

**MAKE SITE WORK BONUS ELIGIBLE:
A HOUSING-FORWARD READING OF § 168(K)**

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Introduction

The United States faces a housing shortage, and construction costs keep rising. Tax policy can ease those burdens. Consider a developer building an apartment complex. Before any structure goes up, the site needs roads, drainage, lighting, and utility lines. These improvements—known as “site work”—can be deducted faster than the buildings they serve. For example, a parking lot depreciates over [fifteen years](#), while the apartment building beside it takes twenty-seven-and-a-half. Current law lets developers immediately and permanently deduct the full cost of qualifying site work. That benefit, which Congress recently reinstated, is called [bonus depreciation](#).

That permanent 100% bonus depreciation makes classification more consequential. Every dollar properly allocated to a fifteen-year class yields an immediate deduction. Every dollar misallocated to a longer class is deferred for decades. The problem is knowing what qualifies for the benefits of bonus depreciation. A water line runs from the street to the building: Is it “site infrastructure” or “building plumbing”? The tax code does not say. A large developer building hundreds of units for its institutional portfolio can hire engineers to draw the line and defend it during audits. A small builder developing five homes for his retirement rental portfolio cannot justify that cost and may leave [tens of thousands of dollars](#) on the table. Not because the deductions are unavailable, but because the uncertainty and expense of identifying them is more than a small builder can absorb.

This Essay proposes that the U.S. Treasury issue guidance to fix that gap. Part II explains how bonus depreciation works under [Section 168 of the Internal Revenue Code](#) and why classification matters. Part III examines the gray area around on-site utilities. Part IV offers a revenue procedure that would confirm typical site work as fifteen-year property, set a clear boundary for utility lines, and create a safe harbor for smaller projects.

I. How Bonus Depreciation Works and Why Classification Matters

The [One Big Beautiful Bill Act \(OBBBA\) of 2025](#) restored 100% bonus depreciation for property placed in service after January 19, 2025. [Bonus depreciation](#) lets a taxpayer deduct the full cost of qualifying property in year one, rather than spreading it over several years. Deduction rules can be found in I.R.C. § 168. That section creates the [Modified Accelerated Cost Recovery System](#) (MACRS). MACRS assigns each asset a recovery period: computers get five years, office furniture gets

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seven, land improvements get fifteen, residential buildings get twenty-seven-and-a-half, and commercial buildings get thirty-nine years.

To qualify for bonus depreciation, an asset must have a [MACRS recovery period](#) of twenty years or less. Buildings fall outside that line, but land improvements fall inside. OBBBA did not alter the definition of qualified property or the class-life table; it simply reinstated a full first-year write-off. Because this rule now applies permanently, the classification of assets matters more than ever. If a developer classifies a site improvement as part of the building, the deduction is spread over decades; if classified as a land improvement, it is expensed immediately. An immediate deduction is beneficial to developers—and housing—because it lowers the tax bill in year one, freeing up capital to reinvest across other projects.

The IRS's class-life system provides the roadmap for cost recovery. [Rev. Proc. 87-56](#) places assets into classes with set recovery periods. Asset Class 00.3 covers land improvements—improvements made directly to or added to land—and gives them a fifteen-year recovery period under the [General Depreciation System](#) (GDS). Examples include sidewalks, roads, drainage facilities, sewers, fences, and landscaping. The [IRS Cost Segregation Audit Techniques Guide](#) (ATG) adopts this classification and adds items such as parking lots, exterior lighting, and site utilities/drainage. Many practitioners therefore treat paving, curbing, exterior lighting, and site drainage as fifteen-year properties and claim bonus depreciation on them.

The process of identifying and assigning costs to shorter-lived categories is called cost segregation. In [Hospital Corp. of America v. Commissioner](#) (T.C. 1997), the Tax Court held that taxpayers may use pre-1981 investment tax credit concepts to classify assets within a building. The [IRS acquiesced](#), and engineering-based cost segregation studies are now standard practice. A residential developer can commission a study to reclassify part of a project's basis into five, seven, or fifteen-year property, unlocking bonus depreciation. But these studies are expensive, often costing several thousand dollars, and they require specialized engineers. As a result, large developers routinely use cost segregation, while smaller builders may leave qualifying costs in the twenty-seven-year basket and forgo immediate deductions.

