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**APPRAISAL GUIDELINES**

# Expropriation

**PURPOSE**

In order to comply with the *Expropriation Act*, which requires the valuation of the separate interests in a property, the standard self-contained appraisal (narrative) format must be adjusted.

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**APPENDICES**

- A Security Interest
- B Value of Other Interests (Easements, Restrictive Covenants, etc.)
- C Equity Interest
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## 1.0 PREFACE

- 1.1 The policy of the Department in respect to the expropriation of property is one of full and open communication with the owner.
- 1.2 The Expropriation Act requires that compensation be based on an appraisal report, which must be given to the owner. In line with the Department's policy, **the report must contain all the data and analysis leading to the conclusions of the appraiser**. At one time it was customary for the appraiser to limit the analysis content of the report in order to protect himself in the event that the matter proceeded to litigation. This practice is no longer viable.
- 1.3 In a decision in respect to the Ontario Act, the Ontario Supreme Court ruled that the owner must be able to make a decision based on the report; the same is true with the Federal Act. Thus, **the owner must be given all the facts**.
- 1.4 A well-documented report can instill in the owner a greater degree of satisfaction with the offer of compensation, and can eliminate many of the differences that might otherwise lead to lengthy and expensive litigation in the Federal Court.

## 2.0 POLICY

- 2.1 In order to comply with the Expropriation Act, which requires the valuation of the separate interests in a property, the self-contained appraisal report (narrative report) format must be adjusted. A statement of the various interests must be included. After indicating the market value of the property in the main body of the report, the separate interests can then be dealt with in the addenda of the self-contained appraisal report (narrative report) (see Appendices A- D for sample forms). The Department will send the main report and relevant addenda to the owner of the interest concerned. Obviously a one-page addendum will normally be enough to deal with any security interest, whereas the equity and/or leasehold interest addenda may be relatively substantial.
- 2.2 The appraisal is to be based on a market data analysis utilizing all pertinent appraisal techniques.
- 2.3 The **effective date of the appraisal is the date of registration of confirmation of expropriation**, unless otherwise instructed.
- 2.4 The market value definition applicable under the Federal Expropriation Act is as follows: **“the amount that would have been paid for the interest if, at the time of its taking, it had been sold in the open market by a willing seller to a willing buyer”**.
- 2.5 Interest in land includes lessee, security holders, or any person having any right, estate or interest in the property: each separate interest is to be valued. Public Works and Government Services Canada will pass on to the appraiser all available information as to known interests in the subject property, and the Department of Justice will be asked to assist the appraiser if necessary. In addition, the appraiser must make every effort to identify the interests that exist and, where there are occupants without a formal lease, such as

month-to-month tenancies, these too, should be reported by the appraiser.

2.6 Where the owner of an interest occupied the land when the notice of confirmation was registered and as a result it is necessary for him to give up occupation of the land, Section 26(3) of the Act states that the value of the expropriated interest is the greater of:

- (a) the market value of the interest in its highest and best use (if other than existing use); **or**,
- (b) the market value, as if the existing use were the highest and best use.

Thus, the appraiser will be required to estimate and report on the value of both (a) and (b).

Where it is clearly evident that the value based on either (a) or (b) is far in excess of the other, then the appraiser will so state and give reasons under Analysis of Highest and Best Use in the self-contained appraisal report (narrative report). After authorization from the Department, the appraiser may then proceed with a single valuation under (a) or (b).

2.7 The appraiser will also:

- (a) identify and report on any element of **special economic advantage** incidental to the owner's occupation of the land, and
- (b) if specifically requested to do so, report on the costs, expenses and losses arising out of or incidental to the owner's **disturbance** including moving to other premises.

In dealing with special economic advantage and/or disturbance, the appraiser should contact the person who authorized the assignment and agree on specific terms and conditions of reference. It may be appropriate for the appraiser to obtain other expert opinion on these matters but before doing so, he must obtain authority to engage and pay such other expert.

