

# Valuation Analysis of Partial Property in Compulsory Acquisition

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**Key words:** Compulsory Acquisition, Compensation, Eminent Domain, Expropriation, Partial Takings

## ABSTRACT

This paper examines the valuation methodology for estimating compensation regarding compulsory purchase of partial property for public use. The method of calculating compensation is commonly found in compulsory acquisition law in most countries in different versions and is referred to as the “Rules of Assessment”. It is of utmost importance that these rules should be precise, clear, and easy to be applied by professionals and judges. Also, it should include all possible compensations, damages, betterment, disturbances, losses including professional fees, provided that it is the natural and reasonable consequence of the compulsory acquisition. As a general principle, the affected owner should be paid just and equitable compensation and should be placed in the same position in monetary terms as if the compulsory purchase would not take place.

Summarizing, the aim of this paper is to analyse the valuation methodology for estimating compensation regarding partial taking for public use by reference to different country’s law and practices as well as some significant court case decisions. Therefore, an appraisal or valuation report prepared by a competent valuer/appraiser should comply with international, regional, or country appraisal standards and should be in line with the respective legislation. Little or no understanding of the valuation process in determining a fair and equitable compensation may lead to lower compensation and affected owners would have no other option but to apply to the court aiming at receiving the real losses as derived by the compulsory acquisition project.

This can provide an invaluable source of information and guideline for property valuers, the judicial participants and other stakeholders who deal with the sphere of property compensation and property rights.

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## 1. INTRODUCTION

Specific law governs the compulsory purchase of whole or partial property for public use and its respective valuation rules in most countries. The owner is deprived by taking away from him/her the whole or part of his property for public use and the only remedy available is to receive adequate or fair and equitable compensation in order to be able to replace the loss as a consequence of the compulsory acquisition. Property rights are protected at international level under the UN Universal Declaration of Human Rights (article 17). Several regional conventions also protect rights in property as follows:

- At European level under the European convention on Human Rights and Fundamental Freedoms (Article 1 of Protocol No. 1)
- In USA, under the American Convention on Human Rights (Article 21 Right to Property)
- In Africa, under the African Charter on Human and Peoples' Rights 1986 (Article 14)

Property rights are also protected under constitution or/and specific legislation at country's level.

Government bodies or other authorized body's exercising their powers under compulsory purchase law, should ensure the following:

- protection of due process,
- fair procedure
- accessible mechanisms for appeals
- confidence of citizens in the justice system
- advance consultation
- good governance
- equivalent compensation

As a general principle, the valuation methodology applied for estimating compensation should be based on market value and important references are derived from International Valuation standards<sup>1</sup> as follows:

Under the general standards –IVS 104 Basis of Value,

*Market Value is the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an*

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<sup>1</sup> International Valuation Standards, IVSC (31.01.2020)

*arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.*

*The concept of Market Value presumes a price negotiated in an open and competitive market where the participants are acting freely. The market for an asset could be an international market or a local market. The market could consist of numerous buyers and sellers, or could be one characterized by a limited number of market participants. The market in which the asset is presumed exposed for sale is the one in which the asset notionally being exchanged is normally exchanged.*

*The Market Value of an asset will reflect its highest and best use. The highest and best use is the use of an asset that maximises its potential and that is possible, legally permissible and financially feasible. The highest and best use may be for continuation of an asset's existing use or for some alternative use. This is determined by the use that a market participant would have in mind for the asset when formulating the price that it would be willing to bid.*

*The determination of the highest and best use involves consideration of the following:*

*(a) To establish whether a use is physically possible, regard will be had to what would be considered reasonable by participants.*

*(b) To reflect the requirement to be legally permissible, any legal restrictions on the use of the asset, eg, town planning/zoning designations, need to be taken into account as well as the likelihood that these restrictions will change.*

*(c) The requirement that the use be financially feasible takes into account whether an alternative use that is physically possible and legally permissible will generate sufficient return to a typical participant, after taking into account the costs of conversion to that use, over and above the return on the existing use.*

*Market Value does not reflect attributes of an asset that are of value to a specific owner or purchaser that are not available to other buyers in the market. Such advantages may relate to the physical, geographic, economic or legal characteristics of an asset. Market Value requires the disregard of any such element of value because, at any given date, it is only assumed that there is a willing buyer, not a particular willing buyer.*

The aforementioned analysis describing the market value principles is an invaluable guide when estimating compensation for compulsory purchase purpose. The basic principles of market value and the estimation of highest and best use, if properly applied will ensure that the compensation offered to the disposed owner is fair and equitable and will enable the owner to replace in real terms what he has lost.

