



**RPC E-Journal  
Winter 2015, Issue 7**

Welcome to the 7<sup>th</sup> edition of the Real Property E-Journal. Included in this edition are some insightful experiences from outstanding professionals including:

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By Mike Orman, ASA

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By Benjamin M. Williams, ASA

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By Micheal R. Lohmeier, FASA

Our next edition's deadline for articles is **May 1, 2015**. Read more about our "call for articles" by clicking on the following link <http://www.appraisers.org/Disciplines/Real-Property/rp-e-journal/call-for-articles>

Our Ad Valorem/Mass Appraisal general and residential specialty designations continue to attract new members. So we encourage articles focused on this area of professional practice.



We would also like to see you all attend or 2015 International Appraisers Conference which is scheduled for **October 18-21, 2015** at the **Mirage Hotel and Casino** in **Las Vegas, Nevada**. More information is to follow but the proposed line-up for this event is nothing less than **\*\*Spectacular\*\*!!!**

Please share this publication with anyone you believe would benefit from its contents.

Thank you for your continued interest and support of the RP E-Journal and we hope you enjoy the articles contained herein.

**Micheal R. Lohmeier, FASA, Senior Editor**

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### **About the American Society of Appraisers**

The American Society of Appraisers is the oldest appraisal society in the United States. ASA has been training professional appraisers since its precursor, the American Society of Technical Appraisers, began in 1936. Today, ASA is still the country's only multidisciplinary appraisal society, providing its members the most solid grounding in the appraisal principles that underlie all classes of property: real, personal, tangible and intangible.

In a word, that's lineage. Because ASA is a non-profit professional society, we explore the principles of valuation as they evolve from basic economic theory and legal precedent in an atmosphere of collegiality and exploration, with instructors who are leaders in the profession.

ASA is the acknowledged leader in real property (RP) appraising and includes members who perform appraisals for various purposes such as sale, acquisition, ad valorem tax, eminent domain, insurance and forecasting. Real Property members specialize in the following appraisal specialties: Ad Valorem/Mass Appraisal (General and Residential), Timber and Timberland, Residential, Rural and other Real Property.

Our titleholders (Accredited Members and Accredited Senior Appraisers) are among those that consumers trust the most. Three-quarters of a century in appraisal education count when you want the finest service in RP appraising. Contact one of our accredited appraisers and you'll find out that lineage means...***excellence in real property appraising.***



## **About Real Property Valuation**

The American Society of Appraiser's (ASA) Real Property Valuation Professional adheres to the highest industry standards (USPAP) and level of ethical conduct. Every ASA Real Property appraiser must meet meticulous requirements in education, experience and comprehensive testing before being awarded either the coveted Accredited Member (AM) or Accredited Senior Appraisers (ASA) designation. ASA Real Property Specialty Categories are:

- Ad Valorem/Mass Appraisal-Residential
- Ad Valorem/Mass Appraisal-General
- Real Property (All types)
- Residential
- Rural Agricultural
- Timberland

ASA's Real Property Valuation Professionals provide independent, unbiased opinions of value for all types of real estate and real estate interests and rights. Whether the assignment is to value interests in land and improvements and/or the related air rights, sub-surface rights or water rights, or to value an owner's partial interest or a tenant's leasehold interest, the ASA Real Property Professional is qualified and capable of doing the job appropriately, fairly, ethically and to the complete satisfaction of their client.

Designated ASA Real Property appraisers have demonstrated their commitment to the highest standards. In addition to having met rigorous education requirements, they have also completed at least 10,000 hours of full-time real property valuation experience.

ASA Real Property Valuation Professionals provide appraisal services for buy/sell agreements, financing, insurance issues, tax assessment, tax appeals, litigation and litigation support, partnership/family dissolution, just compensation for eminent domain/condemnation, equitable distribution of marital assets, highest and best use studies, marketability studies, and much more.

Moving forward, ASA's Real Property Discipline will continue its pursuit in promoting designated members and providing a collective voice for real property appraisers in government relations and profession related issues, leading accreditation programs and relevant continuing professional education courses.



## **Real Property Chair 2014 International Appraisers Conference Report**

September 2, 2014

Gary L. Smith, ASA, MGA  
International President  
American Society of Appraisers  
11107 Sunset Hills Road  
Reston, Virginia 20190

RE: Real Property Discipline Committee Chairman's Report

Dear Mr. President:

This report covers the activities of the Real Property Discipline Committee since the last report dated March 2014, to the present. The Real Property Discipline Governors' Report will be submitted separately by the Governors.

### **RPC Financial Status:**

The Real Property Committee financial status, as of this writing that status hasn't changed by any significant amount. Our issues are still the same, and we are in need of looking for positive ways to raise revenues.

Since our last report in March the RPC has moved forward with the RP401 Going Concern course and has presented webinars that will be further discussed in this report.

The RP committee realizes how crucial it is to develop income via educational offerings. Our goal is to continually look at ways to generate revenue, while providing a member or potential members a benefit and would result in a much more healthy discipline. The added bonus of educational offerings would be the potential increase of membership and increased exposure of ASA.

Karen Mann, ASA, has been the RP committee treasurer until she had to recently resign, and has provided the following report.

Prior to the January, 2014 B&F meeting Karen Mann and Joe Noselli put their heads together to formulate a budget for an Education loan to RP to deliver the newly developed RP-401 course. Our member Deane Wilson developed this course, wrote a book (also available on Amazon) and provided the aforementioned to BV for their approval and backing. The loan was originally supposed to be funded by the Educational Trust; however, Joe Noselli explained to us that it would need to be approved by the BOG not a loan via Educational Trust; as it was supposedly coming out of the same pot. Since I had not put together such a proposal for ASA before, I asked for guidance from the CFO

Joe Noselli. He was great and really seemed to buy in the concept and assisted the plan. At the January B&F meeting I made the presentation, after several days, we obtained approval from the board based on what I submitted.

During the last eight months, I've been encouraged with the fast track for MAIs to obtain the ASA designation and the number of people to actually attend the classes. I personally was keeping track of the locations and the number of attendees to see if our projections were close – and the attendance was certainly getting more encouraging.

Imagine my surprise to read last month's B&F report where RP showed a \$3,000+ loss (in red) based on RP-401. Apparently, no one thought to advise us/me, that the Staff hours would be assessed to that course – to the tune of more than \$5,000. I did bring up that question, and was told that we made a mistake in our template and we should have anticipated the cost of staff attributable to this class. I was stunned...and not pleased.

Karen also represented ASA at the IAAO conference in Sacramento last week, in hopes of expanding our membership. Since her efforts were to solicit members which in turn affect our budget, I have included her report under this heading.

Last week, I represented ASA at the IAAO Conference in Sacramento (850 attendees) in hopes of expanding our membership. Staff did a great job in sending pens and a handout regarding reciprocity of designations and qualifications. Michael Lohmeier was in attendance, he queried me about the glossy brochure which was made for Assessing officers, appraisers, and their fast track method of obtaining an ASA designation. Unfortunately I did not receive those brochures to distribute. However, I did distribute over 500 sheets (which I made a copy of) thanks to Ron Pratt sending me an overview with the appropriate links. More than 250 people were VERY interested – 200 where somewhat interested and the rest were mildly interested in ASA designations. The two people who were slated to assist me were unable to attend at the last minute- but it worked out fine – I had more than 20lbs of bite size candy (which I distributed over the two days) and was able to fine tune my “elevator pitch” to less than 20 seconds. On the volunteer side, I am embarrassed to say that the ASA chapter president and members of the (my) Northern California Chapter chose not to participate. I had a great time and felt like it was effective marketing for ASA. Wish I had applications to pass to prospective folks this time.

As I noted earlier, Karen has had to resign from her secretary/treasurer position on the RPC. I cannot start to express the gratitude I have for her service to the committee. While she has stepped down from her leadership role she does plan to remain active with the committee.

### **RPC Education:**

I earlier mentioned that we have and are now providing educational offerings. Gary Snowdon, ASA, RP's education sub-committee chair has provided the following report education report.

Gary has had the formidable task to manage our floundering education and I appreciate all he does with what little he has to work with.

### **Webinars**

We have just about filled the remainder of our webinar slots for this year. Upcoming webinars will include a panel discussion on International Appraisal, Probability of a Zone Change, The Effect of Energy Efficiency Measures on Value, and three others that are in the works.

Real Property webinars attract few attendees because state CE is not, and should not be (due to the expense of applying to 50 states), offered. RP members tend to spend their education time on courses which will result in state CE credits. One idea for reversing this trend would be to offer real property webinars that would be of interest to non-real property members, such as tax appeals, how we collect data, etc.

### **Live Courses**

We are currently offering the Allocating Value Components of a Going Concern through National. This has been rife with problems for the last two years, specifically the issue of state CE, but has had several successful offerings. It is important to continue offering this course so we can pay back the loan we took to present it.

It should be noted that these course offerings have resulted to several new members. While this is encouraging, there is a need to have follow-up education to maintain these member's needs.

Gary is putting together the Chapter Course Catalog (slowly) and will have to resolve some issues, such as high charges from HQ for putting-on Going Concern at the chapter level, even though the chapter would be handling its own marketing, CE application, venue, instructor, etc. This has brought to light HQ's practice of basing their fee on a percentage of the expense of doing marketing, CE application, venue, instructor, etc. It should be based on a percentage of the net, so all would be rewarded for getting as many participants registered as possible.

### **International Courses**

We are planning to present the Ethics course and POV 201 in Mexico City in the next few months. If successful, POV 202, 203, and 204 should follow. Dave Lewis and Lary Cowart have volunteered to present. We'll start Ethics and POV 201 with Dave Lewis.

I have made contact with Dr. Sapon Pornchokchai, President of the Thai Appraisal Foundation, about using our International Courses, and he is interested.

### **College Affiliation - POV**

I have started a conversation with Empire College (State University of New York) about providing distance learning POV courses as QE. The conversation has stalled as Empire shifts staff, but until we can get our domestic POV courses together it is a moot discussion.

## **New Courses**

The writing of the Self-Storage course proceeds (again, slowly) and is now in the SSA authors' hands. My own one-and two-day Excel workshop is on the back burner for now.

