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April 17, 2006

Mr. J. Richard Capka
Federal Highway Administrator
400 7th Avenue SW
Washington, DC 20590

Dear Mr. Capka:

I write you due to my deep concern regarding the "Sign and Site Valuation Formula and Schedule Guide for Controlling Outdoor Advertising Pursuant to 23 U.S.C. 131" issued by the Office of Right-of Way on February 16th, specifically in regard to Part V: Gross Rent Multiplier. Unless the endorsement of this technique is reversed, the result will be an unjustified gift of tens of millions of dollars of the taxpayers money to the outdoor advertising industry. As an example of this potential impact, in a recent case the appraiser for the outdoor advertising company valued the billboard using the cost approach at \$71,000. He valued the same sign using the Gross Rent Multiplier at approximately \$1.5 million.

The outdoor advertising industry has been engaged in a strong effort to gain compensation when one of their billboards has to be removed in eminent domain based not on any property right that is being taken, but on alleged lost business income. Since business losses are not compensable in most states, the outdoor advertising industry has attempted to hide this in a property appraisal technique, in particular the Gross Rent Multiplier. The FHWA recognized the impropriety of this approach in 1993, issuing a Guide for the Valuation of Outdoor Advertising Signs:

The Gross Income Multiplier (GIM) is not one of the three recognized appraisal approaches. Rather, it is a technique which is useful only as a "rule of thumb." It is a self-adjusting method of comparison that the relationship between income and value/price tends to be relatively similar among reasonably comparable properties. Accordingly, it is our position that the GIM does not meet the intent of 49 CFR 24.103 and 24.104.

Then, in response to a letter from Congressman Bud Shuster, in 2000 the FHWA partially retreated from this position, stating that "the 1993 policy guidance no longer limits the amount of Federal participation for the acquisition of billboards. Our current programs rely on State initiative and statutory authority." This wishy-washy letter has given attorneys for outdoor advertising companies the opportunity to state that the Gross Rent Multiplier is "endorsed" by the FHWA.

The February 16th Policy Guide goes much farther, however, actually endorsing the use of the Gross Rent Multiplier:

A gross rent multiplier based on reliable and current sales of rented signs may be useful in valuing some signs. Sales of signs or groups of signs are preferred to sales of entire companies, but both types may be considered. The usual conditions of a fair market sale should be present, and all nonsign values (items not normally considered in eminent domain) should be deducted from the sales prices. The signs should have similar expense and revenue producing characteristics. If sufficient sales become available and this technique proves feasible, multipliers may be prepared for consideration. Any proposed gross rent multipliers should be submitted to FHWA for approval prior to use.

At this time I have not found out what the impetus was for this unwarranted, unjustified, and incorrect action by the Office of Right-of-way, but I cannot help but see the hand of a outdoor advertising industry lobbyist.

The Guidance regarding the Gross Rent Multiplier is totally wrong. First, it incorrectly that the so-called "comparable sales" are actually comparable to the property that actually is being appraised. They are not -- they are sales of outdoor advertising businesses, not outdoor advertising signs. For example, in a typical sale, when Lamar Outdoor purchased the Assets of Murphy, Inc., the sale included the following:

1. All Murphy's ground leases and licenses;
2. All Murphy's outdoor advertising contracts with advertisers;
3. All Murphy's billboards;
4. All Murphy's inventory and supplies;
5. All Murphy's furniture, fixtures and equipment used in the business;
6. All Murphy's automotive equipment used in the business;
7. All Murphy's accounts receivable;
8. "All goodwill, knowhow, customers' and suppliers' lists, trade secrets, all other trade rights, secret processes of the Seller related to Business or the Purchased Assets (the Goodwill)";
9. "All other tangible and intangible assets of the Seller used or useful in the Business, including without limitation, rights (including benefits arising therefrom), causes of action, claims and demands of whatever nature (whether or not liquidated) of g Seller relating to the Purchased Assets described in subsections (a) - (m) above, including without limitation, condemnation rights and proceeds, and all rights against suppliers under warranties covering any of the same (the "other Assets");
10. A non-compete agreement from Murphy to Lamar.

This obviously is not a sale of signs. It clearly is the sale of a business.

The "Guidance" incorrectly assumes it is possible to separate the sign element in these sales from the business element. It cannot be done. This is similar to trying to determine the value of an egg using sales of omelets. The proper technique would be to use a comparable the sales of eggs, not omelets. Similarly, the proper comparable sales for a billboard are not sales of outdoor advertising businesses but sales of billboards purchased by outdoor advertising companies "turnkey" from sign erection companies.

I strongly urge you to undertake a reassessment of this matter and then take action that is in accordance with accepted appraisal techniques and valid public policy.

