

8113 TAKING OF A LIMITED EASEMENT

The term “temporary limited easement” (TLE) has been used during the trial. The taking of a temporary limited easement requires the payment of just compensation. Question [] of the Special Verdict asks, “What amount of compensation should be paid to the plaintiff owner as a consequence of the TLE?”

You should consider the rental value of the TLE, taking its duration into account. [You should also consider (the loss of site improvements, landscaping, and fixtures within the TLE area) (damages to the plaintiff-owner’s remaining property caused by the taking of the TLE) (insert other damages at issue) or any other damages caused by the TLE.]

SPECIAL VERDICT

Question []: What amount of compensation should be paid to the plaintiff owner as a consequence of the TLE?

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COMMENT

This instruction and comment were approved by the Committee in October 2023.

118th Street Kenosha, LLC v. Wisconsin Dept. of Transportation, 2014 WI 125, 359 Wis.2d 30, 856 N.W.2d 486, and Backus v. Waukesha County, 2022 WI 55, 402 Wis.2d 764, 976 N.W.2d 492 addresses

the issues of loss of direct access and taking a limited easement.

In 118th Street, the Wisconsin Supreme Court assumed without deciding that a temporary limited easement was compensable under Wis. Stat. § 32.09(6g). However, in Backus, the court found that a “...reasonable reading of 32.09(6g) is that it applies only to easements that continue to exist beyond the completion of a public improvement project. Therefore, § 32.09(6g) does not apply to TLEs, which must instead be compensated under constitutional and common law principles.” Id., at ¶19.

The Backus court included a footnote clarifying that its opinion was not intended to limit access to compensation for provable damages caused by the TLE, offering examples of “rental value of the TLE and damages for permanent loss of site improvements within the TLE.” Id., at ¶19, n.12. That footnote provides as follows:

To be abundantly clear, this opinion does not limit a property owner’s access to compensation for any provable damages caused by a TLE. This includes, but is not limited to, elements of value currently included in the WI DOT Real Estate Program Manual section 2.4.6.4, such as the rental value of the TLE and damages for permanent loss of site improvements.