The Alliance for Valuation Education (AVE) is nearing completion of its first course offering: *Understanding & Using Comparable Transactions*. To that end, the Alliance invited sponsoring organizations to attend a presentation of the current draft of the class in Chicago on August 20<sup>th</sup>, with feedback to be given the morning of August 21<sup>st</sup>. It is my hope that this course will be available by the end of the year and can be aggressively presented to our members.

## **Needs**

As always, we need course developers and presenters. We also need to acknowledge that if Education is our revenue generator, then we need a budget for course development, state CE application, and related tasks.

Finding existing course materials is almost impossible and if the materials are at HQ, we have not been successful in getting anyone there to locate them. We also need volunteers to edit International POV courses.

Our relationship with HQ continues to be strained with our requests deflected regularly and with staff work passed-on to me. Confusion reigns in the state approval arena, even with outside employees doing the work (ie: applications being sent twice). The IEC Training Guide has been approved (appointed Chair broke a tie vote) and gives HQ staff much more responsibility.

## **Governmental Affairs:**

Peter Barash and John Russell have been quite attentive to the RP segment of ASA. We as a team addressed the issue relating to the need for physical inspections by appraisers for manufactured homes; the continuing effects and modifications to Frank-Dodd; the modifications to AMC requirements; as the key issues. The importance of representation on Capitol Hill has been paramount. In the spring we had a day to meet your representative and explain some of the ASA issues were promoted by John Russell. The current Government Affairs Committee meets as needed in an informal email and/or phone conversation. No we have not been able to develop new legislation more favorable to appraisers, but ASA RP appraisers are well represented.

We are still working in collaboration with NAIFA. This working relationship has allowed each association to speak in a louder more unified voice.

## **2014 International Conference Sub-Committee:**

Samuel F. Luceno, M.S., FASA, RPC Conference Committee Chair, has provided the following report.

The RPC Conference Committee Members include: Ernie Demba, FASA; Bill Wilson, FASA; Micheal Lohmeier, FASA; Ron Prat, ASA; Sam Luceno, FASA. The first meeting was conducted at the end of the 2013 Annual Conference in San Antonio, TX. During that meeting a list of alternative presentation topics and possible speakers was developed and specific duties were assigned to each of the various committee members. By the time our first ASA International Conference Committee Meeting was held, the RPC Conference Committee had selected specific and back-up presentation topics and speakers for each of the slots to be filled. We all realized that early preparation was necessary in order to ensure ASA Headquarters Staff would have sufficient time to submit the applications and documents necessary to secure approvals for the AQB and various state Continuing Education Credits. The 2014 Real Property segment of the ASA Annual Conference is as follows:

#### MONDAY

9:35 AM to 12:05 Noon > 2 Hours: Best Practices for the Appraisal Professional.  
Presenter - Ernie Demba, FASA

1:35 to 5:35 PM > 4 Hours: Appraisal Report Review  
Presenter - Roger Durkin, J.D., M.S., FASA

#### TUESDAY

8:00 AM to 5:05 PM > 7 Hours: "Allocating Components in Going Concern Appraisals".  
Presenters - L. Deane Wilson, M.A., ASA (Real Property); Rob Schlegel, FASA (Business Valuation); Larry L. Perdue, ASA (Machinery & Equipment)

#### WEDNESDAY

8:00 AM to 11:50 AM > 4 Hours: Ad Valorem/Mass Appraisal Issues Symposium and Conservation Easements component and "The Appraiser as Testifying Expert: Preparing and Presenting Expert Valuation Testimony"  
Presenters - Micheal Lohmeier, FASA, MAI; Paul Bidwell, ASA, MAI; Thomas Countryman, Esq.

Securing state approvals for RP Continuing Education (CE) is a long process. For this reason we began this process earlier than any previous year. Applications have been submitted to 18 states: FL, NC, SC, GA, TN, AL, PA, CA, TX, OK, NY, NJ, MO, IL, MA, MI, VA, & VT. To date, in addition to the AQB approval, we have received 18 hours of Continuing Education approvals from IL, MA, NJ, OK, PA, SC, TN, & VT. North Carolina would only allow 16 hours CE credits (reason unknown). Although we don't anticipate any rejections, the other states are pending approval and there is always a possibility of an unforeseen rejection.

Lastly, discussions are in progress with the National Association of Independent Appraisers (NAIFA) to join the 2015 ASA International Conference. Several hurdles have been identified and are being addressed in the hope that this effort can come to fruition. Many NAIFA Members are very interested in learning more about the other appraisal disciplines within ASA.



I am proud of the RP team. I could not ask for a better group of individuals who donate a tremendous amount of time and effort to ensure we are moving in the right direction. I would like say "Thank You" to all the members of the RPC. Being volunteers, their time and efforts are truly appreciated

Respectfully Submitted,

A handwritten signature in blue ink that reads 'Michael T. Orman'. The signature is fluid and cursive, with the first name 'Michael' being the most prominent.

Michael T. Orman, ASA  
RPC Chair  
PC: RP Committee  
RP Liaison (John Russell)

# The Appraiser As Testifying or Consulting Expert

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## Part Two – The Sufficiency of Expert Testimony

In the first part of this series, we looked briefly at the importance and selection of appraisers as formal and informal expert witnesses, in and out of court. This article explores in more detail the legal elements of “expertise” and how they may be practically applied and evaluated. Initially, however, one caveat bears repeating: an appraiser may satisfy the legal requirements of an expert and still make a lousy witness. Appearance, ability to communicate effectively, general jury appeal and overall credibility cannot be ignored, even if the appraiser (or any potential witness) is a genuine expert. One simple, practical reality must inform the selection of any expert: even the greatest product in the world (in this case, an appraisal) is worthless if its creator cannot convince anyone to buy it.

### **A CLOSER LOOK AT THE FINAL TWO DAUBERT CRITERIA**

To review, the so-called “*Daubert*” criteria (or some derivatives thereof) are used by most courts to initially to determine whether or not an individual truly qualifies as an expert from a legal perspective. Those criteria require that the expert’s work product be:

**Qualified** – *Provided by one qualified to state the opinion offered.*

**Reliable** – *Grounded in an accepted technical method.*

**Relevant** – *Sufficiently tied to the facts of the case.*

See, e.g., *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

### **RELIABILITY**

Having addressed qualifications in Part One, we look now at reliability’s two elements: (1) valid data; and (2) sound methodology. Data validity requires little explanation. An expert must confirm the accuracy of the information relied on and show a connection between that data and the opinion offered. See, e.g., *Volkswagen v. Ramirez*, 159 S.W.3d 897 (Tex. 2004). Now, no true expert would deliberately use false or invalid data. That said, mistakes and misunderstandings do happen, and there is never any excuse for not checking one’s sources and verifying all calculations. As, if not more, important, many experts and other professionals have learned from sad experience that best practice suggests one never completely trust the client. Truth testing is essential. Accepting facts without considered analysis typically leaves any expert – especially appraisers – dangerously blind and vulnerable.

As for methodology, given the overall recognized confines of the cost, income and sales comparison approaches under USPAP, most *Daubert* appraisal challenges are aimed not at the expert’s particular choice of approach(es) but at the more detailed, specific *application* and *interpretation* of those approaches to the related facts. Every

appraiser knows there are times when professional appraisal judgment and creativity regarding methodology are required. However, there is no determinative checklist which guarantees a court will accept an expert's methodology, especially where, as in appraisal, determination of "truth" is to some extent both subjective and fact and issue dependent. See, e.g., *Volkswagen v. Ramirez*, 159 S.W.3d 879 (Tex. 2004). Case law nevertheless is clear there must be *some* basis for affirmatively establishing the reliability of an expert's methodology, *id.*, so the following standards typically are recognized collectively as a fairly good starting point for evaluating a methodology's reliability:

1. The extent to which the methodology has been or can be tested;
2. The extent to which the methodology relies upon the subjective interpretation of the expert;
3. Whether the methodology has been subjected to peer review and/or publication;
4. The methodology's potential rate of error;
5. Whether the underlying methodology has been generally accepted as valid by the relevant technical community; and
6. The non-judicial uses which have been made of the methodology (*i.e.*, generally, the methodology needs to have been used in "real life," not just created for litigation).

See, e.g., *E.I. DuPont de Nemours v. Robinson*, 923 S.W.2d 549 (Tex. 1995).

Even the reliability of generally accepted appraisal methodologies may be questioned in specific applications. For example, with complex commercial properties - including the power plants with which I primarily work - mass appraisal techniques are often insufficient to ensure an accurate appraisal. Also, in these and other cases, adjustments have to be made which, in many cases, are neither published, objective nor free from the possibility of significant error. Thankfully, the law is not blind to these more "custom" circumstances and amplifies on the *Daubert* criteria where additional creativity must be added to a generally accepted approach so that the approach best fits the specific facts at hand. The first question relative thereto asked of the expert appraiser is whether the technique ultimately used is, in fact, "legitimate." Such legitimacy depends essentially on whether the "creative" or unproven technique or procedure appears in both name and description to provide some definitive truth which the expert needs only to accurately recognize and relay to the fact finder. See, e.g., *People v. Stoll*, 49 Cal.3d 1136, 1156 (Cal. 1989). Even if the answer to this question is "yes," the expert still must be able to establish that the technique, as subjective as it may be, has "gained general acceptance in the particular field in which it belongs." *Id.* An expert simply cannot pull a unique methodology out of thin air, no matter how unique the circumstances. "General acceptance" requires a consensus drawn from a typical cross section of the relevant, qualified technical community. *Id.*

In other words, regardless of the need or uniqueness of the issue, where an expert exercises subjective creativity, she does so at her peril unless her process has a demonstrable basis in, or relation to, some "consensus" in the field. The "consensus" may be established by the credible testimony of the testifying expert herself; however, its absence could mean reversal on appeal.

Further, considerations of reliability can extend far beyond the *Robinson* and *Stoll* factors. Courts are largely free to impose their own requirements of reliability when acting as “gatekeepers” in controlling the admissibility of expert testimony, as long as they are not “arbitrary and capricious.” Additional “reliability factors” may include, but not be limited to, the following:

1. Whether the expert has extrapolated from an accepted premise to an unfounded conclusion;
2. Whether the expert accounted for obvious alternatives;
3. Whether the expert applied the same standard of care in the litigation as an expert would normally apply outside of litigation; and
4. Whether the expert’s field of expertise is known to reach reliable results on the subject of the proffered testimony (or, in other words, whether the expert’s “creative thinking” exceeds the bounds of his actual expertise).

