



## 2.4 - EMINENT DOMAIN APPRAISAL CONCEPTS

### 2.4.1 - Larger Parcel

As stated in the Yellow Book, essential to the appraiser's analysis of highest and best use is the determination of the larger parcel. The Yellow Book defines the larger parcel as that tract, or those tracts, of land that possess a unity of ownership and have the same, or an integrated, highest and best use. Elements to be considered in determining the larger parcel are contiguity (or proximity) as it bears on the highest and best use of the property, unity of ownership, and unity of highest and best use.

#### Larger Parcel

- The Dictionary of Real Estate Appraisal 6th Edition, published by the Appraisal Institute, defines the larger parcel as:

In governmental land acquisitions, the tract or tracts of land that are under the beneficial control of a single individual or entity and have the same, or an integrated, highest and best use. Elements for consideration by the appraiser in making a determination in this regard are contiguity, or proximity as it bears on the highest and best use of the property, unity of ownership, and unity of highest and best use.

Historically, the concepts of unity of highest and best use and unity of ownership have been the primary considerations in making a larger parcel determination. These concepts generally mean that the parcels must share the same highest and best use and must be held under the same quality of ownership to be considered as one property. Courts have held that diversity of ownership is not necessarily a preclusion to considering tracts as part of a larger parcel where the tracts abut and are used in common by the owners pursuant to some sort of agreement. Also, a situation where one parcel is held by a corporation solely owned by a single person, and the same single person owns the adjoining tract, does not preclude consideration as one parcel. Unity of highest and best use in determining the larger parcel, as with any other highest and best use analysis does not refer just to the existing use of the parcels being analyzed, but rather refers to the potential uses of the property in question. Contiguity is recognized as the third element of consideration in determining the larger parcel; however, the fact that parcels are not contiguous does not necessarily mean they are not part of the same larger parcel.

In most appraisal assignments, it will be important for the appraiser to include all of the owner's potential parcels in the larger parcel in order to establish the tracts that may be damaged or benefited by the proposed acquisition. The Wisconsin Supreme Court's decision in *Bernice Spiegelberg v. State of Wisconsin and Department of Transportation* provided an alternative point of consideration. Based upon *Spiegelberg*, if a property owner owns multiple individual tracts of land that could potentially qualify as a larger parcel, if combined, it is not a requirement that they be combined. With *Spiegelberg* in mind, a highest and best use analysis must be performed on each potential larger parcel configuration (variable combinations or individual tracts), and the appraiser must look at which alternative is the most advantageous use of the tracts in question. This position is not inconsistent with the concept of highest and best use. The appraiser need not report the highest and best use of every potential combination; however,

they must provide adequate information in their appraisal report to show that all of the options were considered, and why the option reported was the appropriate one.

If questions arise as to the determination of the larger parcel for an appraisal assignment, the appraiser is encouraged discuss the larger parcel determination with the assigned review appraiser and WisDOT legal counsel.

#### **2.4.1.1 - Separate Entity**

In addition to the potential larger parcel options described in REPM/Subsection 2.4.1 above, there is the possibility that the proposed partial acquisition itself may qualify as a larger parcel.

Section 32.09(6), Wis. Stats. refers to the fair market value of the property taken as of the date of evaluation. Typically, the fair market value of the property taken (see REPM/Subsection 2.0.2.1.2) will be based upon a partial acquisition (of a larger parcel) that is either too small or of an insufficient dimension to be considered as a separate independently utilized tract of land (separate entity). In this case the part taken is valued based upon its contribution to the larger parcel (as determined under REPM/Subsection 2.4.1). If, however, the acquisition involves a fee taking that is of a sufficient size and dimension to be developed as an independent, stand alone, parcel, or separate entity, then the appraiser should consider the possibility that the acquisition itself may be the larger parcel. This is consistent with the direction of Section 32.09(6), Wis. Stats. to identify the fair market value of the property taken. In the case where the part taken can be considered as a separate entity, the appraiser must perform a highest and best use analysis based upon a total acquisition of the possible separate entity. This analysis then needs to be compared to the larger parcel options, developed for the acquisition as a partial taking from a larger parcel, to determine the appropriate larger parcel for their appraisal. The separate entity should not automatically be assumed to be the most advantageous larger parcel configuration for the property owner.

The analysis of the part taken as a separate entity must include a full highest and best use analysis that addresses all four tests for highest and best use (legally permissible, physically possible, financially feasible and maximally productive). It is insufficient to just show that a separate independent use of the part taken is legally permitted, physically possible and produces the maximum value, without analyzing the supply and demand within the subject's market area to determine if the use that produces the maximum value is financially feasible. If there is an excess supply of lower priced competing properties for the identified use, or if there is no demand for the use identified as establishing the maximum value, then the use that provides the maximum value will not be financially feasible. The issue of financial feasibility is often overlooked when considering the part taken as a separate entity. However, without a full highest and best use analysis, which includes a consideration of financial feasibility, the appraiser cannot support their selection of the comparable sales or the comparable adjustments. Nor will the appraiser be able to support their determination of the use that produces the maximum value.

The following items are possible areas of concern when considering the part taken as a separate entity:

- Is the zoning relied upon for the determination of legal permissibility currently in place, part of a future land use plan, or an extraordinary assumption on the part of the appraiser?
  - If the zoning is not currently in place, then the appraiser must make allowances for the time and effort to change the zoning and any possible discounts to value that would result.
- Do the size, dimensions and topography of the separate entity allow flexibility in the development of the site, or are development options limited?
  - If the options are limited, then the lack of flexibility is an issue that must be considered in the highest and best use analysis and valuation process.
- What is the relationship between supply and demand (financial feasibility) in the market area of the potential separate entity?
  - Typically acquisitions that are capable of independent development are created in rural or transitional (rural to commercial or residential) areas. In this type of an area, the appraiser must consider whether there is a demonstrable demand for the property use identified for the potential separate entity and how many alternative sites are available. For example, it is difficult to claim a commercial value based upon a high demand area, when the separate entity is located in a rural area surrounded by available agricultural land.
- How does the total taking value of the separate entity compare to the partial taking of the larger parcel, which would include possible severance damages?
  - The appraiser must keep in mind that valuing the part taken as a separate entity results in a total taking. There is no remainder, and therefore there is no chance to consider the possible impacts of grade changes, changes in proximity or access, or any other possible negative impacts to the larger parcel that would be the subject of a partial acquisition.

The consideration of the part taken as a separate entity is considered to be appropriate, based upon Section 32.09(6) Wis. Stats., and is not inconsistent with the concept of the highest and best use analysis. However, the identification of the part taken as a separate entity does not relieve the appraiser of their responsibility to carry out an appropriate highest and best use analysis and the need to show that the identification of a separate entity is supported by the available market data.

## 2.4.2 - Application of the Unit Rule

As stated in The Yellow Book, the market value concept in federal acquisitions generally requires application of the so-called unit rule, a principle developed by the federal courts that dictates what is to be valued for just compensation purposes. Under the unit rule, the property being appraised must be valued as a unitary whole and held in single ownership. The value of the whole cannot be derived by adding together the separate values of various interests or components. As a result, summation or cumulative appraisals are improper under federal law. The unit rule relates to ownership interests (estates) in real estate—such as landlord and tenant, or mortgagor and mortgagee—and to various physical components of real estate—such as timber, mineral deposits, farmland, and buildings.

### Unit Rule

- The Dictionary of Real Estate Appraisal 6th Edition, published by the Appraisal Institute, defines the unit rule as:
  - In condemnation appraisal, a valuation rule with two aspects, the first dealing with ownership interests and the second dealing with the physical components. The first aspect of the rule, also referred to as the undivided fee rule, requires that property be valued as a whole rather than by the sum of the values of the various interests into which it may have been carved (such as lessor and lessee, life tenant and remainderman, and mortgagor and mortgagee, etc.). This is an application of the principle that it is the property, not the interests, that is being acquired. The second aspect of the rule is that different physical elements or components of a tract of land (such as the value of timber and the value of minerals on the same land) are not to be separately valued and added together.

Before the concept of the unit rule can be applied to a parcel being appraised, a larger parcel analysis (as discussed in REPM/Subsection 2.4.1 above) must take place to determine what the property being appraised is. A parcel, as established by the TPP, may consist of a single larger parcel, or multiple larger parcels, depending on the appraiser's larger parcel analysis. The unit rule does not play a part in the larger parcel analysis, but the larger parcel analysis does define the property being appraised for the application of the unit rule. Once the property being appraised is defined by the larger parcel analysis, the unit rule will apply to the larger parcel(s) identified.

The first aspect of the unit rule, as defined above, requires that when an appraisal is being performed on a property with multiple ownership interests, the property is to be appraised as if all property rights are held by a single owner (undivided fee rule). The market value of the whole can then be apportioned among the various ownership interests. In this way, the interests are valued as a portion of the whole, rather than valuing them independently and adding them together. This valuation principle is consistent with the intended use of the appraisal, as a tool in determining just compensation, which is compensation for the property itself, not for the various ownership interests. Typically, in Wisconsin, the appraiser will not be asked to make an apportionment statement in their appraisal report. Apportionment is typically left to the parties involved, or it is left to the courts to decide.

The second aspect of the unit rule, as defined above, concerns itself with the physical elements of the "property being appraised. The unit rule does not permit separate physical components of a property, such as the timber located on the site; the mineral deposits located beneath the site; the site improvements and the remainder of the property to be valued individually and then

added together to estimate a value for the property being appraised (a cumulative appraisal). The property must be valued as a whole with the individual components considered only to the extent that they enhance or diminish that value.

A typical WisDOT appraisal is based upon a partial acquisition from a larger parcel; a valuation problem that will require that the appraiser estimate the value of the part taken, which may include land, site improvements and vegetation. On the surface, the solution to this appraisal problem may appear to depart from the unit rule; however, as will be discussed in REPM/Subsection 2.4.3, addressing the individual components of an acquisition based upon their contributory value will allow the appraiser to adhere to the unit rule while identifying the value of the individual parts taken.

### **2.4.2.1 - Contributory Value**

The majority of the acquisitions undertaken by WisDOT are partial acquisitions from a larger parcel. The value of these partial acquisitions will be determined by either the value of the part taken (see REPM/Subsection 2.0.2.1.2), which is based upon the contributory value of the acquisition, or under the before and after rule, which measures the difference between the value of the larger parcel before the acquisition and the value of the remainder of the larger parcel after the acquisition. The before and after rule will identify the contributory value of the property acquired together with any value loss or gain resulting from the acquisition and subsequent construction project.

#### Contributory Value

- The Dictionary of Real Estate Appraisal 6th Edition, published by the Appraisal Institute, defines contributory value as:
  - A type of value that reflects the amount a property or a component of a property contributes to the value of another asset or to the property as a whole.

Since the only reliable definition of contributory value includes the word “contribute” in it, it is necessary to include the definition of contribution to provide clarity.

#### Contribution

- The Dictionary of Real Estate Appraisal 6th Edition, published by the Appraisal Institute, defines contribution as:
  1. The amount a component of a property adds to the total value of the property. Contribution may or may not be equivalent to the cost to add the component.
  2. The concept that the value of a particular component is measured in terms of the amount it adds to the value of the whole property or as the amount that its absence would detract from the value of the whole.

The term contributory value does not refer to the value of a specific component of a property being analyzed, independent of the subject property. Contributory value refers to that portion of the market value of the subject property that is attributable to the specific component of the subject property (land, buildings, site improvements, timber, mineral rights, etc.) that is being analyzed. The concept of the contributory value of a component of a property is the basis of the value of the part taken, and the determination of the value of the part taken is a necessary step in the breakdown of the findings of the before and after rule.

### 2.4.2.2 - Following the Unit Rule in the Allocation Process

Appraisals prepared for WisDOT under REPM/Chapter 2 are intended for use in the eminent domain (condemnation) process, and are condemnation appraisals, as recognized in the definition for the unit rule (see REPM/Subsection 2.4.2). As condemnation appraisals, the principles, concepts and methods applied to appraisals prepared under REPM/Chapter 2 are required to adhere to the regulations, statutes and case law that address the process of developing and reporting condemnation appraisals. These rules may not necessarily affect appraisals prepared for purposes other than eminent domain, but they must be applied to appraisals prepared for eminent domain (condemnation).

One of the issues that can complicate the preparation of condemnation appraisals is the need to allocate the value determinations arrived at in the appraisal process. In the case of a total taking, it may be necessary to allocate the before value of the subject property between land and improvements. The complicating factor in the allocation process is that, under the rules for condemnation appraisal development, the appraiser must also adhere to the unit rule (undivided fee rule) as discussed above. In adherence to the unit rule, it is not permitted to separate physical components of a property, such as the site improvements and the land; value the components individually and then add them together, to estimate a value for the property being appraised (a cumulative appraisal). The appraiser may value the property in total (land and buildings) and then subtract the appraised value of the site as vacant to identify the contributory value of the improvements. Under this method, the value of the subject property as improved will reflect the undivided fee value of the subject property, the estimated land value may reflect the value of the subject's site under an extraordinary assumption, and the resultant (residual) value of the buildings would not depart from the unit rule. This method would be consistent with the unit rule and still provide a reasonable allocation of the subject property between land and buildings.

The following example will show how an improper allocation that does not adhere to the unit rule can result in an improper value finding:

Assumed facts for the example:

- Estimated market value of a residence (as improved) in an area transitioning to commercial - \$100,000.
- Estimated value of the site based upon a commercial use - \$90,000
- Estimated value of the site based upon a residential use - \$20,000

	Improper Allocation	Allocation Per Unit Rule
Land Value	\$90,000 (commercial value)	\$90,000 (commercial value)
Building Value	*\$80,000 (residential value)	**\$10,000 (transitional value)
Total Value	\$170,000 (mixed value)	\$100,000 (market value)

\*\$100,000 market value - \$20,000 residential lot value = \$80,000 residential improvement value

\*\*\$100,000 market value - \$90,000 commercial land value = \$10,000 transitional value of the improvements

The proper allocation maintains a consistent highest and best use for the property. The market value of the subject property and commercial land value are consistent with market data, and the residual transitional value for the improvements recognizes the property's transition to a commercial use, while still recognizing that the buildings will continue to contribute some value until the property is cleared for eventual commercial development.

The above discussion does not eliminate the possibility of valuing the land and improvements separately, and then adding them together when the appraisal problem dictates that this is the only reasonable valuation method available. However, the need for the use of this method must be clearly explained in the appraisal report, and care must be taken to avoid those inappropriate value effects that occur when not adhering to the unit rule.

### **2.4.3 - Valuation of Site Improvements**

For the purposes of REPM/Chapter 2, the term site improvement will be used to refer to any improvement to the subject property, except for primary building structures (examples: residences, commercial or industrial buildings, barns, etc.). Examples of site improvements include, but are not limited to, landscaping, driveways, fencing, wells and septic systems, irrigation systems, hardscaping, walls, etc.

The majority of WisDOT's right of way activities consist of partial acquisitions from larger parcels. The land components of these partial acquisitions primarily consist of fee takings; PLE; TLE or any combination of the above. There are other less common acquisitions; however, they all have the potential to contain, or affect, site improvements that will need to be addressed in an appraisal.

When site improvements are acquired, their valuation will be based upon their contributory value to the larger parcel in the before condition. There may also be a potential for severance damages, to the remainder of the larger parcel, resulting from the acquisition of the affected site improvements that will need to be addressed by the appraiser.

The following subsections will address the specific valuation issues associated with a number of typical site improvements affected by partial acquisitions. The methodologies presented are WisDOT's preferred methods. They are not to be construed as the only methods available to the appraiser. However, if the appraiser departs from the preferred methodologies, then they will need to provide support within their appraisal report for the method(s) employed.

The situations and methodologies presented do not cover all potential scenarios that could possibly exist. If the appraiser experiences an appraisal problem that does not fit a presented scenario, they are encouraged to discuss their particular circumstances with the assigned review appraiser.

#### **2.4.3.1 - Encroachment Identification**

An encroachment is a condition where a private site improvement, or land use activity extends into existing public roadway right of way. During the process of determining whether there is a potential for a proposed acquisition to result in the need to acquire site improvements, the appraiser must consult the project encroachment report. This will

help to determine if any of the potentially impacted site improvements are encroaching on the public right of way. If the report identifies a site improvement as an encroachment, the appraiser should confirm this condition with the project engineer. If subsequent right of way staking appears to contradict the encroachment report and suggests that an item identified as encroaching is in fact not encroaching, the appraiser should consult with the project engineer. If the right of way staking appears to indicate that an item, not identified in the encroachment report, is encroaching, the appraiser should consult with the project engineer.

The method for valuing encroaching improvements will depend on the nature of the improvement, the history of the affected property and any of a number of variables unique to the larger parcel and the project area. If the appraiser identifies an encroaching site improvement they must consult with the assigned review appraiser and the project manager to determine the appropriate method for dealing with the encroaching improvement in the appraisal.

