

## **NOTICE OF PROPOSED GUIDANCE DOCUMENT**

DTIMBOA37

Pursuant to Wis. Stat. s. 227.112, the Wisconsin Department of Transportation is hereby seeking comment on DTIMBOA37, a proposed guidance document.

### **PUBLIC COMMENTS AND DEADLINE FOR SUBMISSION**

Comments may be submitted to the Wisconsin Department of Transportation for 21 days by:

1. Department's website: <https://appengine.egov.com/apps/wi/dot/guidance-docs?guidDocId=DTIMBOA37>

2. Mailing written comments to:

Division of Transportation Investment Management  
Wisconsin Department of Transportation  
4822 Madison Yards Way  
PO Box 7913  
Madison, WI 53707-7913

### **WEBSITE LOCATION OF FINAL GUIDANCE DOCUMENT**

The final version of this guidance document will be posted at [wisconsin.dot.gov](http://wisconsin.dot.gov) to allow for ongoing comment.

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Appraisal and Appraisal Review Guidelines  
for  
Airport Land Acquisition and Release

June 2012



Wisconsin Department of Transportation  
Bureau of Aeronautics  
4802 Sheboygan Avenue, Room 701  
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Most airports in the Wisconsin state airport system are owned by a municipality although some are in private ownership. The Bureau of Aeronautics frequently acts as the agent for an airport owner doing land acquisition or land release projects.

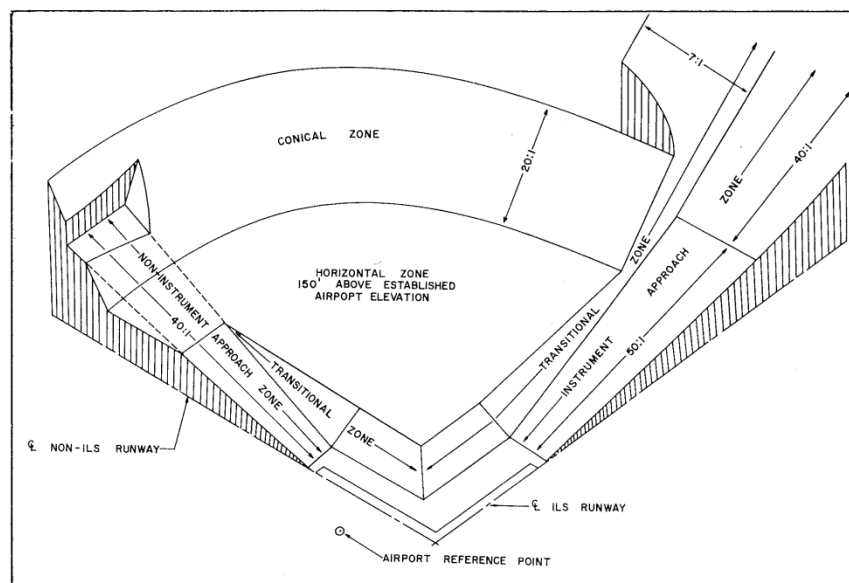
Airports that acquire land or air rights must follow federal and state laws related to eminent domain, land acquisition and relocation. All appraisers and review appraisers doing work for Wisconsin airports must be familiar with and follow Wisconsin statutes related to airports and land acquisition, including Chapter 32 and Chapter 114; federal laws and regulations such as the Uniform Act, FAA Order 5100.37B, and FAA Advisory Circular 5100.17; and Bureau of Aeronautics guidelines and policies for land acquisition and land release appraisals. Appraisals should be in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP) and FAA and Bureau guidance.

This guideline replaces the appraisal and appraisal review sections of the Wisconsin Department of Transportation, Bureau of Aeronautics (BOA), *Airport Owner's Guide to Land Acquisition*.

#### ❑ AIRPORT LAND INTERESTS

Airports acquire land in fee simple or easement form, depending on the public need and minimum requirements for airport development and management. Airports acquire land and airspace to protect Federal Aviation Regulation (FAR) Part 77 and other imaginary surfaces in order to provide for the safety of airport users and nearby property owners, and to protect the public investment in airport facilities.

FAA requires that all of the imaginary surfaces be protected by the purchase of land interest in fee simple or easement and the adoption of height limitation zoning ordinances. These surfaces include the primary surface, the approach surface, and the transitional surface to a height of 50 feet above the primary surface or where controlled by local zoning.



The Runway Protection Zone (RPZ) is trapezoidal in shape, centered on the runway centerline, and begins 200 feet beyond the usable runway end. Property in the RPZ should be purchased in fee simple, controlled by interagency agreement, or controlled by a manmade or natural feature such as a roadway or river. When land cannot be purchased fee simple, it must be controlled by the most restrictive easement possible and preclude incompatible land uses such as residences and places of public assembly.