### **RELEVANCY**

It probably goes without saying that an expert’s opinions also must be relevant to the actual issues involved in the specific case or controversy at issue. Typically, and for obvious reasons, this is because relevant evidence is generally admissible, but irrelevant evidence – because it distracts and detracts from the focus of the case – is not admissible. See, e.g., TEX. R. EVID. 402. “Relevant evidence” is essentially evidence which tends to make the existence of any material fact more probable or less probable that it would be without the evidence. See, e.g., TEX. R. EVID. 401. To determine relevancy, the court will look at the purpose for offering the evidence and must determine that there is some logical connection either directly or by inference between the fact offered and the fact to be proved. See, e.g., *Regy v. Redic*, 408 S.W.3d 440 (Tex. App. – El Paso 2013, *no pet.*).

As but one example from the appraisal arena, relevancy is especially important in the sales comparison approach. If an allegedly comparable property is: 1) too far away from the subject; 2) too different from the subject; or 3) in other different circumstances from the subject - and not susceptible to adjustments sufficient to establish its relevancy to the subject property - introducing it as an alleged “comparable” at trial could end up injecting reversible error into the case. Thus, the expert appraiser, in consultation with counsel, bears a significant responsibility not to stretch the concept of relevancy (or comparability) beyond what is reasonably credible and acceptable in the subject industry.

The requirement of relevancy also restricts the admissibility of opinion testimony which is factually unsupported (*i.e.*, simply conclusory) or speculative because it does not tend to make the existence of any material *fact* more or less probable. See, e.g., *Coastal Transportation Company v. Crown Scent Petroleum Corp.*, 136 S.W.3d 227, 232 (Tex. 2004). As important, simple relevancy may not be sufficient to establish admissibility of expert testimony where that testimony’s probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading of the jury, or by considerations of undue delay or needless presentation of cumulative evidence. See, e.g., TEX. R. EVID. 403.

## **LEGAL AND FACTUAL SUFFICIENCY**

Finally, simply because evidence may be *admissible* in the sense that it is deemed sufficiently relevant and reliable to be *considered* by the finder of fact does not necessarily render the evidence *legally* or *factually* sufficient to support an actual judgment. In other words, as legal scholar Professor McCormick has succinctly put it, “A brick is not a wall.” See e.g., *Transportation Insurance v. Moriel*, 879 S.W.2d 10, 24-25 (Tex. 1994). A single bit of evidence, no matter how strong, may not be legally or factually sufficient to support an entire cause of action or legal defense. Thus, from a legal perspective, the overall goal of an expert is to present evidence that *is* both legally and factually sufficient to support a jury verdict (or court decision) in the client’s favor.

To be “legally sufficient,” the expert’s opinions must provide a sufficient amount of admissible evidence of an asserted fact to at least raise the question of its existence for the finder of fact to determine; otherwise, the entire, related claim(s) or defense(s) will fail as a matter of law (assuming the absence of other legally sufficient evidence). “Legally sufficient” evidence is more than a “scintilla” of evidence – at least enough evidence that reasonable people could disagree about the existence of the fact in dispute. See, e.g., *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). This means that if an expert’s opinion/evidence does not raise any more than a mere suspicion or surmise of the contested fact, it constitutes no evidence thereof; however, in a legal sufficiency review, a court must credit favorable evidence if a reasonable fact finder could, and disregard contrary evidence unless a reasonable fact finder could not. *Id.*

When dueling experts both present legally sufficient evidence/opinions, the finder of fact must decide between them. In general, that fact finding will be notoriously difficult to overturn. However, it still remains possible that an appellate court will find that the resulting fact finding was nevertheless *factually* insufficient to support a judgment – *i.e.*, so against the great weight and preponderance of the evidence as to be manifestly wrong - and so reverse the finding. Typically, this happens when the appellate court determines that either: 1) the underlying data relied on by the expert is not relevant or credible; or 2) if there is too great an “analytical gap” between the data and the expert’s conclusions.

In conclusion:

*The value of opinion evidence rests not in the conclusion reached but in the factors considered and the reasoning employed... Where an expert basis his conclusions upon assumptions which are not supported by the record, upon matters which are not reasonably relied upon by other experts, or upon factors which are speculative, remote, or conjectural, then his conclusion has no evidentiary value.... In those circumstances the expert’s opinion cannot rise to the dignity of substantial evidence.*

See, e.g., *Pacific Gas & Electric Company v. Zuckerman*, 189 Cal. App. 3d 1113, 1136 (1987). In the next part of the series we will begin to look at trial tactics and “The Expert in Court.”



**About the Author:** Tom Countryman, Senior Counsel at Norton Rose Fulbright (Fulbright & Jaworski LLP) in San Antonio, has over 30 years' experience trying complex commercial cases and specializes in the nationwide recruitment, training and use of experts in property tax, energy, financial services and products liability lawsuits. Tom is a member of the Institute of Professionals in Taxation and was named one of "San Antonio's Best Lawyers" (San Antonio Monthly (2007)) and a "Texas Top Rated Lawyer," LexisNexis *Martindale-Hubbell* (1995-2014).

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## VALUATION ISSUES IN FRACTIONAL REAL ESTATE INTERESTS AND PARTITION COST ANALYSIS – PART II

This article develops a probability weighting methodology for evaluating and supporting an appropriate valuation discount for undivided tenancy in common real estate interests. Traditional cost-of-partition models do not reflect the most probable outcome, but instead the least likely and least profitable outcome for a co-owner seeking a liquidity event. We also develop a supportive methodology for estimates of partition likelihood and discount rates, both of which are also consistent with the issues raised in the *Ludwick*<sup>1</sup> tax court case.

### ***Discount Rate via Survey Method***

The discount rate appropriate for the cost of partition analysis is only tangentially comparable to the time value of money on a related discount rate for several reasons. First, a cash flow applicable to leased real property usually reflects contractual lease income, with arm's-length leases for a typical 10-year period, and coupled with a property reversion. By contrast, a partition action is a hostile action involving recalcitrant co-owners, unpredictable attorneys and a judge. Second, the buyer pool for passive investments in leased properties is much larger than that for undivided interests that may require litigation and court testimony. Third, leased real properties typically produce cash flow and can be leveraged with debt,<sup>2</sup> whereas investments in undivided interests produce negative cash flows (net of litigation expenses) and cannot be financed with conventional lenders.

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<sup>1</sup> *Ludwick v. Commissioner*, T.C. Memo. 2010-104 (May 10, 2010).

<sup>2</sup> While the co-owners may encumber a property, a buyer of a fractional interest may not finance his investment without the consent of the non-selling co-owner.

In real estate valuation, the least risky properties are real properties leased for over 20 years to a “credit” tenant, while the riskiest are renovation properties or vacant properties that require tenant improvements and leasing. Subdivision developments are also very risky. Moreover, there is survey data available for these development types that could serve as proxies when calculating an appropriate discount rate in a cost-of-partition model.<sup>3</sup>

The riskier property development types command higher discount rates and suffer from many of the same problems as undivided interests, such as scant available financing, poor cash flow, poor buyer appeal, and intensive management requirements.

One investor survey, Realtyrates.com, also provides discount rates obtained from lenders and developers for condominium and co-op subdivisions. Based on a survey of the 1<sup>st</sup> quarter of 2005, I estimated the appropriate discount rate for the Subject Property at 15 percent.<sup>4</sup>

Another reason for a risk premium that is above that required for an institutional property is the imprecision implicit in both the cash flow analysis and the probability-based decision analysis. That is, for a sale of an undivided interest, the seller usually cannot estimate, with reasonable certainty, the outcomes related to the investment decision. Consequently, more sophisticated models (such as case-based decision analysis and qualitative scenario analysis) and more research is required<sup>5</sup> to make an accurate decision relating to investment choice and pricing.

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<sup>3</sup> See Realtyrate.com and various large appraisal companies that include surveys in their subdivision appraisal analysis.

<sup>4</sup> See Realtyrate.com, *Developer Survey, 1<sup>st</sup> Quarter 2005* (Bradenton: Realtyrate.com, 2005), 5. The 15 percent rate approximates the mean discount rate for actual rates related to “Garden/Townhouse, Resort, and Second Homes” in the California/Pacific region. This category was selected because of the governmental approval process required for such developments, and this factor is similar to that of the partition action process.

<sup>5</sup> See Hugh Courtney, Dan Lovallo, and Carmina Clarke “Deciding How to Decide,” *Harvard Business Review* (November 2013):65. Specifically, a plaintiff in a partition action (a) cannot know, with a high degree of certainty, what it takes to succeed and (b) cannot easily predict the range of possible outcomes.

### ***Impact of Various TIC Agreements***

Each fractional interest valuation is greatly impacted by the relevant TIC agreement or lack thereof, and we recapped the three most prevalent scenarios. In TIC Valuation Example A, the Subject Property in the *Ludwick* case was encumbered by a TIC agreement that enhanced its marketability similar to a 100-percent ownership interest. In TIC Valuation Example B, a property without a TIC agreement suffers from a moderate impairment of marketability because of an inability to unilaterally market the same property. In TIC Valuation Example C, a property with a typical TIC agreement suffers from a significant impairment of marketability because of a partition action prohibition, coupled with an inability to unilaterally market the same property.

For TIC Valuation Example B, which is very common, we developed a reconsidered method. For TIC Valuation Example C, a suitable valuation would not rely upon a cost-of-partition method.

### ***Reconsidered Valuation Model – Property Without Any TIC Agreement***

In response to the specific methodology offered by the *Ludwick* court, I refined and developed an alternative valuation model that uses three alternatives: property sale at par, property sale at discount, and sale via partition action. This alternative model does not reflect all of the facts of the *Ludwick* case, as it does not include an adjustment for any tenancy in common agreement. My model develops and supports a three-prong, comprehensive analysis that applies to fractional interest valuations whereby the property is unencumbered by any prohibition of any partition action. The Subject Property's atypical TIC Agreement, on the other hand, fails to impair marketability, and each co-owner enjoys the enhanced liquidity from a right to market the entire Subject Property, and not just a fractional interest.