#### **2.4.3.2 - Acquisition Options for Affected Site Improvements**

Once it has been determined that a site improvement, which is located within the area of the proposed acquisition, is not encroaching, then it will be necessary to determine whether or not the affected improvement will be acquired. The appraiser should utilize the following guidance in determining whether a non-encroaching site improvement should be valued for acquisition:

- If the site improvements fall within a fee taking then they will need to be acquired, even if they will not be removed as part of the current project for which the appraisal is being completed. This is because the improvements will fall within the new highway right of way and be under the control of WisDOT. WisDOT will then have the right to remove the improvements at any time after their acquisition.
- If the site improvements fall within an easement acquisition, then it must be determined if the project activity within the easement will result in the removal of the improvements.
  - If the activity will not result in the removal of the improvements, then they will not be acquired, and they will not need to be valued.
  - If the improvements will be removed as a result of the construction activity within the easement and will not be replaced as part of the project, then the improvements will need to be acquired and must be valued in the appraisal report.
  - If the project engineer cannot specifically determine if a site improvement within an easement area will be impacted by the proposed construction project, or if the appraiser is directed by the regional office to assume that a site improvement will be removed, then the improvements will need to be valued in the appraisal report.

### 2.4.3.3 - Fencing

Section 32.09(6)(g), Wis. Stats. addresses fencing, specifically, as an item of loss or damage to be considered in the estimation of compensation.

(g) Cost of fencing reasonably necessary to separate land taken from remainder of condemnee's land, less the amount allowed for fencing taken under par. (a), but no such damage shall be allowed where the public improvement includes fencing of right-of-way without cost to abutting lands.

In a partial acquisition of a larger parcel, if fencing is determined to be impacted by the proposed acquisition, or subsequent construction project, the potential impacts must be considered by the appraiser. The appraiser must determine the contributory value of the impacted fencing, and whether the potential loss of the impacted fencing will result in an identifiable severance damage. Before the appraiser can begin the task of valuing any fencing impacted by a partial acquisition from a larger parcel, there are several issues that need to be addressed:

- The location of the fence in relation to the existing right of way line should be checked since the compensability of the impacts to the fencing will be directly related to the location of the fencing.
  - If the fencing is located so far within the existing right of way that it is obvious that the property owner did not attempt to place the fence on the right of way line, then the fencing is encroaching on the highway right of way and no compensation for the encroaching fencing is warranted. If this condition exists, then the appraiser should consult with the project engineer to verify the right of way location in relation to the affected fencing.
  - If the fencing is located within the existing right of way, but sufficiently close to the right of way line to suggest that the owner attempted to recognize the line, then the impacts to the fencing should be considered and compensation estimated. If this condition exists, then the appraiser should consult with the project engineer to verify the right of way location in relation to the affected fencing.
  - If the fencing is located off the existing right of way, then the impacts to the fencing should be considered and compensation estimated.
- The appraiser must determine the condition of the impacted fencing. This is necessary to establish a depreciation factor for the calculations used to estimate the contributory value of the impacted fencing.
- The appraiser must determine how the fence is being used and whether it is part of a larger, functioning fenced perimeter. This will aid in the estimation of the contributory value of the impacted fence and the determination of whether there is a possibility for the existence of severance damages (cost to cure) resulting from the loss of the fencing. This will also identify whether there is a possible need for an allowance for the installation of additional fencing in the calculation of the cost to cure, or a possible need for temporary fencing.
- The appraiser must identify the type of fencing impacted and the materials used. This includes determining whether the affected fencing includes any gates, specialty corners or any non-typical building materials specific to the larger parcel.
- The appraiser will need to explain their final determination of the location, condition and utilization of the fencing in the appraisal report, and provide supporting evidence in the form of photographs, mapping and feedback from the project engineer.

The following are the department's preferred methods of estimating the contributory value of acquired fencing:

- The preferable method of valuing the acquired fencing is for the appraiser to abstract a contributory value for the impacted fencing from market data through the use of matched pairs or a market analysis.
- In the likely absence of market data, given the relatively minor value impacts of the lost fencing, the depreciated reproduction cost of the acquired fencing would be an acceptable representation of the contributory value of the affected site improvement. If the appraiser utilizes a cost service to estimate the replacement cost of the fencing acquired, then the cost service must be cited, and the appraiser's calculations must be included in the appraisal report. If the appraiser utilizes a local contractor to obtain an estimate of the reproduction cost of the fencing, then a copy of the estimate, or an email documenting the amount of the estimate must be included in the appraisal report. Appraiser citation of undocumented verbal estimates is discouraged and should be approved by the assigned review appraiser in advance of submitting the first draft of the appraisal report. The appraiser must provide analysis in the appraisal report to support their estimation of depreciation applied to the replacement cost of the affected fencing.
- As stated in REPM/Subsection 2.4.3, if the appraiser departs from the preferred methodologies, then they will need to provide support within their appraisal report for the method(s) employed.

The contributory value of the fencing acquired should be shown as part of the acquisition, not as an additional compensation, and should be subtracted from the before value to determine the after value of the remainder property.

In addition to the contributory value of the fencing acquired, there is a potential that the loss of the affected fencing may result in severance damages to the remaining site and improvements. The following items should be considered in determining if severance damages exist, and, in the event that they do exist, how the severance should be estimated:

- If the acquired fencing is not part of a functioning fenced perimeter (fencing structure), or does not act as a security barrier, then it is unlikely that the loss of the fencing will have any impact on the value of the remaining property.
  - Unless the appraiser can show market support for the existence of severance damages resulting from the loss of the affected fencing no cost to cure for the loss can be estimated.
- If the acquired fencing is part of an enclosed fencing structure (pasture, barn yard, kennel, play area, residential yard, etc.) then the appraiser may assume that the loss of the affected fencing will render the remaining fencing structure of little or no value to the remainder (severance damage). A statement of this fact will usually be sufficient to qualify an adequate level of severance damage to justify appropriate cost to cure (see REPM/Subsection 2.4.5.2) measures.
  - The cost to cure the loss of the affected fencing would logically be the cost to install a replacement fence at the proposed right of way line. This would include the cost of any necessary replacement gates, and any modifications to the remaining fence needed to accept the newly installed fencing.

- Once the cost to restore the fencing structure is determined, then the estimated contributory value of the fencing acquired must be subtracted from the replacement cost to avoid double paying for the affected fencing (once as an acquisition and once as a severance to the remainder).
- If the enclosed fencing structure, that the affected fencing is a part of, is in active use (containing animals or providing safety and security to people) and the proposed acquisition includes a TLE, that would not allow for the permanent construction of the replacement fencing at the new right of way line during construction, then an allowance for temporary fencing may be required. Even though the impacts to the enclosed fencing structure are temporary, there is a reasonable basis for the appraiser to indicate the existence of severance damages. These severance damages would likely be based upon either the permanent loss of use of the area within the TLE if the permanent fence were constructed at the TLE line, or the loss of full enjoyment of the entirety of remainder property during construction because of the lack of containment or security within the fencing structure.
  - The potential need for temporary fencing should be discussed with the project manager and the property owner to determine the actual needs for the fencing and the most appropriate type of fencing to propose.

The amount of the cost to correct the impacts of the loss of the affected fencing (the cost to acquire the affected fencing plus the calculated cost to cure severance damages) should be shown as part of the acquisition, not as an additional compensation, and should be subtracted from the before value to determine the after value of the remainder property.

The cost to move the affected fencing is a relocation issue, and not an acceptable method of estimating the contributory value of the fencing acquired. If the appraiser is informed at the time of the assignment, that the affected fencing will be acquired, then the appropriate valuation method is to determine the fencing's contributory value based upon the valuation methods outlined above. If, at the time of acquisition, however, the acquisition agent and the property owner agree that the fence should be moved under relocation, then the contributory value of the affected fencing and the cost to cure the loss of the affected fencing should be subtracted from the offer by the acquisition agent (based upon the allocated contributory value and cost to cure in the appraisal report), and a relocation advisor should be contacted to handle the relocation of the fencing. The need for the temporary fencing may still be a valid cost to cure, but this determination should be based upon the advice of the relocation advisor.

#### **2.4.3.4 - Driveways**

Driveways are considered to be site improvements that contribute value in two distinct ways. The first way that driveways contribute value is that they provide access to the subject property. If WisDOT changes access to the subject site and this change affects the market value of the larger parcel, in general, or the contributory value of the driveway specifically, compensation may be appropriate. Value loss due to an access change will be discussed in REPM/Subsection 2.4.4.5. The current subsection deals with the second way that driveways contribute value; as a physical improvement to the site. The act of installing a driveway requires effort and expense, and the existence of the resultant site improvement is assumed to contribute value. Therefore, in a partial acquisition of a larger parcel, if a driveway is impacted by the proposed acquisition, or subsequent

construction project, the potential impacts must be identified and considered by the appraiser.

In the appraiser's analysis of the proposed acquisition's possible impacts to the driveway in question, there is a statutory requirement to consider. Section 86.05, Wis. Stats. states that: whenever it is necessary, in making any highway improvement to cut or fill or otherwise grade the highway in front of any entrance to abutting premises, a suitable entrance to the premises shall be constructed as a part of the improvements. Thereafter each entrance shall be maintained by the owner of the premises. As a result of this statute, generally, all affected driveways are restored. To determine the physical impacts to the driveway being analyzed, the appraiser should review the project plan & profile for driveway placement and road proximity, determine which driveways will be replaced during construction, and summarize the findings in the appraisal report. Any questions regarding the potential impacts to a driveway should be directed to the project engineer.

The appraiser should provide a clear description of the driveway(s) being affected, including the in-place driveway materials (gravel, asphalt, concrete, paver stones, etc.) and its condition. The description of the driveway(s) should be noted in the subject property information (site improvements) section of the appraisal report (see REPM/Subsection 2.3.5, Item 12(F)). The appraiser should give the approximate location of all driveway(s) that serve the property. A good way to address the location of the driveway(s) is by reference to a property sketch, or some other mapping or aerial photograph, where they can be identified and/or by referencing the nearby highway stationing cited on the right of way plat. The purpose of the driveway(s) and the need for them should also be addressed. Under the appraisal report's description of proposed acquisition, any change in the property's driveway should be stated. The appraiser should indicate whether the affected driveway will be replaced in construction and what materials will be used for the replacement. The report's after condition description of the subject property should cite any changes from the before condition that will occur and what effect it may have on the driveway, specifically, and the remainder property, in general.

The following are scenarios for possible impacts to an affected driveway, and the preferred valuation solutions:

Scenario #1: WisDOT is replacing all of the affected driveway in like kind during construction (replacement square footage and driveway materials are the same or similar).

Example: WisDOT is acquiring a 20' wide strip of new fee that includes 20 linear feet of an existing driveway.

Valuation Solution: Generally, the owner should not be compensated for the 20' of existing driveway within the fee taking if the edge of the roadway is not moving (the driveway is not being shortened), and WisDOT is replacing the entire 20 feet within the area of fee taking in like kind.

Scenario #2: The replacement driveway materials included in the project plans are considered to be inferior to the original driveway materials.

Example: The original driveway is constructed with paver stones, and the replacement material will be concrete.

Valuation Solution: The appraiser should discuss the situation with the assigned review appraiser and project engineer to arrive at an appropriate method for valuing the impacts.

Scenario #3: There is a fee acquisition together with a physical shortening of the subject's driveway (WisDOT is not replacing all of the originally affected driveway in like kind).

Example: Under the example above, the driveway, which was originally 80 feet long is reduced in length to 60 feet. As a result of the fee acquisition and subsequent construction project, the edge of the roadway will shift and approximately 20 feet of the existing driveway will be acquired.

Valuation Solution: Compensation for the acquired driveway should be based upon its contributory value. If the appraiser is able to abstract a contributory value for that portion of the driveway that is not being replaced in like kind, from market data, that would be the preferable method of valuing the acquired driveway length; however, it is highly unlikely that this type of data will be available. Given the likely absence of market data, combined with the relatively minor market value impacts of the lost driveway length; the depreciated replacement cost of the acquired driveway square footage would be an acceptable representation of the contributory value of the affected site improvement. If the appraiser utilizes a cost service to estimate the replacement cost of the driveway segment acquired, then the cost service must be cited, and the appraiser's calculations must be included in the appraisal report. If the appraiser utilizes a local contractor to obtain an estimate of the replacement cost of the driveway segment, then a copy of the estimate, or an email documenting the amount of the estimate must be included in the appraisal report. Appraiser citation of undocumented verbal estimates is discouraged and should be approved by the assigned review appraiser in advance of submitting the first draft of the appraisal report. The value of the driveway acquired should be shown as part of the acquisition, not as an additional compensation, and should be subtracted from the before value to determine the after value of the remainder property.

If a driveway, or access point, is eliminated and/or relocated this is considered to be an issue more appropriately addressed under access control (see REPM/Subsection 2.4.5.5), or under a change in grade (see REPM/Subsection 2.4.5.3), depending on the reason for the removal, elimination or relocation. If the driveway is shortened by the proposed acquisition and construction project, to the point where it is of less value to the remainder property (less parking space available) then this change is best handled as a change in proximity (see REPM/Subsection 2.4.5.4).

The following references, which are associated with the exercise of police power as a tool for access management (see REPM/Subsection 2.4.5.5), are informational only:

- The statutory authority for WisDOT to issue entrance permits is presented in Section 86.07(2), Wis. Stats.
- Information regarding the issuance of a driveway permit, and the rights and responsibilities of the property owner and the state can be found in Wis. Admin. Code ch. Trans 231.

#### **2.4.3.5 - Wells and Septic Systems**

Wis. Admin. Code ch. SPS 383 refers to septic systems as Private Onsite Wastewater Treatment Systems (POWTS). Since the appraiser will be required to determine the legal status of the septic systems affected by any proposed acquisitions, it would be advantageous for them to utilize the statutorily recognized terminology in their research. For this reason, this section of Chapter 2 of the REPM will utilize the term POWTS when referring to septic systems; however, this is not an officially recognized WisDOT term that the appraiser will be required to use in their appraisal reports.

In a partial acquisition of a larger parcel, if it is determined that a private well or POWTS will be impacted by the proposed acquisition, or subsequent construction project, the potential impacts must be considered by the appraiser. The appraiser must determine the contributory value of the impacted well or POWTS, and whether their potential loss will result in an identifiable severance damage. Before the appraiser can begin the task of valuing any well or POWTS impacts, resulting from a partial acquisition from a larger parcel, the location and legal status of the affected well/POWTS must be determined:

- During the appraiser's initial inspection of the subject property (see REPM/Section 2.2), he or she will need to make every effort to locate the well and POWTS, even if they are not within the acquisition area. The appraiser should have the property owners point out the location of the well and POWTS at the time of the site inspection and prepare a sketch of the locations.
  - The use of an extraordinary assumption regarding the location of the well and POWTS should only be used if their locations cannot be determined, or if the locations are known and the acquisition is so close that the impacts are uncertain. In the case where potential impacts are uncertain the appraiser should work with the project engineer and a POWTS professional to define the extent of possible system impacts.
  - If the appraiser is able to determine that the right of way encroachment is fairly minimal and the physical impacts to the well or POWTS could be eliminated by a minor change in the proposed taking, then the situation should be communicated to the project engineer for possible plat modifications.
  - The locations of all wells and POWTS, on or off the proposed right of way, should be shown on the property sketch.
- If the appraiser confirms that any part of the well or POWTS is located within the acquisition area of the proposed project and will be negatively impacted, then they will need to determine the legal status of the well and the POWTS.
  - The preferred method for determining the status of the well is to check with the public health department of the county in which the parent tract is

located to see if any reports have been filed on the well for the subject property. If there is no report filed, then the appraiser can make the extraordinary assumption that the well is usable.

- The preferred method for determining the status of the POWTS is to check with the county office that handles land use, where POWTS evaluation report forms are filed. If a report has been filed for the subject's POWTS indicating that it has been found to be defective in conformance with the applicable provisions of Wis. Admin. Code ch. SPS 383, then the appraiser must obtain a statement from the county as to the legal status of the POWTS and their required remedies.
- If the county provides a report that indicates the subject's POWTS is illegal and orders for replacement have been issued by the county, then the appraiser should consider the POWTS as contributing no value. The before value of the larger parcel would have to recognize the value impacts to the subject's improvements resulting from a POWTS that requires replacement. These impacts would likely reflect the potential cost of a new POWTS installation and any other retrofitting costs; thus, eliminating any contributory value from the POWTS. This situation would also eliminate any potential for severance damages resulting from the impacts to the POWTS. If these circumstances are found to exist, the appraiser should clearly state the status of the POWTS in their appraisal report. Also, the acquisition agent and project lead person should be notified of the situation so that they can be prepared to deal with the issue during acquisition.
- If, during their inspection of the subject property, the appraiser notices any piping or drain tile emptying into the existing right of way, or sewage seeping out of the backslope of the ditch, then the project engineer should be notified. This could be evidence of an illegal POWTS.
- If the location of the well and POWTS as defined by the above documents is not consistent with the location established by the site inspection, then the appraiser should contact the regional project manager and or assigned review appraiser to determine the appropriate course of action.

