

**8135 EMINENT DOMAIN: COST APPROACH**

You have heard testimony that under the cost approach to the valuation of property, the value of the land is added to what it would cost to replace the building and improvements on the property, as reduced by depreciation. Evidence has been received to assist you in determining the fair market value of the property immediately before (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)].

Cost of replacement means the cost to rebuild the building and improvements on the property on (date of evaluation) so that the new facility has the same utility as the property being valued. The cost of replacement new is not reproduction cost, which is the cost to build a replica.

Depreciation includes three elements: physical depreciation, economic obsolescence and functional obsolescence.

1. Physical depreciation represents that loss in value, if any, caused by the wear and tear which the building and improvements have experienced since their construction.

2. Economic obsolescence means that loss in value, if any, caused by factors outside the property itself, such as changes in the neighborhood.

3. Functional obsolescence means that loss in value, if any, caused by aspects of the building and improvements themselves, such as their design or style, which may reduce the desirability of the building and improvements in the marketplace or which may reduce the capability of the building and improvements to be fully and efficiently used for their proper function.

You may determine the value of the property as of (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)] by subtracting the amount of depreciation you have concluded exists from the cost of replacement of the building and improvements on the property and adding the land value you have determined.

#### COMMENT

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

Definitions of "replacement cost" and "reproduction cost" are found in Milwaukee Rescue Mission, Inc. v. Redevelopment Authority of the City of Milwaukee, 161 Wis. 2d 472, 482, 468 N. W. 2d 663 (1991).

See secs. 20.02, 20.04, Nichols on Eminent Domain (3<sup>rd</sup> Ed.) and Appraisal of Real Estate (12<sup>th</sup> Ed.), pp. 357-58, 403-414.

**Date of Evaluation.** For a discussion of the date of evaluation, see the comment to Wis JI-Civil 8100.

**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 of Dept. of Transportation, 263 Wis. 2d 649, 665 N.W. 2d 198 (2003); Rademann v. State Department Transportation, 252 Wis. 2d 191, 642 N.W.2d 600 (Ct. App. 2002).

See also the comment to Wis JI-Civil 8130.