenses. Wis. Stat. §32.195(4) provides for payment of the cost of realignment of personal property on the same site.

The concept and phrase “just compensation” is the constitutional requirement that the government shall not take property without just compensation. This is the constitutional basis for the state’s eminent domain laws, found in Wis. Stat. Chapter 32. Historically, personal property is not considered a compensable interest when affected by the acquisition of the underlying real estate. Personal property is considered moveable and no just compensation is due to the owner of the personal property. Typically, where a sign owner is a tenant, the constitution would not require payment of just compensation to that sign owner.

The U.S. Congress and Wisconsin state legislature created additional payments separate from the concept of just compensation, so that people with personal property who are required to relocate due to a government project are provided relocation assistance. These payments are provided under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act) and federal code 24 CFR Part 24. State relocation assistance laws are found in Wis. Stats. §§32.19 - 32.27 and Adm 92. The provisions of Adm 92.64 apply specifically to conforming outdoor advertising signs.

Further, the state legislature (at the behest of the U.S. Congress in the federal Highway Beautification Act) established additional compensation requirements for nonconforming signs under Wis. Stat. §84.30. The Wisconsin Supreme Court has held that §84.30 provide the exclusive means for determining just compensation for nonconforming signs. (*Vivid, Inc. vs. Fiedler*, 219 Wis. 2d 764, 580 N.W. 2d 644 (1998)).

WisDOT generally treats the sign site as a real estate interest. If WisDOT determines that a sign can be realigned on the same property (e.g., sign conforms to state requirements) and the property owner(s) will have a sign site in the after condition, WisDOT will not acquire the sign site. The only payment due the property owners and interest holders in that case will be reimbursement for the cost of realigning the sign on the same site. In contrast, where no sign site will exist after WisDOT’s acquisition (e.g., the sign does not conform to Wis. Stat. §84.30), WisDOT will acquire all right, title, any permit, and interests related to the sign site as part of its acquisition and must pay just compensation to the owners. The just

compensation will be determined in an appraisal of the entire parcel acquired and will include the real property value of the sign site. This is referred to in this chapter as the Total Outdoor Advertising Real Property (TOARP). No relocation payments will be provided if the sign structure is acquired as part of the real property.

Under Wisconsin property law (*Old Line Life Insurance Co. of America vs. Hawn*, 225 Wis. 627, 275 N.W. 542 (1937)), sign structures are considered personal property if they are owned by a tenant. A sign structure will only be treated as part of the real estate if the sign owner also owns the real estate in fee or owns a permanent easement for the sign. The most common situation WisDOT encounters is when the land is owned by one party and the sign is owned by a tenant sign company that has a lease with the landowner. However, if one owner owns the sign site, the underlying fee, and the sign structure, the structure is a fixture and will be treated as real property.

As stated above, for valuation purposes, WisDOT considers the entire property as a single unit and all the various interest holders as a single owner. The appraiser values the entire parcel as a unit. Legal contracts between landlords and tenants or between fee owners and easement owners do not increase the value of the real estate beyond what the land is worth without those complex contracts.

The Supreme Court held, in the case of the *City of Milwaukee Post No. 2874 Veterans of Foreign Wars of the United States vs. Redevelopment Authority of the City of Milwaukee*, (2009 WI 84. 39), under the unit rule, there is no separate valuation of improvements or natural attributes of the land. The manner in which the land is owned or the number of owners does not affect the value of the property. When property that is held in partial estates by multiple owners is condemned, the condemnor provides compensation by paying the value of an undivided interest in the property rather than by paying the value of each owner's partial interest. Simply stated, the unit rule determines the fair market value as if only one person owned the property. When the value of the property is determined, the condemnor makes a single payment for the property taken and the payment is then apportioned among the various owners, in a separate action.

## 10.2.2 Conforming Sign Compensation

### 10.2.2.1 Realignment Under Wis. Stat. §32.195(4) and §84.30(5r)

Conforming signs are in areas where signs are allowed, therefore, it may be possible to realign a conforming sign on the same property. If the existing sign conforms to both state law and local requirements, and can be realigned on the same site, the cost to realign it may be reimbursed as a relocation payment to the owner under Wis. Stat. §32.195(4). In such a situation, WisDOT does not acquire the sign site (or the structure).