[Section 163\(j\) of the Internal Revenue Code](#) limits how much business interest expense a taxpayer can deduct each year. For leveraged real estate projects, this cap can be [particularly painful](#) because a developer who borrows heavily may only deduct a fraction of the interest paid each year. If a project owes \$400,000 in interest but can deduct only \$150,000, the developer pays taxes as if the remaining \$250,000 were profit. A real property trade or business can elect out of the limit under § 163(j)(7)(B), which would allow full interest deductions. That election comes with a cost: slower depreciation on certain assets. Those assets must switch from the General Depreciation System (GDS) to the [Alternative Depreciation System](#) (ADS). ADS uses longer recovery periods, [straight-line depreciation](#), and disallows bonus depreciation. Section 168(g)(8) identifies which assets must make the switch: nonresidential real property, residential rental property, and qualified improvement property. But land

improvements under Asset Class 00.3—roads, parking lots, drainage systems, fencing—are not on that list. Neither is five-year or seven-year personal property. These assets remain on GDS and keep their bonus eligibility, even after the election. For housing developers carrying significant debt, this means they can deduct all their interest and still expense their site work immediately.

II. On-Site Utilities Fall into a Legal Gray Area

The law distinguishes between improvements to land and structural components of a building. Land itself is not depreciable. Buildings have long recovery periods—twenty-seven-and-a-half years for residential rental property—and cannot be expensed. Land improvements are separate, shorter-lived assets. This distinction is easy for obvious items like parking lots or fences. It becomes blurry for on-site utility lines that supply a building. Water laterals, sanitary sewer lines, gas lines, and electric conduits often run from a main to the building. Are they part of the building’s plumbing and electrical systems (and thus twenty-seven-year property) or part of the land improvement that makes the site buildable (fifteen years)? The class-life table does not say. For example, the IRS’s ATG treats domestic water and sewer systems as building components. Yet, the same guide identifies “site utilities” and “drainage” as land improvements. Practitioners often struggle to reconcile these examples.

Case law is limited and fact specific. In [AmeriSouth XXXII, Ltd. v. Commissioner](#) (T.C. 2012), the taxpayer argued that a wide range of apartment-complex site improvements were shorter-lived property. The Tax Court rejected many of those classifications, including certain utility systems, but the decision turned on poor documentation and sweeping claims rather than a clear rule. The opinion does not foreclose a more nuanced approach. The ATG itself [warns](#) examiners that its classifications are not official pronouncements and should not be cited as authority. Without binding guidance, taxpayers must rely on cost-segregation experts and risk audit disputes. This uncertainty causes two problems. First, well-capitalized developers can afford studies and claim large up-front deductions, while smaller operators cannot. Second, inconsistent IRS interpretations across regions lead to uneven application of the same law.

Housing development is capital-intensive, and early cash flow often determines feasibility. Roads, utilities, grading, and drainage systems represent a substantial share of development costs. According to the [National Association of Home Builders’ 2024 Cost of Construction Survey](#), site work accounts for 7.6% of total construction costs, which translates to approximately \$32,719 for an average home. When combined with foundation work (10.5% of construction costs), site preparation and infrastructure represent nearly one-fifth of all construction expenditures. [Industry data](#) shows site development costs can range from \$15,000 to \$120,000 depending on lot size and complexity, with utility connections alone costing \$1,000 to \$6,000 per service. When those costs are expensed, developers can reinvest the tax savings into additional units or improved infrastructure. When they are capitalized as part of the building, those deductions are spread thin, and financing becomes more

challenging. By clarifying the classification of on-site utilities and site work, the Treasury can make bonus depreciation easier to use and more equitable without changing the statute or the class-life table.

The Treasury already issues safe harbor rules to simplify complex depreciation questions. For example, in [Rev. Proc. 2015-56](#), the Service allowed restaurants and retail stores to deduct a fixed percentage of remodel costs without itemizing each component. The ATG also provides detailed asset matrices for other industries, such as retail or auto dealerships, to promote consistency. There is no comparable safe harbor for residential site work. Yet the tools exist: The Treasury could, under its [§ 168](#) and [§ 446 authority](#), prescribe a method that taxpayers may elect to use for classifying their site improvements and allocating costs. The Treasury possesses broad [regulatory authority under § 7805\(a\)](#) to prescribe all needful rules and regulations for the enforcement of the Internal Revenue Code. Because this would be an elective method and conservative in scope, it would not produce greater deductions than a well-documented study. It would simply ensure that those without access to engineering services can still obtain the benefit Congress intends.