If it is determined that a legal POWTS will be impacted by the proposed acquisitions, and the subsequent construction project, it will be necessary to involve a reliable local contractor to perform the necessary site testing, and system plan development for any corrective measures to ensure that the larger parcel will have a working POWTS in the after condition (the following steps will also apply to an impacted well). The fees for obtaining any needed site testing, and the itemized estimates, should not be included in the contract costs of the appraisal (for fee appraisers). They should be paid for by the state as an item separate from the contract.

- If the contractor determines that what remains of the POWTS can be modified to correct the loss of the affected portion of the system, their findings should be provided in writing and included in the appraisal report.
- If the contractor determines that the remains of the POWTS cannot be modified, and a new system will need to be installed, their findings need to be provided in writing. The contractor will then need to determine whether or not the remainder of the larger parcel will support a replacement system. These findings should also be provided in writing. The findings of the contractor should be included in the appraisal report.

- If the system can be corrected, or replaced on the subject's remainder, then the appraiser should obtain an itemized estimate or estimates from the contractor(s) to either bring the remaining system into compliance with code or to replace it with an appropriate new system that meets code. The estimate should cover all anticipated costs to retrofit the remaining plumbing within the subject's buildings, and any costs associated with the possible impacts to, or moving of, other site improvements.
- The costs to replace the affected system will need to be allocated between the contributory value of that part of the system acquired and the cost to cure the severance damages resulting from the system impacts. For example, if the taking hits any portion of the drain-field, the depreciated replacement cost of the entire drain-field will be identified as the contributory value of the site improvement acquired (Typically it is not possible to replace just a part of a drain-field). When that amount is subtracted from the estimated cost to replace the affected drain-field, the resultant amount would be the cost to cure the severance damages resulting from the impacts to the POWTS.

As with any cost to cure it is necessary to establish that a severance damage exists and that it exceeds the amount of the proposed cost to cure. The appraisal development process for the affected parcel will be required to identify any potential severance damages through a before and after analysis. However, the reporting of the findings of the before and after analysis, when addressing the loss of all, or a portion, of a POWTS, will not typically require the inclusion of the full before and after analysis performed to justify the use of a cost to cure severance damage. A general statement, in the appraisal report, to the effect that the appraiser has conducted a before and after analysis of the possible value impacts of the loss of a working POWTS and has determined that the absence of a working POWTS in the after condition would render the subject's remaining buildings uninhabitable, which would substantially reduce or potentially eliminate their contributory value to the remainder of the larger parcel, would suffice. This statement would serve to qualify the potential severance damages.

When considering the after condition of the subject property in the presence of a cost to cure for the loss of a well or POWTS, the appraiser must consider the possibility that the recommended cure may result in severance damages to the remainder. For example, if the construction of a new POWTS results in the placement of a mound system in the front yard of the affected parcel that negatively impacts the quality or condition of the site, or if the placement of a new well in the front yard of the subject's remainder is found to cause negative market perceptions of the subject's remainder. These possible value impacts, if they cannot be avoided when replacing the well or POWTS, would be considered incurable and could potentially result in severance damages to the remainder of the subject property, that would be in addition to the identified cost to cure.

#### **2.4.3.6 - Landscaping**

In a partial acquisition of a larger parcel, if it is determined that landscaping will be impacted by the proposed acquisition, or subsequent construction project, the potential impacts must be considered by the appraiser. The appraiser must determine the contributory value of the impacted landscaping, and whether the potential loss of the impacted landscaping will result in an identifiable severance damage. The elements of landscaping that will be dealt with in this section of the valuation of site improvements

will include vegetation (trees, shrubs and other plantings), planting beds and unrestored groundcover. Valuation issues associated with elements of hardscaping (the man-made features used in landscape architecture, e.g. paths, sidewalks, walls, retaining walls, raised planters, etc.) will be handled under REPM/Subsection 2.4.3.10.

During the field inspection of the subject property, the appraiser will note the specific items of landscaping that will be impacted by the proposed acquisitions and whether they are located within a fee acquisition, a permanent limited easement or a temporary limited easement (items of landscaping that are encroaching on the existing right of way should also be noted). An accurate inventory of the impacted items and their location within the proposed acquisition is essential in determining whether an item will be impacted (see REPM/Subsection 2.4.3.1 and REPM/Subsection 2.4.3.2) and compensation is appropriate. The appraisal report must contain the complete inventory of impacted landscape items, photos of the impacted items, and the acquisition area (Fee, PLE or TLE) that they are located within. Any estimates of replacement costs for the impacted landscape items must be consistent with the reported inventory, or the differences explained (example: if a 24-inch oak is replaced with two 2-inch maples because the appraiser considered them to contribute equally).

Typically landscaping only has a contributory value to an improved property, in part because the act of improving a vacant site would likely involve the removal of any existing landscaping. The appraiser may encounter a situation where a vacant site has planned landscaping present that will be affected by the proposed acquisition. If it is the appraiser's opinion that landscaping on a vacant site contributes value, they are encouraged to discuss the valuation of the affected landscape items with the assigned review appraiser.

The issue of landscape valuation will be divided into two distinct categories; commercial landscaping and residential landscaping.

#### Landscaping for Commercial Property:

The type and quantity of landscaping installed on commercial property is typically dictated by zoning requirements, market norms, or both. As a result, the loss of a portion of a commercial property's landscaping would have the potential to create a non-conforming status, based on zoning requirements, or the loss may place the subject property at a competitive disadvantage in the market place. Both of these possibilities have the potential to adversely affect the market value of a commercial type property. Therefore, a typical buyer of commercial property would be aware of the market, or zoning, requirements for landscaping and would factor corrective measures into their purchase price to deal with any potential deficiencies. For the above reasons, the contributory value of any landscaping, acquired under a partial acquisition from an improved commercial property, should be based upon its replacement cost. As stated above this method is consistent with the thought process of a typical commercial buyer. This method is also considered reasonable because commercial properties do not typically benefit from the existence of mature trees.

Landscaping is typically updated periodically to fit with market changes and expectations, so typical commercial landscaping is more easily replaced than mature residential landscaping that tends to include mature trees. Finally, by valuing commercial

landscaping based upon its replacement cost, the potential for severance damages resulting from lost landscaping is reduced.

If the appraiser utilizes a cost service to estimate the replacement cost of the landscaping acquired, then the cost service must be cited, and the appraiser's calculations must be included in the appraisal report. If the appraiser utilizes a local contractor to obtain an estimate of the replacement cost of the landscaping, then a copy of the estimate, or an email documenting the amount of the estimate must be included in the appraisal report. Appraiser citation of undocumented verbal estimates is discouraged and should be approved by the assigned review appraiser in advance of submitting the first draft of the appraisal report.

#### Landscaping for Residential Property:

The estimation of the contributory value of residential landscaping, impacted by a proposed acquisition or subsequent construction project, is very subjective and dependent on the appraiser's understanding and analysis of the subject property's real estate market.

WisDOT's preferred method for the appraiser to develop their understanding of landscaping's contribution in the local residential market is the allocation method. This involves the allocation of improved sales into their various components (i.e., lot value, value of house and garage, value of well, septic system and driveway, and finally landscaping).

True understanding of the value of landscaping can occur only after the appraiser has allocated a large number of sales. It is recommended that the appraiser, at a minimum, attempt to allocate each of the improved sales utilized for the appraisal project to develop an understanding of the contributory nature of landscaping in the subject's real estate market.

If an appraisal project does not require the identification of improved sales, or if the affected parcels only have minimal landscaping impacts, then the following chart can be used as a valuation guide. The generalizations presented in the chart represent the total contributory value of a property's landscaping and are based upon multiple allocation studies conducted by WisDOT staff appraisers and private fee appraisers. The information contained in the chart should only be used as a guide in the valuation of landscaping on improved residential properties. The appraiser retains responsibility for testing the results of any application of the presented generalizations for reasonableness as applied to the property being appraised. The value of landscaping varies according to the quality and arrangement of the components of the landscape design, as well as the market value of the overall property.

For example, it is appropriate to spend a considerable amount of money to landscape a very expensive home, but the same landscaping would be super adequate for a modest home and would contribute less to market value. The various components of a property must be in balance to achieve maximum value.

Quality	Description	Landscaping Contribution
Excellent	Landscape appears to be professionally designed and installed, well-maintained trees and shrubs. Lawn is clean and highly manicured.	8 to 10%
Good	Well-designed with good placement. Vegetation is well maintenance, with pruning and fertilization above average. Lawn is clean and healthy.	6 to 8%
Average	Unplanned layout of plantings, with average pruning and maintenance. Lawn has some weeds and thin areas.	4 to 6%
Fair to Poor	Native trees, unpruned shrubs and poorly maintained plantings. Lawn has thin areas and weeds.	2 to 4%

The landscaping contribution (percentage) would be applied to the total value of the affected parcel to establish the total contributory value of all of the subject property's landscaping.

Since the appraiser will typically only be valuing the effects of a partial acquisition on a larger parcel's landscaping, the appraiser would need to estimate what percentage of the property's total landscaping is being impacted and then apply that percentage to the contributory value of the total landscaping. In their appraisal report, the appraiser must discuss the larger parcel's total landscaping and then the affected components to support the percentage impact determination. The description of the total landscaping should utilize the terms and definitions provided in the above chart.

If the landscape impacts involve specialty plantings, screening, or the possibility of severance damages, the appraiser is advised to discuss the impacts with the assigned review appraiser.

As stated in REPM/Subsection 2.4.3, if the appraiser departs from the preferred methodologies, the appraiser will need to provide support within the appraisal report for the method(s) employed.

#### **2.4.3.7 - Drain Tile and Agricultural Irrigation Systems**

During the appraiser's initial inspection of the subject property (see REPM/Section 2.2), they need to make every effort to determine if the proposed acquisition or construction project will have the potential to impact existing drain tile or agricultural irrigation systems. The appraiser should report all tile discoveries to the project engineer so that they can be investigated and put on the construction plans.

Drain tile:

This general class of site improvement covers several sub-classes, each of which has its own set of considerations and valuation issues:

- Clear water drains – typically involve drains from buildings into adjacent highway ditches. In general, any clear water discharges from basement drains, down spouts, springs or any other clear water source will be incorporated into the highway drainage system, if possible. When it is not possible to perpetuate the continued operation of the drain tile, the impact is considered a severance damage to the remaining improvements and not as an acquisition of a site improvement. The severance damages would be measured by determining potential market impacts to the serviced improvements. The cost to cure the severance damages would address the cost to redirect the drain tile to an alternate outlet.
- Field tile systems – cover those tile systems that are designed to drain entire agricultural fields, or unwanted wetlands in agricultural areas. Field tile outlets will be perpetuated if possible. If they cannot be perpetuated the appraiser should get a tile location map from the owner of the larger parcel or installer of the field tile. If it is possible for the system to be modified to preserve the site drainage, then the costs to make the modifications would be considered a cost to cure the loss of the functionality of the remaining tile and the potential loss of value to the remaining site. In general, field tile has a contributory value only as a functioning system, which can be determined in the market by comparing land sales that have beneficial tile in place to sales where tile is needed but not installed. The severance damage would be equivalent to the loss of the contributory value of the tile system. Impacts to the system will not be stated as an acquisition, but rather as a severance damage to the remainder.
- Overflow tile lines from drywells or illegal septic systems are not legal, and there should be no compensation for impacts to them. Milk house drains and laundry drains are also generally illegal and there should be no compensation for impacts to them.

Agricultural irrigation systems:

In general, agricultural irrigation systems have a contributory value only as a functioning system, which can be determined in the market by comparing land sales that have a beneficial irrigation system in place to sales where irrigation is needed but not installed. Sales of irrigated land will often indicate a value for the irrigators (the towers and sprinklers) that is separate from the real estate. The wells and guy-wires are typically included as part of the real estate. So, comparing the real estate value of the irrigated land to the land value of the non-irrigated land will identify the contributory value of the well and guy-wires. The severance damage would be equivalent to the loss of the contributory value of the entire irrigation system (towers, sprinklers, well, guy-wires etc.).

Impacts to the system will not be stated as an acquisition, but rather as a severance damage to the remainder. When portions of irrigation systems are located in the acquisition area, a cost to cure the severance damages should be investigated. The appraiser should enlist the assistance of a local irrigation contractor to determine the feasibility of modifying the remaining irrigation system. If modification is possible, then the contractor should be asked to provide a written estimate of the costs and a determination of how many acres will be irrigated in the after condition. The non-irrigated

land in the after condition should be compared to the non-irrigated land in the before condition to determine the effectiveness of the modifications to the irrigation system. It may be possible to have a partial cost to cure and still have remaining uncured severance, so the appraiser is advised to consult with the assigned review appraiser to discuss the appraisal problem and the appraiser's options.

#### **2.4.3.8 - Land Valuation in the Presence of Marketable Mineral Deposits or Timber Stands**

The unit rule has been recognized by the courts and is employed by WisDOT in its eminent domain activities. As stated in the definition of the unit rule, provided in REPM/Subsection 2.4.2 the second aspect of the rule is that different physical elements or components of a tract of land (such as the value of timber and the value of minerals on the same land) are not to be separately valued and added together. This definition from The Dictionary of Real Estate Appraisal 6th Edition, published by the Appraisal Institute clearly states that in the valuation of lands that contain mineral deposits or timber, the value of the mineral or timber is not to be valued separately and then added to the market value of the land.

When valuing lands containing minerals or timber the existence of the mineral deposits or timber stands in or on land being appraised is an element to be considered in determining the market value of such land. The value of the land should be measured by what a willing buyer would pay and a willing seller would accept in an arm's length transaction with both parties knowledgeable about the mineral deposits, or timber stands. In other words, sales of other lands with similar deposits or stands are the true measure of value. The potential value of minerals and timber are relevant only to the extent that they enhance the value of the whole property and would be considered a factor influencing the value of the land, and they are best measured by market comparison. If mineral rights of a property being appraised have been conveyed to an entity other than the current property owner this does not change the applicability of the unit rule. The land would still be valued with the recognition given to the existence of the minerals or timber and the value of the mineral or timber rights would be abstracted from the determined market value of the land. The abstraction is a question for the courts and will not typically be requested from the appraiser.

#### **2.4.3.9 - On-Premise Signs**

An on-premise sign, commonly referred to as a business sign, advertises goods and/or services produced or sold on the site on which the sign is located (the larger parcel). On-premise signs are typically recognized as personal property, and, if impacted, are addressed within the relocation program. When an appraisal assignment includes possible impacts to an on-premise sign the appraiser is advised to communicate with the relocation advisor assigned to the project to make sure that the affected sign is handled appropriately. If the sign cannot be relocated (zoning will not permit; there is no room on the remainder property or the replacement site; the actual structure will not handle being moved; etc.), then the appraiser will be asked to value the existing sign structure.

The following are the department's preferred methods of estimating the contributory value of acquired on-premise signage:

- If the sign is being valued as part of a total taking, then the valuation of the sign will be integrated into the valuation method employed. If the income capitalization or sales comparison approaches are utilized, then the sign structure will be part of the comparable data or addressed by any necessary comparable adjustments. If the cost approach is utilized, then the sign would be part of the depreciated cost analysis. If an independent valuation of the sign is required, then the depreciated replacement cost would be the most appropriate method of valuation.
- If the sign is being valued as a component of a partial acquisition, then the depreciated replacement cost of the sign structure would be the appropriate method of valuation. If it is determined that the sign cannot be moved to the remainder property, the appraiser will need to determine whether the loss of the affected signage will result in severance damages to the remainder, and whether the severance damages are curable or incurable. An example of possible severance damages resulting from the acquisition of an on-premise sign would include: If the remainder of the larger parcel has building improvements on it, the loss of signage resulting from the acquisition of the on-premise sign may cause severance damages to the improvements. If the sign can be replaced by a different type of signage, the severance damages may be curable. If the remaining site is too small, or zoning will not permit the placement of a new sign, the severance damages may be incurable. It is recommended that the appraiser discuss any potential severance and cost to cure methods with the assigned review appraiser.
- As stated in REPM/Subsection 2.4.3, if the appraiser departs from the preferred methodologies, the appraiser will need to provide support within the appraisal report for the method(s) employed.

If the appraiser utilizes a cost service to estimate the replacement cost of the on-premise sign acquired, then the cost service must be cited, and the appraiser's calculations must be included in the appraisal report. If the appraiser utilizes a local contractor to obtain an estimate of the replacement cost of the signage, then a copy of the estimate, or an email documenting the amount of the estimate must be included in the appraisal report. Appraiser citation of undocumented verbal estimates is discouraged and should be approved by the assigned review appraiser in advance of submitting the first draft of the appraisal report.

The appraiser must provide analysis in the appraisal report to support their estimation of depreciation applied to the replacement cost of the affected signage.

