



## 3.12 Condemnation Limitations

Wis Statute 32.015 limitations condemnation authority:

“Property may not be acquired by condemnation to establish or extend a recreational trail; a bicycle way, as defined in s. 340.01 (5s); a bicycle lane, as defined in s. 340.01 (5e); or a pedestrian way, as defined in s. 346.02 (8) (a).”

It is also referenced in the treatment of sections 23.09 (2) (d) (intro.), 27.01 (2) (a), 27.019 (10), 27.05 (3), 27.065 (1) (a), 27.08 (2) (b) and (c), 32.015, 32.51 (1) (intro.), 59.52 (6) (a) (as it relates to condemnation for recreational trails, bicycle ways, bicycle lanes, and pedestrian ways), 60.782 (2) (d), 61.34 (3) (b), 62.22 (1) (b), 62.23 (17) (a) (intro.) and (am), 85.09 (2) (a), and 990.01 (2) of the statutes.

This manual will refer to recreational trails, bicycle ways, bicycle lanes, sidewalks, and pedestrian ways as “bicycle and pedestrian facilities”.

In the case of §32.015, wherein the department is statutorily prohibited from condemning, there can be no taking. Therefore, the protections provided under §32.05 regarding condemnation are not in play. The state may only acquire under §84.09 using an arms-length transaction.

Using this reasoning, in the case of an acquisition solely within §84.09 where condemnation can never be used (WisDOT has no authority to condemn) it is not obligated to acquire pursuant to the full requirements of the Uniform Act. This means it does not have to make available appeal rights under §32.05. This also makes practical sense because the landowner will *never* be forced to relinquish title to their lands absent agreement regarding price and all terms for those lands.

Acquisition for bicycle and pedestrian facilities is a voluntary sale. Wis Stats 32.05 do not apply since condemnation is prohibited. The state may only acquire under §84.09 using an arms-length transaction. No condemnation or threat of condemnation may occur. This means the owner does not have appeal rights under §32.05. This makes practical sense because the owner will *never* be forced to relinquish title to their lands.

Federal code (49 CFR 24.101(b)(2)) addresses the acquisition of real estate interests when condemnation is not allowed. An §84.09 acquisition (where condemnation can never be used) is not bound to the full requirements of the Uniform Act. Federal code says that for a voluntary sale, the agency must clearly inform the owner that the property cannot be acquired via condemnation if negotiations fail. The agency must also inform the owner of the agency’s determination of market value.

It must be abundantly clear to the owner that in no circumstances will the agency condemn for the property.

Because of these limitations, policies and procedures have been developed to acquire bicycle and pedestrian facilities. Standard WisDOT letters and forms are not appropriate. You must get all letter and form templates from the BTS Acquisition coordinator or the LPA Real Estate Program Manager.

A project may need real estate interests for both roadway and bicycle and pedestrian facilities purposes or for the sole purpose of bicycle and pedestrian facilities. It is especially important to identify to all property owners which transactions are subject to only §84.09 and which are subject to §32.05.

Therefore, the following sub chapters will separate the two situations.

### **3.12.1 Process for Bicycle and pedestrian facilities ONLY projects:**

#### **3.12.1.1 Project Scoping**

Before the Real Estate Start Up Meeting, the agency must decide how long the owner will have to accept or counter the offer. The agency must determine the date to terminate negotiations. Factors to consider include the construction schedule, project need, owner concerns, etc.

The agency must decide if they will offer appraisals to owners who are unwilling to sign without one. This must be a project wide determination ensuring that all owners are treated equitably.

#### **3.12.1.2 Start Up Meeting**

Processes and procedures for acquiring bicycle and pedestrian facilities parcels must be discussed at the Real Estate Start Up Meeting. All individuals interacting with property owners must be aware of the condemnation limitations. Any threat of condemnation for these acquisitions is a violation of the owner's rights.

The RE project manager must get all letter and form templates from the BTS Acquisition coordinator or the LPA Real Estate Program Manager. Then the RE project manager must provide them to the acquisition agents. Do not use standard letters and forms generated from READS.

Inform the acquisition agents of the predetermined timelines for acquisition. The remainder of the meeting would follow the typical Start Up Meeting process.

#### **3.12.1.3 Plat Process**

Follow the standard process. The agency and its agents still have the right to enter the property for survey purposes as described in §84.01(10).

#### **3.12.1.4 READS Entry**

Enter parcels following the standard process. Do NOT use the letters and forms available in READS. Get them from the BTS Acquisition coordinator or the LPA Real Estate Program Manager.