III. Proposal: A Revenue Procedure for Housing Site Work

The classification problems and access barriers identified above call for a targeted administrative fix. Rather than waiting for Congress to act, the Treasury can use its existing authority to issue a revenue procedure that provides clarity and consistency to the depreciation treatment of residential site work. The Treasury should publish a revenue procedure that: (1) confirms typical housing site improvements as bonus-eligible fifteen-year property; (2) adopts a clear boundary for on-site utilities; and (3) offers a simplified allocation for smaller projects.

A. Confirm Typical Housing Site Improvements as Bonus-Eligible Fifteen-Year Property.

The first step is to remove any doubt as to what qualifies as bonus eligible. The revenue procedure should explicitly list qualifying site improvements: internal roads, sidewalks, curbs, stormwater systems, grading, exterior lighting, fencing, irrigation, and ponds. These are fifteen-year land improvements under § 168 and qualify for bonus depreciation. The guidance should quote or incorporate Rev. Proc. 87-56's list and apply it to housing developments. It should also note that improvements remain separate from the building even if they serve the tenants' use, as long as they are installed in or on the land rather than within the structure. This clarification would codify existing practice found in the ATG, but in an authoritative document that taxpayers can rely on when filing returns.

Further, the revenue procedure should remind taxpayers that the § 163(j) election to avoid the interest-deduction limit requires ADS for buildings and qualified improvement property but does not apply to fifteen-year land improvements. In other words, even electing real property trades or businesses may use GDS and bonus depreciation for land improvements. Incorporating this note will prevent taxpayers from mistakenly using ADS for site work and losing immediate expensing.

B. Adopt a Bright-Line Boundary Rule for Utility Laterals.

To resolve the ambiguous status of water, sewer, gas, and electric laterals, the depreciation procedure would establish a physical boundary. Under this Essay's proposed rule, the boundary is the foundation wall. Utility lines on the site side—between the property line and the exterior face of the foundation—would be fifteen-year land improvements. And the portions within or under the foundation would be treated as part of the building. The boundary is consistent with the ATG's framework for distinguishing site utilities from building systems. This rule would treat on-site utility laterals—such as water, sewer, gas, and electrical lines that run horizontally underground from the property line to the exterior of the building—as fifteen-year land improvements. These laterals are typically installed and owned by the developer as part of site development.

In contrast, piping and wiring located within or under the building's foundation would be treated as structural components of the building. Where a utility vault or manhole serves both site-level and building-level functions, the guidance could allow a reasonable allocation—such as 80% to land improvements and 20% to building components. Taxpayers seeking more precise results could still opt for a full cost segregation study. But a small builder with a twelve-unit project would no longer need to spend thousands just to claim what large developers get effectively by default.

C. Provide an Optional Simplified Allocation Method for Smaller Projects.

Smaller developers often cannot afford engineering studies. The Treasury could offer a safe harbor that allows taxpayers with residential development costs below a specified threshold (for example, \$5 million in total depreciable basis) to allocate a fixed percentage of their site-development costs to fifteen-year property without an engineering report. Based on National Association of Home Builders construction cost data, the service could allow taxpayers with residential development costs below \$5 million to allocate 15% of their total depreciable project basis to fifteen-year land improvements without requiring an engineering study. This percentage reflects the combined average of site work (7.6% of construction costs) plus a reasonable allocation for site utilities, exterior lighting, and related infrastructure that typically comprises an additional 7–8% of total project costs. This conservative approach is consistent with the IRS's existing safe harbor precedents, such as the [tangible property regulations](#) that allow small taxpayers to deduct up to \$2,500 per item without detailed analysis and the small taxpayer safe harbor that permits expenses up to 2% of property basis. Taxpayers using the safe harbor would attach a statement to their return and be protected from challenge if they follow the prescribed method. Those seeking to classify a higher portion could still commission a traditional study. This optional method would open bonus depreciation to smaller builders and reduce administrative costs for the IRS.

Conclusion

Housing shortages across the United States have many causes, but tax policy should not be one of them. Congress has chosen to allow full expensing of assets with

recovery periods of twenty years or less. Site work—roads, lights, grading, and utility networks—falls squarely within that category. Yet ambiguous guidance causes confusion and inequities in accessing the benefits Congress intended. This Essay’s proposed revenue procedure in Part IV would do three things: lock in existing classifications, draw a clear line for utilities, and provide a safe harbor for smaller builders. Clear rules would reduce disputes and free IRS resources for other priorities. And accelerating deductions for site work would lower the cost of building new homes and apartments. Most importantly, these changes would ensure that bonus depreciation works for all housing developers, not just those who can afford engineering studies. The large developer and the small builder would finally stand on equal ground. Both build the housing this country needs.