The appraiser is advised to communicate with the relocation advisor assigned to the project to make sure that the affected on-premise sign is handled appropriately (move, or value with possible severance damage). The appraiser must identify the existence of all affected signage within the descriptive portion of the appraisal report and whether it will be valued and acquired, or relocated. If the signage will be handled as a relocation issue, the appraiser should note that the affected sign will not be valued, and that it will be handled as an issue outside of the appraisal.

The cost to move the affected signage is not an appropriate measure of a sign's contributory value and will not be accepted upon review. If the appraiser is asked to value the affected signage and, at the time of acquisition, the acquisition agent and the

property owner agree that the signage should be moved under relocation, then the contributory value of the affected signage and any cost to cure should be subtracted from the offer, and a relocation advisor should be contacted.

On-premise signs, or business signs must not be confused with off-premise signs or billboards. Off-premise signs are typically signs that are 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. Issues associated with off-premise signs are addressed in Chapter 10 of the REPM.

#### **2.4.3.10 - Miscellaneous Site Improvements**

REPM/Subsection 2.4.3 has dealt with a number of common site improvements that are typically encountered by appraisers in the preparation of eminent domain appraisals. This section will not address any additional specific site improvements, but rather will establish some basic guidance for how to analyze and value any of the many site improvements that the appraiser may encounter. The following is the preferred methodology for addressing miscellaneous site improvements:

1. Using the guidelines provided in REPM/Subsection 2.4.3.2 the appraiser will need to determine what site improvements are impacted by the proposed acquisition, and whether they should be valued. The affected site improvements must be identified and described in the appraisal report.
2. The appraiser must determine if the affected improvements are consistent with the highest and best use of the larger parcel. If the improvements are not consistent with the highest and best use, then they may not have any contributory value. The appraiser's findings need to be discussed in the appraisal report.
3. Once the appraiser determines that an improvement will be valued then the depreciated replacement cost of the improvement would be the appropriate method of valuation. If the proposed acquisition is a partial taking the appraiser will need to determine whether the loss of the affected improvement will result in severance damages to the remainder. The appraiser will also need to determine whether the severance damages are curable or incurable. It is recommended that the appraiser discuss any potential severance damages and cost to cure methods with the assigned review appraiser.
4. As stated in REPM/Subsection 2.4.3, if the appraiser departs from the preferred methodologies, the appraiser will need to provide support within the appraisal report for the method(s) employed.

If the appraiser utilizes a cost service to estimate the replacement cost of the improvement acquired, then the cost service must be cited, and the appraiser's calculations must be included in the appraisal report. If the appraiser utilizes a local contractor to obtain an estimate of the replacement cost of the improvement, then a copy of the estimate, or an email documenting the amount of the estimate must be included in the appraisal report. Appraiser citation of undocumented verbal estimates is discouraged and should be approved by the assigned review appraiser in advance of submitting the first draft of the appraisal report. The appraiser must provide analysis in the appraisal report to support their estimation of depreciation applied to the replacement cost of the affected site improvement.

### 2.4.4 - Valuation of Commercial Fixtures

The following section applies to appraisal assignments involving a total taking of an improved commercial property, or a partial acquisition from a commercial property that includes the acquisition of a commercial building; a portion of a commercial building; or a mixed-use building that includes commercial activity. The valuation methods described herein are not required for partial acquisitions from commercial property that do not include the acquisition of building improvements. If a partial acquisition will result in significant severance damages to the building improvements, and the appraiser determines that the valuation of the improvements in the appraisal is necessary, the valuation methods prescribed herein would still be valid; however, the verification process need not be as extreme.

#### Fixture

- The Dictionary of Real Estate Appraisal, 6th Edition, published by the Appraisal Institute defines Fixture as:  
An article that was once personal property but has since been installed or attached to the land or building in a rather permanent manner so that it is regarded in law as part of the real estate.

When eminent domain involves commercial property, there will be multiple professionals involved in determining whether individual articles are personal property, fixtures that are part of the real estate, or trade fixtures that can reasonably be removed from the property without extensive damage, and thus, again, returning to a designation of personal property. The owner's intent of how the article would be used and moved when installed is also a factor in determining whether it is appraised as part of the real property or relocated as personal property. Ownership and lease agreements also identify this intention.

The determination of what is personal property and what is real estate is further complicated by the appraisal methods employed by the RE appraiser, the availability of relocation benefits for displaced property owners to move their personal property, the intricacies of the negotiation process, and the need to ensure that payments for what is acquired and what is moved are not duplicative. The only way to avoid the complications associated with handling fixtures and personal property is through close communication and coordination between the RE appraiser, the fixture appraiser, the relocation advisor and the acquisition agent.

When an appraiser is faced with an appraisal assignment involving a total taking of an improved commercial property, or a partial acquisition from a commercial property that includes the acquisition of a commercial building; a portion of a commercial building; or a mixed-use building that includes commercial activity, their first action should be to contact the relocation advisor assigned to the parcel. If no relocation advisor has been assigned to the parcel, then the appraiser should contact the project manager and alert them to the need to assign a relocation advisor. Parcels involving the possible displacement of a commercial activity require close coordination between the appraiser and the relocation advisor to avoid double payments to displacees and an appropriate accounting/inventory of affected trade fixtures. The appraiser and the relocation advisor will coordinate to ensure that the services of a FF&E appraiser are secured to handle the actual valuation of the affected commercial fixtures. When the FF&E appraiser completes the FF&E report (appraisal report) the report must be reviewed by the relocation advisor, the appraiser and the project's lead worker/acquisition agent. If there is a disagreement, as to the designation of a specific item, the assigned appraiser, in conjunction with BTS-RE relocation staff, will make the final determination. Once the FF&E report is

accepted, the report will be provided to the assigned RE appraiser. The appraiser will not be asked, nor should they attempt, to value any of the personal property, or commercial trade fixtures contained within the subject property. Possession of the approved FF&E report will enable the real estate appraiser to properly exclude the identified fixtures from his or her appraisal analysis of the physical characteristics of the property being appraised. For this reason, the appraiser cannot submit the first draft of his or her appraisal report without first receiving the FF&E report (this requirement must be addressed in the appraisal scope of work agreement discussed in REPM/Subsection 2.1).

At times, the use of the income approach or sales comparison approach to value have the potential to result in the appraiser including some fixtures within their valuation of the subject property. This typically happens when the comparable sales or rental information includes fixtures that cannot easily be abstracted from the available data. For example, the comparable sale may benefit from a walk-in cooler or other kitchen equipment, or the rental rate may be for a property that has a functioning kitchen. In cases like these, the appraiser should:

#### When employing the sales comparison approach

1. Identify the specific fixtures that are included in the comparable data. The identification would include a description of the type, size and condition of the fixture.
2. Attempt to confirm, with either the buyer or seller, whether the specific fixtures contributed value to the transaction, and, if they did, what value was estimated for the identified items. The appraisal of improved commercial property requires the employment of extreme verification methods, which would include as extensive of an inspection of the interior of the comparable sale as the current owners will permit, and, if possible, interior photos.
3. If the appraiser is unable to confirm the amount that the fixture(s) contributed to the transaction he or she should utilize the information obtained through the confirmation process to obtain an estimated value for the fixtures included in the transaction from the FF&E appraiser and, or from historic FF&E appraisals available from previous appraisal assignments.
4. The estimated contributory values for the fixtures included in the comparable sales transaction will be subtracted from the unadjusted sales price as a transactional/property adjustment before any adjustments are made for market conditions (time adjustment).
5. Complete the valuation analysis of the subject property.
6. The appraiser should indicate in the appraisal report that the resultant value determination is reflective of the subject's RE value with no fixture values included.

#### When employing the income capitalization approach

1. Identify the specific fixtures that are included in the property being leased. The identification would include a description of the type and size of the fixture.
2. Attempt to confirm, with either the landlord or the tenant, whether the existence of the specific fixtures contributed to, or impacted the lease rate, and, if they did, how much of the lease rate was for the fixtures.
3. Often times the appraiser is required to work with published commercial rental data, or aggregate income information. When using this type of income data, the appraiser should inquire into the industry standards regarding the anticipated effects of the presence of commercial fixtures in rental property.

4. If the verification process described above results in a supportable adjustment to the income data, the appraiser should subtract the contributory income for the fixtures from the identified gross income (rent paid) for the comparable rental.
5. If there is insufficient information to determine if the commercial fixtures included in the comparable rental affected the lease rate, then the appraiser should assume that the commercial fixtures had no impact on the rental rate.
6. Complete the valuation analysis of the subject property utilizing the income data identified above.
7. The appraiser should indicate in the appraisal report that the resultant value determination is reflective of the subject's real estate value with no fixture values included.

The ultimate goal of this appraisal methodology is the identification of a value for the real estate being acquired that excludes all fixtures or personal property from the estimated market value. In this way, the negotiations for both the acquisition of the real estate and the acquisition of the fixtures or personal property can be conducted independently, and documentation of the agreed upon amount, or jurisdictional offer, will have sufficient information available to clearly indicate negotiated amounts for both the real estate and the fixtures or personal property. Adherence to these valuation steps, combined with close coordination between the appraiser, the relocation advisor and the fixture appraiser will help to avoid double payments and duplicative work.

Relocation issues associated with the identification, inventory and moving of personal property and fixtures is available in REPM/Section 5.7.

### 2.4.5 - Severance Damages

As stated in REPM/Subsection 2.0.2.1, The Appraisal Institute's Real Estate Valuation In Litigation 2nd Edition defines severance damages as the diminution of the market value of the remainder area, in the case of a partial taking, which arises (a) by reason of the taking, and/or (b) the construction of the improvement in the manner proposed.

The following are excerpts taken from the Yellow Book that discuss the issue of severance damages. The term severance damage has been added to the Yellow Book excerpts because the term is not typically utilized at the federal level, even though the concepts presented are consistent with WisDOT's definition of severance damage:

- In partial acquisitions when only part of a larger parcel is acquired, the value of the part acquired is not the sole measure of compensation; the injury (severance damage) or benefit to the part not taken is also to be considered. If the part not acquired, the landowner's remainder, is left in such shape or condition as to be in itself of less value than before, the owner is entitled to additional damages on that account.
- Compensable damages are not a distinct item to be added to compensation; rather, they are already reflected and automatically included in a before and after method of valuation (emphasis added).
- It is incorrect to think of severance damages as a separate and distinct item of just compensation apart from the difference between the market value of the entire tract immediately before the taking and the market value of the remainder immediately after the taking.

- Compensable (severance damage) damages may reflect a decrease in the market value of the remainder arising from (1) the government's planned use of the part acquired, and/or (2) the relation of the part acquired to the larger parcel.
- As with any element affecting value, damage to the remainder (i.e., diminution in value) can never be assumed but must always be fully supported by the facts of each situation.
- The extent to which the utility of a property has been impacted by the acquisition must be established by factual information and analysis and must never be assumed or based on speculation.

REPM/Subsection 2.0.1.6 states, in part - In the case of a partial taking of property other than an easement, the compensation to be paid by the condemner shall be the greater of either the fair market value of the property taken as of the date of evaluation or the sum determined by deducting from the fair market value of the whole property immediately before the date of evaluation, the fair market value of the remainder immediately after the date of evaluation. Case law in the state of Wisconsin has held that the only method to identify severance damages is the before and after appraisal method as covered in REPM/Subsection 2.0.2.1.1. WisDOT appraisers will adhere to the principle that any determination of possible severance damages will be the result of the prescribed before and after appraisal analysis performed during the development phase of the appraisal process, and not treated as a separate and distinct item of compensation that is added to the value determined for the part taken.

In the allocation of damages within an appraisal report, the appraiser will account for all severance damages, whether curable or incurable, in the determination of the after value of the remainder of the larger parcel. This is consistent with the principle that the only acceptable method of determining the existence of severance damages is through the employment of a before and after appraisal method, where severance damages are inextricably part of the after-value determination. The appraiser will, under no circumstances, allocate and report the severance damages, estimated by a cost to cure method, as an additional compensation.

The following subsections will assist the reader in identifying potential severance damages resulting from proposed takings and, or, subsequent construction projects. They will also address the state's preferred methods for documenting and measuring any identified severance damages. The scenarios covered by the subsections are not the only situations where severance damage can occur, and not all instances of the described scenarios will necessarily result in severance damages. This is a guide only, and the final determination of the existence or absence of severance damages is the responsibility of the appraiser.

#### **2.4.5.1 - Incurable Severance Damages**

In general, severance damages come in two basic categories: incurable and curable. An incurable severance damage is a loss in value to the remainder of a larger parcel, resulting from a partial acquisition, and, or a subsequent construction project, that cannot reasonably be physically or economically corrected.

Examples of incurable severance damages include the value impacts resulting from:

- An acquisition accompanied by a change in the grade of a roadway that eliminates a property's view of a lake
- An acquisition and roadway modification that places the driving lanes of a highway significantly closer to a single family residential structure
- An acquisition of access rights that results in a building site losing all physical and, or legal access and becoming landlocked

- An acquisition that results in a size reduction of a buildable site to a point where it is no longer buildable
- An acquisition that results in the elimination of a use that has been grandfathered in under the current zoning ordinances

The key feature in all of these situations is a change to the remainder of a larger parcel that cannot reasonably be corrected. There may be no way to physically correct some of the changes; some impacts could potentially be corrected by modifications to the remainder's improvements, that are very expensive; or the corrections might take the form of acquiring an adjacent parcel of land or an easement, which is a speculative correction. If a potential correction exceeds the value loss due to the acquisition and subsequent construction project, or is speculative in nature, then the severance damage is considered to be incurable. The only way to measure incurable severance damages is through the use of the before and after appraisal method (REPM/Subsection 2.0.2.1.1). If the appraiser is unsure whether a potential severance damage to a specific parcel is curable or incurable, they should discuss the impacts and the nature of the potential severance damages with the review appraiser assigned to the parcel.

#### **2.4.5.2 - Curable Severance Damages (Cost-To-Cure)**

The second type of severance damage is curable severance damage. A curable severance damage is a loss in value to the remainder of a larger parcel, resulting from a partial acquisition, and, or a subsequent construction project, that can reasonably be physically or economically corrected. This severance is established by using cost to cure methodology.

##### Cost to Cure (Severance Damages)

- A method for mitigating severance damages that can be physically and economically corrected (cured).

The Real Estate Valuation in Litigation 2nd Edition published by the Appraisal Institute suggests that the cost-to-cure method supports the before and after appraisal method. If a property with a deficiency is placed on the market, both the buyer and seller will consider the cost to cure the deficiency, if it is physically and economically curable. The price at which the property will sell is the value of the property as deficient or the value of the property without the deficiency minus the cost to cure the deficiency, whichever is higher. This statement supports the use of the cost-to-cure method to estimate the amount of severance damages, as well as to establish adjustments for the analysis of comparable sales used to estimate the after value of the larger parcel's remainder. However, when an appraiser analyzes the after-condition effects of any proposed acquisition, and subsequent construction project, it is a mistake to look at what is lost rather than what remains.

The Appraisal Institute's Real Estate Valuation in Litigation 2nd Edition state's that under no circumstances can the cost to cure measure of damage be applied if the cost to cure exceeds the diminution in value that would result if such cure were not undertaken. However, if the cost to cure is less than the diminution in the value of the remainder, the cost to cure measure of damage must be used. Care must be taken when employing the

cost-to-cure method of estimating severance damages. When employing the cost-to-cure method, major costs to cure, or multiple items of cost to cure on a single parcel may seem logical as individual components of value or items of mitigation but take on a completely different appearance when compared to the uncured severance damages that would exist without the prescribed cures. The check on any utilization of the cost to cure method of estimating severance damages must be a comparison to value impacts (severance damages) indicated by the before and after analysis.

The following are examples of the use of a cost-to-cure:

- The value impacts of: an acquisition accompanied by a change in the grade of a roadway that restricts the visibility of a commercial property, may be curable with the placement of new signage.
- An acquisition and roadway modification that results in a roadway along the side yard of a single family residential structure moving closer to the residence, may be curable with the placement of screening.
- An acquisition of access rights that results in a property's only driveway being eliminated, may be cured with the construction of a new driveway at a different location.
- An acquisition that takes a small portion of a site's fencing and leaves the remaining fencing with little or no contributory value, may be cured by fully paying to replace the acquired fencing.

The key feature in all of these situations is a change to the remainder of a larger parcel that can reasonably be corrected at a cost that does not exceed the severance damages that would occur if the impacts were not cured. The method used for calculating the amount of a curable severance damage is the cost-to-cure.