### ***Alternative A – Sale at Par***

The first alternative is that a non-selling co-owner, or another buyer, pays the pro rata share of the real property (net of costs of sale). I applied a 20 percent probability to this alternative, which reflects a minimal to moderate probability. Absent any buy-sell

agreement between the co-owners, this alternative seems unlikely. While many co-owners eventually sell at par, it may take months to negotiate and require other personal or financial concessions unrelated to the instant transaction. Any assumption that a non-selling co-owner will liquidate a long-term realty investment because of the whims of the selling co-owner, especially a third party, is speculative. Consequently, I calculated Alternative A as follows:

Fair Market Value of the Subject Property	\$7,250,000
Pro Rata Share@50%	\$3,625,000
Less: Cost of Sale @ 6%	<u>(\$217,500)</u>
Indicated Value via Alternative A	\$3,407,500
Rounded to	<b>\$3,400,000</b>

### **Alternative B – Sale at Discount**

Second, I used another alternative that is similar to the first one, but I used a valuation discount of 20 percent, plus six percent cost of sale (about 26 percent total). This rate is supported by the undivided interest comparables. We also applied a 45 percent probability to this alternative, as this is the most reasonable alternative. This alternative is most likely, because (a) the Subject Property sale may incur unacceptable tax consequences for the co-owners (capital gains taxes for non-spouses), and (b) the selling co-owner is a 50 percent owner who suffers from an onerous negotiating disadvantage for the Subject Property. We calculated Alternative B as follows:

Fair Market Value of the Subject Property	\$7,250,000
Pro Rata Share@50%	\$3,625,000
Less: Cost of Sale@6%	<u>(\$217,500)</u>
Net Property Proceeds	\$3,407,000
Less Valuation Discount @ 20%	<u>(\$681,500)</u>
Indicated Value via Alternative	\$2,726,000
Rounded to	<b>\$2,730,000</b>

### **Alternative C – Sale Via Partition Action**

Thirdly, I used a cost of partition analysis similar to that of the *Ludwick* court, except I used a 15 percent discount rate. For the two-year cash flow, I assumed a four percent growth rate for rental income (none for the Subject Property) and operating expenses. Similar to the *Ludwick* court, I also used a three percent property growth rate and a six percent cost of sale, which I based it upon the projected sale price. The probability of Alternative C is estimated at 35 percent, which makes it a moderately likely alternative. This is because there is (a) no evidence of funds available to pay litigation expenses, and (b) no evidence of financial ability to either buy-out as an alternative to sale, or fund the marketing period for the Subject Property. In its model, the *Ludwick* court used a discount rate of 10 percent, presumably because of the restrictive tenancy in common agreement. My alternative model does not reflect this restriction and I used a rate of 15 percent. The cost of partition model's assumptions are recapped as follows:

#### Assumptions for Model

Date of Value	February 2005
F.M.V. of Subject Property	\$7,250,000
Annual Property Growth Rate	3%
Annual Expense Growth Rate	4%
Cash Flow Period	2 years
Costs of Sale	6%
Annual Subject Property Expenses	\$175,000
Subject Property Discount Rate	15%

Alternative C's cash flow is presented in Exhibit 1.

<b>EXHIBIT 1</b>					
<b>CASH FLOW MODEL FOR ALTERNATIVE C</b>					
Year	Operating Cash Flow	Partition & Selling Costs	Gross Sale Proceeds	Total Cash Flow	Present Value
1	-\$175,000	-\$18,125 <sup>6</sup>	0	-\$193,125	- \$167,935
2	-\$182,000 <sup>7</sup>	-\$242,875 <sup>8</sup>	\$3,845,763 <sup>9</sup>	\$3,420,888	\$2,586,683
Indicated Value of Alternative C					\$2,418,748
Rounded to					<b>\$2,420,000</b>

The weighted average of these three alternatives is calculated as follows:

Alternative A - \$3,400,000 x 20% prob. =	\$680,000
Alternative B - \$2,730,000 x 45% prob. =	\$1,228,500
Alternative C - \$2,420,000 x 35% prob. =	<u>\$847,000</u>
Indicated Value via Weighted Average Method	\$2,755,500
Rounded Effective	\$2,760,000
Discount Valuation	23.9%

All three alternatives relate to the investment calculus of a potential buyer. That buyer may buy the fractional interest outright, or that buyer may buy the Subject Property via a mutually coordinated sale. In any event, no consideration is warranted for the investment horizon of the potential buyer, who may want to lease it out or occupy it over a long holding period.

### **Concluding Comments**

In this article I have offered support and methodologies required for a supportable discount analysis applicable to undivided property interests. As the *Ludwick* tax court decision shows, both the courts and IRS apply a variety of tests when analyzing such interests. Moreover, these entities have a tendency to challenge appraisers' assumptions inconsistently, varying greatly over time and by geographic region. As such, it is important

<sup>6</sup> Calculated as negative \$36,250 x 50%.

<sup>7</sup> Calculated as negative \$175,000 x 1.04.

<sup>8</sup> Calculated as negative (\$36,250 x 50% x 1.04) + (\$7,250,000 x 50% x 1.03 x 6%).

<sup>9</sup> Calculated as \$7,250,000 x 1.03 x 1.03.

for appraisers to utilize multiple approaches when completing a discount report. Specifically, the tax courts have frequently emphasized the cost-of-partition method, partly because of the judges' inexperience with business valuation and discount rates. In this article I offered sources and methodologies required for a supportable discount analysis applicable to fractional property interest valuation.

### **About the Author**



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## **MARKET ABSTRACTED OVERALL CAPITALIZATION RATES**

### **Overview**

Overall rates abstracted from the market have been considered the simplest and most accepted method of obtaining overall capitalization rates (OAR). It's easily explained, easily understood, and easily defended. However, there is more to the development of the OAR's other than a simple calculation of known facts. This presentation provides some issues appraisers and mass appraisers should consider.

### **More Than a Simple Mathematical Calculation**

The format for abstracting the Overall Capitalization Rate from a market sale is as follows:

$$\text{Net income} \div \text{Sales Price} = \text{Overall Capitalization Rate}$$

Simple, right? The most difficult task the appraiser and mass appraiser have in the development of this method is obtaining the necessary and accurate information to do this simple calculation.

Because of the complications of the real estate fallout over the past several years, USPAP confidentiality, resistance to allow others to have such pertinent information in their files, non-disclosure letters, I don't have that information available and so on and on.

Have you ever asked a buyer if they have a copy of the income and expense statement for the property they just purchased? Believe it or not, some have said "I never got one". Or the broker who provides one and it has been so altered in format that you end up with more questions with no possible answer.

Getting information from the lender sometimes is a futile endeavor. Now it's important to know that the lender does have the financial statements for the property because its part of the risk analysis they perform in order to determine and affirm a lending rate.

National publications for OAR's such as Robert G. Watts of Realtyrates.com and Korpacz Real Estate Investor Survey as conducted by PricewaterhouseCoopers, who on a national scale obtain information by strict criteria for each sale and on a uniform basis. Since the information is available in markets throughout the country, and utilized by some of the largest financial institutions, it has become readily accepted as reliable.

Although confidentiality is foremost apparent, the lending institution feels its better to provide this information to the those who provide such service rather than the local appraiser. Now this does not mean that all appraisers have this problem, but in my experience, there are more who do.

## **Reliability**

If the appraiser does obtain a financial statement, it should be reviewed as to the items that are included and those that are not included. Sometimes income and expense statements have categories that are collect-alls. Meaning more than one-(1) expense item is lumped into it.

A single year's statement should be used with great caution. For example, a single year's statement might include an extraordinary amount for so called maintenance when in fact it's for capital improvements. If the appraiser is unaware of this, the result will be overstated expenses, understated NOI (Net Operating Income), and too-low of a OAR.

Having a single year's income and expense statement for a sold property does not guarantee a reliable OAR. Relying on an owner's verbal statement of NOI may produce an even more skewed OAR, because the owner's idea of legitimate expenses may include items that should not be included in the valuation.

If at all possible, the appraiser should try to obtain a three-(3) year expense statement. Yes it's easier said than done. But this way the appraiser can do an audit, line by line to trend expenses. Any anomalies will be apparent. Keep in mind that the information being review will also assist in developing a expense ratio study based upon actual market information.

It does take time to systematically collect this information, however, it is also invaluable when the appraiser needs to estimate expenses for a similar property or simply report to a client what the market is doing or responding to existing economic conditions.

## **Elements Used in the Abstraction Method**

Since the actual data needed to obtain an OAR for a sale property is not available to the appraiser for one-(1) reason or another, and time is of the essence, it may be necessary and is quite acceptable to estimate the essential elements from market data that is used to arrive at a NOI to abstract the OAR from a sale.

Under USPAP<sup>1</sup>, the appraiser, subject to the Competency Rule, is responsible for factors that may apply to an appraiser's familiarity with a specific type of property, market, geographic area, or analytical method.

Lets say for example the appraiser has had a difficult time of obtaining a financial statement on a verified sale. Having previously researched the market for applicable data available to apply a market abstraction, the following basic elements are analytically applied to the sale property.

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<sup>1</sup> USPAP 2014-2015, Competency Rule

## Elements - Continued

<b>Gross Income Estimate</b>	\$	-
(Market Rent - 100% Occupancy)		
<b>Vacancy Rate (0%)</b>	\$	-
(Market Observed - Typical % Level)		
<b>Income from other Sources</b>	\$	-
(If Applicable)		
<b>Effective Gross Income</b>	\$	-
<b>Operating Expenses</b>		
(Typical for Property Type)	\$	-
(Include Reserve Estimate)	\$	-
(Other Applicable Expenses)	\$	-
(Property Taxes at Time of Sale)	\$	-
<b>Net Operating Income</b>	\$	-

According to the principle of anticipation, market value can be viewed as the present worth of future benefits. Even though the property's past performance can be a valuable guide, investors purchase on the basis of their expectations of the property's future performance under their management.