#### **3.12.1.5 Introduction Letter**

Get the Introduction Letter template from the BTS Acquisition coordinator or the LPA Real Estate Program Manager. All language referencing §32.05 and condemnation are eliminated. Do not send the property owner rights brochure or brochure letter to the owner.

### 3.12.1.6 Valuation

#### 3.12.1.6.1 Sales Study

For non-complex acquisitions and/or those under \$25,000 in damages that the agency does not intend to appraise, a Sales Study must **be prepared**. A Sales Study is not required if the agency chooses to appraise all parcels on the project.

#### 3.12.1.6.2 Non-Complex Parcels and/or Parcels under \$25,000 in Estimated Damages

Do not use the Waiver of Appraisal form. The property owner does not have a statutory right to an appraisal, so; they cannot waive a right they do not have. The agency may acquire non-complex acquisitions and/or those under \$25,000 in damages without an appraisal. The estimated market value must be presented in writing to the property owner. The value must be supported using a Sales Study. The parcel must be acquired via a purchase agreement and conveyance document. Get the document templates from the BTS Acquisition coordinator or the LPA Real Estate Program Manager. Before acquisition activities begin, the agency must decide if they will offer appraisals to owners who are unwilling to sign without one. This must be a project wide determination ensuring that all owners are treated equitably.

#### 3.12.1.6.3 Complex Parcels and/or Parcels over \$25,000 in Estimated Damages

Because these acquisitions are not subject to §32.05, the owner does not have a statutory right to either an initial appraisal or an owner's appraisal. But an agency appraisal must still be made for all complex acquisitions and/or those over \$25,000 in damages. The appraisal must include consideration of damages above the land interest acquisition (severance damages, site improvements, etc.). All appraisals must be completed following REPM Chapter 2. The appraiser must exclude any mention of condemnation authority or §32. Include a statement in the appraisal saying that the Agency will not use eminent domain authority to acquire the property if the seller chooses not to participate or if negotiations fail.

##### 3.12.1.6.3.1 Appraisal Review

Complete appraisal reviews following the standard process outlined in REPM Chapter 2. This allows for quality control. The review appraiser must exclude any mention of condemnation authority, §32 and the term "just compensation" in their review report. Just compensation is directly related to the agency's authority to condemn. Thus, any mention of just compensation must be avoided. The Appraisal Review Form template must be obtained from the BTS Acquisition coordinator or the LPA Real Estate Program Manager.

##### 3.12.1.6.3.2 Offering Price Reports

An offering price report must be completed following the standard process. Get the Offering Price Report form template from the BTS Acquisition coordinator or the LPA Real Estate Program Manager.

### **3.12.1.7 Acquisition**

The acquisition agent must use READS. Basic acquisition policies still apply (i.e., good faith negotiation, documentation, tax proration, diaries, etc.). The agency should offer to buy any uneconomic remnants caused by the bicycle and pedestrian facilities project.

#### **3.12.1.7.1 Initiation of Negotiations**

Get all acquisition letters and form templates from the BTS Acquisition coordinator or the LPA Real Estate Program Manager. Do not use READS to generate letters or forms. Inform the property owner verbally and in writing that the acquisition is voluntary, and no condemnation action can be made against the property.

Include the following in the offer package:

- Initiation of Negotiation letter
- Conveyance document
- Legal description
- Any appraisals completed
- Donation form, if applicable. If donating, ensure the property is not contaminated.
- Proposed Agreement for Purchase and Sale of Real Estate - MANDATORY
- Copies of project's R/W plat showing owner's affected property, highlighted
- Statement to the Construction Engineer
- Self-addressed stamped envelope
- Business card/contact information
- W-9, if needed
- Authorization for partial release, if mortgaged
- Copies of quit claim deeds if there are other parties of interest
- Appraisal guidelines and agreement if owners are being offered an owner's appraisal on the project

#### **3.12.1.7.2 Owner's Appraisal**

While the owner does not have a statutory right to an owner's appraisal, it may be in the best interest of the agency to offer one. The agency must make this decision before beginning any acquisition activities. The decision must be made on a project wide basis ensuring equitable treatment of owners in this aspect.

#### **3.12.1.7.3 Increased Offers / Administrative Revisions**

Document all increased offers on the Administrative Revision form and have them signed by the approving authority. Follow the standard process.

#### **3.12.1.7.4 Clear Title**

Clear title is still needed for bicycle and pedestrian facilities parcels. Partial releases of mortgage and conveyances by other parties of interest must be obtained.