2.8 The appraiser will report and document the **equivalent premises** concept when and if necessary. As soon as it becomes apparent that this concept will apply, the appraiser should contact the person who authorized the assignment and agree on equivalent area to be considered and type of data to be supplied in report.

2.9 The appraiser, when valuing the **security interest(s)** of an expropriated property, will also document information on the prevailing rates of interest for an equivalent security in the community in which the expropriated interest is situated.

2.10 The appraiser, when valuing any **leasehold interest**, will carefully consider:

- (a) the terms of the lease and term remaining on the date of confirmation, so as to calculate the capitalized value of any contract rent advantage;
- (b) any investment in the land by the owner of the leasehold interest and nature of any business carried on by him thereon; and,
- (c) the reasonable expectancy of renewal of the lease, so as to calculate the degree and amount of disturbance, if specifically requested to do so.

2.11 The appraiser will value the **security interest** (mortgage) computed as the principal amount outstanding as of the date of confirmation plus three months' interest; and if the property is subject to more than one security interest, each shall be determined in order, but in no case shall the sum of the security interests exceed the value of the whole as if it had not been subject to any security interest. (It may be necessary for the appraiser to consider Equivalent Premises, depending on the resultant equity position).

2.12 **If a limited interest or a partial taking** is expropriated, the value assigned to the security interest will be in the same proportion that the value of the land taken bears to the whole of the land.

2.13 The appraiser, in estimating the value of an expropriated interest, shall not consider:

- (a) any sale, lease or other transaction concerning the expropriated interest that was entered into after the registration of the notice of intention to expropriate (note that “entered into” is considered to mean at the date of an executed contract);
- (b) any anticipated or actual use by the Crown of the land at any time after the date of notice of the intention to expropriate was registered (except as in 2.14 below);
- (c) any increase or decrease in the value of the interest resulting from the anticipation of expropriation by the Crown; or,
- (d) any increase in value of the interest as a result of an illegal use.

2.14 Subsection 25(1) of the Act indicates that compensation for partial taking is calculated in two parts.

**Part 1:** The value of an expropriated interest at the time of its taking [Paragraph 25(1) (a)]; and,

**Part 2:** The amount of any decrease in value of the remaining property of the owner determined as provided in Section 27.

This precludes the use of the **before and after method** as normally carried out. The benefit of this is to the owner because the value of the land taken, regardless of any betterment to the remaining lands, is always paid.

The method of appraisal shall be as follows:

**Part 1:** The actual part taken must be valued on its own. If marketable, the market value as an individual parcel as per Subsection 26(2) or 26(3), if not marketable on its own, then it is valued at the greater of, the value it contributes to the whole property, or the value of equivalent land.

**Part 2:** The value of the **severance damages** under Subsection 25(1)(b) and Section 27 is then calculated by taking the value of the total interest before the taking, minus the previously calculated value of the part taken and the value of the interest in the remaining land. Thus in valuing the severance damage, the Act uses a **modified before and after calculation**.

The total loss in value is then the sum of the two parts.

It will be noted that Subsection 27(2) of the Act provides that in determining the value of the remaining interest in land, any increase or decrease in the value of the remaining interest resulting from the construction or use or anticipated construction or use of any public work on the land shall be taken into account. However it is pointed out that any benefits or advantages to the remaining land are only set off against damages for severance or injurious affection to the remaining land, and thus is automatically accounted for in Part 2 of the calculations.

2.15 The report is sent by the Department to the owner supporting an offer of compensation; therefore the thoroughness and accuracy of statements are absolutely imperative. Particular care should be taken to ascertain all matters of fact, such as details of index sales, zoning and availability of services, etc.

The appraiser is urged to clearly indicate any limiting factors and circumstances

- affecting the consideration of the problem. Recognizing the pressure of time in these assignments, the appraiser may wish to point out that certain assumptions are subject to change if more information is available at a later date.
- 2.16 The appraiser must not attempt to fix compensation, i.e., to add percentages to the value for any purpose whatsoever.
- 2.17 Section 37 of the Act authorized the appraiser to make an inspection of the property and, for this purpose, a letter will be provided to identify him to the expropriated party. The appraiser must make arrangements with the owner for a suitable time to inspect the property.