The cost-to-cure method of estimating curable severance damages involves the following steps:

1. Determine whether the remainder of the larger parcel has experienced any curable severance damage.  
**Note:** In most situations, a curable severance damage will be readily identifiable; however, the appraiser will still have to identify and analyze the cause of the severance damages, and what parts of the remainder will suffer the value loss. Whether the curable severance damages are readily identifiable or require greater analysis to discover, the determination of the existence of a severance damage and whether it is curable must be supported by factual evidence.
2. Based upon a before and after analysis, determine the amount of value loss that would result from the identified severance damage if a cure were not undertaken.  
**Note:** This value loss can either be quantified as an estimated dollar or percentage amount or qualified as the potential loss or reduction of the utility of a structure or site improvement. The before and after analysis employed to determine the amount of potential value loss resulting from the identified severance damage will range from a full before and after quantified analysis utilizing two different sets of comparable data, to a straightforward before and after qualified analysis that analyzes the anticipated physical impacts to the remainder resulting from the proposed acquisition and resulting construction project. The depth of the before and after analysis will be based upon the cause of the severance damage, the difficulty associated with curing the severance damage and the amount of the potential cure.

3. Depending on the nature of the proposed cost-to-cure, the appraiser will either obtain a detailed written estimate of the recommended cost to cure from a qualified contractor or perform their own estimate for the cost to cure.
4. If the cost-to-cure a severance damage is less than the uncured severance damage, the appraiser must use the cost-to-cure estimate to reflect the amount of severance damage to the remainder of the larger parcel. If the amount of the uncured severance damage is less than the estimate of the cost-to-cure the perceived severance damage, then the amount of the uncured severance damage must be used to reflect the amount of severance damage to the remainder of the larger parcel.
5. Whether the appraiser obtains a cost-to-cure estimate from a professional, or develops their own, the appraisal report must contain a detailed description of the nature of the curable impacts, the recommended method for correcting the impacts and a detailed cost estimate for the recommended cure.
6. The appraisal report must contain adequate factual data to support the existence of curable severance damages; a discussion of the appraiser's quantified or qualified analysis of the severance damages without the proposed cure; and sufficient analysis to support the use of the cost-to-cure to mitigate the potential severance damages.

Steps 1 through 4 above are part of the analysis, or development, phase of the appraisal process. If the steps are completed properly, they fulfill the requirement, under Wisconsin case law, that the appraiser employ a before and after analysis in the identification of potential severance damages. This analysis will also be adequate to support the identification of severance damages that will justify the use of the cost-to-cure method of estimating severance damages. Steps 5 and 6 above are part of the reporting phase (preparation of the appraisal report) of the appraisal process. The reporting detail required to describe the before and after analysis performed by the appraiser is dependent upon the complexity of the analysis performed under steps 1 through 4. If the appraisal problem required the use of a full before and after analysis to quantify the anticipated severance damages, because of the difficulty and cost of curing the potential impacts, then the documentation within the appraisal report should be adequate for the reader to understand the appraiser's conclusions. If the impacts of a partial acquisition are clearly minor and easily cured, then the appraisal report may only need to qualify the potential severance damages and the estimated costs to cure the anticipated impacts. In reporting the findings of the appraiser's severance damage analysis, the appraiser should always point out that the analysis undertaken in the development of the identified severance damages, whether a cost to cure method is employed or not, included a before and after analysis of the impacts of the proposed acquisition and the corresponding construction project.

If the appraiser is unsure whether the use of the cost-to-cure method, for a specific parcel, is appropriate they should contact the review appraiser assigned to the parcel being appraised.

### 2.4.5.3 - Severance Damages Resulting from A Change of Grade

Wisconsin State Statutes dictate that, in the case of a partial acquisition, the appraiser will, in their before and after analysis, consider a number of items of loss or damage. One of the items to be considered is a loss or damage resulting from a change in grade.

Section 32.09(6)(f), Wis. Stats. states that the appraiser will consider damages to property abutting on a highway right-of-way due to change of grade where accompanied by a taking of land in their before and after analysis.

The most obvious use of the term change of grade refers to instances where the roadway is physically raised or lowered however, change of grade can also refer to changes at the slope intercept line. This is the point where the proposed construction changes, or the new ground-line, meet the existing ground-line. Changes at the slope intercept line typically take the form of slope changes. The slope from the property, towards the roadway can increase (get steeper) or decrease (get less steep), and the changes don't necessarily result just from a raising or lowering of the roadway. They can also occur from a widening of the roadway, or modifications to a ditch, that result in a change of the in-slope (the slope down from the edge of the roadway to the ditch bottom or slope intercept line) or the backslope (the slope up from the edge of the roadway or ditch bottom to the slope intercept line).

A change of grade is not automatically assumed to result in a loss in value to the remainder of the larger parcel (severance damage). The appraiser must analyze the physical impacts to the remainder to determine the possible impacts to the after value of the remaining site and improvements. The impacts can range from minor, or insignificant, with only small adjustments to a slope, which will not impact the remainder's access or site maintenance; to significant slope modifications that will adversely affect access to the remainder; to major changes to the elevations of the roadway that will negatively affect the visibility in, or the view out, of the remainder. If the appraiser is unclear as to the exact nature of the physical impacts of the proposed grade change, they should consult with the project engineer.

Value impacts to the remainder of a larger parcel, resulting from a change in grade, will typically result from changes to a subject's physical access or issues associated with view, although these are not the only possible sources of severance damage resulting from a grade change. In addition to identifying the possible sources of severance damage, the appraiser will need to determine whether the damages are curable or incurable. Whether a damage is curable, or incurable will depend on the nature of the physical change, local zoning ordinances and the alternatives available for curing the potential damage. If an appraiser identifies possible changes to the remainder's access, then they should follow the guidance provided by REPM/Subsection 2.4.5.5. If a grade change, results in changes to the remainder's visibility or view, the appraiser will need to consult local zoning ordinances to determine the range of possible cures, such as providing for signage. The appraiser will then need to determine, using a before and after analysis as described in REPM/Subsection 2.0.2.1.1, whether any of the potential cures would be supported by the market. If market data does not support any of the potential cures, then the severance damages must be considered incurable and the value impacts identified by the before and after analysis will reflect the loss in market value. If the appraiser indicates that the severance damages are curable, then they must follow the guidance provided by REPM/Subsection 2.4.5.2.

As with all damages the existence of severance damages must be based upon factual evidence, and not be speculative in nature. Evidence of severance damages must be included in the appraisal report.

If the appraiser is unsure about the potential for severance damages on a specific parcel they should contact the review appraiser assigned to the parcel being appraised.

#### **2.4.5.4 - Severance Damages Resulting from A Change in Proximity**

A change in proximity generally refers to a change in the distance between the highway right of way line and a building or improvement. This change may have impacts on the contributory value of the existing improvements; however, the issue of proximity does not generally impact the value of the remaining site. A change in proximity affects improvements because they cannot be moved and the nearness of the right of way line to the improvement can impact the legal status, or marketability of the improvement. The impacts to the site will typically result from market impacts, or a change in highest and best use, based upon a change in size or shape.

When analyzing the impacts of a change in proximity the following items must be considered and addressed in the appraisal report:

- What is the distance between the improvement and the right of way line (setback) in the before condition? This is factual data based upon available survey and plan data. If the available mapping does not provide this information, the appraiser may need to request it from the project engineer.
- Does the before condition setback meet minimum zoning requirements? Is the subject property in conformance with the minimum setback requirements? This is factual data based upon existing zoning ordinances.
- How does the before condition setback compare to similar properties in the subject's market area? This data will take the form of comparable sales data as well as a visual inspection of the neighborhood and an analysis of available aerial photography.
- What is the distance between the subject's improvement and the right of way line in the after condition? This is factual data based upon available survey and plan data. If the available mapping does not provide this information, the appraiser may need to request it from the project engineer.
- Does the change in proximity alter the zoning conformance of the subject property in the after condition? This is factual data based upon existing zoning ordinances.
- Does the change in the setback of the subject's improvement (proximity change) affect the subject property's ability to compete with the same properties that were considered similar to the subject property in the before condition? This data will take the form of comparable sales data as well as a visual inspection of the neighborhood and an analysis of available aerial photography.

The determination of the possible existence of severance damage resulting from a change in proximity is most appropriately arrived at through a before and after analysis. The analysis of the before and after conditions of the subject property must be based upon the factual data identified above, not on a perceived loss to the owner of the subject property resulting from a physical change to the affected parcel. The owner will undoubtedly perceive the physical change to the subject property, resulting from the change in proximity, but will the market indicate a change in value?

The following is a list of items to consider in the appraiser's before and after analysis:

- If a house is closer to the right of way line (setback), in the before condition, than typical houses in the neighborhood then it will already be negatively impacted by the proximity of the right of way line, any further reduction in the setback will likely have less of an impact than a similar reduction would have on a house with setbacks more typical for the market.
- If a house is farther from the right of way line (setback), in the before condition, than typical houses in the neighborhood, then any value loss resulting from a reduction in the setback will be limited to the amount of any value premium attributable to the larger than normal setback. This should be true as long as the change in proximity does not create a situation where the after condition of the house becomes less than what is typical for the neighborhood.
- When the effects of a change of proximity are extreme in nature, the appraiser must recognize that each house has a minimum basic shelter value that will always exist. It is highly unlikely that a change in proximity, that does not involve the removal of a house, will ever be so severe that a house will have no value in the after condition.
- There may be a temptation to tie a change in proximity to changes, or a lack of changes, in the centerline or edge of the driving lane resulting from the proposed construction project. This temptation must be avoided in performing the before and after analysis. The market analysis should be tied to changes in the location of the right of way, not the roadway. Even though the road location may not change substantially under the current project, a change in the location of the right of way line will permit future moves of the roadway that may not be compensable if there are no additional right of way takings.
- When performing a before and after analysis to determine severance damages resulting from a change in proximity, it is preferable to utilize two separate unique sets of comparable sales. However, the appraiser may be able to use the same set of comparable sales for the before and after conditions and utilize a matched pairs analysis to adjust for the effects of the change in proximity.
- In most circumstances, any severance damage resulting from a change in proximity will be incurable (see REPM/Subsection 2.4.5.1). If the appraiser attempts to utilize a cost to cure to estimate a severance damage resulting from the change in proximity, they must provide market evidence that the proposed cure will mitigate the permanent reduction of the subject's setback.
- Typically, if the highest and best use of the subject property is based upon the subject as improved, then any damages resulting from the impacts to the site will be included in the before and after determination of severance damages. If the highest and best use of the subject property is as vacant, then severance damages resulting from a change in proximity will not be an issue.

Severance damages resulting from a change in proximity are typically difficult to support with available market data. It is recommended that the appraiser discuss the issue of proximity changes, and their anticipated method for measuring any potential severance damages, with the review appraiser assigned to the project.

### 2.4.5.5 - Severance Damages Resulting from A Change in Access (Access Control)

#### Access Rights:

- The Dictionary of Real Estate Appraisal 6th Edition, published by the Appraisal Institute defines access rights as:  
The right of ingress to and egress from a property that abuts an existing street or highway; an easement in the street that adjoins abutting property; a private right, as distinguished from a public right.

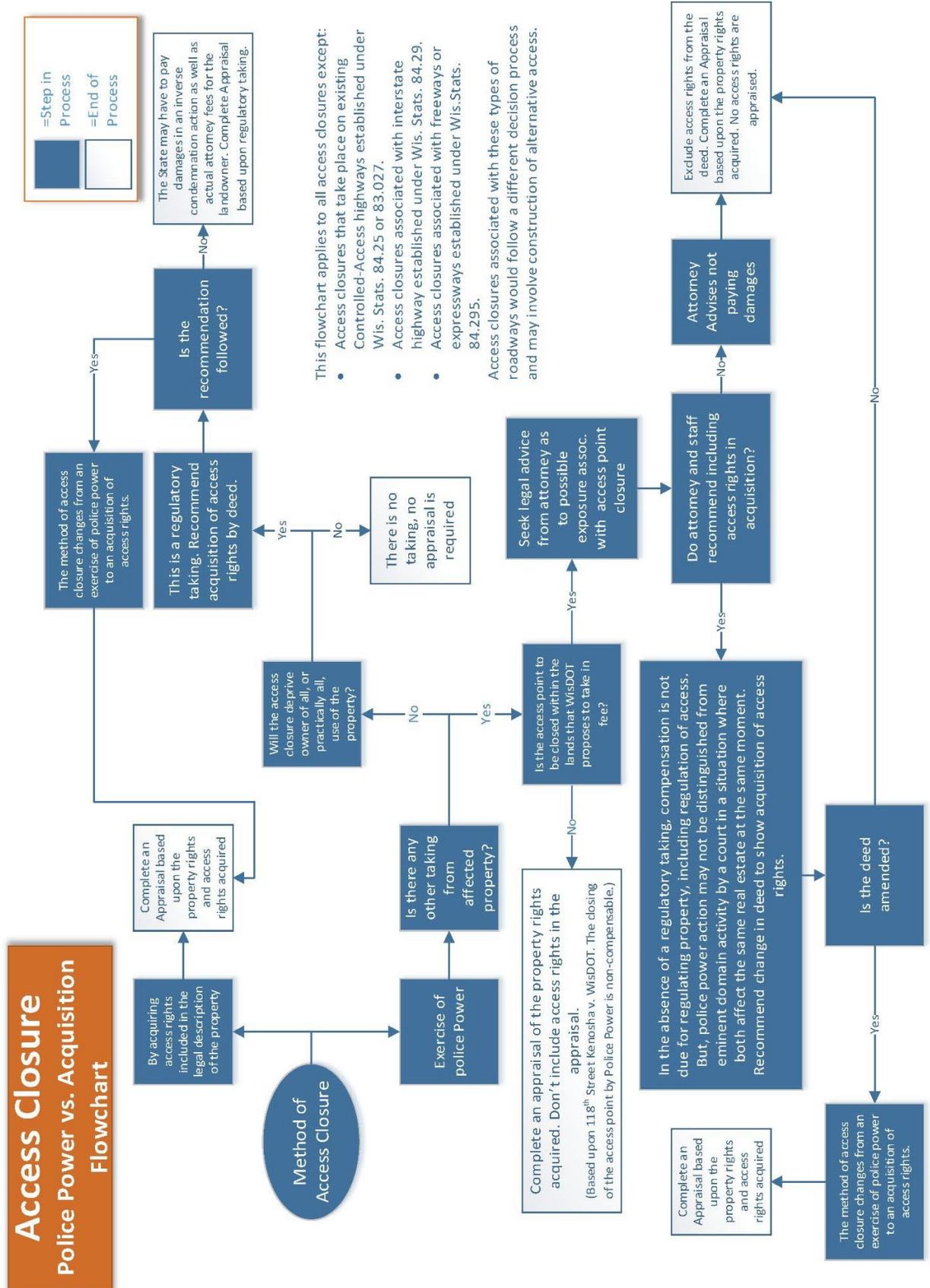
#### Regulatory Taking

- The following definition has been created for the REPM:  
A regulatory taking is a situation in which a government regulation limits the uses of private property to such a degree that the regulation effectively deprives an affected property owner of all, or practically all use of the affected property, even though the regulation does not formally divest them of title to it.

A change in access generally refers to a modification of the physical access to a property that abuts a highway, resulting from a removal of one or more existing access points (driveways). The access change is typically undertaken as a function of WisDOT's access management program which is a strategy to reduce crashes and preserve a highway system's capacity and performance through the reduction of highway access. The goals of WisDOT's access management program include:

- To improve the sustainability of existing roads by increasing their capacity through the elimination of access points. This reduces the need for right of way acquisition typically required for roadway expansion.
- To increase traffic safety by eliminating the conflict points (potential points of collision) that are associated with each access point closed.
- To remove access points from turn lanes or acceleration lanes, which improves safety.
- To eliminate median crossings, which is a function of access management that is used to increase sustainability and safety. This type of closure does not typically affect abutting property rights, but it warrants mention here.

The two primary methods for eliminating access points are the exercise of police power and the acquisition of an affected property's access rights. The following flowchart is designed to assist real estate project managers and appraisers in the determination of whether a proposed access point elimination will require the inclusion of an analysis of the elimination in the appraisal scope of work. The determination is based upon whether the access point elimination is the result of an exercise of police power, or the acquisition of the right of access.



The first method for eliminating an access point is the exercise of police power. Under this method access points are physically removed and not replaced. The property rights tied to the subject property and its access to the adjacent highway are not changed. Police power, which is defined and discussed in REPM/Subsection 2.0.2.3.1 will not be an appraisal issue unless the exercise of police power results in a regulatory taking, requiring compensation. Examples of an access closure under an exercise of police power would include:

- The removal of an access point under a construction project, which is not replaced;
- The revocation of an access authorization, established for a controlled access highway (Section 84.25, Wis. Stats.), where alternative access exists;
- The cancelation of an existing entrance permit under Wisconsin Administrative Code ch. Trans 231 and the subsequent removal of an existing access point (driveway).

Under most circumstances, when an access point is removed through an exercise of police power, no property rights are acquired so there is no basis for a change in the affected property's after condition versus its before condition and, except under an extreme situation (a regulatory taking), there is no basis for compensatory damages. Any value impacts resulting from an access closure through an exercise of police power is considered to be non-compensable. However, if the exercise of police power deprives an affected property owner of all, or practically all use of the affected property, then the non-compensable police power action may become a regulatory taking, requiring compensation. If the proposed access closure has the potential to result in a significant value loss, the appraiser is advised to talk with the RE project manager and, or the assigned project attorney to determine if there is a potential for a regulatory taking resulting from the access point removal(s). If there is no regulatory taking, then the appraisal of the affected property will not include any damages associated with an access point removal resulting from the exercise of police power. If it is determined that there is a potential for a regulatory taking, then it is recommended that the proposed acquisition be amended to include the acquisition of access rights from the affected property rather than closing access by police power.