Sincerely,

Charles F. Floyd



U.S. Department
of Transportation
Federal Highway
Administration

May 9, 2006

400 Seventh St., S.W.
Washington, D.C. 20590

Refer to: HEPR

Professor Charles F. Floyd
P.O. Box 430
Cleveland, NC 27013-0430

Dear Professor Floyd:

Thank you for your April 17 letter to Acting Federal Highway Administrator J. Richard Capka regarding our February 16 notice on "Sign and Site Valuation Formula and Schedule Guide for Controlling Outdoor Advertising Pursuant to 23 U.S.C. 131." I have been asked to reply.

The substance of the February 16 non-regulatory supplemental notice is the same as the guidance issued in 1974 as attachment 1 of Volume 7, Chapter 2, Section 12 of the *Federal-Aid Highway Program Manual*. The notice has been updated only in minor ways, for example to reflect changes in our organizational structure, such as the elimination of Regional Offices. The guidance was originally intended to help States that were using Federal-aid highway funds to acquire Standard Poster Panels, Painted Bulletins, and Miscellaneous Signs under the Highway Beautification Act. Rather than calculate just compensation for each billboard, the State had the option of using the guidance to establish a value on many billboards owned by a single company at the same time.

Today, acquisition of Standard Poster Panels, Painted Bulletins, and Miscellaneous Signs is more likely to occur when the panels, bulletins, or signs are on right-of-way being acquired for a Federal-aid highway project. We reissued the guidance because it contains good pointers to consider in acquiring minor signs owned by a company on an agreed-to schedule.

You commented on part V: Gross Rent Multiplier (GRM). This part, which is unchanged from the original notice, discusses GRM because the subject is often raised during acquisitions. However, we recognize that multipliers can be abused. Therefore, the notice states that for acquisition of multiple signs, a GRM "may be useful in valuing some signs" when "the usual conditions of a fair market sale" are present, "nonsign values" are deducted, the signs "have similar expense and revenue producing characteristics," and values are based "on reliable and current sales of rented signs." In those cases, multipliers may be prepared if "sufficient sales become available and this technique proves feasible," but the Federal Highway Administration reserves the right to approve their use. These qualifications indicate that we neither endorse nor prefer GRM, but are offering guidance for those situations where a State and sign owner consider employing the technique.



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LEGAL DIVISION
SCDOT



I hope this clarifies why we have reissued the 1974 guidance to show major factors that should be considered initially when sign acquisition is necessary.

Sincerely yours,

A handwritten signature in black ink, reading "Susan B. Lauffer". The signature is written in a cursive style with a large, prominent "S" and "L".

Susan B. Lauffer
Director, Real Estate Services

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May 16, 2006

Ms. Susan B. Lauffer
Director, Real Estate Services
Federal Highway Administration
400 Seventh Street, S.W.
Washington, DC 20590

Dear Ms. Lauffer:

Thank you for your letter in response to my April 17th letter to Mr. Capka regarding the Federal Highway Administration's apparently endorsing the outdoor advertising position on valuation in eminent domain. Unfortunately, the letter did not address the matters I raised and appears to indicate an almost total lack of understanding of the issues involved.

Basically, what is involved here is the question of whether outdoor advertising companies should be treated like other property owners in eminent domain, or whether they should be considered a favored class. For many years the outdoor advertising industry has been attempting to have their compensation in eminent domain based, not on their actual property losses, but on their alleged lost business value. Since lost business in normally not compensable, they have attempted to convert business value to property value. The vehicle to do this is the gross income multiplier technique using "comparable sales" of outdoor advertising businesses, not sales of signs. As I pointed out in my letter to Mr. Capka, this can result in appraisals by billboard industry appraisers many, many times the actual value of the subject billboard.

In the 1993 Guide for the Valuation of Outdoor Advertising Sign your agency recognized the impropriety of the gross income multiplier approach in valuing the interests of outdoor advertising firms in eminent domain. Is this still the position of the Federal Highway Administration, or has the agency adopted the outdoor advertising industry's position? The taxpayers eagerly await your answer.

Sincerely,



Charles F. Floyd

Federal-Aid Policy Guide

February 16, 2006, Transmittal 35

NS 23 CFR 750D

Non-Regulatory Supplement Attachment

OPI: HEPR

SIGN AND SITE VALUATION FORMULA AND SCHEDULE GUIDE FOR CONTROLLING OUTDOOR ADVERTISING PURSUANT TO 23 U.S.C. 131

INTRODUCTION

Sign and site valuation formulas and schedules for use in the highway beautification program are intended to minimize administrative and legal expenses necessarily involved in determining just compensation by individual appraisals and litigation, facilitate acquisition, and simplify program procedures.