The competent investor's expectations are market-based and realistic. The investor expects to keep rental rates, vacancy, and expenses at about the same level as or better than those of similar competing properties.

Thus the appraiser develops an NOI for rate extraction from market-based estimates of rent, vacancy, and expense levels, applying the same rationale as a prudent, competent investor. Isn't that the goal of appraisers to emulate the actions of market participants.

### Other Important Factors to Consider

In the qualification process of a verified sale, a big question that needs to be answered. Does the sale contain a consideration for personal property? Are there any other considerations in the sales price that should be excluded? Before an OAR Market abstraction can have any meaning, the sale should be adjusted for those considerations. It does have an affect on the outcome of the calculation.

In the market abstraction technique for OAR's (and this is important), the appraiser must make certain that the net operating income of each comparable property is calculated and estimated in the same way the net operating income of the subject property is estimated.<sup>2</sup>

Non-market financing terms nor different market conditions should have affected the price of the comparables. The overall level of risk associated with each comparable should be similar to that of the subject. If there are differences between a comparable property and the subject that could affect the overall capitalization rate, the appraiser must account for the difference.<sup>3</sup>

As previously pointed out, the OAR abstraction analysis is "property specific". If the income to the property includes property taxes, then the market rent estimate will include that consideration. If a property receives an income based upon a Net-Net-Net Lease, then the inclusion of property taxes is not made.

The property taxes are paid by the Tenant and is reflected in the Lease rate per square foot. The following is a simple outline that can be adapted to all type of properties.

### **Market Extracted Overall Capitalization Rate (OAR)**

#### **Warehouse Valuation Data**

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Market Rent	\$4.00 - \$5.00 NNN Per Sq. Ft.
Vacancy (Observed for Market)	9.50%
Total Expenses To Owner (Observed)	9.00% Includes Reserves Estimate
Taxes Paid By Tenant	100.0% Not included in Market Rent

#### **Technique 1**

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Sale #1	\$686,000
Square Feet	14,000
Date of Sale	10/2014
Estimated Gross Rent	\$4.50 (Per Market Comparison Method)
Potential Gross Income	\$63,000
Vacancy Rate	9.50%
Effective Gross Income	\$57,015
Total Expenses (9%)	\$5,131
Net Operating Income	\$51,884
Net Income Ratio (NIR)*	91% of Eff. Gross Inc.
OAR	\$51,884 ÷ \$686,000 = <b>7.56%</b>
Effective Gross Income Multiplier	12.03 (\$686,000 ÷ \$57,015)

<sup>2</sup> Appraisal Institute, Appraisal of Real Estate, 12<sup>th</sup> Edition, Pg 531.

<sup>3</sup> Appraisal Institute, Appraisal of Real Estate, 12<sup>th</sup> Edition, Pg 532.

### **Technique 2 – Abstraction from Multiplier**

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Effective Gross Income Multiplier  
 $(\text{NIR})^* \div \text{EGIM} = \text{OAR}$                        $91\% \div 12.03 = .0756$  or **7.56%**

#### **Market Extracted Overall Capitalization Rate (OAR)**

#### **Method 1 - Apartment Valuation Data**

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Market Rent	\$600 / Month 14-Units
Vacancy (Observed for Market)	8.00%
Total Expenses To Owner	55.88% Includes Reserves Estimate

#### **Technique 1**

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Sale #1	\$378,000
Date of Sale	October - 2014
Estimated Gross Income	\$100,800 (Per Market Comparison Method)
Vacancy Rate	8.00%
Income from other Sources	\$2,800
Effective Gross Income	\$95,536
Expenses (excluding Taxes) (45%)	\$42,991
NOI (Including Taxes)	\$52,545
Estimated Taxes	\$10,395 $\$378,000 \times .50$ [ratio] $\times .055$ [tax rate]
NOI After Taxes	\$42,150

OAR     $\$42,150 \div \$378,000 = \mathbf{11.15\%}$

Effective Gross Income Multiplier              3.96  $(\$378,000 \div \$95,536)$   
 Net Income Ratio (NIR)\*                      44.12% of EGI

### **Technique 2 – Abstraction from Multiplier**

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Effective Gross Income Multiplier  
 $(\text{NIR})^* \div \text{EGIM} = \text{OAR}$                        $44.12\% \div 3.96 = .1114$  or **11.14%**

#### **Method 2**

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Effective Gross Income	\$95,536
Expenses (excluding Taxes) (45%)	\$42,991
NOI (Including Taxes)	\$52,545
Indicated OAR	13.90% $(\$52,545 \div \$378,000)$
Effective Tax Rate	2.75% $(.50 \text{ AV Level} \times .055 \text{ Tax Rate})$
Indicated OAR (Base Rate)	<b>11.15%</b>

### **Conclusion**

Market-extracted OARs are not difficult to determine as long as the appraiser exercises analytical skill and judgment in the application of the market data available.



## **Bibliography**

### **Select readings and information Sources**

1. Appraisal of Real Estate, 12<sup>th</sup> Edition, Appraisal Institute, 2001
2. USPAP, Appraisal Foundation, 2014-2015 Edition

## **Biography of Author**

**Daniel J. Dzierbicki** is an independent real estate appraiser with thirty-Nine-(39) years of experience. He specializes in industrial real estate and special purpose property. Daniel holds the Senior designation of ASA-RP with the American Society of Appraiser, also the Senior designation of IFAS with the National Associations of Real Estate Appraisers, and the RES designation with the International Association of Assessing Officers. He is a Licensed Certified General Real Estate Appraiser with the State of Michigan and a Licensed Michigan Real Estate Broker. **Contact:** [dzierbicki54@att.net](mailto:dzierbicki54@att.net)

## Multiple Regression Analysis – A Case Study

### Case Study Method<sup>1</sup>

The first step in a case study analysis involves research into the subject property and a determination of the key factors that impact that property. Then, in an effort to determine any effect on value, case studies are developed from other properties that are similarly situated with respect to the subject property and its value drivers. In order for the analysis to be reliable, case studies must make “apples to apples” comparisons, that means that case studies being used must have similar property, market, and value drivers (highest and best use) as the subject property.

Typically, the case-study method is considered a special case of the Sales Comparisons approach to value. Statistical studies, including simple and multiple regression analysis, are considered a refined version of sales comparison analysis that generally uses more data and allows for the statistical testing of the results.

The purpose of this MRA case-study analysis is to demonstrate how this statistical technique can be used to isolate the impact of various value drivers and also to illustrate how MRA outcomes can be used to “test” the reasonable of the variables that form the basis of market value.

Following is a brief description of the physical and functional characteristics of the case-study subject property.

Current Use: The property is improved with a one-story, 8,967± SqFt, concrete tilt-up (“CTU”) warehouse building and parking that was erected in 1974.

Construction Type: Class “C”– Concrete Tilt-up.

Year Built: 1974. The actual age is 40 years.

Effective Age: 20 years

Total Economic Life: 45 years.

Remaining Economic Life: 25 years.

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<sup>1</sup> Randall A. Bell, Orell C. Anderson, Michael V. Sanders, *Real Estate Damages, 2<sup>nd</sup> Edition*. Chicago, Illinois: Appraisal Institute, 2008: 31-37.

## Multiple Regression Analysis

Description of Improvements: This is a concrete tilt-up warehouse/retail building with office space and these general specifications:

Vertical Clearance:	20' Min. / 24' Max.
Office Space:	796± SqFt (22.39% of GBA)
Parking:	12 Spaces
Parking Ratio:	1.509/1,000 SqFt
Sprinklers:	The property is fully sprinklered.
Electrical Power	
Main:	2000 Amps, 480 VAC, 3 Phase, 3 Wire
Subpanel:	400 Amps, 120/240 VAC, 3 Phase, 3 Wire
Loading:	0 "Dock High" Spots 3 Ground Level Doors 0 Rail Spurs

Functionality: Interviews with local brokers and market participants suggested that a lack of dock high loading spots, common for distribution warehouses, might be a functional detriment to an industrial property. Manufacturing properties built in past decades, such as the subject, often have only ground level doors. While our analysis of market leases did identify a general market preference for dock high doors, it appeared that the subject is leased at market rates.

Multiple regression analysis (MRA) is a statistical method that correlates the behavior or variation of a number of factors, or independent variables, in order to ascertain their individual and combined impact upon a single factor, called the dependent variable.

“The multiple regression equation describes the average relationship between these variables, and this relationship is used to predict or control the dependent variable.<sup>2</sup>” In statistical terms, this is known as a hedonic pricing model.

The principal drawback to multiple regression analysis is that it is a very data-hungry technique. Large data sets must be available for the analysis to be reliable. Smaller data sets run the risk that a few observations can significantly affect the outcome of the regression model. This can lead to a lack of multivariate normality, which is

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<sup>2</sup> Spurr, William A. & Bonini, Charles P., *Statistical Analysis for Business Decisions*. Homewood, Illinois: Richard D. Irwin, Inc., 1973: 495.

one of the underlying assumptions of a multiple regression analysis. Some researchers indicate that “a good rule of thumb is to use at least 10, preferably more, comparable sales per independent variable included in the MRA [Multiple Regression Analysis] model.<sup>3</sup>” Typically, appraisers do not have that much data in a given market necessary to reach a reliable conclusion. In the case of the subject case-study property, it is located in a very active submarket, historically speaking. Vacancy rates have traditionally been very low and the market has remained relatively active over the years. Thus, we were able to compile sufficient data to overcome this hurdle.

The other drawback is that multiple regression analysis is statistical in nature, meaning that it relies on hard data characteristics (i.e. building size, year built, clear height, etc.) and thus, cannot truly take into account all of the “soft” characteristics of a property (i.e. individual location, effective age, etc.). Therefore, sufficient data must be not only known about each comparable, but must be mathematically quantifiable. In the case-study data set, we identified seven critical variables in our analyses, all of which are mathematically quantifiable.