In the following section, an attempt is made to describe and analyze the valuation methodologies applied in different countries in order to arrive at the final compensation to the affected owner. Where possible court decisions are referred to support the methodology applied and how court perceive and apply them.

## 2. USA

### 2.1 Partial taking principles

The value of the partial acquired property for public purpose, is measured in terms of the taken parcels contribution to the whole or larger parcel in its highest and best use, rather than its value as a separate parcel. In other words, in order to estimate the market value of the partial land taken, the value as part of the whole should be determined before the taking and not its value as a piece of property separate and disconnected from the rest of the property (remainder). However, this legal requirement may deviate according to different jurisdictions. Further, in case the partial land taken has no independent highest and best use, the best use can only be analyzed by its relation to market value<sup>2</sup> of the whole initial land at its highest and best use. Therefore, the methodology of determining the compensation for partial takings, is by first estimating the market value as a whole before land is acquired and second by estimating the market value of the remainder land. The difference of the two separate estimates of market value equals to the total compensation to be offered to the owner. This includes both the market value of the land taken as well as the change if any whether positive or negative resulting from the deletion of the property to the remainder. In other words, the compensation includes market value of partial land taken plus injurious affection or betterment to the remainder property. This is referred as the contributory value<sup>3</sup> and is consistent with the “unit rule” and argues against the reliance on the summation method. The summation method has been rejected by the courts<sup>4</sup>.

### 2.2 Testing for Highest and Best Use

A partial taking of a whole parcel that has no independent highest and best use or is not part of an integrated or banded together highest and best use of the whole parcel, is virtually a nonviable partial taking. It is common in practice that highest and best use of a property, which means that use will produce the highest value for an asset, is tested through the three pillars i) Physically Possible, ii) Legally Permissible and iii) Financially feasible. These three pillars are analyzed below:

Physical Possibility:

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<sup>2</sup> Definition of market value is described in The Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) 2016 edition

<sup>3</sup> See The Dictionary of Real Estate (6<sup>th</sup> Ed): Definition of contributory value.

<sup>4</sup> Supreme Court of Kansas in *Pener V King* (Kan. 2017) referring to *Rostine V City of Hutchinson*, 219 Kan 320 (1976)

- Is the area of the taking or whole large enough to support the probable economic use
- Is the configuration of the taking or whole parcel sufficient to support any probable economic use. That is the shape, size, accessibility, contour and surface of land, soil water content, irritability, fertility, quality of soil and subsoil to support the probable economic use (agricultural, residential, commercial, industrial etc).
- Is the soil capacity of the land capable of supporting any probable economic use.

#### Legal Permissibility:

- Is the area of the taking or whole large enough to support any legal permissible use (e.g planning/zone designations and regulations)
- Is the configuration of the taking or whole parcel sufficient to support any legal permissible use.
- Is the soil capacity of the land capable of supporting any legal permissible use.
- Is the taking, if encumbered by an easement or restrictive covenant or lease capable of accommodating any legally permissible use

#### Financially Feasible

An analysis of all probable economic uses of the taking or the whole that fails to meet highest and best use test of physical possibility or legally permissibility, excludes any further analysis of those uses regarding their marketability, supply and demand as well as financial feasibility. In the financial feasibility, prices and/or rents must be sufficient to support the specific use as long as the other two are also possible. Further, there must be an active demand for that use.

The highest and best use for a property may be its current or existing use when it is being used optimally. However, highest and best use may differ from current use.

