



**International Right of Way Association
Chapter 1 – Los Angeles County
March 2003 Newsletter**

Upcoming Events

- April 8th Chapter 1 Board Meeting
DPW, 700 Fremont Ave., Alhambra (595-H/6)
- April 22nd Chapter 1 Membership Meeting
Stevens Steak House, 5332 Stevens Place, Commerce (675-G/3)
RSVP to Deborah Zelaya, Luncheon Chair, at (310) 816-0466 ext. 135
- May 20th Relocation Seminar (and Membership Meeting)
Quiet Cannon, 901 N. Via San Clemente, Montebello (636-A/7)
Contact Fred Arevalo, Relocation Chair, at (323) 890-7473
- October 28th Fall Seminar (and Membership Meeting)
Quiet Cannon, 901 N. Via San Clemente, Montebello (636-A/7)
Contact Augusto (Gus) Parcerero, Fall Seminar Chair, at (213) 847-5580.

Membership Luncheon

- March 11th Chapter 1 Board Meeting
DPW, 700 Fremont Ave., Alhambra (595-H/6)
- March 25th Chapter 1 Valuation Seminar
(and Joint Membership Meeting with Southern California Chapter of the
Appraisal Institute)
Quiet Cannon, 901 N. Via San Clemente, Montebello (636-A/7)
Contact Elaine McDaniel, Valuation Seminar Chair, at (310) 216-1400

**President's Message
March 25th Valuation Seminar
By: Michael Popwell**

Chapter 1's Valuation Seminar will be presented at the Quiet Cannon on March 25th. Elaine McDaniel, Director of Marketing with Desmond, Marcello & Amstar, has put together a great program focusing on the mysterious world of FF&E (furniture, fixtures and equipment). The morning and luncheon secessions feature a stellar cast of FF&E professionals who will answer the age old questions of what is it, where did it come from, and why do I need to know – much less care. The afternoon secessions include an overview of



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the eminent domain process and the increasing role of arbitration; and a lively presentation of unique exhibits that can be used in the courtroom setting.

And what a value on this great seminar which includes a great lunch selection and lots of continuing education credits (DRE, OREA, MCLE & SR/WA credits pending) – just \$75 for IRWA members, \$100 after March 18th. Check out the detailed Eleventh Annual Right of Way Valuation Conference registration in this issue of Crossroads.

Substantial Changes to USPAP

The Appraisal Standards Board has approved substantial changes to USPAP effective 2003. Looks like all our appraiser members will be digging through their USPAP 2003 books – or oh horrors of horrors – taking that USPAP class again soon. Here's a quick overview:

Subject Property

- All real estate, including one to four unit residential properties, must have the property history analyzed for a minimum of three years if that information is available to the appraiser in the normal course of business (Standards Rule 1-5).
- For personal property appraisals, prior sales of the subject property that occurred within a reasonable and applicable time period given the nature of the assignment must be analyzed (SR 7-5). Well, that's about as clear as mud, good job guys.

Environmental Contamination

- Revisions were made to provide guidance to appraisers who may choose to undertake an appraisal assignment of real property that may be impacted by environmental contamination (Advisory Opinion-9). You'll have to read that one for yourself.

Updating an Appraisal

- The various conditions on performing an "update" have generally been removed and replaced with procedures to clearly show that an "update" is merely a new appraisal.

Appraisal Review

- The provisions of Standard 3 covering appraisal review will be extended to cover Mass Appraisals and Business Valuation. Where the reviewer reports his own opinion of value, it must be reported at minimum as a Summary Appraisal Report format.



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New 7-Hour USPAP Class

The ASB also approved a new 7-hour National USPAP Update Course which must be completed by all licensed appraisers once every other year. The course basically covers recent changes to USPAP and reviews some of the most common misconceptions about USPAP. This requirement is not in addition to the 14 hours of continuing education which must be completed every year for license renewal.

City of San Diego v. Rancho Penasquitos Partnership, et al.