### **3.0 EXPROPRIATION APPRAISAL REPORT - GENERAL**

- 3.1 The minimum requirements for an appraisal report of an expropriated property are the same as for the self-contained appraisal (narrative) format with additional information provided as per this Guideline, and with the following adjustments.

#### **3.2 For a Total Taking**

The market value of a property in its highest and best use according to the self-contained appraisal (narrative) format requirements. A second valuation may be required of the market value of the property in its existing use plus special economic advantage to the occupant; where the owner is in occupation and is required to give up same, and the existing use is not the highest and best use.

#### **3.3 For a Partial Taking**

**Part 1.** The market value of the taking in its highest and best use as per the self-contained appraisal (narrative) format requirements. A second valuation may be required of the market value of the taking in its existing use plus special economic advantage to the occupant in the situation where the owner is in occupation and is required to give up same, and the existing use is not the highest and best use.

**Part 2.** To estimate the decrease in value, if any, of the remaining property, the modified before and after method is applied as per section 2.14 of this guideline.

## 4.0 PARTIAL TAKING REPORT FORMAT

(Refer to the guideline on the Self-Contained Appraisal (narrative) Format for the required standards for each of the following sections.)

### Introduction

- 4.1 Title Page
- 4.2 Letter of Transmittal
- 4.3 Table of Contents
- 4.4 Photographs
- 4.5 Summary of Important Facts and Conclusions
- 4.6 Statement of Limiting Conditions and Critical Assumptions

### Factual Data

- 4.7 Definition of the Appraisal Problem (See Note A)
- 4.8 Scope
- 4.9 Identification of the Property
- 4.10 Area and City Data
- 4.11 Neighbourhood Data
- 4.12 History
- 4.13 Mortgage Data

### Before the Taking

- 4.14 Site Data
- 4.15 Services Available to the Site
- 4.16 Description of the Buildings
- 4.17 Site Improvements
- 4.18 Assessed Value and Annual Taxes
- 4.19 Lease Details
- 4.20 Land Use Controls (Zoning, etc.)

### Analysis and Conclusion

- 4.21 Analysis of Highest and Best Use
- 4.22 Appraisal Analysis
- 4.23 Land Value as if Vacant
- 4.24 Estimated Value by the Cost Approach
- 4.25 Estimated Value by the Income Approach
- 4.26 Estimated Value by the Direct Comparison Approach
- 4.27 Reconciliation and Final Estimate of Value
- 4.28 Exposure Time

### After the Taking

Where no change in information occurs in the following sections, it is unnecessary to repeat previous information. A statement of no change should be made.

If the taking results in more than one remainder parcel, each remainder parcel must be treated separately and with the following completed:

### Factual Data

- 4.14 Site Data (See Note B)
- 4.15 Services Available to the Site
- 4.16 Description of the Buildings
- 4.17 Site Improvements
- 4.18 Assessed Value and Annual Taxes
- 4.19 Lease Details
- 4.20 Land Use Controls (Zoning, etc.) (See Note C)

### Analysis and Conclusion

- 4.21 Analysis of Highest and Best Use (See Note D)
- 4.22 Appraisal Analysis
- 4.23 Land Value as if Vacant
- 4.24 Estimated Value by the Cost Approach
- 4.25 Estimated Value by the Income Approach
- 4.26 Estimated Value by the Direct Comparison Approach
- 4.27 Reconciliation and Final Estimate of Value
- 4.28 Exposure Time

### Summary

Value(s) of Part(s) Taken	_____
Value of Total Interest	_____
before the Taking	_____
Less: value of remainder	_____
Difference before and after	_____
Less: Value of Part(s) Taken	_____
Severance damages	_____
Total Value Reported	=====

- 4.29 Certification

## Part IV - Supporting Data

- 4.30 Displays (See Note E)
- 4.31 Addenda
- 4.32 Indexes
- 4.33 Appraiser's Qualifications

Note A: The "Definition of the Appraisal Problem" encompasses the purpose and function, e.g., purpose of the appraisal is to estimate the loss in market value to the subject property due to the taking of a part of the property for (give proposed use, such as 'a new highway'), by the (state the acquisition authority, such as the Department of Transport).