An important court case namely The State ex rel. Ordway V Buchanan 154 Ariz. 159 (1987) is noted. It identified two methods in analyzing the value of a partial taking which is valuing part of the whole parcel or as a separate economic unit and emphasized the significance of highest and best use in making this distinction. In general, the partial taking is valued as part of the whole because in most cases if valued separately is not a viable entity.

A non-viable remainder has no independent highest and best use and will have a nominal or no market value, unless it can be tied up with the adjoining property. Further, valuing a partial taking may require consideration of the “larger parcel” as adjacent land is held in the same ownership with the affected property. Another term that expresses the concept of “larger parcel” is economic unit. This is possible where there is a unity of use or contiguity. Unity of use may be described as the parcel or continuous number of parcels that have one planning permission or the use covers all parcels. Contiguity may be described as the situation where two or more properties although separate, they can be valued as one unit. To support this, the valuation of each separate parcel when added together is lower than the value as one single unit.

### 2.3 Partial taking valuation methodology

Despite of the methodology applied in order to arrive at the value of the land portion taken, independent pre-taken and post-taken appraisals are mandatory<sup>5</sup>. The two methods relied on to analyse the impact of the partial taking is described below:

#### Equation 1

In a group of court cases, it was held that the compensation is the market value (contributory value) of the part taken as a function of the whole plus the difference before and after the taking in the market value of remainder area. The following equation is derived:

$$\text{Value of land taken}^* + (\text{Value of remainder area before taking} - \text{Value of the remainder area after taking}) = \text{Compensation}$$

#### Equation 2

Some other courts have adopted the before and after rule, where damages are estimated as the difference between the value before the taking and the value of the remainder area after the taking and the following equation is derived:

$$\text{Value of the whole or entire parcel before taking} - \text{Value of remainder after the taking} = \text{compensation}$$

In the aforementioned equation, the compensation includes both the value of parcel taking as well as any other monetary impact which can be positive (gain) or negative (loss).

Some of the difficulties in analyzing the value of the partial taking is to find comparable sales that have the same characteristics either before the partial taking but more difficult is to find sales that match with the remainder part of the parcel.

Appraisers are professionally obligated to carry out valuations in a meaningful, relevant, comprehensive, understandable and transparent manner. Therefore there is a duty by the appraiser, in developing real property appraisals, be aware of, understand and apply correctly

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<sup>5</sup> "The Appraisal of partial interests" in Principles of right of way, 4th ed. 205-214. Uniform Appraisal Standards for Federal Land Acquisitions 2016 ed.

employ those recognized methods and techniques that are applicable to produce a reliable appraisal for compensation purposes<sup>6</sup>.

In United States V.2.33 Acres of land, More or Less, 704 F.2d, 728, 732 (4<sup>th</sup> Cir 1983) it described the two appraisal procedures as follows: “although the two methods differ, it is important to note that, in any given case, if both methods are applied correctly, they will yield the same result (Before and After BAA or Value Plus Damage VPD).

The Scholarly paper<sup>7</sup> describing the application of the two methods in determining fair market value, concludes that the BAA method better reflects the monetary impact of the taking as is more realistic and leave less room for error, thus ensures more accurate and fair results, rather than the artificial nature of the VPD method. With the VPD method, an appraiser is more prone to exaggerate both elements of compensation.

### Public Project impact on property values and treatment in compensation appraisal

In analyzing the before value of the taking, the project or scheme must be ignored. This is a fundamental principle for the affected owner as well as for the expropriated authority. The US Supreme Court made a reference regarding this issue, which is twofold. Regarding the affected owners, these are protected against receiving lower compensation where property prices are diminished due to the negative impact from the scheme. On the other hand, the expropriated authorities and finally the taxpayers should be requested to pay overcompensation, as a result of the positive impact of the scheme and the property prices are most likely inflated due to government investment<sup>8</sup>. Therefore, when analyzing the before value of the taking, the influence over time of the project scheme or public improvements must be excluded (increases or decreases) except from items of physical deterioration<sup>9</sup>. It is noted that when the government project is announced and as the project proceeds the effect on property values is fluctuating as time is closer to completion, it is more difficult to distinguish between the influence of the planned public project and the market deflationary or inflationary values. The extent of the impact depends on the type and scale of project. Under the Uniform Appraisal Standards for Federal Land Acquisitions (Sections 4.5-4.6), in partial acquisitions the influence of the public scheme is taken into consideration when estimating the compensation for the remainder part of the parcel. This enhancement or benefit<sup>10</sup> to the remainder property that is derived from the public scheme falls into two categories, namely, “General Benefits” and “Special Benefits”. The treatment of these benefits differ from one jurisdiction to the other thus appraisal should be aware and act accordingly. The Washington Pattern Jury Instructions noted that “special benefits are those that add value to the remaining property as distinguished from those arising incidentally and enjoyed by the public generally”. In Spokane Traction Co V Granath 42 Wash.506, 85 P.261(1906) it was held that a new