#### **3.12.1.7.5 Closing**

##### **3.12.1.7.5.1 Tax Proration**

Prorate taxes as normal. Prepare a closing statement.

**3.12.1.7.5.2 Conveyance**

Conveyances must NOT include any appeal language. Get the conveyance document template from the BTS Acquisition coordinator or the LPA Real Estate Program Manager.

**3.12.1.7.5.2 Closing by Mail Letter**

Closing by mail letter must not include any appeal language. Get the letter template from the BTS Acquisition coordinator or the LPA Real Estate Program Manager.

**3.12.1.8 Relocation**

Relocation benefits must be offered to displaced tenants. Other displaced persons are not eligible for relocation benefits. Relocation plans are required if there are any displacements.

**3.12.2 Process for Projects requiring Acquisition for both Roadway and Bicycle and pedestrian facilities**

The agent must present two offering packages when projects need acquisition for both roadway and bicycle and pedestrian facilities purposes. One for the bicycle and pedestrian facilities part and the other for the roadway part. It must be evidently clear to the owner which acquisition is voluntary and which is under the threat of condemnation.

The same acquisition agent should conduct both the bicycle and pedestrian facilities and roadway acquisitions to maintain consistency.

Except for those items listed below, the bicycle and pedestrian facilities part must follow the guidelines in REPM 3.4.1 "Process for Projects Requiring Acquisition for Bicycle and pedestrian facilities". The roadway part must follow the standard policies and procedures outlined in the REPM.

**3.12.2.1 Project Scoping**

Before the Real Estate Start Up Meeting, the agency must decide how long owner will have to accept or counter the bicycle and pedestrian facilities offer. The agency must decide the date to end negotiations. Align this date with the date any roadway negotiations would conclude, or a JO for the roadway part would be issued.

**3.12.2.2 Start Up Meeting**

Discuss all processes and procedures for acquiring bicycle and pedestrian facilities and roadway parcels at the Real Estate Start Up Meeting. All individuals interacting with property owners must be aware of the condemnation limitations. Any threat of condemnation for bicycle and pedestrian facilities acquisitions is a violation of the owner's rights.

Inform the acquisition agents of the predetermined timelines for acquisition. The rest of the meeting would follow the typical Start Up Meeting process.

**3.12.2.3 Plat Process**

Use one plat with one project id. Two parcels must be identified. One for the Roadway Part (#1) and the other for the Bicycle and pedestrian facilities Part (#101).

There must be a clear delineation and separation of what is needed for each part of the project. Each part requires a separate legal description.

The remaining plat process follows the standard process.

#### **3.12.2.4 READS Entry**

Enter the roadway parcel and the bicycle and pedestrian facilities parcel as two separate parcels. Both should have all READS screens filled out. Do NOT use the letters and forms available in READS for the bicycle and pedestrian facilities part. Get them from the BTS Acquisition coordinator or the LPA Real Estate Program Manager.

#### **3.12.2.5 Introduction Letter**

Send a single letter to the owner introducing the project and showing what the roadway part and what the bicycle and pedestrian facilities part is. The letter must clearly state what is under the threat of condemnation and what is voluntary. Get the Introduction letter template from the BTS Acquisition coordinator or the LPA Real Estate Program Manager. Include the owner's rights brochure in the letter.

### **3.12.2.6 Valuation**

#### **3.12.2.6.1 Sales Study**

Follow the standard process. A Sales Study is not required if the agency chooses to appraise all parcels on the project.

#### **3.12.2.6.2 Non-Complex Parcels and/or Parcels under \$25,000 in Estimated Damages**

Follow the standard process for parcel acquisition needed for roadway purposes. Follow the process outlined in 3.4.1.6.2 for parcel acquisition for bicycle and pedestrian facilities.

#### **3.12.2.6.3 Complex Parcels and/or Parcels over \$25,000 in Estimated Damages**

A single appraisal should be completed encompassing both the roadway and the bicycle and pedestrian facilities acquisitions. The appraisal assignment requires the appraiser conduct two before and after analyses on one property within a single appraisal report. The report addresses two acquisition scenarios:

- Valuation of the acquisition required for the roadway project (Parcel "A").
- Valuation of the acquisition (Parcel "A" + Parcel "B") required for the roadway project (Parcel "A") combined with the acquisition for the bicycle and pedestrian facilities portion of the project (Parcel "B").