Avigation Easement	Purchase of airspace above a certain height determined by the FAR Part 77 imaginary surfaces. Typical easement rights and conditions include a right of flight, right to cause noise, vibration, and dust, right to prevent growth or obstructions into the surface, right of entry to maintain the easement, right to prevent interference with aviation communication or navigation, lighting restrictions and wildlife attractant restrictions.
Clear Zone & Avigation Easement	Purchase of air rights from the ground up. This easement restricts structures and growth from the ground up, but may allow low growth farming and fencing. The easement includes the rights and conditions contained in an avigation easement.
Permanent Limited Easement	Purchase of permanent rights for a specific and limited purpose such as an access road or placement of utilities.
Temporary Limited Easement	Purchase of temporary rights for a specific and limited purpose such as the construction of a road or fence. This easement notes duration or time period for the easement.

### **Common Types of Airport Easements**

#### **☐ APPRAISAL STANDARDS & REQUIREMENTS**

The Uniform Relocation Act (known as the Uniform Act) sets forth the requirements for acquiring agencies when property is to be acquired for projects using federal funds. Appraisals performed for federally assisted airport land acquisition must meet federal requirements under the Uniform Act and FAA Order 5100.37B and FAA Advisory Circular 5100.17. In addition, appraisals must follow Wisconsin statutes related to airports and land acquisition, including Chapter 32 and Chapter 114, and Bureau of Aeronautics guidelines and policies for land acquisition and land release appraisals.

Appraisers entering into contracts to perform eminent domain appraisal work will adhere to state and federal appraisal requirements. The appraiser must also be in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP).

#### **USPAP Jurisdictional Exception Rule**

If any provisions of the Uniform Act or Wisconsin Statutes, case law or regulations conflict with USPAP, then the requirements of the Uniform Act or state statute or regulation take precedence. This is allowed under the jurisdictional exception provision of USPAP. The Jurisdictional Exception Rule states that if any part of USPAP is contrary to the law or regulation of the jurisdiction, then the conflicting part of USPAP is void and of no force or effect in that jurisdiction. However, only that part of USPAP becomes void for that

assignment. It is the appraiser's responsibility to use and understand the adaptable features of USPAP when complying with federal and state regulations and laws.

A jurisdictional exception would likely be used in most eminent domain appraisals produced for the Bureau. If relying on the jurisdictional exception, the appraiser must identify in the appraisal report the law or regulation that precludes compliance with USPAP, comply with that law or regulation, and clearly state in the report the part of USPAP that is voided by the law or regulation.

#### **☐ APPRAISER QUALIFICATIONS**

State and federal regulations require any appraiser hired to appraise on a Bureau project to be state certified. For all airport projects involving the valuation of land interests for acquisition or release, the Bureau of Aeronautics requires appraisers and review appraisers to be Wisconsin Certified General Appraisers in good standing and with recent airport experience.

#### **☐ APPRAISAL PREPARATION**

The Bureau will furnish the appraiser with the following information to support the development of the appraisal report:

- Land rights or interests to be acquired and acreages.
- Copies of proposed deeds and easements.
- Surveys and maps depicting the property boundary, dimensions, location of improvements, areas to be acquired and remainders.
- All known title information which may affect the value of the property including encumbrances such as outstanding mortgages, leaseholds, liens, easements, rights, and restrictive covenants.
- Special exhibits as developed to show title encumbrances or airspace obstructions.
- Hazardous materials assessment reports and other environmental investigations and studies conducted on the property.
- Airport facility design or construction information that may impact the appraisal.

#### **Environmental investigations**

FAA requires properties to be appraised "as is", therefore environmental investigations for hazardous materials, agricultural impact, and historical or cultural resources must be completed before the subject property is appraised. Any parcel of land that is to be purchased in fee simple must have a hazardous materials assessment, at a minimum, prior to appraisal. If residential or commercial buildings are to be purchased, the hazardous materials assessment should include an investigation for asbestos, lead paint and other hazardous waste materials.

### **Inspection of properties**

All property appraised, and the comparable sales that were relied upon in arriving at the market value estimate, should be *personally* inspected by the appraiser. The owner, or owner's representative, **must** be given an opportunity to accompany the appraiser during the appraiser's inspection of the subject property.