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<sup>6</sup> Uniform Standards of Professional Appraisal Standards, 2018-2019 Standard Rule1-1, Lines 438-431

<sup>7</sup> Scott Salmon, “Necessary Change: Re-calculating just compensation for environmental benefits,” Washington and Lee Journal of Energy, Climate and the Environment 6, no.2 (March 2015)552-591, <http://bit.ly/2YZJPFJ>

<sup>8</sup> United States V Miller, 317 US 369 (1943) at 376-377, 379

<sup>9</sup> Principles of Right of Way 4th ed 195 and UASFLA

<sup>10</sup> Brittany Harrison, “The compensation Conundrum in Partial Takings cases and the Consequences of Borough of Harvey Cedars” Cardozo Law Review De Novo (2015)

bridge and highway improvements could constitute special benefit to an abutting owner, regardless whether there are several abutting owners enjoying like benefits. Only special benefits need to be defined in the jury and is not necessary to define general benefits and then instruct the jury to disregard them. Public projects that would result in rezone and city plans to extent utilites to the property, these can be considered as enhancements and this increase is a special benefit.

### 3. United Kingdom

It is a fundamental principle that the owner shall not be deprived of his property without compensation. In the case of Horn V Sundrland Corporation (1941), this principle was stated by Scott LJ as:

*“The aim is to put the claimant in the position as if this land had not been taken from him”*

This is sometimes known as the principle of equivalence from the case of Hull & Humber Investment V Hull Corporation (1965), where it was noted that the claimant’s compensation should be equivalent of what he has lost.

Under the Land Compenastion Act 1961, six basic rules are applicable in order to estimate the compensation to the claimant, which are described below:

Rule (1): No allowance shall be made on account of the acquisition being compulsory

Rule (2): Market Value principle, which is “The value of land shall be subject hereafter provided, be taken to be the amount which the land, if sold in the open market by a willing seller, might be expected to realise.

It is possible that the claimant may claim compensation regarding the development potential of his property and this is reflected in the value of his property to the extent that it would affect market value. If the property can be developed or has some alternative use, this can be considered and planning assumptions need to be taken into consideration. Thus compensation can be based either on the existing use value (EUV) or the development vale (DV), whichever is the highest. Development value is a function of planning permission and demand<sup>11</sup>.

Rule (3) The special suitability of the land for any purpose shall not be taken into account, if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market appart from the requirements of any authority possessing compulsory purchase powers.

Rule (4) No account shall be taken of any increase in value due to the use of land, or any premises theron, in a manner which is restrained by any court, or is contrary to law, or is detrimental to the health of the inmates of the premises or of the public.

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<sup>11</sup> Viscount Camrose V Basingstoke Corporation (1966)

Rule (5) Where land is, and but for the compulsory purchase acquisition would continue to be, devoted to the purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the lands tribunal is satisfied that reinstatement in some other place is bona fide intended, be assessed on the basis of reasonable cost of equivalent reinstatement.

Rule (6) The provision of rule (2), shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land. The heads of claims under this rule can be as follows:

- Removal costs
- Adapting new premises
- Installations
- Temporary storage of furniture
- Loss of goodwill (permanent loss of profits)
- Temporary loss of profits
- Notifying customers of new address
- Reprinting header notepaper
- Redundancy payment to staff

Three additional rules are also applicable as described below.