California Court of Appeal, Fourth Appellate District

2003 DJDAR 1245

January 30, 2003

By: Larry Permaul, NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

This case involves eminent domain proceedings brought by the City of San Diego (the “City”) to acquire 10.94 acres (part of a 108.75 acre parcel) of real property owned by the Rancho Penasquitos Partnership and several individuals (collectively “RPP”). The City acquired the subject property for the State Route 56 freeway (“SR-56”). Not surprisingly, the main issue at trial was what evidence could properly be considered in valuing RPP’s property. At the time of the filing of the eminent domain action, the subject property was zoned for agricultural use and had a zoning restriction in place prohibiting higher density development. The City argued that based on the zoning restrictions, the subject property had to be valued at its current use. In contrast, RPP asserted that because the City was both the condemning agency and the agency responsible for the zoning restriction, and the restriction was designed to minimize the City’s cost of acquiring the subject property through eminent domain, the proper value of the subject property must be based on an appraisal that did not consider the City’s prohibition on higher density development. Further, RPP argued that it was reasonably probable that the subject property could be rezoned to residential use and proffered expert testimony concerning rezoning and sales of neighboring properties. The City countered that any rezoning of neighboring properties was a result of “project enhancement” and that in the absence of SR-56, it was too speculative to assume that the rezoning and sales would have occurred. These issues came before the court in the form of several motions in limine, in which RPP sought to exclude any evidence of the City’s prohibitive zoning regulations and the City attempted to exclude RPP’s expert testimony regarding the probability of a zoning change. The trial court ruled in favor of RPP on both issues. After the jury returned their verdict, the City appealed.



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The condemned property was unimproved land located within subarea IV of the North City Future Urbanizing Area (“NCFUA”). The NCFUA is approximately 12,000 acres created “to avoid premature urbanization, to conserve open space and natural environmental features and to protect the resources of the City by precluding costly sprawl and/or leapfrog urban development.” Zoning within the NCFUA was designated as A1-10, restricting development to one residence per every ten acres, or under a clustering option, one residence per every four acres. However, because of a shortage of available land and a lack of an orderly plan for the development of the NCFUA, the City adopted a framework providing a blueprint for the future urbanization of the NCFUA. As part of the framework, the City restricted development of subareas III and IV of the NCFUA to allow for the SR-56 project to be developed in those areas. Specifically, the framework provided:

“Subareas III and IV: The City will undertake an alignment study for SR-56. Subarea Plans for these areas may be approved, provided sufficient corridors are designed for alternative alignments for SR-56. *However, discretionary approval for development in these subareas shall not be approved prior to adoption of the City’s final alignment for SR-56.*” (Italics added.)

A further subarea plan was adopted by the City which provided:

“Final selection of the alignment for SR-56 must occur *prior to discretionary approval of any development in [subarea IV] which is affected by the final alignment.*” (Italics added.)

The City conceded that the purpose of the zoning regulations was to prevent development of the land required for final alignment of SR-56. The City further conceded that the restrictions did not apply to property that did not conflict with the proposed path of SR-56 and such property could be rezoned upon application.

Based on the zoning regulations, the City argued that RPP’s property did not have a reasonable probability of a zoning change as of the date of value because the City’s regulations prohibited such zoning changes until SR-56 was approved. In addition, the City asserted that any evidence of zoning changes and sales that occurred after the final alignment of SR-56 was approved, was a result of “project enhancement” since any zoning changes could not occur absent approval of the SR-56 project.

On the other hand, RPP argued that the subject property must be appraised without regard to any increases or decreases in value caused by the SR-56 project. RPP’s expert opined that the subject property enjoyed a reasonable probability of a zoning change consistent with the higher densities permitted in other subareas of the NCFUA. He stated that absent the SR-56 project, development



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in subarea IV would have proceeded in generally the same manner as in other subareas allowed under the City's framework plan. RPP's expert relied on several reasons for his conclusion. First, he argued that the A-1-10 zoning was never intended to be permanent as implied by the City's general plan and NCFUA's characterization of the area as a "future urbanizing area." Secondly, he relied on the fact that the higher density development was authorized under the City's framework because of a severe shortage of housing. The need to move traffic via SR-56 was unrelated to this issue. Further, when the City approved the framework allowing for higher density development, it was not conditioned upon construction of the SR-56 project. Lastly, he pointed out that an adjacent property to RPP's property, which was not located in the NCFUA, and therefore not subject to the zoning restrictions, enjoyed a reasonable probability of a zoning change which even the City admitted.