The fact that an access point(s) is being removed under police power should be addressed in the after-condition description of the subject's remainder. The exercise of police power is not an element of acquisition and should not be discussed in the description of the acquisition, nor should the value impacts of the closure(s) be recognized in the after condition. If the appraisal assignment includes a request that the appraiser identify damages resulting from an exercise of police power, the appraiser must alert the assigned statewide review appraiser, who should inform the region that the appraisal assignment is inappropriate. If there is no assigned statewide review appraiser, then the appraiser must inform the section chief, relocation, appraisal and property management section, BTS-RE-Chief to obtain the necessary assistance.

The second method for eliminating an access point is the acquisition of an affected property's right of access. The acquired right of access can be broad in its affect, limiting access between the subject property and a named highway, or it can be specific and eliminate the right of access along a specified portion of the subject's frontage on a named highway. The acquisition of access rights will be indicated on the TPP and addressed in the transfer deed. The acquisition of access rights will effectively change the legal description of the affected property and establish the basis for a before and

after analysis that may or may not identify a change in value resulting from a change in access. In a situation where the proposed acquisition includes access rights, the resulting loss in value would be considered compensable.

There is a third circumstance that will potentially result in the elimination of access to an affected property. This circumstance does not involve the elimination of an access point through an exercise of a police power, or the acquisition of access rights. Rather it involves the elimination of the ability of an affected property to physically support an existing access point because of a grade change to a highway, resulting from a construction project accompanied by a taking of real property (see REPM/Subsection 2.4.5.3). These grade changes would alter the existing topography and make the continued use of the existing access either physically impossible, or financially prohibitive. A loss of physical access, resulting from a change in grade, will not change the legal description of the affected property; however, it will change the description of the physical characteristics of the affected property, and establish the basis for a before and after analysis that may or may not identify a change in value resulting from a change in access. In a situation where the change in access results from a change in grade, accompanied by a taking of real property, the resulting loss in value would be considered compensable.

When estimating any potential change in value resulting from the acquisition of access rights from an affected property, or from the elimination of the ability to physically access a property due to a change in grade, the appropriate appraisal methodology would be a before and after analysis as described in REPM/Subsection 2.0.2.1.1. When valuing the impacts of the legal or physical restriction of access, it is imperative that the appraiser utilize before-condition comparable sales that reflect the existing access in the before condition and after-condition comparable sales that reflect the access in the after condition. The appraiser should make every attempt to utilize a different set of comparable sales for the before and after conditions. Utilization of the same set of comparable sales for both conditions with different adjustment factors to address the effects of the access closure does not prove or support a value change due to the change in access. The identified value impacts should be reported as a severance damage resulting from the change in access.

When a before and after analysis of the impacts of a legal or physical change in access results in the identification of severance damages to the subject property's remainder, the appraiser should consider the possibility that the severance damages are curable (see REPM/Subsection 2.4.5.2). The following are examples of situations where severance damages resulting from the legal or physical elimination of access may be curable:

- A change in grade makes an existing driveway unusable. As a result, the site improvements are left with no physical access, thus significantly reducing the contributory value of the improvements (severance damage). If the subject site has access potential at a different location, a cure for the loss of the driveway would be the cost to build a new driveway at the alternate location, and the removal of the old driveway.
- A physical or legal loss of a commercial access point that results in the primary customer entrance to an upscale retail store being moved from the front of the building to the less desirable rear entrance. Under this scenario the original primary customer entrance, which would have provided high visibility of the best side of the

primary building is closed. In the after-condition the replacement entrance would result in the customers having an increased exposure of the unsightly aspects of the remainder's improvements (waste storage, under improved building facades and dock areas). This situation could potentially be cured by upgrading those newly exposed portions of the remaining property.

- A physical or legal loss of an access point results in internal circulation issues (example a service station or truck stop cannot function after an access modification; a residential garage, can no longer be accessed through the original garage door). As a result, the site improvements can no longer function at their highest and best use, thus significantly reducing the contributory value of the improvements (severance damage). A cure for the access impacts would be the cost to modify and, or move site improvements (curbing, pump islands, signage, modify garage door location, etc.) to accommodate a modified internal circulation.

Care must be taken to ensure that the cost to cure an access modification does not exceed the potential uncured severance damages. In addition, the appraiser must recognize that a potential cure for an access modification may not cure all severance damages resulting from the elimination of an access point. There still may be a potential for incurable severance damages (see REPM/Subsection 2.4.5.1) resulting from the loss of an access point. For this reason, the appraiser's before and after analysis must address both curable and incurable severance damages. Finally, any determination of the existence, or absence, of severance damages, is not a matter of an appraiser's opinion and must be supported by market data.

Appraisers must recognize, when doing a before and after appraisal, that identifying and measuring a loss in value due to access restriction/changes by this method may also include non-compensable damage items. Examples of non-compensable damages are: loss of business, external circuitry of travel or changes in traffic patterns. A careful analysis of the comparable sales used to establish the before value and those establishing the after value is needed. Any non-compensable damage components included in the before and after comparison should be identified and qualified in the appraisal narrative and eliminated from the final value conclusion.

The existing (before-condition) access must be described in the property description, before acquisition section of the appraisal report. The access rights acquired must be identified and described in the description of acquisition section of the appraisal report. The changes to the subject's remainder resulting from the change in legal or physical access must be described and discussed in the property description after acquisition section of the appraisal report.

The appraisal report should also include a site sketch showing the existing access locations and photos of the driveways to show the use and need for the driveways.

### 2.4.5.6 - Valuation Issues Resulting from the Creation of Remnants

#### Remnant

- The Cambridge English Dictionary defines remnant as:  
A small piece or amount of something that is left from a larger, original piece or amount. In eminent domain appraisals, the original piece or amount is the larger parcel.

In a partial acquisition of a larger parcel the remaining property (after condition) is typically referred to as the remainder of the larger parcel. However, when that remainder has negligible economic utility or value (a small piece or amount of something) due to its size, shape, or other detrimental characteristics, WisDOT has chosen to utilize the term remnant to define it. The term remnant is also used to refer to a small or landlocked portion of the remainder that is physically separated from the main body of the remainder as a result of the proposed acquisition. Remnants created by a partial acquisition are divided into two basic categories; economic remnants and uneconomic remnants.

Economic remnants are remnants that retain all or a substantial portion of their original, before condition, contributory value. As such, they still provide value to the property owner.

Uneconomic remnants are remnants that, because of a loss or difficulty of access, changed highest and best use, remoteness, or any other reason, will burden the affected property owner with responsibilities or expenses not commensurate with the value of retaining the remnant. A remnant becomes uneconomic when it's size, shape or condition has substantially impaired its economic viability or will render it of little value to the owner after the acquisition.

**Note:** It is not the appraiser's responsibility to determine whether a remnant is economic or uneconomic. This is a designation that will be assigned by WisDOT regional personnel. The appraiser will determine a value for the remnant and the region will assign a designation of economic or uneconomic based, in part, upon the findings presented in the appraisal report. The appraiser will not utilize the terms economic remnant or uneconomic remnant in their appraisal report. The appraiser will limit his or herself to the utilization of the term remnant when describing remainders affected by size, shape, or other detrimental characteristics created by a partial acquisition.

When valuing a partial acquisition of a larger parcel, the appraiser will value the before condition utilizing the appropriate approach(s) to value (sales comparison, cost, income). In the after condition, the determination of whether or not a remnant has been created will be made as part of the highest and best use analysis of the remainder. If the remainder of the larger parcel, due to its size, shape, or other detrimental characteristics, has experienced a substantial change in highest and best use or marketability, then there is a potential for the remainder to be a remnant. If an acquisition creates a small or landlocked tract that is separated from the main body of the remainder of the larger parcel, then the highest and best use analysis will be performed for both the small or landlocked portion and the main body of the remainder to determine if one, or all, of the

remaining portions of the remainder of the larger parcel, are potentially remnants. The remaining portion(s) of the remainder of the larger parcel will then be valued independently. Any reduction, in the unit value of the remnant, identified by the before and after analysis is considered to be a severance damage.

#### **2.4.5.7 - Valuation Issues Associated with Acquisitions from Legally Non-Conforming Properties**

Legally non-conforming properties will typically fall into one or more of the following categories:

- Legally nonconforming use: A use of property that was allowed under the zoning regulations that existed at the time the use was established, but which, because of subsequent changes in those regulations, is no longer a permitted use. This type of use is referred to as a “Grandfathered Use”. Most zoning ordinances will permit the grandfathered use to continue until such time that the use is discontinued. Once a use is discontinued it will typically lose its grandfathered status and will not be permitted to restart.
  - Grandfathered use, in the before condition, that is the highest and best use of the larger parcel, may create a before value that exceeds what is possible under a use that is legal and conforming. The proposed acquisition may cause the grandfathered use to be discontinued, which would result in an after condition highest and best use that is legal and conforming but has a lower value than the before condition. In this situation, the before and after analysis will value the legally non-conforming property, with the grandfathered use in place for the before condition. The after condition will be valued based upon the legal highest and best use of the affected property. The difference will be considered a severance damage resulting from the loss of the grandfathered status.
  - If the before condition use is not the highest and best use of the larger parcel, then the subject property is being underutilized and an interim use likely exists. Valuation issues associated with an interim use are addressed in REPM/Subsection 2.4.7.1.
- Legally nonconforming structure: A structure that complied with zoning and development regulations at the time it was built but which, because of subsequent changes to the zoning, development regulations, or as a result of governmental acquisitions, no longer fully complies with those regulations. The non-conforming status of an improvement can result from: the building not meeting setback requirements; the improvements being too large, or tall for the site (exceeding site coverage or height requirements), or any other physical characteristic exhibited by the site improvements that does not conform to the zoning ordinances in place at the time of the appraisal.
  - When determining the market value impacts of the existence of a legally non-conforming structure, either in the before condition or the after condition, the appraiser should assume that, if a non-conforming structure is damaged or destroyed, it may be restored or rebuilt. This assumption is based upon statutory amendments resulting from 2005 Wisconsin Act 112, which include changes to Stat. 59.69 (10m) Counties, Planning and Zoning Authority, Restoration of Certain Nonconforming Structures; Stat. 60.61 (5m) Towns, General Zoning Authority, Restoration of Certain Nonconforming Structures; Stat. 61.351 (5m) Villages, Zoning of Wetlands in Shorelands, Restoration of

Certain Nonconforming Structures, and Stat. 62.23 (5m) Cities, Zoning of Wetlands in Shorelands, Restoration of Certain Nonconforming Structures.

- Legally non-conforming lot: A lot that, at the time of its establishment, met the minimum lot size requirements for the zone in which it is located but which, because of subsequent changes to the minimum lot size applicable to that zone, or because of subsequent governmental acquisitions, is now smaller than that minimum legal lot size. Some zoning authorities will recognize this type of lot as legal, or a lot of record as long as it is capable of supporting adequate setback requirements for a proposed structure.

The scope of work for an appraisal analysis of a property, that is either legally non-conforming in the before condition or will become legally non-conforming as a result of the proposed acquisition, must include a determination of the exact nature of the non-conformity. In making this determination, the appraiser must understand that the local zoning regulations establish the formalized rules for what qualifies as a conforming, non-conforming, legally non-conforming or illegal property. The zoning regulations can vary greatly, from jurisdiction to jurisdiction. Often times the interpretation of the zoning regulations may vary even within the same jurisdiction, over time, depending on the individuals authorized with overseeing the regulations. It is for this reason that the appraiser is advised to discuss the legal status of non-conforming properties, as well as the nature of the non-conformity, with the local zoning authority, if they believe that a subject of their appraisal is or may become non-conforming.

Once the appraiser has determined whether a property is legally non-conforming, he or she must determine how the local market reacts to the identified non-conformity.

- Does the non-conformity enhance or complicate the marketability of the affected property?
- Is the non-conformity unique?
- If the non-conformity is unique, does the unique nature of the non-conforming property increase its desirability in the market?
- Does the non-conformity result in upward or downward pressures on the value of the non-conforming real estate?

Answers to these questions should be based upon an analysis of available market data, including, but not limited to, comparable sales data, a review of aerial photography of the market area, a personal inspection of the subject's market area and possible interviews with RE professionals familiar with the market area. The level of analysis undertaken by the appraiser will vary based upon the nature of the proposed acquisition and the resultant appraisal problem. That portion of the appraiser's scope of work associated with identifying and measuring non-conformities should be discussed with the review appraiser assigned to the affected parcel, to determine the appropriate level of analysis.

Once the appraiser has identified the nature of the non-conformities and determined how the area market views those non-conformities, then he or she should employ the before and after appraisal method, as described in REPM/Subsection 2.0.2.1.1 (Before and After Rule - Appraisal Method) to value the proposed acquisition and any severance damages that will result.

## 2.4.6 - Valuation of Easements

REPM/Subsection 2.0.1.6 addresses the valuation of easements as prescribed by Section 32.09(6g), Wis. Stats. in the case of the taking of an easement, the compensation to be paid by the condemnor shall be determined by deducting from the fair market value of the whole property immediately before the date of evaluation, the fair market value of the remainder immediately after the date of evaluation, assuming the completion of the public improvement and giving effect, without allowance of offset for general benefits, and without restriction because of enumeration but without duplication, to the items of loss or damage to the property, where shown to exist.

Typically, the state acquires its needed right of way in fee simple (fee). Occasionally, however, the state determines that it is preferable to acquire an easement over the needed property instead of the fee ownership. The following definitions address the difference between fee and easement, and will support the valuation discussions that follow:

### Easement

- The Yellow Book describes easements as follows:  
In general terms, an easement is a limited right to use or control land owned by another for specified purposes. An easement is a property interest less than the fee estate, with the owner of the underlying fee (the servient estate) retaining full dominion over the realty, subject only to the easement (the dominant estate); the fee owner may make any use of the realty that does not interfere with the easement holder's reasonable use of the easement and is not specifically excluded by the terms of the easement.

### Fee Simple Estate

- The Dictionary of Real Estate Appraisal 6th Edition, published by the Appraisal Institute defines Fee Simple Estate as:  
Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power and escheat.

The reasons for utilizing an easement instead of fee can be based upon who owns the needed property, or what the property is needed for. The following subsections will address the most common easements used by WisDOT: a brief description of the terms of the easement; why the easements are typically used instead of a fee acquisition and guidance for how to value the rights acquired under the easement.

### **2.4.6.1 - Highway Easements (HE)**

Occasionally land for highways is acquired by a highway easement rather than fee title. Typically, highway easements are utilized when acquiring: property from the federal government; tribal lands; or an active railroad corridor. However, highway easements are also acquired in a variety of instances where a fee acquisition would be undesirable.

Typical language associated with the acquisition of a highway easement reads as follows:

A Highway Easement (HE) is an easement for highway purposes, as long as so used, including the right to preserve, protect, remove or plant thereon any vegetation that the highway authorities may deem necessary or desirable.

The standard interpretation of this language is that the state is acquiring a dominant estate that encompasses nearly all the property rights for the area covered by the easement. The only remaining property right that is retained by the servient estate (the underlying fee owner) is the right of reversion. This is the right for the underlying fee owner to regain ownership of the area covered by the highway easement if the use for which the easement was acquired is ever discontinued.

When valuing a highway easement, the appraiser is directed by Section 32.09(6g), Wis. Stats. to perform a before and after analysis. The fact that the state is acquiring a highway easement does not affect the calculation of the before condition. The valuation of the remainder of the larger parcel after the acquisition of the highway easement and the subsequent construction project (the after condition) is treated in the same manner as if the highway easement were acquired in fee. This is because the rights, within the area of the easement, that remain after the establishment of the highway easement (underlying fee rights) have historically been held to have no value. This position is based upon the unlikelihood that the highway, for which the easement is acquired, will ever be abandoned, and the amount of time that would have to pass until any abandonment would take place. This position is supported by the Wisconsin Supreme Courts findings in Joint School District No. 1, Town of Greenfield v. Bosch et. al. as discussed in REPM/Subsection 2.4.6.2 below. In addition to the underlying fee rights having no value, the physical impacts to the remainder of the larger parcel resulting from the acquisition of the highway easement would be the same as if the area of the easement were acquired in fee. In most cases partial acquisition of a highway easement should be valued in the same manner as if the acquisition was in fee.