The “Pointe Gourde” Principle: Compensation for land acquired is not to be increased or reduced by the effect of the acquiring body’s scheme unless the development under the scheme might have taken place apart from the scheme (S6).

The “Set off Rule”: Where the retains any contiguous or adjacent land, the value of which is enhanced by development carried out or proposed to be carried out under the “scheme” the betterment is set off against the compensation otherwise payable (S7).

Therefore, under the UK compulsory purchase, the compensation equation can be divided into three basic categories as follows:

Compensation = market value of land taken

- + Severance and injurious affection of land retained (less set off for betterment)
- + disturbance and professional fees (and additional payments)

An alternative valuation approach is as described below:

- a. Determine the value of land taken
- b. “Before and after” valuation of the whole of the land before, and just

the retained land after, to determine overall effect of scheme.

- c. Separate the heads of claim by deducting (a) from the difference between the two valuations in (b). This will show the amount of compensation for severance and injurious affection.

In the above approach, under S7 of the law, it makes clear that the section only applies to land retained, thus injurious affection compensation is payable in respect to any depreciation in value of the retained land, but no depreciation in the value of the land acquired. This is why “before and after” valuations should not be applied to different areas of land before and after.

Note on “Before and after” valuation:

Assume a 2 ha site, ripe for residential development. The land is affected by a compulsory purchase of a 16m wide strip for a road, taking 0,4ha.

Value of land before acquisition	2.0 ha @ say €500.000	€1.000.000
Value of land after acquisition (reflects loss of 0.4 ha and some damage to the remainder)	1.6 ha @ say €450.000	<u>€720.000</u>
Loss due to the scheme		<b><u>€280.000</u></b>
Claim Land taken 0,4 ha @ €500.000		€200.000
Balance of claim = Severance and injurious affection		<u>€80.000</u>
		<b><u>€280.000</u></b>

The “before and after” valuation methodology is accepted by the Lands tribunal in UK in Budgen V Secretary of State for Wales (1985) 2 EGLR 203 and in Landlink Two Ltd V Sevenoaks District Council (1985) 1 EGLR 196. However, it was then asked to apportion the compensation for land taken and compensation for severance and injurious affection to the remainder land. On the other hand, in ADP & E Farmers V Dept. of Transport (1988) 1 EGLR209, the Tribunal preferred that there should be separate valuations for land taken and land retained.

#### 4. Australia

Compulsory acquisition in Australia (NSW) is based on the principles of just terms compensation. This is governed by S20 of the Land Acquisition (Just Terms Compensation) Act 1991.

The basis of claim for compensation will depend on the acquisition and in the case of partial acquisition, the impact that the taking of the land has on the land retained by the dispossessed. The heads of compensation in partial acquisition are described below:

## Heads of Compensation in partial acquisition

- Market value
- Special value
- Disturbance
- Severance
- Injurious affection / betterment

Method of Assessment: “Before and after method”

Hornby (1996) highlights that the “before and after method” is not the sum of values but a judgement of the assessment of the property’s value before acquisition and the value of the residual after acquisition on the property retained. This method is not clearly understood by valuers and property owners. The value of the land taken is not the subject of compensation but rather, it is the impact of the taking on the remaining property that is the matter to be assessed in partial takings.

It is worth noting that courts in Australia have sought to expedite the resolution of completion of these matters through its Practice Direction: class 3 compensation Claims (The Land and Environment Court of New South Wales, 15.03.2019). In the valuation process, the direction requires expert valuers to confer and provide:

- Method of valuation and check method where one has been used
- Full workings, documents relied upon and details of any personal communication relied upon
- Sales relied upon and all relevant information relating to those sales including price, date, area of land and improvements, rate per sq.m analysis, zoning and planning controls and comparisons between the sales with percentage adjustments between sales and subject property.

Once the above information has been exchanged between valuers, they are to confirm matters they agree and identify matters that disagree on. These matters should include:

- Highest and best use
- List of comparables sales agreed
- Facts and assumptions upon which the respective valuations are based
- Comparable sales used by each valuer with their analysis
- Percentage adjustments between sales and subject property

Its requirements prohibit the introduction of any evidence not provided in the expert’s statement, report or affidavit. In effect the objective of the proceedings becomes the resolution of the matter, not a decisive win by one side or the other.