The prescribed appraisal method is as follows:

- Appraise the first scenario (Parcel "A") with a before and after analysis that identifies the value of the real estate acquired together with any identifiable severance damages or special benefits to the remainder.
- Appraise the second scenario (Parcel "A" + Parcel "B") with a second, independent before and after analysis that gives no consideration to

the damages identified for the first scenario. This analysis identifies the total value of the real estate acquired together with any identifiable severance damages or special benefits to the remainder.

The before condition analysis and valuation of the larger parcel used for both the first and second scenarios must be the same.

The following calculation establishes the allocations for Parcel "A" and Parcel "B":

- a. The conclusions of the before and after analysis of the first scenario will establish the damages for Parcel "A"
- b. Subtract the conclusions of the before and after analysis of "Parcel A" from the conclusions of the before and after analysis of "Parcel B". This establishes the damages for the bicycle and pedestrian facilities portion.

The appraisal must include an allocation of the damages between Parcel "A" and Parcel "B". The allocations for each of Parcels "A" and "B" must include; the value of the land acquired; the value of any improvements acquired, if any, and any severance damages or special benefits.

#### **3.12.2.6.3.1 Appraisal Review**

Complete appraisal reviews following the standard process outlined in REPM Chapter 2.

#### **3.12.2.6.3.2 Offering Price Reports**

An offering price report must be completed for each parcel (roadway and bicycle and pedestrian facilities). It must be uploaded to the appropriate READS parcel log. The Offering Price Report template for the bicycle and pedestrian facilities portion must be obtained from the BTS Acquisition coordinator or the LPA Real Estate Program Manager.

#### **3.12.2.7 Acquisition**

The acquisition agent must use READS. Basic acquisition policies still apply (i.e., good faith negotiation, documentation, tax proration, diaries, etc.). The agency must offer to buy an uneconomic remnant caused by the roadway project. The agency should offer to buy any uneconomic remnants caused by the bicycle and pedestrian facilities project.

##### **3.12.2.7.1 Initiation of Negotiations**

The agent must provide the owner with two independent ION letters and offering packages. One should be for the roadway only portion of the project. The other should be for the bicycle and pedestrian facilities only portion of the project. Present both packages at the same time and include the one appraisal completed for the acquisitions. The agent must clearly explain to the owner that the bicycle and pedestrian facilities portion is a voluntary sale and not under the threat of condemnation. The roadway package should include those items in the standard process. The bicycle and pedestrian facilities portion should include those items listed in 3.4.1.7.1.

READS must not be used to generate any letters or forms for the bicycle and pedestrian facilities portion of the project. Get those templates from the BTS Acquisition coordinator or the LPA Real Estate Program Manager.

#### **3.12.2.7.2 Owner's Appraisal**

The owner has a statutory right to obtain their own appraisal and for its costs to be reimbursed if it meets criteria laid out in REPM Chapter. This appraisal should follow the same or similar format as the Agency appraisal as identified in 3.4.2.6.3

#### **3.12.2.7.3 Increased Offers / Administrative Revisions**

Increased offers should be clearly divided between the two parcels. Document all increased offers on the Administrative Revision form and have them signed by the approving authority. Follow the standard process.

#### **3.12.2.7.4 Clear Title**

Clear title is still needed for all parcels. Partial releases of mortgage and conveyances by other parties of interest must be obtained.

#### **3.12.2.7.5 Condemnation**

The agency may condemn for the roadway parcel. That process must follow the standard process. The agency may NOT condemn for the bicycle and pedestrian facilities parcel.

### **3.12.2.7.5 Closing**

#### **3.12.2.7.5.1 Tax Proration**

Prorate taxes for each parcel (bicycle and pedestrian facilities and roadway) independently. Prepare a closing statement for each parcel.

#### **3.12.2.7.5.2 Conveyance**

Two separate conveyances must be obtained and recorded. The bicycle and pedestrian facilities conveyance must NOT include any appeal language. The roadway conveyance must include appeal language.

#### **3.12.2.7.5.3 Closing by Mail Letter**

Two separate closing letters must be sent. They can be sent together. The bicycle and pedestrian facilities letter must NOT include any appeal language. The roadway letter must include appeal language.

### **3.12.2.8 Relocation**

Relocation benefits must be offered to any persons displaced for the roadway portion. Follow the standard process outlined in REPM Chapter 5. Relocation benefits must be offered to only displaced tenants for the bicycle and pedestrian facilities portion. Other persons displaced by the bicycle and pedestrian facilities portion are not eligible for relocation benefits.