One exception to the rule of valuing highway easements at 100 percent of fee value is the partial acquisition of a highway easement over an active rail corridor. When a roadway is constructed within a highway easement across an active rail line within a railroad corridor the roadway and the rail line co-exist within the affected real estate. In this situation, as well as with other corridors (canals, utility, etc.) where the original use of the corridor is preserved within the highway easement and the roadway and existing use co-exist across the same real estate, the valuation of the highway easement will require greater analysis. The appraiser must review the language associated with the highway easement within the corridor and determine whether the roadway and the existing use within the corridor share the real estate equally (each use is supported equally) or whether the uses are unbalanced. This will determine whether the value of the highway easement should be 50 percent (balanced) or some other percentage of the unencumbered fee value of the affected real estate. It is recommended that the appraiser discuss any proposed highway easements across active corridors with the assigned review appraiser.

#### **2.4.6.2 - Existing Highway Easements (Underlying Fee Rights)**

Occasionally it is determined to be appropriate for WisDOT to acquire the underlying fee rights that were not acquired when the original roadway right of way was acquired as a

highway easement. The TPP will typically show the acquisition of the underlying fee rights in the schedule of lands and interests required as existing right of way acres required. Despite the indication in the TPP, WisDOT is not acquiring existing right of way. What is being acquired is the underlying fee rights that remained after the acquisition of the original highway easement. The acquisition of underlying fee rights is often inappropriately referred to as a conversion or transition of a highway easement to fee. The terms convert, and transition are a misrepresentation of the acquisition that is taking place and should not be used in an appraisal report.

When valuing the underlying fee property rights within an existing highway easement area, the appraiser must analyze the nature of the property rights that remain from the original highway easement acquisition. Some local zoning ordinances may permit the recognition of the area of underlying fee when calculating density or minimum site size requirements. This may suggest a higher value for the underlying fee rights, or possibly even a potential for severance damages to the remainder of the larger parcel resulting from the acquisition. However, if this condition is found to exist the appraiser should consult with the review appraiser assigned to the parcel being appraised. Under most circumstances, unless the original highway easement specified something different, most highway easements are assumed to have acquired all rights except the right of reversion, and the underlying fee rights are assumed to have no contributory value to the larger parcel. This position is supported by the Wisconsin Supreme Court Case Joint School District No. 1, Town of Greenfield v. Bosch et. al., which found that "... in ordinary cases, where condemnation for a right of way is sought, evidence is permitted to show, as the damages sustained, the full value of the land taken, upon the theory that the easement will be perpetual; that the right of way acquired, though technically an easement, will be permanent in its nature, and the possibility of abandonment by nonuse are so remote and improbable as not to be taken into consideration; that the exercise of the right will require practically the exclusive use of the surface; and that any interest which might be reserved to the owner in the fee would only be a nominal one and of no value."

The appraiser should avoid a finding of a nominal value when appraising underlying fee rights, because the term nominal is a non-specific term open to debate. A finding of no value is an acceptable finding. Under no circumstance should the appraiser indicate that the underlying fee rights being taken are non-compensable. This suggest that the state has the right to take the rights in question without compensation. This is inconsistent with the acquisition that is taking place and is completely different than saying the rights contribute no value.

If the appraiser reports a finding of no value, or a nominal value, for the acquisition of underlying fee rights, they should cite Joint School District No. 1, Town of Greenfield v. Bosch et. al. within their appraisal report as justification.

### **2.4.6.3 - Permanent Limited Easements (PLE)**

Occasionally land for highways is acquired by a permanent limited easement rather than fee title. Typical language associated with the acquisition of a permanent limited easement reads as follows:

A permanent limited easement (PLE) is a right for construction and maintenance purposes as defined herein. Including the right to operate necessary equipment thereon and the right of ingress and egress, as long as required for such public

purpose, including the right to preserve, protect, remove, or plant thereon any vegetation that the highway authorities may deem necessary or desirable. But without prejudice to the owner's right to make or construct improvement on said lands, or to flatten the slopes. Providing said activities will not impair or otherwise adversely affect the highway facilities.

The PLE document will specify the intended use of the area within the easement. The standard interpretation of this language is that the state is acquiring a dominant estate that encompasses specific property rights that are spelled out in the TPP and the PLE document. Each easement document contains specific controls and restrictions and must be carefully analyzed to determine how the easement affects the encumbered property as well as the easement's potential impacts on the unencumbered remainder. The servient estate typically retains the right to utilize the encumbered property to the extent that the specific property rights covered by the permanent limited easement are not impacted. The servient estate also retains the right of reversion. This is the right for the underlying fee owner to regain full ownership of the area covered by the permanent limited easement if the use for which the easement was acquired is ever discontinued.

When valuing a permanent limited easement, the appraiser is directed by Section 32.09(6g), Wis. Stats. to perform a before and after analysis. The fact that the state is acquiring a permanent limited easement does not affect the calculation of the before condition. The valuation of the remainder of the larger parcel after the acquisition of the PLE and the subsequent construction project (the after condition) must address the limitations placed upon the encumbered area by the easement, and any potential impacts to the unencumbered remainder as well. The acquisition of an easement through eminent domain does not give an appraiser a license to guess. The same logic and reason must be applied to appraising easements as would be applied to any other partial acquisition. A before and after analysis using comparable sales affected by permanent easements is the preferred method for determining the value impacts of a PLE, if the data is available. If sales with easements are used for the after condition, the easements should have similar effects on the sales properties as the easement being valued is anticipated to have on the subject property. In the absence of reasonable comparable sales data reflecting the anticipated effects of the proposed easement, the use of matched pairs to establish a range in potential value impacts, stated as percentages of the unencumbered fee value could be used. The ultimate responsibility for determining the appropriate appraisal methodology rests with the assigned appraiser. Whatever method of valuation the appraiser chooses to utilize, must be supported by appropriate market evidence. The appraiser is encouraged to discuss their intended valuation method with the assigned review appraiser.

The appraiser should use sound reasoning and logic to determine what percentage of the total ownership interest is affected. The most common type of easements found on comparable sales includes easements for access, utilities, overhead electric transmission lines, and pipelines. If there is no sales data to support the valuation of the easement, the appraiser's justification for the percentage of impact to the unencumbered fee value of the affected real estate, resulting from the permanent easement, must include an analysis of how the easement will affect the use of the property. Any percentage of loss of value for an easement should be proportionate to the loss of use of the property by the owner. It is also possible that the imposition of a permanent easement could cause a severance damage or benefit to the property remaining.

Evidence of severance damages or special benefits can only be determined through the use of a before and after analysis.

The use and impacts of the permanent limited easement acquired must be identified and described in the description of acquisition section of the appraisal report. The physical changes and limitations on the use of the subject's remainder resulting from the imposition of the proposed easement must be described and discussed in the property description after acquisition section of the appraisal report.

#### **2.4.6.4 - Temporary Limited Easement (TLE)**

Occasionally land, necessary to facilitate the construction of a highway project, is acquired as a TLE. Typical language associated with the acquisition of a TLE reads as follows: a TLE is a right for construction purposes, as defined herein. Including the right to operate necessary equipment thereon and the right of ingress and egress, as long as required for such public purpose, including the right to preserve, protect, remove, or plant thereon any vegetation that the highway authorities may deem necessary or desirable. All TLE's expire at the completion of the construction project for which this instrument is given. A TLE is an interest in land that is limited in purpose and time. TLE's must be acquired when the department has a need to temporarily use a portion of a property owner's land to facilitate the construction of a highway project. There are three potential elements of value loss or compensation resulting from the acquisition of a TLE.

1. The actual use or encumbrance of the land contained within the TLE. WisDOT's policy is that costs associated with the actual use of the land contained within the TLE, are an element of compensation, and not a damage. For this reason, the calculation of the compensation for the use of the TLE is separate from the before and after analysis of other property interests being acquired. The calculation of this element of value loss is discussed below.
2. The acquisition of site improvements or landscaping contained within the area of the TLE. Guidance for determining if, or when to value site improvements or landscaping within the area of the TLE is provided in REPM/Subsection 2.4.3.2. The methods for valuing the various site improvements or landscaping within the TLE is discussed in REPM/Subsection 2.4.3. The loss of the impacted site improvements is considered permanent, so the value determined for the affected site improvements or landscaping, which is considered their contributory value, must be addressed when calculating the after value of the subject property.
3. Possible severance damages to the land within the TLE and the remainder of the subject property, resulting from the construction activity within the TLE. Possible sources of severance damage could include: soil quality modification or compaction within the TLE that has the potential to adversely affect the vegetation growing capacity and subsequent contributory value of the affected area (corrective measures are available; however, the time required is extensive enough to consider the impacts permanent); significant slope modifications within the TLE that would permanently reduce the contributory value of the affected land, or impede access to the remainder of the subject property; and removal of essential site improvements (fencing, screening, retaining walls, etc.), where the cost of replacement exceeds their contributory value. The severance damages resulting from the construction activity within the area of the TLE is considered permanent in nature and must be taken into consideration when calculating the after value of the subject property.

The following section relates only to the calculation of the compensation for the use of the land contained within the TLE, as discussed in Item 1 above. The compensation for use of the land within the TLE is typically considered equivalent to renting the affected land for a specified period of time. This method of estimating compensation is consistent with WisDOT's policy of treating the use of the land within a TLE as an additional item of compensation. Factors that need to be identified, or estimated, in order to calculate the compensation for the use of the land within the TLE are:

- Amount of land within the TLE
- Unencumbered fee unit value of the subject site (Land Value per Sq. Ft. or Ac.)
- Appropriate rental rate, or annual yield rate, for the TLE
- Amount of time that the property within the TLE will be encumbered (Duration of TLE)
- Appropriate discount factor for the lump sum payment of calculated annual TLE payments (DR)

Amount of land within the TLE. This information is obtained from the TPP schedule of lands and interests required and is typically stated in square feet or acres.

Unencumbered fee unit value of the subject site. The appraiser must utilize the after condition unit value of the subject site when calculating the compensation for the use of the land within a TLE. In most situations, the unencumbered fee unit value of the larger parcel in the before condition, and the remainder of the larger parcel in the after condition, will be the same. However, if the property encumbered by the TLE has experienced any severance damages as a result of the proposed permanent acquisitions (fee and permanent easements) from the larger parcel and the subsequent construction project, the after condition unit value within the area of the TLE will be lower than the before condition unit value. If the land within the TLE has experienced severance damages in the after condition, the combination of the severance damages applicable to the land within the TLE plus the compensation for the TLE (if calculated utilizing the before condition unit value), could potentially exceed the total unit value of the land within the TLE in the before condition.

An example of this situation would be where an accessible site, that is worth \$5,000 per ac. in the before condition, becomes landlock in the after condition and is only worth \$500 per ac. (a severance damage of \$4,500 per ac.) A TLE on the remainder, based upon the before value, would be worth about \$1,500 per ac. That would mean that total compensation for the property within the TLE would be \$6,000 per ac., or \$1,000 per ac. more than the before value.

For this reason, the appraiser will utilize the after condition unit value when calculating the compensation for the actual use or encumbrance of the land within the TLE.

Appropriate annual rental rate, or annual yield rate, for the TLE. The preferred method for calculating the compensation for use of the land within the TLE is to identify annual market rental rates for land, within the subject's market, that are similar to the subject property. This may be possible when dealing with agricultural lands, but it is unlikely to be available for other types of property. If the appraiser chooses to utilize market rental rates for the calculation of the compensation for the use of the land within a TLE, he or she should consider whether the intended use of the TLE is consistent with the use under the market rental agreements (Example: crop production vs. construction activity). If the appraiser's analysis indicates higher than normal expected inflation, and that the

use of the TLE would reflect higher levels of risk (see the discussion of this issue below) than the uses identified for the market rental agreements, he or she may choose to adjust the rental rate to address the potential differences.

In the absence of market rental information, the appraiser is directed to develop an annual yield rate, which, when applied to the unencumbered fee value of the land within the TLE, will establish a reasonable annual rental rate for the land within the TLE. Depending on the subject's market location and property type, it may be possible to abstract an annual yield rate from available market data. In the absence of market data, or in support of limited market data, it is possible to estimate an annual yield rate. There are multiple methods for estimating an annual yield rate. The appraiser is encouraged to reference available reputable appraisal text to identify his or her preferred method. The following method of estimating an annual rate of return is considered to be adequate for the calculation of compensation for the use of land within a TLE:

Basic Safe rate + Liquidity Adjustment + Risk Adjustment = Annual Rate of Return

- A basic safe investment rate reflects the time value of money rate, or a rate which compensates an investor for waiting. A basic safe rate obtained for competitive investments in the financial market would establish the base for building an annual yield rate. A safe rate would include rates for certificates of deposit with time requirements similar to the duration of the TLE, municipal bond rates, etc. This safe rate is by definition, basic and not specific to any property type or use. Therefore, the basic safe rate should be the same for all property types and uses. If the appraiser chooses to vary this rate based upon property type or use, they must provide evidence supporting the variation.
- The adjustment for expected inflation is an adjustment to the basic safe rate that addresses the expected loss in purchasing power resulting from inflation over the life of the TLE (from the effective date until the expiration date of the TLE). This adjustment is required because there will be no annual rate adjustments made to the annual rental rate during the term of the TLE. The adjustment for expected inflation will be tied to the consumer price index. The appraiser should utilize the current year's inflation rate to establish the adjustment for expected inflation. No effort should be made to project or predict future inflation rates.
- The risk adjustment includes consideration for market, financial liquidity and management risks together with uncertainty associated with the ultimate physical and financial impacts of the imposition of the TLE on the encumbered areas. The lack of liquidity will affect the annual yield because most alternative investments give the investor the opportunity to divest themselves of an investment. Most investments can be sold or traded easily, which gives the investor the opportunity to take advantage of beneficial fluctuations in the market that could potentially allow him or her to increase their annual yield rate. In contrast, the TLE cannot be sold or traded and the investor bears greater risk the longer the timeframe for the TLE. This inability to sell or trade the TLE, or non-liquidity, is an element that should be considered in the establishment of a risk adjustment. The element of uncertainty associated with the physical and financial impacts of the imposition of the TLE include not only the possibility of unexpected physical changes within the encumbered area, but also the possibility of impacts from the construction activities within the TLE on the unencumbered portions of the subject property. This element of the risk adjustment may be affected by the location and size of the TLE. Smaller TLE's, or TLE's that are situated in remote or unused areas of

the subject property would have less risk. Larger TLE's, or TLE's located in prominent or heavily used areas of the subject property would have more risk. The adjustment for risk is directly tied to the physical characteristics of the TLE being analyzed and its impact on the affected parcel, and the impacts of the TLE on the affected parcel are potentially tied to the property type or current use of the parcel, so the adjustment for risk has the potential to be unique for each parcel being appraised. Typical adjustments for risk range from 2% to 4%.

Example: The following is an example of a calculation of an annual rate of return:

- Basic Safe Rate – Based upon market research a rate of 2.5% per year is identified for AAA rated municipal bonds.
- Expected Inflation – A review of the available inflation estimates results in an adjustment for expected inflation of +1.5% per year.
- Risk adjustment – The proposed TLE will be located in the front yard of a single-family residence and will take up approximately two-thirds of the yard, so a risk adjustment of 3% per year is identified by the appraiser.
- Basic Safe rate + Expected Inflation + Risk Adjustment = Annual Yield Rate
- 2.5% + 1.5% + 3% = 7% Annual Yield Rate

Application of an annual yield rate for all or a portion of a project. The appraiser may choose to establish a single annual yield rate for an entire project where the affected parcels are sufficiently similar with regards to property type and the potential impacts of the proposed TLE. In this situation, the affected parcels would utilize the same basic safe rate. The adjustment for expected inflation would be the same for all of the parcels on the project because they would all be affected by the same market conditions. The risk adjustment would be same for all of the parcels as long as the property types are similar, and the acquisitions are similar in nature. If the appraiser chooses to utilize a single annual yield rate for a project, but there are a small number of parcels with increased risk potential, the annual yield rate calculated for the project can be adjusted to address the increased risk for the affected individual parcels.

The annual yield rate calculated for the project can be further refined if the parcels on the project are not sufficiently similar with regards to property type to utilize a single rate. If the project contains multiple property types that are not similar in nature, those parcels on the project that are similar in nature can be grouped together. A separate annual yield rate can then be calculated for each property type (group of parcels) by adjusting the annual yield rate calculated for the project to reflect the impacts of utilizing a different risk adjustment for each of the different property types. The appraiser must cite his or her justification for the use of different risk adjustments based upon property type.

Time that the TLE will be encumbered. The time period of the TLE will typically run from an established starting date until the expiration date identified in the appraisal assignment by the regional office. The establishment of the starting date of the TLE will depend on whether the TLE is part of an appraisal or a waiver valuation contained in a NPPR. If the TLE is part of an appraisal, the starting date will be the same as the effective date of the appraisal. If the TLE is part of a waiver valuation contained in a NPPR, the starting date will be the date that the NPPR is being prepared and the TLE is being calculated.