## 5. Republic of Cyprus

In this country, the law is cited as the Compulsory Acquisition of Property Law N.15/1962 and S10 provides the basic rules of assessing compensation. The provisions of this legislation are very similar with the UK legislation. The relevant rules regarding partial taking are outlined below:

#### Market Value principle

*Rule (a) the value of the property shall, ..., be taken to be the amount which the property, if sold in the open market on the date of the publication of the relative notice of acquisition by a willing seller, might be expected to realise;*

#### Injurious affection or/and betterment

*Rule (f) In the case of property of which part only is acquired ... account shall be taken of the increase or decrease, ... in the value of other property held by the owner together with the part acquired ...;*

Damages (severance) of the part acquired and held together

*Rule (g) Account shall be taken of the damage... by reason of the severance of the property acquired... from the other property held together with the property acquired;*

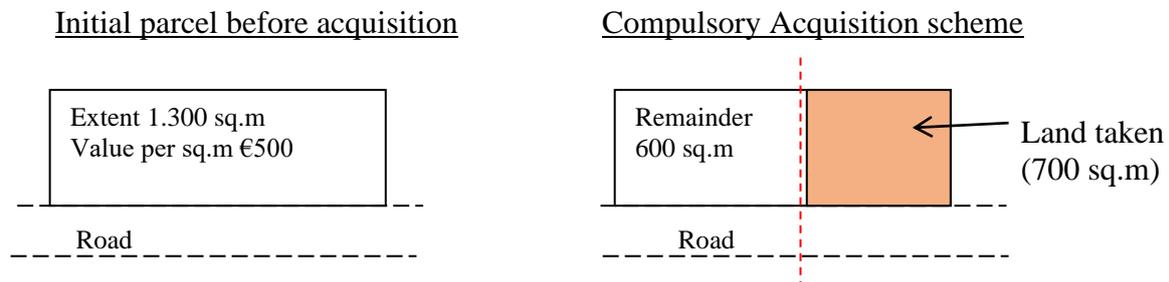
#### Disturbances

- (l) where, at the date of the publication of the notice of acquisition, the property referred to therein was, and but for the acquisition would continue to be used for the carrying on of any business, trade, profession or vocation, account shall be taken of the loss, if any, directly sustained by any person interested by reason of his being dispossessed of the property under this Law;

The basic principle used is the market value of the property under valuation at the date of the publication of the notice. This value is then adjusted accordingly to consider any betterment or injurious affection on the remainder of the property, or other adjoining property belonging to the same owner of the acquired property. Any other limitations imposed on the property are also taken into account, as well as any damage caused to any business carried out on the property acquired.

The valuation methodology applied in Cyprus for partial taking follows the pattern under rule (a) which is basically the market value of the partial taking based on the whole initial parcel (“unit rule”) and not the market value of partial piece of land acquired as if it was a piece of land independent from the remainder. Thereafter valuers attempt to estimate the impact of segregation of the whole parcel into two or more pieces of land and according to physical and legal characteristics of the remainder pieces of land, which can be positive (betterment) or

negative (injurious affection) or neutral. The value per sq.m of the remainder piece of land is usually the same as estimated for the whole initial parcel and thereafter a percentage is multiplied to the sq.m value to arrive at the betterment or injurious affection value for the remainder. Finally, the total compensation is estimated by adding the value of land taken plus injurious affection and/or less betterment for the remainder part. An example is illustrated below:



The land is designated for residential use

#### Valuation for compensation

a. Market value of land taken

$$700 \text{ sq.m @ } €500/\text{sq.m} = €350.000$$

b. **less betterment** 5% because the remainder plot becomes corner plot and the size remains fit for purpose

$$600 \text{ sq.m @ } €500/\text{sq.m @ } 5\% = \underline{€15.000}$$

**Total compensation offered:** €335.000 (€350.000 -€15.000)

Another valuation methodology can be adopted assuming that at the date of acquisition, the property has a planning permission issued for subdividing the property into several building sites. The “before and after” approach can be used, where the parcel is valued by applying the residual method of valuation as if no compulsory purchase was made and thereafter another independent valuation is carried out of the remainder parcel, again having in mind the assumption of a planning permission for subdividing the remaining parcel into building sites. The difference of the value of the parcel before and after will derive the compensation available to the claimant. This is illustrated below using the same example above:

#### Before and after approach

a) Valuation before      1.300 sq.m @ €500/sq.m =                      €650.000

b) Valuation after      600 sq.m @ €500/sq.m @ 1,05 =                      €315.000  
(remaining parcel)

**Total compensation offered:**

**€335.000**

It can be argued that the second valuation methodology is better or more accurate than the first one especially when the property has been granted a planning permission for specific use or subdivision of field into building sites. Also, it is much easier to clarify and crystalize the actual impact of the compulsory acquisition scheme on the partial property that will also affect the sustainability and suitability of the remainder if it can be turned into some useful usage. Besides, the second valuation methodology is more applicable when appraising large size parcels within the development boundaries as comparable sales are difficult to find. Therefore, the appraiser will need to make a planning assumption or requesting the issuance of a preliminary planning permit by the local planning authority regarding the possible subdivision of the parcel into approved building sites. Again, the availability and compatibility of comparable evidence compared with the subject property will determine which valuation methodology is more appropriate under the circumstance.

In the USA it seems that the courts share the same view, however the methodology that an appraiser will decide, depends on the availability and comparability of actual transactions or sales that can be compared with the subject parcel or part of it. The physical and legal characteristics of comparable sales and time adjustment will need to be adjusted with the respective subject property.

When investigating the concept of highest and best use, the test of physical permissibility, legal permissibility and financially feasible should be explored. The physical permissibility was actually tested in a court case namely Niki Anastasi Perikleous V Attorney General of the Republic 35/2012, (23.05.2019) at the District Court of Limassol. The owner claimed compensation regarding part of his land compulsorily acquired that was designated for residential use. However the court awarded compensation based on agricultural value of that part for the reason that evidence by the Geological Department, showed that the subsoil of that part of her property was not strong enough to accommodate or support the residential use (e.g erecting a house), other than agriculture (or as residential amenity value). It was explained by the defendant's expert valuer in Court that the purpose of the compulsory purchase was to reinforce and support the parcel ground due to landslides and ground subsidence of the surrounding plots.

## **6. CONCLUSIONS**

An attempt has been made to analyze the valuation methodology applied in different parts of the world regarding the appraisal of partial taking for compensation purposes. In USA, UK as well as in Australia the valuation methodology applied is very similar. The compensation for the partial taking is based on market value where its definition is common across. Further, regarding the compensation in these geographical regions, all apply the principle of highest and best use (HBU), where the test is whether the physical possibility, legal permissibility and financial feasibility of a property will produce the maximum value. This should be the compensation offered to the claimant. The definition of market value as well as the

application of the highest and best use analysis in determining the compensation is also in line with the International Valuation Standards.

Regarding the valuation methodology applied in the aforementioned geographical regions, it was found that in practice two basic equations are applied but sometimes they are applied slightly different. The basic equations are as follows:

#### Equation 1

Compensation = value of partial land taken  
+ severance/injurious affection  
- Betterment  
+ Disturbance payments

Or

#### Equation 2

Compensation = Value of whole land before acquisition minus the value parcel after the acquisition (remainder)

Both equations can be used concurrently, where the one is used as a cross check against the other and should end up in the same result.

The understanding and application of the basic principles of valuation methodology in partial taking, is of utmost importance on behalf of the acquiring authorities/government, valuers and lawyers as well as the Courts. Every effort should be made so that the award must be fair and equitable for the claimant and to safeguard that the property taken away will be replaced in real financial terms.

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## **BIOGRAPHICAL NOTES**

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Licensed Valuation Surveyor with experience in the private and public sector. Much experience has been acquired in compulsory acquisitions, planning compensations and all other types of valuations, including general valuations for taxation purposes. Also, he is a trainer of the valuation courses in the Department. Past president of the Cyprus Association of Property Valuers.

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