These variables included:

- Rented SqFt ( $X_1$ )
- Percent Office Space ( $X_2$ )
- Year Built ( $X_3$ )
- Clear Height ( $X_4$ )
- Truck-High Doors ( $X_5$ )
- Ground Level Doors ( $X_6$ )
- Date of Lease ( $X_7$ )

After defining the variables and the data set, we ran the regression through the *Data Analysis ToolPack* in Microsoft Excel. According to the program, “The Regression analysis tool performs linear regression analysis by using the ‘least squares’ method to fit a line through a set of observations.” The “least squares” method is one of the more common ways of determining the regression equation “by solving a system of

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<sup>3</sup> Isakson, Hans R., “Using Multiple Regression Analysis in Real Estate Appraisal.” *The Appraisal Journal* (October, 2001): 424-430

simultaneous linear equations in which the unknowns are the constants of the regression equation.<sup>4</sup>

A first regression was run with the data from 167 leases. Then, 20 were eliminated, because their residuals (the difference between predicted and actual values) exceeded one standard error. A second analysis was run with the remaining 147 leases. The results are below.

<i>Regression Statistics</i>	
Multiple R	0.963238794
R Square	0.927828975
Adjusted R Square	0.924194463
Standard Error	845.2831017
Observations	147

ANOVA					
	<i>df</i>	<i>SS</i>	<i>MS</i>	<i>F</i>	<i>Significance F</i>
Regression	7	1276803988	182400569.7	255.282954	4.85766E-76
Residual	139	99315989.57	714503.5221		
Total	146	1376119978			

	<i>Coefficients</i>	<i>Standard Error</i>	<i>t Stat</i>	<i>P-value</i>	<i>Lower 95%</i>	<i>Upper 95%</i>
Intercept	-25199.92159	9041.39028	-2.787173301	0.006061244	-43076.35789	-7323.485294
Rented SqFt	0.299058402	0.010727598	27.87747948	8.86251E-59	0.277848032	0.320268771
% Office	1922.329272	859.5535812	2.236427506	0.026916907	222.8389989	3621.819545
Year Blt	6.205948575	4.584375236	1.353717411	0.178023625	-2.858176447	15.2700736
Clr Ht	46.36805005	25.80616359	1.796781993	0.074541676	-4.655324137	97.39142424
TD	280.7750856	76.40493815	3.674829041	0.000338913	129.7089368	431.8412344
GL	-140.4947672	72.23526439	-1.944960933	0.053798454	-283.3167296	2.327195116
Lease Date	0.354482196	0.090385688	3.921884132	0.000137489	0.175773619	0.533190774

The resulting regression equation is:

Monthly Rent =

$$\begin{aligned}
 & - 25199.92159 \\
 & + 0.299058402 \times \text{SqFt in Premises} \\
 & + 1922.329272 \times \text{Percent Office} \\
 & + 6.205948575 \times \text{Year Built} \\
 & + 46.36805005 \times \text{Feet of Clear Height} \\
 & + 280.7750856 \times \text{Number of Truck-High Doors} \\
 & - 140.4947672 \times \text{Number of Ground Level Doors} \\
 & + 0.354482196 \times \text{Date of Lease}
 \end{aligned}$$

Using the characteristics of the case-study property in the equation yields a rent indication of \$11,432 per month, or \$0.367/SqFt/Mo., unadjusted for any upgrades.

<sup>4</sup> Spurr, William A. & Bonini, Charles P., *Statistical Analysis for Business Decisions*. Homewood, Illinois: Richard D. Irwin, Inc., 1973: 503.

**Reasonableness:**

Most of the other statistics in the above regression summary are tests indicating whether the model and the variables are statistically significant or not. The most important is the “Adjusted R-Square.” The “R-Square” statistic tells us how much of the change in the dependent variable (in our case, total rent) is accounted for by the changes in the independent variables (the property characteristics). The R-Square must be between zero and one, with a higher number indicating more explanatory power by the independent variables.

The Adjusted R-Square simply accounts for the degrees of freedom (the number of observations less the number of variables) in the model. In this case, the two numbers are very close to one (R-Square of 0.9278 and Adjusted R-Square of 0.9242). Together, these statistics indicate that over 92% of the change in total rent can be explained by changes in the seven chosen variables. In addition, the model is not over-specified with useless variables that might skew the results.

The “Standard Error” statistic gives us the average error in the predicated dependent variable. This essentially is a measure of the accuracy of the estimate provided by the regression model. If the standard error is large, relative to the prediction, then estimates of the dependent variable based on this model will not be very reliable. One standard error is equivalent to about a 66% confidence level. Therefore, we could predict that the total rent for the subject case-study property has a 66% chance of being  $\$11,432 \pm \$845$ . For our purposes, we want a better significance level. A 90% confidence interval can be obtained by multiplying the standard error by 1.65. Therefore, we have a 90% chance, based on the original data set, that the subject case-study property will rent for somewhere between:

$$\$11,432 - (845 \times 1.65) = \$10,037/\text{Mo.}$$

And

$$\$11,432 + (845 \times 1.65) = \$12,826/\text{Mo.}$$

The “F” Statistic tells us whether or not we can reject the assumption (the “null hypothesis”) that the independent variables (jointly) are insignificant. In other words, how significant is the regression analysis as a whole? Our F Statistic is 255.282954. At a 95% confidence level, with

147 degrees of freedom, the critical F statistic is 2.164. The fact that the F Statistic is so much larger than the critical number, a byproduct of a large and consistent data set, underscores the significance and reliability of this model. Our model's F probability is  $4.857 \times 10^{-76}$ , practically zero. Therefore, we can conclude that the coefficients indicated by the regression model did not occur purely through chance.

We also calculated the Durbin-Watson statistic for this regression model. This is a test used to find the presence of autocorrelation in the residuals, which, if present, could invalidate the standard error measurements. The test returns a value between zero and four. A value of exactly two indicates no autocorrelation at all. A value of zero indicates very high positive autocorrelation, while a value of four indicates very high negative autocorrelation. The statistic of the regression model is 2.375, well within the bounds of acceptability.

The other relevant statistics in the table are the individual "t-stats" for each independent variable. These are simply the ratios of the coefficients to their corresponding standard errors. A higher t-stat indicates that the variable is more statistically significant to the model. A low t-stat indicates the opposite. A general rule of thumb is that a t-stat above two signifies a significant variable.

In the case of our model, most of the variables were very significant. The t-stat for the "Rented SqFt" variable was 27.8775, indicating an extremely high correlation between size and lease rate. This relates to our common sense understanding that larger spaces rent for more money. The date the comparable was leased also has a relatively high t-stat of 3.9219. Again, this makes intuitive sense, as the date the lease was signed plays a large role in the rental rate.

It appears that the least relevant variable was the year that the building was built. This can be explained, because, while the year built is intended to be a proxy for condition (i.e. newer buildings are typically in better condition than older buildings), it doesn't take renovations and quality of upkeep into account. An older building that has been very well-maintained can certainly be in just as good, and perhaps better, condition than a newer building with lower quality construction and less maintenance.

The most interesting relationship that can be taken from the t-stats is the relationship between truck-high and ground level doors. With a t-stat of 3.6748, truck high doors must play a key role in the determination of a rental rate. Again, this makes perfect sense, as a building with more truck-high doors, all else being equal, should rent for more than a building without. However; the ground level doors variable has a *negative* coefficient, indicating that for every ground level door added to a building, the rental rate actually goes *down*. At first, this does not make sense. Why would adding something that theoretically adds functionality to a building decrease the amount that the market will pay for it?

The answer lies in the typical user in the market. The outsourcing boom of the 90s and the import boom coinciding with the rise of China and India have resulted in the typical user in the market shifting from manufacturing to warehousing. Conversations with market participants revealed that the typical user now is importing and exporting goods to and from the Ports of Los Angeles and Long Beach. They need warehouse space to store their goods before distribution. Since many of those goods are moved via trucking, truck-high doors are very useful for the typical warehouse user. Therefore, the market is not necessarily discriminating *against* ground level doors. They are, in effect, cheering *for more* truck high doors.

The fact remains that the subject case-study lacks any truck high doors. It has three ground level doors, one facing a primary arterial and two in the rear yard facing a secondary feeder street.

Nevertheless, the subject case-study suggests that the subject case-study property appears to be renting at a market rate, as indicated by the regression analysis. The current tenant makes good use of the subject case-study facilities as they currently exist and do not particularly need any truck-high doors.

### **About the Author**

Kurt Goepfner is a real estate appraiser, broker, counselor and expert witness. He evaluates and/or values real property for a variety of purposes, including disposition, acquisition, development and financing, as well as consultation and litigation support. He consults on matters involving real estate damages such as contamination, geotechnical problems, construction defects, eminent domain, environmental issues such as wetlands and habitat, property damage, tax appeal, title questions and easements, and unlawful detainer. Cases involve a wide range of commercial, industrial, residential, public use, open space, and special purpose properties. Most recently, Mr. Goepfner has worked on the development of a Carbon Credit Valuation webinar for the ASA. Mr. Goepfner can be reached at: 213-268-1494 and or [kurtgoepfner@gmail.com](mailto:kurtgoepfner@gmail.com)

## **Should an Appraisal Report Contain an Economic and/or Industry Analysis?**

The answer to this question, of course, is ... it depends!

If appraising a “bread and butter” type commercial property in a stable market for a bank that is only interested in the “value conclusion” – an economic and/or industry analysis may not be necessary or even relevant. In this type of report, I often see the area population and a list of major employers, however, seldom does the appraiser explain what the data included actually means and how it affects the value. Extra “stuff” thrown into a report to make it thicker does not make the report any better.

If the appraisal assignment is for a real property going concern such as a truck stop, convenience store, hotel or motel, car wash, assisted living facility, restaurant, or for a major manufacturing facility, a large resort, a travel plaza, a shopping mall, a special purpose property, large industrial property, a subdivision, etc., then an economic analysis is likely relevant and an industry analysis may also be needed.

The key concept that needs to be addressed is “analysis.” Many appraisal reports that do include an economic or industry section simply include some “boiler plate” pulled from a service or from some Internet site that is “dropped into” the report. This is meaningless. It is not the reader of the reports job to figure out how the economic and industry data included in a report affects the value – that is the appraiser’s job to explain.

