

8115 EMINENT DOMAIN: SPECIAL BENEFITS*

The term "special benefits" has been used during the trial. Special benefits increase the fair market value of the remaining property after (date of evaluation) because of the (defendant)'s public project.

Special benefits are different from "general benefits." General benefits are those benefits that are enjoyed by the community as a result of (defendant)'s public project. Special benefits arise because of the unique relationship between the remaining property and the completed public project.

Before you may find that special benefits have accrued to the remaining property, you must first find that the benefit is peculiar to the remaining property and provides it with an uncommon advantage. You need not find that the remaining property's use has changed.

The burden of proof is on (defendant) to establish that the remaining property received a direct and immediate special benefit because of the public project. (Defendant) must show that the claimed special benefits are direct, immediate and certain, rather than remote and speculative, as to both time and place.

If you find that special benefits have accrued to the remaining property, you should consider the special benefits in answering Question 2 of the Special Verdict.

COMMENT

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

*This instruction is to be given only in partial taking cases.

Wis. Stat. § 32.09(3).

Red Top Farms v. State Dept. of Transp., Div. of Highways, 177 Wis. 2d 822, 503 N.W.2d 354 (Ct. App. 1993).

The burden is on the condemnor to establish "special benefits." Heitpas v. State, 24 Wis. 2d 650, 130 N.W. 2d 248 (1964); Petkus v. State of Wis., 24 Wis. 2d 643, 130 N.W.2d 253 (1964).

See also Real Estate Valuation in Litigation, 2nd Ed. Ch. 15, pp. 323-350.