When a sign is conforming to state requirements but nonconforming under local zoning or ordinances, sign realignment on the same parcel is also possible. Wis. Stat. §84.30(5r) allows realignment of signs under this circumstance. Under Wis. Stat. §84.30(5r), WisDOT must first identify that the sign is legal and conforms to state law. However, if the sign is determined by WisDOT to be nonconforming under local zoning or a local ordinance, WisDOT may, but is not required to, propose realignment of the sign on the same site. Realigning a sign avoids the need for the state to acquire the sign site and

structure. If this occurs, WisDOT does not acquire a sign site, because the sign site has not been lost. The department will, however, pay for the reimbursement of relocation costs for realigning the sign structure on the same property. Realignment costs include uninstall, moving, storage (if applicable) and reinstallation costs on the same property for the same sign. Realigning a sign does not qualify the sign company for the provisions found under Adm 92.64 moving payment for outdoor advertising signs. Realignment provisions under Wis. Stat. §32.195(4) and Wis. Stat. §84.30(5r) can be used for both on-premise and off-premise signs.

If a municipality wants to prevent the realignment, it can ask WisDOT to acquire the sign site rather than realign the sign. WisDOT will then acquire the real property interests. The municipality will then be liable for costs in excess of the relocation costs to realign the same sign.

If the region is unsure if the sign will be realigned on the same parcel, an appraisal that includes the sign site should be undertaken. If it is later determined the sign site will not need to be acquired, the appraisal will be adjusted accordingly.

Realigning a sign does not qualify the sign owner for the provisions found under Adm 92.64 moving payment for outdoor advertising signs. Realignment provisions under Wis. Stat. §32.195(4) and Wis. Stat. §84.30(5r) can be used for both on-premise and off-premise signs.

If state law prohibits the ability to erect a sign at a location, then Wis. Stat. §84.30(5r) is inapplicable, and any sign at that location will need to be acquired or removed as discussed elsewhere in this chapter.

To reiterate, when a sign can be legally realigned to another location on the same property under Wis. Stat. §32.195(4), and Wis. Stat. §84.30(5r), and the visibility of the sign as an advertising location is not diminished, the unit (all interests in the property considered as a single unit) is considered to have no loss in value. The sign site is present in both the before and after condition.

If WisDOT is certain that a conforming sign will be realigned on the same parcel, the appraisal of the acquisition parcel need not include the value of the sign site.

### **10.2.2.2 Relocation Under Administrative Rule 92.64**

If a conforming sign cannot be realigned on the same site, the sign site will likely need to be appraised and acquired as part of the real property acquisition. The region must decide if it is necessary for WisDOT to acquire the sign structure as well or acquire only the sign site as part of the real property and allow the sign owner to retain the sign structure and provide relocation reimbursement to move it to a new site. Regardless of whether the structure itself is acquired by WisDOT, the sign owner and the underlying fee owner will receive compensation for the real property being acquired, which will include the value of the sign site. The compensation will be determined in the appraisal of the real property.

When WisDOT does not acquire the sign structure, the department will reimburse the sign owner for actual move costs, including search expenses up to \$2,500 and moving

expenses related to the relocation of the structure consistent with Adm 92.64. Move expenses may include disconnecting and reconnecting electricity to a sign if the subject sign was lighted in the before condition. Relocating a sign does not qualify the sign owner for reestablishment expenses.

Under Adm 92.64(5), the sign owner may choose a payment in lieu of actual and reasonable moving costs. WisDOT requires income tax returns to establish adequate documentation for payment. See REPM 5.7.13 for details regarding this provision.

### 10.2.3 Nonconforming Sign Compensation

Usually, a nonconforming sign cannot be realigned on the same property. Nonconforming signs may not be relocated to locations that do not conform to the requirements of state law under Trans 201.10(2)(c). Therefore, usually, WisDOT must appraise and compensate for the loss of the TOARP when impacting a nonconforming sign.