Economic data is plentiful – it is readily available for the following levels:

- International
- National
- Regional
- State
- Local

Please don’t include a discussion of each of these levels in every report. Only use data that is relevant and explain how it drives value. For example, if appraising a small office building, the trade imbalance with China and Japan is not likely relevant. However, if appraising a manufacturing facility for a company that sells overseas, it may very well be relevant. If appraising a truck stop, a chain of convenience stores, or a bulk oil plant, a discussion of oil prices and the outlook may be very relevant.

When appraising many types of real property going concerns or properties used by many types of businesses, the national, regional, and state, as well as the local economic outlook may impact the value and should be addressed. Key value drivers, depending on the nature of the property, such as consumer spending, employment outlook, discretionary income should be addressed.

Likewise, many real property appraisal assignments are of properties in a specific industry and as such require an industry analysis section to explain how various industry factors affect the value of the property.

For example, when valuing a car wash, demand is driven by new car sales, growth in consumer income, and gas prices. Other specific factors include such things as local municipality rules regarding release of contaminated water into storm drains, water shortages that may affect consumer's ability to wash their own cars, and new energy and water efficient equipment.

When valuing a restaurant building, the industry data for restaurants should be examined and explained. Even though the building may be covered by a long-term lease, the lease is only as good as the restaurant operator. If the restaurant fails, the lease will not likely be paid. Restaurants are highly dependent on such things as demographics, consumer tastes, and personal income. Trends and changes in the industry may affect the value of the property and they should be explained.

If valuing an assisted living facility, an explanation of the Affordable Care Act and its impact on Medicare reimbursement rates is important.

The results of the economic analysis and industry analysis directly impact all three typical approaches to value. It affects either the development of the income forecast whether you do a one-year reconstructed operating statement or a multi-year discounted cash flow model or the selection of the capitalization/discount rate; the multiples used in the market approach; and whether or not any external obsolescence exists in the cost approach.

The relevance and importance of an economic and industry analysis varies from appraisal to appraisal. The appraiser should always consider the impact of the economy and the industry on the property value, include relevant data, and explain how it affects the value.

### **About the Author**



Paul R. Hyde, EA, MCBA, ASA, MAI appraises business entities, real property, and machinery & equipment. He can be reached at [prh@hydevaluations.com](mailto:prh@hydevaluations.com).

## **Integrating Land Planning into Appraisals**

### **Overview**

In the field of “eminent domain” or “condemnation” appraisal, an appraiser is often required to incorporate a land planner’s report into his appraisal. Many partial acquisitions of improved properties for public projects leave remainder properties in essentially the same condition as they were before the acquisition, but they are not really able to function without curative work and perhaps a redesign of the remainder. For example, the acquisition of substantial parking or other significant property improvements such as access points may require a land planner to redesign parking and restore functionality to the remainder.

Under these circumstances, an appraiser or the public agency may request a land planner study the impact of the acquisition and develop a plan to return all or some measure of functionality to the remainder property. An appraiser’s ability to work effectively with the land planner may determine how well the appraiser defines the market value of the acquisition and any damages resulting from it. This article will explore the relationship between the appraiser and the land planner and provide guidance from an appraisal perspective on how appraisers and land planners can achieve positive results.

### **When is a Land Planner needed?**

Most partial acquisitions from improved property for highway expansions, power lines, gas pipelines or other proposed longitudinal occupancies can encompass site improvements and often building improvements. The degree of impact to the remaining property is determined by the nature and the size of the acquisition.

A small “corner clip” of a few hundred square feet from an improved office building sitting on two acres with an ample landscaping buffer along a roadway may not justify employing a land planner. The appraiser can merely estimate the contributory value of the landscaping in the area of the acquisition along with the value of the land being acquired. Minor acquisitions may not require a land planner.

However, should this same property have two of its four driveways closed as a result of the acquisition and twenty parking spaces from its parking lot within the area to be acquired, the services of a land planner are definitely recommended. Even though an experienced eminent domain appraiser may be able to put together a simple cure plan for a remainder office building to restore some parking and analyze the impact of the driveway closures, he is wise to allow a qualified land planner to undertake this task.

Additionally, the land planner is better able to furnish the appraiser with a reasonable cost to cure for the remainder property using local contractors. The land planner can create an “After Acquisition” plan for the office building and present it to the local planning and

zoning agency for approval by the Development Review Committee and the local Planning Director.

### **What is the Relationship between the Appraiser and the Land Planner?**

There are various opinions about “much” or how “little” a land planner’s report should be included within an appraisal report. There is also a great deal of debate among appraisers about how critical a land planner’s report is in a partial acquisition appraisal. Typically, appraisers either welcome the land planner’s insight and comprehensive conclusions or they do not.

The land planner in a partial acquisition is really assisting an appraiser through two of the four criteria in his highest and best use analysis of the remainder property. He is analyzing the remaining improved property to see if it is *physically possible* to continue the existing use and return functionality to it. Next, he is designing a solution for the remainder property, which the local planning and zoning officials can approve so the use will be *legally permissible*.

Naturally, the appraiser has to independently establish whether or not the land plan is in synch with the appraiser’s highest and best use. Many appraisers only reference the land plan in their appraisals or feature portions of the land plan report in the appraisal’s addendum to avoid any potential conflicts with their highest and best use.

Sometimes land plans tend to make statements, which sound as if the land planner is doing his own highest and best use analysis and this, is an area where appraisers and land planners do experience some difficulties. Highest and Best Use is the providence of the appraiser and not the land planner. Decisions about whether a remainder property’s use is “financially feasible” or “maximally productive” are the purview of the appraiser.

Land plans often conclude their reports by stating their design for the remainder property is the “maximum development potential” for the remainder. Statements similar to this suggest to appraisers the land planner maybe infringing on his highest and best use analysis. The term, “maximum development potential” implies a degree of financial feasibility in its title.

Another area where a land planner and an appraiser may differ is in the proposed cure for an improved remainder property. A land planner attempts to restore the same functionality to the remainder it had before the acquisition. In some cases, if this is not possible, the land planner makes statements about the remainder’s lack of utility, which border on an appraiser’s economic analysis of the remainder’s cured situation.

Land planners should avoid interjecting any conclusions regarding valuation issues in their reports. Appraisers appreciate land plans with factual conclusions concerning the improved remainder property’s ability to function, absent of any comments regarding “reduced marketability” or “limited parking for this class of office.” The land plan should

merely identify what will be permitted by the local planning and zoning department and whether or not the remainder property will be legally conforming or legally non-conforming for various property improvements.

### **Improving the Environment between Appraisers and Land Planners**

There are a few appraisers who do not enjoy working with land planners, even when they are dealing with complex acquisitions. Both appraisers and land planners are professionals and each may have their own opinion about the remainder's potential use and these opinions could differ.

Another one of the potential conflicts is time, because land plans tend to take as long as or often longer than it does to complete the appraisal. Clients scheduling appraisals in conjunction with land plans often contract separately with the appraiser and the land planner, but usually run both schedules concurrently. If the appraiser is dependent on the land planner's report to finish his or her remainder valuation, the appraisal may be delayed while the appraiser waits to receive the land plan report.

Clients, who may be attorneys or governmental agencies, should plan their contracts with appraisers and land planners so both professionals have adequate time to complete their respective assignments. Further, clients should consult with their appraiser before contracting with a land planner. An appraiser may have a better working relationship with certain land planners than with others and it is advisable to solicit their input. The appraiser is responsible for the credibility of any reports or portions of reports he includes within his appraisal so his confidence in the land planner's work is a key aspect in the appraisal process and in satisfying his obligations in USPAP [S.R. 2-2(a)(vii), 2-2(b)(vii) and S.R. 2-3].

A second method of improving the relationship between appraisers and land planners in project work is to pair appraisers and land planners with properties they both enjoy working on. Appraisers and land planners can appraise and evaluate many types of properties, but like all real property professionals they may specialize in specific improved properties.

Some appraisers have an affinity for appraising fast food restaurants and some land planners may specialize in planning these properties. For a large highway widening project situated in a metropolitan area, a client may be well advised to contract with and pair those appraisers and land planners who excel in planning or appraising fast food restaurant properties. To establish a certain consistency in the valuation and the curative solutions the client should consider assigning them all of the fast food properties being acquired.

### **Conclusion**

Appraisers and land planners can provide a valuable service to clients trying to negotiate partial acquisitions from improved residential, commercial and industrial properties.

Appraisers and land planners can complement and augment each other's professional analysis and special expertise. Both groups have a critical role in determining whether improved remainder properties can continue to function in their current use or seek an economically-viable alternative use in the after situation.

Appraisers doing eminent domain or condemnation appraisal work should actively seek out land planners in their area of practice and become familiar with their work. In a similar manner, land planners doing eminent domain work on remainder properties would be wise to meet with appraisers to discuss how their land plans could be more helpful to appraisers.

Finally, clients engaged in eminent domain acquisitions should be aware of the unique dynamics between appraisers and land planners or other specialists involved in partial acquisitions from improved properties. Contracting for appraisal and land planning services in conjunction with partial acquisitions cannot be done "in a vacuum" or in isolation among the experts.

In eminent domain appraisal work, a good working relationship between the appraiser and the land planner is essential. This article has attempted to explore some recommendations on how appraisers and land planners can work together more effectively.

#### **About the Author**

John R. Navratil, ASA, SR/WA, MRICS, R/W-AC, R/W-NAC. Mr. Navratil is an appraisal consultant with Atkins North America; and has over 39 years of experience in appraisal, appraisal review and appraisal management. He has worked in eminent domain appraisal for the last 31 years employed by state DOTs, railroads, engineering companies and private consultants. He holds designations and certifications from the American Society of Appraisers, the International Right of Way Association and the Royal Institution of Chartered Surveyors. He is currently an active certified general appraiser in Texas and Florida. He may be reached for further contact at [john.r.navratil@atkinsglobal.com](mailto:john.r.navratil@atkinsglobal.com)

## **Big Property Tax Appeal: Supreme Court Upholds \$10 Billion Value of Trans-Alaska Pipeline<sup>1</sup>**

### Article Overview

This article is a case summary of the Alaska Supreme Court's decision in the 2006 property tax appeal of the Trans-Alaska Pipeline System. The taxpayers argued for an \$850 million "fair market value" using the income approach, or in the alternative, a cost approach value with much depreciation and obsolescence. Municipalities argued for a \$12 billion "use value" using the cost approach. Each appeal brought higher valuations, until ultimately the highest court in Alaska upheld a \$10 billion valuation.