The appellate court agreed with RPP and affirmed the trial court's decision to exclude any evidence of the City's prohibitive zoning regulations and to allow RPP's expert testimony regarding the probability of a zoning change. The appellate court reasoned that in order to determine the fair market value of a property being condemned in an eminent domain action, "there must be a determination of the highest and best use to which the property being condemned can be put." (*San Diego Gas & Electric Co. v. Daley* (1988) 205 Cal.App.3d 1334, 1344, disapproved on other grounds.) Moreover, "[a] determination of the property's highest and best use is not necessarily limited to the current zoning or land use restrictions imposed on the property; the property owner is entitled to show a reasonable probability of a zoning [or other change] in the near future and thus to establish such use as the highest and best use of the property." (*County of San Diego v. Rancho Vista Del Mar, Inc.* (1993) 16 Cal.App.4th 1046, 1058.) Further, "[t]he fair market value of the property taken shall not include any increase or decrease in the value of the property that is attributable to any of the following: (a) The project for which the property is taken....(c) Any preliminary actions of the plaintiff relating to the taking of the property." (CCP section 1263.330). In particular "[t]he probability of rezoning or even an actual change in zoning which results from the fact that the project which is the basis for the taking was impending cannot be taken into account in valuing the property in a condemnation proceeding." (*People ex rel. Dept. Pub. Wks. V. Arthofer* (1966) 245 Cal.App.2d 454, 465.) In addition, the appellate court noted that while "in most situations a collateral attack upon zoning is not permitted in an eminent domain proceeding [citation], that principle is inapplicable to the situation where the condemnor purporting to exercise its police power by enacting a zoning ordinance has in reality discriminated against a particular parcel or parcels of land in order to depress their value with a view to future takings in eminent domain." (*People ex rel. Dept. Pub. Wks. v. Southern Pac. Trans. Co.* (1973) 33 Cal.App.3d 960, 965.)

Thus in the instant case where the City adopted zoning regulations in consideration of the SR-56 project, the trial court properly excluded any evidence of the prohibitive zoning regulations affecting the subject property and furthermore, properly allowed the property owner to argue the probability of a zoning change to establish the highest and best use of the property. Finally, just as the



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City was precluded from using the zoning restrictions as evidence of a depressed value, if could not exclude RPP's evidence of sales that occurred once the restrictions were lifted.

2003 Scheduled Courses for Chapter 1

Dates	Class Code	Title	Instructor	Location	Coordinator	Phone No.	Email
March 27	103 1 day	Ethics and the Right of Way Profession	Ralph Brown, SR/WA	19800 S. Vermont Ave, Torrance, CA	Hayley McKuur	(310) 646-1014	Hmckuur@lawa.org
May 19	504 1 day	Computing Replacement Housing Payments	Bill Von Klug, SR/WA	19800 S. Vermont Ave, Torrance, CA	Hayley McKuur	(310) 646-1014	Hmckuur@lawa.org
July 17	214 1 day	Skills of Expert Testimony	Ralph Brown, SR/WA	19800 S. Vermont Ave, Torrance, CA	Hayley McKuur	(310) 646-1014	Hmckuur@lawa.org
1 st half September	407 1 day	Valuation of Contaminated Properties			Rudy Romo	(714) 379-3376	Rromo@paragon-partners.com
November 6, 7	803	Eminent Domain Law Basics for Right of Way Professionals	Bruce Beach	19800 S. Vermont Ave, Torrance, CA	Hayley McKuur	(310) 646-1014	Hmckuur@lawa.org
March 12-14	501	Relocation Assistance	William A. Von Klug, SR/WA	Orange County Transportation Authority, Orange, CA	Patricia Reed	(714) 560-5754	
March 31 - April 2	201	Communications In Real Estate Acquisition	Michael Wolfe, SR/WA	Costa Mesa Neighborhood Community Center, Costa Mesa, CA	Susan Santoro	(714) 754-5066	
April 30	406 B	7 – Hour Uniform Standards Of Professional Appraisal Practice	J. L. Craft	Holiday Inn, Torrance, CA	Connie Sanchez	(310) 538-0233 ext. 124	
April 28-29	400	Principles Of Real Estate Appraisal	Michael L. Heineke, SR/WA	Orange County Transportation Authority, Orange, CA	Gina Gallagher	(714) 560-5758	
April 28-29	406 A	15 – Hour National Uniform Standards of Professional Appraisal Practice	J. L. Craft	Holiday Inn, Torrance, CA	Connie Sanchez	(310) 538-0233 ext. 124	