Note B: The "Site Data" should provide the area of the property before the taking, the area of the part taken and the area of the remainder parcel(s).

Note C: Under "Land Use Controls", consideration should be given to any possibility of zoning change (which must be confirmed by the appropriate authorities) as a result of works to be done on the part taken and changes in the neighbourhood.

Note D: For "Highest and Best Use", careful consideration must be given to change of use caused by the works to be done on the part taken, and any zoning change as per Note C.

Note E: In the "Displays", it is important that the dimensions, area, shape, frontage, access and any other factors of the Remainder Parcel(s) be clearly described, using wherever possible, a detailed plan or at least a sketch plan.

## 5.0 VALUATION OF INTERESTS

In accordance with the Act, each interest will be valued separately as outlined below:

- 5.1 Value of Security Interests.
- 5.2 Value of Other Interests (and Costs if requested to do so).
- 5.3 Value of Equity Interest (and Costs if requested to do so).
- 5.4 Value of Leasehold Interest (and Costs if requested to do so).
- 5.5 Identify and report on elements of Special Economic Advantage to the owner, if applicable.
- 5.6 Report on Equivalent Premises concept, if applicable.
- 5.7 Report on prevailing rates of interest.
- 5.8 Summary of value of all interest (and Costs if requested to do so).
- 5.9 Justification of cost items (e.g., Business Disturbance Relocation, if requested to report on Costs).

## 6.0 SPECIAL ECONOMIC ADVANTAGE

6.1 Section 26, subsection (3), paragraph (b) of the Act provides that an owner, in occupation of any land at the time the Notice of Confirmation was registered, may be entitled to either the market value of his/her interests in its highest and best use **or** the aggregate of the market value as if the existing use were the highest and best use plus costs and expenses and losses arising out of or incidental to the owner's disturbance, including moving to other premises; plus the value to the owner of any element of special economic advantage to him/her arising out of or incidental to his/her occupation of the land, to the extent that no other provision is made by this paragraph for the inclusion thereof in determining the value of the expropriated interest.

6.2 Special care must be exercised in applying this provision: the costs and expenses and losses arising out of or incidental to the owner's disturbance may cover what might otherwise be regarded as special economic advantage. Since it is difficult to generalize in such an involved matter, the following examples are given to illustrate the type of situation where an element of special economic advantage may occur.

(a) **Non-Conforming uses:** an owner may be living in a residence and using the property for business purposes as well. In some areas, the planning authority does not permit a subsequent owner to continue the non-conforming use, nor is the non-conforming owner permitted to re-establish the non-conforming use on another property. In these circumstances, the market may not fully reflect the value in use, and a calculation should be made on the economic advantage to the owner of this dual use.

(b) **Where special economic advantage is being enjoyed:** where business premises are used for purposes requiring extensive parking facilities, and the expropriated property had the benefit of using a nearby parking lot available to them when not required by the expropriated business - a social club using the parking lot of an office building in the evening; an office or retail store using a parking lot of a social club or movie theatre during the day. Obviously, the owner of the expropriated property is enjoying a special economic advantage which he will probably lose when he relocates. In some cases, municipal by-laws on ratio of parking space to building area will force the expropriated owner to buy a larger site when he relocates. This then must be taken into account and a calculation made as to the monetary value of this economic advantage.