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Taxpayers own the Trans-Alaska Pipeline System (TAPS). TAPS is an 800-mile oil pipeline that transports crude oil from Alaska's North Slope to a shipping terminal in the City of Valdez. The Department of Revenue valued TAPS by the cost approach at \$3.6 billion in 2006. Both the taxpayers and municipalities appealed to the State Assessment Review Board, which raised the value to \$4.3 billion. Both sides appealed to the superior court, which raised the value to \$10 billion. Both parties appealed to the Supreme Court, which affirmed.<sup>2</sup> The two main discussions covered the proper method of value to use, and the cost approach deductions for depreciation and obsolescence.

Taxpayers argued that TAPS should be assessed an \$850 million "fair market value" using the income approach, based on their regulated tariff income stream. The municipalities argued for an almost \$12 billion valuation using the cost approach. Nevertheless, the Supreme Court affirmed the lower court which held that TAPS should be assessed at "full and true value," or "use value," because there was a limited market for TAPS and it was a special purpose property. Furthermore, unlike most pipelines, TAPS is a closed system mostly used by affiliated oil producers. Three companies that owned 95% of TAPS also controlled 91% of the North Slope oil production. Therefore, the court affirmed that it would be inappropriate to value TAPS using the *related-party* tariff income that the producers paid TAPS.

Most of the court's discussion concerned cost approach depreciation and obsolescence. Taxpayers argued for higher deductions for depreciation and obsolescence, and the municipalities argued for lower deductions.

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<sup>1</sup> This article was originally prepared for the International Association of Assessing Officers (IAAO) 35th Annual Legal Seminar, December 11, 2014, Chicago, Illinois. Published here with IAAO's permission.

<sup>2</sup> *BP Pipelines (Alaska) Inc. v. State of Alaska, Department of Revenue*, Supreme Court of Alaska, May 9, 2014, 325 P.3d 478.

First, taxpayers argued for additional obsolescence deductions due to tariff regulation – calculated by the income shortfall method – based on the theory that a hypothetical new pipeline would be allowed to charge higher tariffs because it would have a higher rate base. The court rejected taxpayers’ argument, just as it did their income approach valuation, in part, again, based on the close affiliation and integration of the owners and producers: “the value of the pipeline is completely divorced from the Owners’ ability to charge tariffs.”

Second, taxpayers argued for a shorter economic life of TAPS. “Alaska law requires that the measure of a pipeline’s economic life be based on the estimated life of ‘proven’ reserves of oil and gas.” The court affirmed that TAPS could operate until 2047. Taxpayers argued that *undeveloped* reserves are unproven and should be excluded from the economic life estimate. The court disagreed and cited industry definitions of *proven reserves* which included undeveloped reserves.

Third, the court upheld a super-adequacy obsolescence deduction for excess capacity. TAPS is required to maintain capacity of 1.1 billion barrels per day, but operates at less than that. The municipalities questioned whether it was economic or functional obsolescence, which the court dismissed as irrelevant. Municipalities also argued, in part, that a super-adequacy obsolescence deduction double-counted what the economic age-life depreciation already deducted from value. The court disagreed with the municipalities and held that while economic age-life accounted for the level of reserves, it did not account for the physical capacity of the pipeline.

Finally, the taxpayers were dealt a further blow when the court affirmed the superior court in holding that interest on the supplemental taxes runs from the date the original taxes were due. The original taxes were due in 2006, meaning taxpayers owe eight years of interest.

Two justices dissented in part. They opined that the super-adequacy obsolescence deduction for excess capacity might be improper. Since the owners of TAPS are closely affiliated with the producers, the use of TAPS is controlled by the producers. Thus, TAPS’s declining throughput might *not* be caused by external factors, but might instead be based on the producers’ own business decisions of holding back oil reserves.

Interestingly, the same court in a related case about attorneys’ fees, 327 P.3d 185, ruled three months later that the municipalities, as the prevailing parties, were entitled to their costs plus the *enhanced* 45% of their reasonable attorneys’ fees, with a total award of around \$2.5 million. The court notes that as a result of the valuation case, taxpayers will pay the municipalities \$152 million in supplemental taxes for the 2006 tax year.



### **About the Author**

Benjamin M. Williams, a former appraiser, is an attorney at Podell, Schwartz, Schechter & Banfield, LLP, the largest law firm in New York City that is solely dedicated to reducing property taxes. Ben has presented to the International Association of Assessing Officers (IAAO), the New York State Society of CPAs (NYSSCPA), and several chapters of the American Society of Appraisers. He has guest lectured at Rutgers Law School. Ben previously served on the board of the Northern New Jersey chapter of the American Society of Appraisers.

Ben is an Accredited Senior Appraiser of the American Society of Appraisers and holds an engineering degree. He used both in his past performing cost segregation studies and power plant appraisals. Ben may be reached at the following:

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## **Professional Perspectives of the 2014 International Appraisers Conference in Savannah, GA**

The American Society of Appraisers had a highly successful **International Appraisers Conferences** this past September. The conference was held in downtown Savannah, Georgia, a beautiful city with rich history, vast shopping areas, waterfront charms, and other attractions for everyone to enjoy.

The conference brought together valuation specialists from a variety of disciplines including real property, personal property, machinery and technical specialties, gems and jewelry, and business valuation. This year's speakers came from equally diverse backgrounds including private fee appraisal offices, government offices, and large corporate accounting offices and financial service firms.

### **Real Property Committee Meeting**

The Real Property Committee (RPC) met on Sunday and discussed a variety of contemporary and challenging issues facing its members and the real estate appraisal profession. Discussions included membership recruitment and retention, education, and our financial solvency. Education focused on future classes currently being developed by the *Alliance for Valuation Education*, as well as international and on-line opportunities.

### **Professional Networking Opportunities**

- *Get-Acquainted Welcome Reception.* Sunday night our members had an opportunity to meet and network with other ASA members at the ASA's Get-Acquainted Welcome Reception. This was a very well attended event and a natural segue from the RPC meeting.
- *ASA Educational Foundation Auction.* Monday night the ASA held its annual auction. This was well attended and the auction items for bid (silent auction) were tremendous.
- *President's Networking Reception.* Also on Monday night following the auction was a reception and an opportunity to meet with our current and past International Presidents. These leaders were easy to spot in their red jackets.

### **Real Property Committee Discipline Education**

The Real Property Committee provided a diverse mixture of real property programming at the conference including. Education opportunities included

- *Best Practices* with Ernest Demba, FASA.
- *Real Property Appraisal Report Review* with Roger Durkin, FASA
- *Allocating Components in Going Concern Valuations* with Robert Schlegel, FASA and Deane Wilson, ASA (and one word to describe this program ... "Fantastic!")
- *Contemporary Ad Valorem Property Tax Issues* with Thomas Countryman, Paul Bidwell, ASA, MAI, SRA, CCIM and Micheal R. Lohmeier, FASA, MMAO(4), MAI, SRA, RES

In all our members were able to earn up to 18 hours of continuing education credit!!!

## 2014 ASA Awards Ceremony

The Awards Ceremony took place on Monday afternoon. This annual event recognizes and honors the achievements of ASA members, volunteers, chapters and staff. The following awards were presented:

- Life Member: W. David Snook, FASA; Alan Iannacito, ASA; and Paul Giroux, ASA
- Examiner of the Year: Micheal R. Lohmeier, FASA
- College of Fellows Member: J. Michael Hill Jr., FASA; Edith Yeomans, FASA
- Jerry F. Larkins Award: Lee P. Hackett, FASA
- Sylvia Wade Olson Award: Todd J. Paradis
- Best Chapter Mentor Program: Los Angeles Chapter
- Best Chapter Newsletter: Los Angeles Chapter
- Best Chapter PR Program: Chicago Chapter
- Best Chapter Website: Los Angeles Chapter
- Outstanding Chapter Education Event: Houston Chapter
- Outstanding Chapter of the Year: Chicago

Including committee and board meetings, as well as other discipline education opportunities, our ASA members had three to six days of education and professional networking opportunities available to them. The following are a few of the photographs from the conference.



(It to rt) Jim Hirt, ASA CEO, Micheal Lohmeier, FASA and J. Mark Penny, ASA



(It to rt) Micheal Lohmeier, FASA, Mike Pratt, ASA, Lee Hackett, FASA, and Ron Prat, ASA



Speaker Ernest Demba, FASA lecturing to a full class on Best Practices



Speaker Joseph Cornell, ASA lecturing to a full class on Appraising Firearms.



Went next door to City Hall and met Savannah's Clerk (lt to rt) Clerk Dyanne Reese, Micheal Lohmeier, FASA, Kirsten Sieloff, ASA, and Ron Prat, ASA



Micheal Lohmeier, FASA presented by International President Gary Smith with award for Examiner of the Year



David Snook, FASA presented by International President Gary Smith with Life Member



Lee Hackett, FASA presented by International President Gary Smith with Jerry F. Larkins Award



Micheal Lohmeier, FASA and Mike Pratt, ASA discussing ASA business



Conference Speaker Paul Bidwell, ASA, MAI, SRA, CCIM focusing on the conversations at the Awards Ceremony



And our conference was full of world class entertainment!!

For additional information and photographs of the conference go to the American Society of Appraisers' website at [www.appraisers.org](http://www.appraisers.org) and its Facebook page at <https://www.facebook.com/asaappraisers>. Other chapters which had members present also took plenty of photographs including the Detroit Chapter at <https://www.facebook.com/AmericanSocietyOfAppraisersDetroitChapter>.

I hope to see you all at our **2015 International Appraisers Conference** which will be held in **Las Vegas, Nevada** from **09/14/2014 to 09/17/2014** (with discipline committee meetings held the day prior). This will be a conference you won't want to miss so go ahead and block those dates out on your calendar.



**About the Author**

Micheal R. Lohmeier, FASA, MAI, SRA, RES, MMAO(4) currently serves as the City Assessor for the City of Auburn Hills in Oakland County, Michigan. He may be reached at 248.364.6811 or [mlohmeie@auburnhills.org](mailto:mlohmeie@auburnhills.org)