

8120 EMINENT DOMAIN: COMPARABLE SALES APPROACH*

You have heard testimony about other sales [and contracts] to assist you in determining the fair market value of the property on (date of evaluation) [and/or the fair market value of the remaining property immediately after (date of evaluation), as if the public project had been completed by (date of evaluation)].

In determining fair market value, you must consider the price and other terms and circumstances of any good faith sale of [or contract for the sale of] comparable property. A sale [or contract] is comparable if it was made within a reasonable time before or after (date of evaluation) and if that property is sufficiently similar with respect to location, situation, usability, improvements, and other characteristics to warrant a reasonable belief that it is comparable to the property [or remaining property] being valued.

You are to consider all the elements of similarity and dissimilarity in deciding whether the other sales [or contracts] assist you in determining the fair market value of the property on (date of evaluation) [and/or the fair market value of the remaining property immediately after (date of evaluation) as if the public project had been completed by (date of evaluation)].

COMMENT

This instruction and comment were approved in 2006. It was revised in 2008 and 2021. The 2021 revision reflects statutory amendments pursuant to 2017 Wisconsin Act 243 [effective date: April 5, 2018].

*The bracketed language is to be used in partial taking cases.

Wis. Stat. § 32.09 (1m)(a) provides:

As a basis for determining value, a commission in condemnation or a court shall consider the price and other terms and circumstances of any good faith sale or contract to sell and purchase comparable property. A sale or contract is comparable within the meaning of this paragraph if it was made within a reasonable time before or after the date of evaluation and the property is sufficiently similar in the relevant market, with respect to situation, usability, improvements, and other characteristics, to warrant a reasonable belief that it is comparable to the property being valued.

See Calaway v. Brown County, 202 Wis. 2d 736, 553 N.W.2d 809 (Ct. App. 1996)(citing Kamrowski v. State of Wis., 37 Wis.3d 195, 201-02, 155 N.W.2d 125, 129 (1967)); Rademann v. State Dept. of Transportation, 252 Wis. 2d 191, 642 N.W.2d 600 (Ct. App. 2002); Alsum v. Wisconsin Dept. of Transportation, 276 Wis. 2d 654, 689 N.W.2d 68 (Ct. App. 2004); Justmann v. Portage County, 278 Wis. 2d 487, 692 N.W.2d 273 (Ct. App. 2004) and Rosen v. Milwaukee, 72 Wis. 2d 653, 242 N.W.2d 681, (1976).

Income Approach to Valuation. The trial judge must decide if evidence on the income approach is admissible. See Hoekstra v. Guardian Pipeline, 2006 WI App 245, 298 Wis.2d 165, 726 N.W.2d 648; Alsum v. Wisconsin Dept. of Transportation, 276 Wis.2d 654, 689 N.W.2d 68 (Ct. App. 2004); National Auto Truckstops, Inc. v. State, Dept. of Transportation, 263 Wis. 2d 649, 665 N.W. 2d 198 (2003); Wisconsin Dept. of Transportation, supra; Rademann v. State Dept. of Transportation, 252 Wis. 2d 191, 642 N.W.2d 600 (Ct. App. 2002).

See also, the comment to Wis JI-Civil 8130.