## **7.0 EQUIVALENT PREMISES (APPLICABLE ONLY TO RESIDENCES)**

- 7.1 Section 26, subsection (8) of the Act provides that where an expropriated interest was being used by the owner for the purposes of his/her residence and the value of the interest otherwise determined under this section is less than the minimum amount sufficient to enable the owner to relocate the residence in or on premises reasonably equivalent to the premises expropriated, there shall be added to the value otherwise determined the amount by which that minimum amount exceeds such value.
- 7.2 The principle involved is most clearly illustrated in urban renewal schemes or similarly large acquisition schemes whereby smaller than standard, older or perhaps poorer than standard homes are to be removed from the community and no such properties of similar value are available within that community. For example, similar homes may exist in the community but because they currently sell at a higher price than the value of the subject (perhaps because these similar homes are in a better district), then the minimum amount of difference should be added to the value of the expropriated interest.
- 7.3 It is difficult to generalize about the extent to which this provision may apply, especially in geographic terms. Judgement must be used in each instance but generally it appears to be the intent that an owner should not have to move away from his present community--i.e., moving from one part of a city to another would be reasonable, but not to another city. Similarly, in rural areas the owner should not be forced to move to another district.
- 7.4 The Equivalent Premises Provision applies to any residence (Residence means a dwelling, a home). Thus, this provision will apply to such properties as a farmhouse or to the residential unit of a combination business and living premises, and to leased residences.
- 7.5 In order to report the equivalent premises concept, the appraisal report will require some changes in format. The purpose of the appraisal will be to estimate the minimum amount of money needed for the owner to acquire reasonably equivalent premises. Market data, fully documented, should be utilized. The appraiser will document sales and listings of reasonably equivalent properties which were available on the market as of the applicable date. The normal adjustment process used in the Direct Comparison Approach is not applicable. The appraiser will identify physical and functional differences between the indexes and subject property, and express an opinion in respect to their relative desirability. In looking for equivalent properties, the appraiser will consider properties that are within a reasonable range of equivalency to the subject property. It is not necessary for the property to be exactly similar or to be a replacement in detail of the expropriated property.
- 7.6 A federal court judgement states that ... reasonably equivalent to the premises expropriated does not mean identical premises ... but ... in or on premises which are corresponding in function to that expropriated, but not exceeding the limit prescribed by reason or not excessive. The section does not require the court to embark on an eye for an eye comparison.
- 7.7 In all cases, Subsection 26(8) requires that an amount, to be determined, is to be added to the value of the interest of the expropriated property. Thus, at all times an appraisal report in respect to Subsection 26(8) must be in addition to the appraisal report of the market value of the interest as of the effective date of the appraisal.



**APPENDIX A**

# Security Interest

Name of Property Owner: \_\_\_\_\_

Address of Property Owner: \_\_\_\_\_  
\_\_\_\_\_

Location and Legal  
Description of Security: \_\_\_\_\_  
\_\_\_\_\_

Type of Security: \_\_\_\_\_  
\_\_\_\_\_

Name of Security Holder: \_\_\_\_\_

Address of Security Holder: \_\_\_\_\_  
\_\_\_\_\_

Terms and Conditions of Security: (Copy of document to be attached)

Security Interest:

Principal balance only, outstanding as of \_\_\_\_\_ \$ \_\_\_\_\_ \*\*  
(Date\*)

Add 3 months' interest @ \*\*\* \_\_\_\_\_ % \$ \_\_\_\_\_

Add accrued interest from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_  
(Date) (Date\*)

**TOTAL:** \$ \_\_\_\_\_

Signature of Appraiser

Date of Signature

- \* Date of confirmation, if known.
- \*\* Amount to be reflected in Appendix C.
- \*\*\* Prorated rate of interest of existing mortgage.



**APPENDIX B**

# Value of Other Interests

(EASEMENTS, RESTRICTIVE COVENANTS, ETC.)

Name of Property Owner: \_\_\_\_\_

Address of Property Owner: \_\_\_\_\_  
\_\_\_\_\_

Location and Legal  
Description of Property: \_\_\_\_\_  
\_\_\_\_\_

Name of Holder of Interest: \_\_\_\_\_

Address of Holder of Interest: \_\_\_\_\_  
\_\_\_\_\_

Purpose, Location and Description of Interest:  
(Copy of document and plan or sketch to be attached)

Value of Subject Interest as of \_\_\_\_\_ : \$ \_\_\_\_\_  
(Date)

Signature of Appraiser

Date of Signature