#### **☐ APPRAISAL FORMAT**

Appraisals developed for airport improvement projects should be "full narrative, before & after" appraisals. A complete narrative description of the property being appraised and a detailed analysis of value are required in the appraisal; other content will depend upon the complexity and unique characteristics of the appraisal problem. The Standard Before & After Appraisal is used in appraisal situations where the appraisal problem is complex in nature and a complete detailed before and after appraisal is necessary. It is also required in appraisal situations where damages to the remaining property are so substantial that a complete analysis of the after value is required in addition to the analysis of the before value. It is, in effect, two appraisals in one report.

#### **☐ APPRAISING LESS THAN FULL FEE SIMPLE INTEREST**

Where the acquisition involves only a portion of the property, the appraiser must develop the severance damage, if any, to the remainder, including the reasoning and sales data to support the conclusion. The parcel to be examined by the appraiser is the entire land titled to the same owner and contiguous to the parcel to be acquired. The 'before and after' method of appraisal is expected to be used. In most cases where a property will be divided or some rights (but less than full fee) will be taken, a 'full narrative or detailed appraisal' will be required. If the situation is such that the remainder may be an uneconomic remnant, the appraiser should so indicate.

When only a small amount of land is being acquired from a large tract and the remainder is not being materially affected, such as a change in the highest and best use or evidence of diminution of value – and the parcel to be taken is of nominal value - only that area being acquired needs to be appraised. In these instances, the highest and best use of the part to be acquired must reflect the same highest and best use of the remainder.

#### **☐ THE APPRAISAL REPORT**

The Bureau requires a full narrative appraisal for airport land acquisition and release. A full narrative appraisal is a detailed and comprehensive report describing the property that is to be acquired and coming to a documented conclusion as to the fair market value of such property. The report must contain the rationale that has been used by the appraiser to reach an opinion of value and must be documented by market data which supports the appraiser's rationale. The following items are considered to be essential for a full narrative appraisal:

**Purpose of the appraisal**

The purpose of the appraisal will be stated. Include a statement of value to be estimated and the rights or interests being acquired.

**Scope of work/Assignment**

Describe the scope of work or project assignment – what you are appraising and why. Include a description of the subject parcel to be appraised or the interest being acquired from the subject property.

**Jurisdictional Exception**

Describe how the appraisal must be done under the Jurisdictional Exception Rule to comply with the overriding authority of state and federal laws, rules, and regulations. The Jurisdictional Exception Rule allows law or public policy to supersede USPAP rules.

**Description of the property**

- Legal description
- Location of property
- Parcel number as it relates to the airport's Exhibit "A" map
- County tax parcel number(s)
- Name of apparent owner(s) of each interest being evaluated
- Pertinent title information
- A minimum of 5 years sales history of the property
- Statement of encumbrances, including existing aviation easements, leases, signs, etc.
- Total area of property in acres &/or square feet
- Area of each interest in property being acquired in acres &/or square feet
- Present use and zoning and, if available, the potential use as reflected by a local comprehensive land use plan
- Utilities, existing and available
- Type and condition of all above/below ground improvements and special features that may add to or detract from the value of the property
- Any tenant-owned improvements must be identified

**Documentation**

- Highest and best use
- The before and after method of valuation should be used for partial acquisitions except where there is clearly no damage or benefit to the remaining land or improvements due to a minor acquisition of property.
- Approaches to value should include sales, cost, and income, except when there is sufficient market sales data comparable to the property being appraised. When sufficient data is available, the appraiser should rely on the sales comparison approach only. When a sales comparison approach is not used, the appraiser should state why it was not used.



- Benefits are to be offset against the value of the part acquired and/or damages to the remainder. The after value appraisal must eliminate any consideration of damages that are not compensable or benefits not recognized under state law even though they may exist in the ultimate value of the remaining property on the market.
- The appraisal of the after value must be supported to the same extent as the appraisal of the before value.
- The difference between the before and after will represent the value of the property to be acquired including the damages and/or benefits to the remainder property. The appraiser must separately analyze and tabulate the difference showing a reasonable allocation to land, improvements, damages, and benefits.
- When more than one approach to value is used, the appraiser must show a correlation of the separate indications of value derived by each approach along with the reasonable explanation for the final conclusion of value. This correlation will be included for both before and after appraisals.
- Reasons for not using an approach if one is excluded.
- All appraisals should include photographs of the subject property including all principal above-ground improvements or unusual features affecting the value of the property to be acquired or damaged.
- An appraisal for a property being totally acquired should contain a sketch or survey of the property showing the boundary dimensions, location of above and below ground improvements, transportation access (public/private roads), and other significant features of the property. For a partial acquisition, the sketch or survey should also show the area and/or interest to be acquired, relation of improvements to the acquired area, and area of each remainder. For an appraisal of residential improvements, a sketch should be included depicting the interior room layout and noting room dimensions.

