

8102 EMINENT DOMAIN: SEVERANCE DAMAGES*

The term "severance damages" has been used during the trial. Severance damages reduce the fair market value of the remaining property because of the partial taking.

If you conclude that severance damages exist, you should subtract the amount of the severance damages from the fair market value of the remaining property in answering Question 2 of the Special Verdict.

COMMENT

This instruction and comment were approved in 2006. The comment was revised in 2008.

*This instruction should be given in partial taking cases when evidence has been received that the part of the Property not taken has been damaged by the partial taking, but no cost-to-cure evidence has been received.

Wis. Stat. § 32.09(6)(e), Wis. Stats.

The definition of "severance damages" is taken from Arents v. ANR Pipeline Company, 2005 WI App. 61, 281 Wis.2d 173, 189, 696 N.W.2d 194 (Ct. App. 2005). See also Hoekstra v. Guardian Pipeline, 2006 WI App 245, 298 Wis.2d 165, 726 N.W.2d 648.

Justmann v. Portage County, 278 Wis. 2d 487, 692 N.W.2d 273 (Ct. App. 2004); Alsum v. WISDOT, 276 Wis. 2d 654, 689 N.W.2d 68 (Ct. App. 2004)

Sec. 14A.04(1) and (2), Nichols on Eminent Domain (3rd Ed).

See also Braun v. Wisconsin Elec. Power Co., 6 Wis.2d 262, 267, 94 N.W.2d 593 (1959), Renk v. State of Wis., 52 Wis.2d 539, 191 N.W.2d 4 (1971); and Narloch v. State of Wis. Dept of Transp., 115 Wis.2d 419, 340 N.W.2d 542 (1983).

The term "just compensation" includes not only the value of the portion taken but also the diminution of the value of the parcel(s) from which it is severed. Parks v. Wisconsin Central R. Co., 33 Wis. 413, 420 (1873), citing Bigelow v. West Wis. Ry. Co., 27 Wis. 478 (1871).