Occasionally circumstances may make it possible to bring a nonconforming sign into conformance when a highway project affects a sign. For example, if the only reason a sign is nonconforming is related to spacing requirements from an intersection or another sign, it might be possible to realign the sign in a manner that meets all the requirements of state law. In rare instances, a permit could be issued to move the sign to a new, conforming, location on the same property. If the sign owner realigns the sign on the same property, neither the sign site nor the sign structure is acquired by WisDOT. The sign owner would in that case be entitled to reimbursement for the cost to realign personal property on the same property under Wis. Stat. §32.195(4). No damages would accrue to the sign owner because the department would not have taken any of their “right, title and interest in and to the sign and the owner's leasehold relating thereto”, nor would WisDOT be “taking of the right to erect and maintain such signs thereon from the owner of the real property on which the sign is located.” (Wis. Stat. §84.30(7)) Because both the sign and the sign site would remain in the after condition, no compensation is due under Wis. Stat. §84.30.

If realigning the sign on the same parcel is not possible, WisDOT will acquire the sign site and the sign structure as part of the underlying fee acquisition. Generally, nonconforming signs affected by a project that cannot be realigned are acquired by WisDOT. In *Vivid, Inc. vs. Fiedler*, 182 Wis.2d 71, 512 N.W.2d 771 (1994) (“Vivid II”), the Wisconsin Supreme Court rejected WisDOT’s suggestion that such signs could be relocated under Wis. Stats. §32.19 when eminent domain proceedings related to a highway project required removal or relocation of a sign. “When a governmental body requires removal of billboards in its official capacity, Wis. Stats. §84.30(6) require just compensation for the removal.” (*Vivid II*, p. 81)

The court’s decision is consistent with the language of Wis. Stats. §84.30(6), (7) and (8). Subsection (6) requires just compensation be paid for a nonconforming sign if it is acquired outright or relocated. Subsection (7) provides that the compensation must include payment for the sign structure, any tenant sign owner’s interest in the sign site (the lease), and the property owner’s interest in the sign site. Just compensation for the sign structure is determined following the process in §84.30(6) to (8). The sign site and the structure will need to be valued as part of the appraisal process.

This reading of the law is set forth in a successor case to *Vivid II* involving the same parties and signs. In *Vivid IV* (“Vivid IV”), the Wisconsin Supreme Court ruled that §§84.30(6) to (8)

is the sole means by which compensation is available to owners of removed nonconforming signs. (*Vivid, Inc. vs. Fiedler*, 219 Wis. 2d 764, 580 N.W.2d 644 (1998)). The court determined that Wis. Stat. §84.30(7)(a) provides that sign owners are to be paid for all right, title and interest in a sign and any leasehold value, while Wis. Stats. §84.30(7)(b) provides that the landowner must be paid for the sign site, which is the “right to erect and maintain such signs” on the property. The court ruled that §84.30 requires WisDOT pay for the sign structure when it acquires a nonconforming sign site. Because WisDOT must pay for a nonconforming sign structure in any §84.30 acquisition, WisDOT generally acquires the nonconforming sign and removes it.

If WisDOT acquires a parcel of land, a nonconforming sign structure, and a sign site in a unit by agreement and the owners convey the property to WisDOT using a deed, as opposed to WisDOT acquiring through the use of an award of damages, because the parties have agreed upon the price, neither the property owner nor sign owner can appeal the compensation allocated for the sign site under Wis. Stat. §32.05 (the fee owner still has the right to appeal the compensation under Wis. Stat. §32.05, if any, for the remainder land rights WisDOT acquired). In contrast, when WisDOT acquires the land, sign structure and sign site by award of damages rather than by agreement, the sign owner or landowner, or both, may appeal the amount of compensation in a court action under Wis. Stat. §32.05.

When a nonconforming sign structure is purchased under Wis. Stat. §84.30(7), the sign owner is not eligible for relocation benefits under Adm 92.64 or Wis. Stat. §32.195(4), because the state has taken possession of the sign structure and the state does not pay relocation for property it already owns.

### **10.2.4 Grandfathered Sign Compensation**

Grandfathered signs are acquired and compensated in a manner similar to that for nonconforming signs.

### **10.2.5 Illegal Signs Get No Compensation**

Illegal signs are removed without compensation. See REPM 10.3.4. No relocation benefits are provided for owners of illegal signs under Adm 92.64 or Wis. Stat. §32.195(4).