The expiration date may coincide with the date of the completion of construction, which is available from the regional project engineer; however, responsibility for the establishment of the expiration date of the TLE rests with the regional RE office. The expiration date does not have to be directly connected to the anticipated completion of construction. If a project has the potential of being advanced, the regional RE office has the option to choose to utilize the program year for the expiration date of the TLE or the potential advanced date. If there is concern about the project being completed on time or the letting date being delayed, the regional RE office has the option to choose to add time to the duration of the TLE. In addition, the month of the expiration date for the TLE does not need to be tied to the anticipated construction completion date. It can be based, for example, upon the typical end of the construction season (November 30), or the last day of the calendar year (December 31). The date does not need to be tied to an anticipated event if the regional RE office so chooses.

It is recognized that the addition of time, that ultimately may not be needed, will increase the cost of the TLE; however, it will allow the region to avoid the possibility of having to obtain TLE extensions at a later date. The region must weigh the potential costs of increasing the duration of the TLE against the risk of possibly having to pay for extensions, which must be obtained under tight time constraints, that could have the potential of delaying a project. An additional element of consideration when determining the expiration date of the TLE is that the increased costs of extending the timeframe of a TLE will be mitigated somewhat by the discounting process discussed below. The completion date is considered to be an extraordinary assumption, because it is not defined in the document establishing the temporary limited easement.

Appropriate annual return on investment used to calculate a discounted lump sum payment of the annual rent for the TLE. The annual rental rate will be paid as a lump sum rather than annual installments. Therefore, an annual return on investment must be identified to determine a discount factor (see discount factor table below) used to calculate the present value (lump sum payment) of future annual rental payments for the use of the land contained within the TLE. Typically, payments that are made up front like this are discounted to reflect the time value of money (i.e., the value of a dollar received today is worth more than a dollar to be received in the future). A discount rate is the opposite of interest compounding; in other words, the present value of say five yearly rental instalments, if invested using a compound interest rate, should earn enough to provide a full rental payment each year. The basic safe rate element of the annual yield rate, which is defined as the time value of money, best reflects this. The annual yield rate's element of inflation is already built into the annual rental rate, and the annual yield rate's risk element need not be considered because there are no liquidity issues and a payment from a government agency carries a very low level of uncertainty. Based upon the above analysis the annual return on investment used to determine the discount rate is best reflected by the basic safe rate element of the annual yield rate calculation.

Calculation of an Appropriate Discount Factor. The identified annual return on investment, together with the duration of the TLE, will be used to calculate a discount factor, for the calculation of the discounted lump sum payment of the annual rental of the land within the TLE. The appraiser should utilize a financial calculator to obtain the appropriate discount factor. The Discount Factor Table provided below may be employed by the appraiser if they choose.

DISCOUNT FACTOR TABLE*												
Years	Annual Return on Investment											
	1%	1.5%	2%	2.5%	3%	3.5%	4%	4.5%	5%	5.5%	6%	6.5%
1 (12 mo.)	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
2 (24 mo.)	1.990	1.985	1.980	1.976	1.971	1.966	1.962	1.957	1.952	1.948	1.943	1.939
3 (36 mo.)	2.970	2.956	2.941	2.927	<b>2.913</b>	2.900	2.886	2.873	2.859	2.846	2.833	2.821
4 (48 mo.)	3.941	3.912	3.884	3.856	<b>3.829</b>	3.802	3.775	3.749	3.723	3.698	3.673	3.648
5 (60 mo.)	4.902	4.854	4.808	4.762	4.717	4.673	4.630	4.588	4.546	4.505	4.465	4.426
6 (72 mo.)	5.853	5.783	5.713	5.646	5.580	5.515	5.452	5.390	5.329	5.270	5.212	5.156
7 (84 mo.)	6.795	6.697	6.601	6.508	6.417	6.329	6.242	6.158	6.076	5.996	5.917	5.841

\*The discount factor is based upon the annual payment being made at the beginning of the year.

**Use of the Discount Factor Table:**

When calculating a discounted lump sum payment for a Temporary Limited Easement (TLE), the appraiser must identify an appropriate discount factor, utilizing the length of time that the TLE will be in place, and an appropriate annual rate of return on investment. Using the above table, the appropriate discount factor for a 3-year TLE utilizing the 3% annual return on investment (calculated above) is **2.913**. In the event that the length of time that the TLE will be in place is not an even number of years (**Example: 41 months**) the appraiser will identify the discount factor for the even years before and after the actual identified TLE length of time. Using the above table, the discount factor for 3 years (36 mo.) is **2.913** and the discount factor for 4 years (48 mo.) is **3.829**. Subtract the discount factor for the shorter time frame from the discount factor for the longer time frame (**3.829 – 2.913 = 0.916**). Divide the difference by 12 (**0.916 ÷ 12 = 0.076**) to identify a monthly adjustment. Multiply the monthly adjustment by the time difference between the even year before the actual identified TLE length of time and the actual TLE length of time (**(41 mo. – 36 mo.) × 0.076 = 0.380**) to identify the necessary time adjustment for the discount factor. Add the adjustment to the discount factor for the even year before the actual TLE length of time (**2.913 + 0.380 = 3.293**) to obtain the discount factor for a TLE length of time that is not an even year in length (**3.293 for 41 months at 3%**).

Utilizing the factors identified above, the following formula should be used to calculate the compensation for the use of the land contained within the TLE:

1. Size of TLE in Sq. Ft. or Ac. × Unencumbered Fee Land Value per Sq. Ft. or Ac. = Value of the Land Contained in the TLE;  
Example: 0.25 Ac. × \$10,000 per Ac. = \$2,500
2. Value of the Land Contained in the TLE × Annual Yield Rate = Calculated Annual Rental Rate;  
Example: \$2,500 × 7% = \$175.00
3. The Calculated Annual Rental Rate may be replaced by an Annual Market Rental Rate if market data is available.  
Example: Market Rental Rate is NOT available. Calculated Annual Rental Rate - \$175.00.
4. Annual Rental Rate (Calculated or Market) × The Discount Factor = The Lump Sum Compensation for the use of the land within the TLE.  
Example: Using the discount factor for 41 months at 3% example from the Discount Factor Table above - \$175.00 × 3.293 = \$576.28 is the amount of the lump sum rental payment.

**Note:** The identified method of calculating the compensation for the use of the land within a TLE utilizes a single annual rental rate, or annual yield rate for the entire term of the TLE. WisDOT does not recognize the use of different annual rental rates, or annual yield rates, based upon the departments activity within the area of the TLE, during any specific portion of the term of the TLE.

The above calculation is not part of the before and after analysis of the subject property. The appraiser will report the analysis associated with the TLE, and the calculation of the compensation for the actual use or encumbrance of the land contained within the TLE, as an additional item of compensation. The section of the appraisal report that addresses the issue of compensation for the actual use or encumbrance of the land contained within the TLE will be distinctly separate from the before and after analysis and valuation portion of the appraisal report.

## 2.4.7 - Concept of Consistent Use

### Consistent Use

- The Dictionary of Real Estate Appraisal, 6th Edition defines consistent use as:  
The concept that land cannot be valued on the basis of one use while the improvements are valued on the basis of another use; most often an issue for interim or transitional uses of land. For example, a property in transition from one use to another cannot be valued on the basis of one immediate use for the land and another use for improvements because to do so would be inconsistent with elements of valuation. The improvements must enhance the value of the land. A dwelling that may have many years of remaining life for residential use could not possibly enhance the value of the land for which the immediate higher use would be a service station.

The concept of consistent use is typically only an issue when valuing improved interim use property that may be actively used for one purpose on the effective date of the appraisal, but which has a different immediate highest and best use on the same effective date. A common example is a property that is being utilized as a single-family residence on the effective date of the appraisal, while the appraiser's analysis indicates that the highest and best use of the property on the same effective date would be as if vacant and available for commercial development. It would be acceptable, under the concept of consistent use, for the appraiser to value the land as if vacant and available for commercial development, and place no value, a negative value (cost to remove the residence), or a minimal value (interim or transitional value) on the single-family residence and the residential site improvements (The value would depend on the condition of the improvements and the likely time frame for the commercial redevelopment). It would only be appropriate to recognize the value of the land as if vacant and available for development to its highest and best use, while allowing a residual (interim) value for the improvements, if the potential redevelopment is likely to take place in the near future (say 2 to 5 years). It would not be acceptable, under the concept of consistent use, for the appraiser to value the land as if vacant and available for commercial development, and then value the residence and the residential site improvements as if the highest and best use of the subject property was as improved for continued residential use.

### 2.4.7.1 - Valuing Interim Use Properties

#### Interim Use

- The Dictionary of Real Estate Appraisal, 6th Edition defines interim use as:  
The temporary use to which a site or improved property is put until a different use becomes maximally productive.

As indicated in the definition of interim use, the term can be applied to a vacant site. Typically, if a vacant site has a different highest and best use than the current use, a use

change will be dictated by market conditions and the investor's willingness to accept the risk and costs associated with bringing the vacant property to market. The valuation of vacant interim property will not typically be impacted by the concept of consistent use; however, the value analysis will require the appraiser to consider issues associated with risk, holding costs and interim income generation. The valuation of vacant interim use property can be accomplished utilizing a number of acceptable methods, including, but not limited to:

- The identification of comparable sales data for vacant interim use property that is similar to the subject property. This type of data should be available in an active market and is considered to be the best indicator of market value.
- Estimate the market value of the vacant interim use property at its highest and best use as if development is imminent (example: land with an interim use as tillable agricultural with an imminent highest and best use as residential development land) and adjust the findings to address the value impacts of time, holding costs, costs to rezone the property, costs to prepare the property for sales and elements of risk associated with unknown future market conditions.

The appraiser must be competent to utilize his or her chosen method. If the appraiser is unsure of the appropriate valuation method to use, they are encouraged to consult the assigned review appraiser.

The following section will focus on the valuation of improved interim use property, because of the potential for complications associated with the employment of the concept of consistent use.

The determination of whether an improved parcel is considered an interim use property is based upon the highest and best use analysis for the larger parcel being appraised. The determination must be supported by:

- Market evidence of demand for the change (financial feasibility)
- Evidence of a willingness on the part of the local zoning authority to accommodate the change (legal permissibility)
- Market evidence that the potential change will result in a higher value for the subject site as if vacant than as improved (maximally productive)

The final element in determining whether an improved parcel is an interim use property is the issue of time. For an improved parcel to be considered an interim use property, with the site valued as if vacant and available to be developed to its highest and best use.

(example: A residentially improved site valued as a vacant commercial site) the above highest and best use changes must be imminent (likely to happen within the next 2 to 5 years) Any changes that are not expected to occur imminently are speculative, and do not support the valuation of an improved site, as a vacant site available for development. If the timeframe for the potential changes is not considered to be imminent the comparable data used to value the subject property may exhibit locational characteristics reflective of market speculation about possible changes, but they cannot reflect situations where changes were imminent. The determination of whether a parcel should be considered an interim use property is not a matter of opinion or a guess. It is a determination based upon supportable facts and market data.

The appraiser must utilize the before and after appraisal method when analyzing the value impacts of a partial acquisition from an improved interim use property. The before condition valuation of interim use properties can be accomplished utilizing the sales comparison approach, the cost approach or the income approach. The specific approach, or methodology used, is dependent upon the available data and is the responsibility of the assigned appraiser. The appraiser must be competent to employ the chosen appraisal methodology utilized to complete the appraisal assignment and must adhere to the concept of consistent use.

When valuing an improved interim use property, the land value for the subject site will typically be consistent with the identified highest and best use of the subject property as if vacant, adjusted for the anticipated costs associated with removing the existing improvements and obtaining the necessary zoning changes. If an improved interim use property is valued as if vacant and available for development to its highest and best use no adjustments will typically be made for risk or time, because of the determination that the proposed changes are considered to be imminent. There is no industry standard term for the resultant land value described above, but, for the purposes of the appraisal options discussed below, the term interim land value will be used. The following discussion of appraisal options is intended to provide guidance and should not be treated as the only appraisal options available. The appraisal options for estimating the before condition value of the interim use property might include:

1. The identification of comparable sales data for improved interim use property, similar to the subject property. This type of data should be available in an active market and is considered to be the best indicator of market value. The valuation methodology utilized for option 2 will provide an allocation of the market value of the interim use property between land and buildings.
2. Estimate the market value of the interim use property (as improved) as it is actively being used on the effective date of the appraisal (example: land and improvements valued as single-family residential), with no consideration for a different potential highest and best use. Then estimate the interim land value of the interim use property as if vacant and available for redevelopment to its highest and best use (example: vacant commercial). Compare the two values. If the value as vacant is higher than the value as improved, then the buildings likely lend no value to the interim use property. If the market value as improved is higher; subtract the land value as if vacant and available for development to its highest and best use from the estimated market value of the property as currently improved and being used. The difference would be the contributory value of the improvements for an interim use. In general, the lower the interim value of the improvements, the more imminent the use change would be.
3. If an analysis of the interim use property indicates the following:
  - There is a potential for imminent conversion of the property, but the current owner shows no inclination to pursue a use change;
  - The analysis from options 1 and 2 above result in zero interim use value for the site improvements;

The appraiser has the option to value the improvements utilizing an income analysis based upon a hypothetical market rental of the property for the likely transitional period (this method is discussed in Real Estate Valuation in Litigation, Second Edition, published by the Appraisal Institute, on Page 117). The calculated value for the improvements would be considered an interim value and would be added to the interim land value to provide a before value for the interim use property. This method

recognizes the possible market reactions of a potential buyer of an interim use property, that will not be converted to the identified highest and best use for a few years, who would likely be willing to consider the potential income generating capacity of the interim use when buying the property.

The value findings of the above appraisal options would be supportive of a before condition market value for an interim use property. The same methods described for the before condition, along with the before condition value allocations between land and improvements, would be used to estimate an after value of the interim use property. The land and improvement allocations can also be utilized to determine the value of the part taken in a partial acquisition.

In a total taking of an interim use property, the valuation methods described above will likely result in the highest supportable market value for the larger parcel and, by extension, the highest resultant determination of just compensation. In a partial acquisition, however, the potential value impacts of the proposed acquisition will vary greatly depending on the amount of land acquired, the impacts to the existing site improvements, and the potential for severance damages. A partial acquisition should be analyzed from two possible perspectives to determine the most advantageous outcome for the affected property owner. One perspective would involve the valuation of the property as an interim use property, recognizing the land value as if vacant and available for development to its highest and best use and an interim value for the improvements. This would provide the greatest value for the land acquired, but it would significantly reduce the potential compensation for acquired site improvements, or potential severance damages to the buildings, because their contributory value is based upon a temporary use. The second perspective would involve the valuation of the property as it is used as of the effective date of the appraisal with the land and improvements valued accordingly. This would reduce the potential compensation for the land acquired but would increase the contributory value of the existing improvements acquired and allow for the potential for severance damage recognition. The appraiser should utilize the perspective that most benefits the property owner. However, the appraiser must not value the impacts to the buildings and site improvements based upon the current use and then value the impacts to the site (land) based upon a highest and best use that is different from the current use, and then add the damages together. This would be contrary to the concept of consistent use.

### **2.4.8 - Valuation of Contaminated Property**

The appraisal of contaminated property involves the use of specialized data and appraisal methods that are discussed in REPM/Chapter 9.

### **2.4.9 - Carve-Outs**

The term carve-out refers to a relocation concept discussed in REPM/Chapter 5. If a person is displaced from a home and a comparable replacement dwelling within the immediate area of the subject property, used in computing a Replacement Housing Payment (RHP), lacks major exterior attributes such as a garage or other outbuildings, the value of such attribute is subtracted from the acquisition cost of the subject dwelling to establish a base value for calculating a maximum RHP. This method is known as a carve-out for computation purposes.

The contributory value of the major exterior attributes is established by the appraiser and identified in the appraisal report. The appraiser must adhere to the unit rule, so the contributory values of the major exterior attributes are allocated from the estimated market value of the larger parcel, and not simply based upon a replacement cost. These allocations, or carve-outs may include items such as:

- The value of a residence and a typical lot for the area. This carve-out could be used to identify the contributory value of excess land that is capable of being independently developed. This carveout could also be used to determine the contributory value of the residential portion of a mixed-use residential/commercial property (farm, residence with an attached office or hair salon).
- The contributory value of exterior site improvements (major exterior attribute). This carve out would include items like swimming pools, outbuildings, detached garages oversized garages, barns, sheds and other unique site improvements. These carveouts would be used when comparable listings, used for replacement housing payment calculations, lack the identified improvement (major exterior attribute).
- The contributory value of the living quarters of an owner occupied commercial building. This carve-out could be used to determine the contributory value of the living quarters of an owner occupied commercial property such as a motel, tavern or resort.

If the appraiser is required to provide carve-out value estimates, he or she will be informed as a part of the appraisal scope of work agreement. The potential need for carve-outs must not influence the appraisal analysis of the subject property. Any carve-out allocations must be performed after the determination of the market value of the larger parcel and must be based upon the attribute's contributory value. The allocated contributory value of the requested carve-outs can be included in the appraisal report in a section labeled as carve-outs for relocation.

The appraiser should consult with the relocation advisor assigned to the parcel to determine any potential carve out need.