This guide provides suggested procedures for the development of schedules and valuation techniques for the following:

- I. Standard Poster Panels
- II. Painted Bulletins
- III. Miscellaneous Signs
- IV. Depreciation
- V. Gross Rent Multiplier
- VI. Site Valuation
- VII. Leasehold Value

The content of this guide was developed by State and Federal representatives with the assistance of the outdoor advertising industry and is subject to modification as additional valuation information becomes available.

METHOD OF DEVELOPING SIGN PAYMENT SCHEDULES

1. By contact with the industry and observation in the field, locate a suitable number of newly constructed signs.
2. Contact the companies that have constructed signs recently and obtain from them the direct and indirect costs of the specific sign construction. At the same time, request authority to audit the company's records to determine the validity of the data acquired. This initial study and data is crucial to the development of the valuation techniques set forth herein.
3. Field check each sign to determine whether it was built according to the company's plans to determine the specific type of construction, including such things as wood or metal construction, illumination, one face, two face, and the area of the advertising face or faces.
4. Correlate the data obtained from the field and the verified construction data.
5. When adequate sign cost data has been collected from a sufficient number of signs, analyze the data to determine the cost of variable such as height, lighting, addition of a second face, reflectorization, quality and type of construction, and the appropriate form for schedules.
6. The data acquired should then be broken down into various categories and analyzed to determine the appropriate costs and depreciation rates which can be used as a basis for the schedules.
7. In lieu of the above steps, a State may adopt another State's FHWA approved schedules after test auditing necessary adjustments as may be necessary to reflect local conditions due to labor costs, material costs, typical height above ground level, local ordinances and codes requiring special fire

and wind protection, safety requirements during construction, and other appropriate items affecting the cost of signs. A State may adopt another State's schedule after full consideration has been given to the above items to determine comparability of conditions and construction cost of signs.

8. Obtain and evaluate industry's position concerning the payment schedule concept and the resultant formula based on the analysis in paragraph 5 above.

PART I SCHEDULE 1: STANDARD POSTER PANELS

DEFINITION

An outdoor advertising device built on two or more posts imbedded into the ground or attached to the wall or roof of a building which is designed to support a flat surface of approximately 300 square feet upon which printed advertising or other messages are affixed by posting.

A. Direct Costs.

1. Material, labor, etc. Price Per Square Foot (\$/S.F.) of Display Area

- a. Construction material
- b. Material handling
- c. Construction labor
- d. Engineering
- e. Permits
- f. Equipment costs for sign construction
- g. Other sign erection/installation costs

B. Indirect Costs (overhead or burden) attributable to construction.

1. Items to be considered: \$/S.F. of Display Area

- a. Shop overhead
- b. Insurance
- c. Salaries
- d. General office expense
- e. Utilities (not including sign illumination)
- f. Taxes
- g. Business licenses
- h. Site procurement
- i. Management
- j. Bad debts, interest and other expenses normal to sign construction
- k. Profit (A sign fabricator or builder's profit is an appropriate item reflected in the cost of a sign and, therefore, should be included in the development of sign cost schedules. The level of profit should be determined on an individual State basis. The profit factor selected by the State must be based on valid statistical data or other reliable sources. Profit should not be added, however, to sign costs developed from complete audits because such audits contain all costs including profit--whether it is shown as profit per se or taken out in salaries and bonuses. So long as the audit includes all costs appropriate to sign construction, no separate addition of profit is necessary. The audit itself determines the level of profit. On the other hand, audits that disclose only partial costs (such as hourly wage rates and material costs) provide only part of the necessary information and should have other direct and indirect costs, including profit, added to them to complete the schedules. In the absence of support for profit as a separate element, one figure may be used to include both profit and overhead if such figure is available. Because a cost estimate should include both overhead and profit, a single figure may be even more useful than the single element of profit.)

C. Adjustments

1. Illumination, including power run-in
2. Steel support
3. Height
4. Multiple face
5. Other appropriate adjustments

PART II SCHEDULE 2: PAINTED BULLETINS

DÉFINITION

An outdoor advertising device built on one or more posts imbedded into the ground or attached to the wall or roof of a building which is designed to support one or more flat surfaces upon which at least one advertisement or other message is painted in whole or substantial part.

A. Direct Costs	CUT OUT	MODULAR
1. Material, Labor, etc.	\$/S.F. of Display Area	\$/S.F. of Display Area
a. Construction material		
b. Material handling		
c. Construction labor		
d. Engineering		
e. Permits		
f. Equipment costs for sign construction		
g. Other sign erection/installation costs		
2. Art and Display	\$/S.F. of Display Area	\$/S.F. of Display Area

B. Indirect Costs (overhead or burden) attributable to construction.

1. Items to be considered:
 - a. Shop overhead
 - b. Insurance
 - c. Salaries
 - d. General office expense
 - e. Utilities (not including sign illumination)
 - f. Taxes
 - g. Business licenses
 - h. Site procurement (not including payment to landowner)
 - i. Management
 - j. Bad debts, interest and other expenses normal to sign construction
 - k. Profit

C. Adjustments

\$/S.F. of Display Area

1. Illumination, including power run-in
2. Steel support
3. Height
4. Reflectorization
5. Multiple face
6. Other appropriate adjustments

PART III SCHEDULE 3: MISCELLANEOUS SIGNS

DEFINITION

Factory-made signs produced for mass distribution, or small inexpensive signs characterized by "do-it-yourself" workmanship, that do not fit into the standard 300-square foot poster panel or painted bulletin categories.

