8104 EMINENT DOMAIN: UNITY OF USE – TWO OR MORE PARCELS

In considering the fair market value of both the entire property and the remaining property, you must first determine whether the parcels of real estate owned by (plaintiff) were used as a single unit, or whether they were used as separate units. The fact that the parcels were touching does not, by itself, make them a single unit, nor does the fact that the parcels were not touching, by itself, make them separate units. You may consider that they were touching or separated, in connection with all the credible evidence received in this case, in determining whether the parcels were used as a single unit or as separate units.

If you determine that two or more parcels of real estate owned by (plaintiff) were used as a single unit, consider the taking as a partial taking from all of those parcels as the entire property.

However, if you determine that the parcels of real estate owned by (plaintiff) were used as separate units, you will then make your determination of fair market value only with respect to the parcel(s) from which the taking occurred.

In determining the value of the entire property, you may consider it as a single amount or as the sum of the value of the individual parcels making up the entire property.

COMMENT

This instruction and comment were approved in 2006.

The instruction is based, in part, on Spiegelberg v. State of Wisconsin, 2004 AP 3384, 2006 WI 75 (2006).

Separation of parcels by public streets, green spaces, or buffer zones, does not necessarily destroy unity of use. City of Milwaukee v. Roadster LLC, 265 Wis.2d 518, 666 N.W.2d 524 (Ct. App. 2003). Welch v. Milwaukee St. P.R.R., 27 Wis. 108 (1870).

Diversity of ownership ordinarily prevents unity of use as a matter of law; however, title in fee to one parcel and a valid leasehold or contractual interest in another is sufficient ownership to permit proof of unity of use in fact. Jonas v. State, 19 Wis. 2d 638, 121 N.W.2d 235 (1963).

Contiguity of parcels does not necessarily make them a unit. Lippert v. Chicago & N.W. Ry. Co., 170 Wis. 429, 175 N.W. 781 (1920).