### **Comparable sales**

- Each appraisal must contain or make reference to the comparable sales that were used in arriving at the market value estimate.
- The appraiser must state the date of sale, names of parties to the transaction, consideration paid, method of financing, conditions of sale and with whom these were verified, the location/address of the sale property, total area, type of improvements, easement encumbrances, mineral, oil, gas interests included in sale, appraiser's estimate of highest and best use at the date of sale, zoning, and any other data pertinent to the analysis and evaluation thereof.
- If the appraiser is unable to verify the financing and conditions of the sale from the usual sources such as buyer, seller, broker, title company, etc., it will be so stated.
- Pertinent comparable sales data should include photographs of all principal above ground improvements of unusual features affecting the value of the comparable sale.
- The appraiser should prepare a comparable sales map showing the location of the sale properties and their relation to the project.

- A data and analysis sheet must be prepared for each sale or listing used as a comparable in the preparation of an appraisal. Include an explanation and reasoning for items affecting the condition of sale (ex: demolition, financing).
- For noise impacted properties, comparable sales must be as similar as possible to the property being appraised with respect to noise, location, size, community services, time of sale, and the terms of the transaction. The appraiser should use comparable sales that are the most current, similar, proximate, and reflective of current market conditions. If comparable sales cannot be found in a noise impacted neighborhood near the subject property, the appraiser can move farther out from the impacted area, making appropriate adjustments to develop a comparison to the subject property.

#### **Assumptions and limiting conditions**

- Include a statement of appropriate assumptions and limiting conditions.

#### **Environmental considerations**

- The impact of hazardous materials affecting the property and the level of treatment needed to control or cleanup the property needs to be considered and reflected in the appraised market value.

#### **Inspection of properties**

- All property appraised, and the comparable sales that were relied upon in arriving at the market value estimate, will be *personally* inspected by the appraiser.
- The owner, or owner's representative, **must** be given an opportunity to accompany the appraiser during the appraiser's inspection of the subject property.
- Inspection dates of subject property and owner contacts will be noted in the appraisal.
- During the inspection, enough detail should be recorded in notes and photographs so that it can later be used to prepare a full before and after appraisal if the property is acquired through an Award of Damages and owner appeals.

#### **Date of valuation**

- This is the effective date to which the appraisal valuation data applies.

#### **Certificate of Appraiser**

- Each appraisal must contain the FAA/Bureau of Aeronautic's Certificate of Appraiser. This form can be downloaded from the Bureau's Consultants Forms and Documents webpage: [www.dot.wisconsin.gov/business/engrserv/airports/forms-documents.htm#land](http://www.dot.wisconsin.gov/business/engrserv/airports/forms-documents.htm#land)
- A new certificate will be prepared when there is a change in the appraisal report which affects the estimate of just compensation or changes the date of valuation.

## ❑ APPRAISAL REVISIONS

Appraisers will be given sufficient time to revise appraisals when there have been significant changes to acquisition plans or documents such as Exhibit A maps. Revisions to appraisals that are required as a result of the appraisal review will be completed within 10 business days of receipt of the correction request.

## ❑ APPRAISAL REVIEW

Each airport appraisal shall be reviewed by a qualified review appraiser to determine if the appraisal may be used as a basis of just compensation for the property acquisition. The intent of the appraisal review is to assure that the appraisal is in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP), FAA Order 5100.37B, and Bureau of Aeronautics guidance. The appraisal review process is a quality control step that helps maintain the integrity of the appraisal process and assure accuracy and consistency on a project wide basis.

### **Review Appraiser's Responsibilities**

It is the review appraiser's responsibility to assure that all appraisal requirements are met and the appraisal report is in compliance with applicable state and federal requirements. The review appraiser shall examine the presentation and analysis of market information in all appraisals to assure that they meet the definition of appraisal and appraisal requirements of state and federal guidelines, and support the appraiser's opinion of value. The level of review depends on the complexity of the appraisal problem.

While federal and state laws require just compensation there are some items for which the a property owner cannot be legally compensated. Common examples of non-compensable items include sentimental value, loss of anticipated future profits, and inconvenience. Review appraisers must know allowable elements of compensability under state and federal law, and assure the appraised value does not include items that are not compensable under law in the estimate of just compensation.

The review appraiser shall identify each appraisal report as **recommended** (as the basis for the establishment of the amount believed to be just compensation), **accepted** (meets all requirements but not selected as recommended or approved), or **not accepted**. The review appraiser shall approve the appraisal as the basis for the establishment of the amount believed to be just compensation or develop and report the amount believed to be just compensation.