A. Direct Costs	CUT OUT	MODULAR
1. Material, Labor, etc.		
a. Construction material		
b. Material handling		
c. Construction labor		
d. Engineering		
e. Permits		
f. Equipment costs for sign construction		
g. Other sign erection/installation costs		

2. Art and Display

\$/S.F. of
Display Area

\$/S.F. of
Display Area

B. Indirect Costs (overhead or burden) attributable to construction.

In those instances where these costs are applicable, use the appropriate costs under "Painted Bulletins."

C. Adjustments

\$/S.F. of Display Area

1. Illumination
2. Steel Support
3. Height
4. Reflectorization
5. Back to Back
6. Other appropriate adjustments

D. Quantity Survey Method

As an alternative to the above, miscellaneous signs may also be estimated through use of a simplified quantity survey. Such methods should be supported with a table of current material costs developed through study of supplier's prices. A standard form should be used to list the basic components as line items and show their quantities, costs, and extended amounts. The list of basic components could include suppliers' prices for typically used sizes of dimensioned lumber, durably or its equal, plywood, pipe, angle iron, I-beams, sheet metal, pressure treated poles and posts, fasteners, and other appropriate items.

Labor and overhead should be added to the material cost. These figures may be obtained from sign contractors or through audit of sign companies.

A list of adjustments should also be provided, such as in C above. They may be computed on an individual basis and include both direct and indirect costs. In addition to the adjustments in C above, this list could include adjustments for transportation, excavation and erection, and light or heavy copy.

NOTE: A lump-sum schedule may be developed when appropriate.

PART IV: DEPRECIATION

Depreciation schedules should be established to reflect the depreciation of signs of similar type, size, and physical condition. These schedules should include levels of depreciation reflecting the condition of the signs, their maintenance, and other appropriate factors.

The age-life method of estimating depreciation may be used. The estimator should be aware of the typical economic life of the sign. Consideration should be given to past maintenance, quality of construction, type of materials, etc. A remaining economic life should be estimated and applied to each sign if the age-life method of estimating depreciation is used.


In the appraisal process depreciation may also reflect functional, economic, legal and other matters, such as zoning, deed restrictions, visibility, compatibility with future use, and traffic conditions.

PART V: GROSS RENT MULTIPLIER

A gross rent multiplier based on reliable and current sales of rented signs may be useful in valuing some signs. Sales of signs or groups of signs are preferred to sales of entire companies, but both types may be considered. The usual conditions of a fair market sale should be present, and all nonsign values (items not normally considered in eminent domain) should be deducted from the sales prices. The signs should have similar expense and revenue producing characteristics. If sufficient sales become available and this technique proves feasible, multipliers may be prepared for consideration. Any proposed gross rent multipliers should be submitted to FHWA for approval prior to use.

PART VI: SITE VALUATION

The valuation process outlined in Part V of this directive would lend itself to the adoption of a formula permitting annual income to be multiplied by a present worth factor to determine the amount of payment to



the site owner. Selection of the appropriate multiplier would depend upon the judgment of the appraiser or site valuator and reflect the following considerations:

1. The maximum duration of the income stream may not exceed the remaining economic life of the sign on the site.
2. Existing or proposed local ordinances.
3. Neighborhood quality and trends.
4. The effect of the existing sign(s) on the dominant use of the property.
5. Any potential change in use of the property.
6. Potential development of adjacent property which might block the view of existing sign(s).
7. Present and future traffic flow.
8. Existing zoning and potential rezoning.
9. Deed restrictions.
10. The effect of cancellation clauses and/or renewal options in the lease.
11. The ability of the tenant to pay.

In developing a payment schedule or formula, it should be recognized that the risk rate may increase on those sites having a relatively long remaining economic life. Sites producing substantial income and having long remaining economic lives should be valued using accepted appraisal procedure.

In applying developed schedule multiples to site income, the average rental for the preceding 2 years should be utilized.

PART VII: LEASEHOLD VALUE

If it is established that economic site rent exceeds contract site rent, the bonus value may be computed in accordance with applicable State law and accepted appraisal technique. This amount may be added to the sign owner's compensation.