### **Appraisal Reviews**

The review appraiser should conduct an objective, subjective and technical review of the appraisal report to determine whether the appraisal considered and supported the following:

- Are all math calculations correct?
- Does area/interest to be acquired agree with approved acquisition or release map?
- Is the appraisal of the type required?
- Is effective date of appraisal same as last inspection date?
- Has appraiser included any "non-compensable" items?

- Was the owner or designated representative offered an opportunity to accompany the appraiser during inspection of the property? Was the response noted?
- Is the FAA/BOA certificate of appraiser included?
- Does the appraisal format support the requirements of the assignment?
- Are the appraisal methods and techniques in compliance with USPAP and state and federal requirements?
- Was the analysis reasonable, logical, defensible, and based upon an adequate sample of data?
- Was the scope of work sufficient to address the appraisal problem?
- Was there adequate discussion of area and neighborhood as it relates to subject?
- Was there adequate discussion of physical characteristics of land?
- Was the subject parcel identified with respect to accepted definition and in consideration of historical court decisions?
- Was acquisition area or interest to be acquired discussed in an understandable manner?
- Was remaining property and effects of acquisition explained in an understandable manner?
- Was a separate entity analysis of acquisition area discussed per s. 32.09(6) Wisconsin Statutes?
- Was the discussion of highest and best use of the property supported?
- Was there discussion of existing zoning and whether zoning agrees with highest and best use?
- Was there adequate discussion and illustration of physical characteristics of improvements?
- Did appraiser discuss the rationale for the concluded value by referencing comparable sale(s)?
- Were a sufficient number of quality comparable sales analyzed?
- Was an adequate sale location map included identifying location of each comparable sale?
- Does comparable sale sheet include adequate photo(s)?
- Were grid adjustments and/or narrative discussion within boundaries of reasonable probability?

In addition to the above questions, the sufficiency and correctness of data must be considered. The review appraiser must make reasonable efforts to verify that the factual data within the appraisal is correct.

It is the reviewer's responsibility to recognize when an appraiser's conclusion is not supported. If the problem is that the appraiser has overlooked or failed to consider relevant market data, the reviewer should ask that the data search be expanded. Good comparable market information can be limited or simply not available. If data is carefully and appropriately analyzed, an opinion of value based on limited data can be acceptable.

### **Appraisal Revisions**

If the initial appraisal is not acceptable, the review appraiser will secure necessary corrections or revisions to the appraisal. The appraiser should be asked to make the corrections or revisions within ten working days. All correction or revision correspondence should be in writing and should become a part of the appraisal report or the review file. The review appraiser will communicate and work with the appraiser to the greatest extent possible to facilitate the development of an acceptable appraisal.

### **Property Owner Appraisals**

The same reviewer should review the airport appraisal and the property owner appraisal if one was obtained. The review appraiser must consider any new information contained in a property owner appraisal that was not previously considered or known (for example, new sales). The review appraiser must document the property owner appraisal review and consider all material submitted. The review

appraiser can change the offer of just compensation based on new information that appears in a property owner's appraisal.

The review appraiser must review the property owner's appraisal to ensure that all appraisal requirements are met, the analysis is documented with logical and reasonable conclusions of value, and the fees are reasonable and charges are typical for the type of appraisal.

#### **Review Appraisal Format**

The review appraiser should use the Bureau of Aeronautic's *Appraisal Review, Certification & Recommendation* template to identify the appraisal report reviewed and to document the findings and conclusions of the review. This form can be downloaded from the Bureau's Consultants Forms and Documents webpage: [www.dot.wisconsin.gov/business/engrserv/airports/forms-documents.htm#land](http://www.dot.wisconsin.gov/business/engrserv/airports/forms-documents.htm#land)

The appraisal review report shall include the review appraiser's certification and state the approved appraised value as the basis for the sponsor's offer of just compensation.

#### **Appraisal Reconciliation**

If the review appraiser is unable to approve an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined by the Bureau that it is not practical to obtain an additional appraisal, the review appraiser may develop appraisal documentation in accordance with state and federal requirements to support an estimate of just compensation. The review appraiser shall include the additional analysis and documentation required to supplement the reviewed appraisals and support an approved appraised value.

#### **❑ APPRAISAL UPDATES**

The need for updating an appraisal most often occurs at the time the Bureau is preparing to condemn the property. The data used to estimate the value should be reviewed and an effort made to investigate pertinent sales up to the date of taking. If negotiations become protracted or the acquisition is delayed, the appraisal may need to be updated. Appraisals must be updated if older than one year.