

LOS ANGELES



IRWA
CHAPTER 1

April
2004



Upcoming Events

May 11

Board of Directors meeting: 11:30am to 1:00pm Nossaman offices: 445 S. Figueroa St., 31st Floor, Los Angeles

June 20-24

IRWA International Education Conference at Wyndham Franklin Plaza Hotel; Philadelphia, Pennsylvania

June 29

Membership Meeting
Stevens Steak House, 5332 Stevens Place, Commerce (675-G/3)



President's Message

By: Linda Cunningham Esq.,
Nossaman, Guthner, Knox, & Elliott,
LLP

Annual Valuation Seminar Chapter 1's Twelfth Annual

Valuation Seminar was held on April 22 at the Quiet Cannon in Montebello. The seminar focused primarily on goodwill valuation issues, with a luncheon presentation on the use and selection of expert witnesses. The seminar and luncheon were well attended, with about 70 members and guests attending the seminar, and over 80 in attendance for the luncheon. Our thanks to Elaine McDaniel for all of her work in putting the successful seminar together, and thanks also to the speakers and panelists from the firms of Desmond, Marcello & Amster, Rutan & Tucker, and Oliver, Vose, Sandifer, Murphy & Lee.

Region 1 Spring Forum

Chapter 1 hosted this year's Region 1 Spring Forum at the Queen Mary in Long Beach with a cocktail reception on March 19. The business meeting on March 20, was attended by delegates from chapters throughout

Membership Luncheon

Date:

May 25

Location:

Stevens Steak House, 5332 Stevens Place, Commerce (675-G/3)

RSVP to Tracy Washburn, at
(310) 571-3400 or
twashburn@sphvalue.com

Please note: in order to cover increasing expenses charged by our luncheon venue, the cost for a luncheon will be increased to \$16, effective the May meeting. It is still one of the best values around!

Region 1, as well as Regional and International Executive Committee representatives. Among the topics of discussion were the annual budget, the new pricing structure for education courses, and the regional Fall Forum to be held in October in South Lake Tahoe. Carolyn Carrica of Chapter 46 (Reno) was elected Region 1 Vice Chair. Many thanks to Michael Popwell for successfully orchestrating the Spring Forum, and doing so at a minimal cost to Chapter 1 by obtaining corporate sponsorships. Thanks also to the following Chapter 1 contributing sponsors for their support of the Spring Forum: **Del Richardson & Associates, Inc.; Demetriou, Del Guercio, Springer & Francis; Desmond, Marcello & Amster; Epic Land Solutions, Inc.; Gold Coast Appraisal; Integra Realty Resources; Lawyer's Title Company; Lea Associates, Inc.; Nossaman, Guthner, Knox & Elliott, LLP; Overland, Pacific & Cutler, Inc.; Paragon Partners Ltd.; Sanli Pastore & Hill.**

Electronic Newsletter

Please note that we are now distributing the newsletter electronically and not in hard copy. Members who wish to continue receiving a copy by regular mail should notify our Newsletter Chair, Natalie Michelson (aunttalice@aol.com). Also, all members are asked to check the e-mail information on the IRWA website (www.irwaonline.org) to make sure it is correct, and provide us with any updates.

IRWA Chapter 1, Los Angeles
2004 Board Officers and Committee Chairs

| | | |
|--|---|---|
| President & International Director: Linda Cunningham Esq. Nossaman, Guthner, Knox, & Elliott, LLP 445 S. Figueroa St. Los Angeles, CA 90071 Phone (213) 612-7800 E-mail lcunningham@nossaman.com | President Elect & International Director: Holly Rockwell Epic Land Solutions, Inc. 24050 Madison St., Suite 205 Torrance, CA 90505 Phone (310) 378-0771 E-mail hollyrockwell@epicland.com | Vice President: Tom Hanley Southern Calif. Regional Rail Authority (Metrolink) 700 S. Flower St. Suite 2600 Los Angeles, CA 90017 Phone (213) 452-0256 E-mail hanley@scrta.net |
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| Pipeline Chair: Gary Valentine, MAI, SR/WA 23942 Lyons Avenue, Suite 212 Santa Clarita, CA 91321 Phone (661) 288-0198 E-mail: gsv@valentineappraisal.com | Relocation Chair & Relocation Seminar Cochair: Freddy Arevalo Community Development Commission of the County of Los Angeles 2 Coral Circle Monterey Park, CA 91755 Phone (323) 890-7473 E-mail fred.arevalo@lacdc.org | Luncheon Chair: Tracy Washburn Sanli Pastore & Hill, Inc. 1990 S. Bundy Drive, Suite 800 Los Angeles, CA 90025 Phone (310) 571-3400 Fax (310) 571-3420 Email twashburn@sphvalue.com |
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| Fall Seminar Chair Michael Fischer Community Development Commission of the County of Los Angeles 2 Coral Circle Los Angeles, CA 91755 Phone (323) 890-7250 E-mail Michael.fischer@lacdc.org | Past President; Nominations and Awards Chair; Region Spring Forum Chair: Michael Popwell, SR/WA Community Development Commission of the County of Los Angeles 2 Coral Circle Monterey Park, CA 91755 Phone (323) 890-7195 E-mail michael.popwell@lacdc.org | Region Spring Forum Co-Chair & Membership Co-Chair Henry Nunez Henry Nunez Coordinated Land Services 11 E. Huntington Drive Arcadia, CA 91006 Phone (626) 254-0524 E-mail henry@hnrealstate.com |

May Luncheon

Ever since the Telecommunications Act was passed, there has been ongoing controversy over what rights it gave telecommunication companies. In our industry, the questions revolve around what rights telecom companies have to install fiber optic and other facilities in existing rights of way, and how much compensation, if any, should be paid for those installations. A recent court decision has endeavored to address some of those questions. Fredric W. Kessler of Nossaman, Guthner, Knox, Elliott, LLP will present the latest outcome of Williams vs. City of Riverside case at our May luncheon. Mr. Kessler has over 25 years of experience in infrastructure development and transactions, telecommunications and real estate matters for institutional clients in the private sector and public agencies. If you work for any agency or company that acquires, values, or manages rights of way, come Tuesday May 25th to listen to this presentation on the recent decision related to the California Telecommunications Industry.

Date: May 25, 2004
 Time: 11:45 am
 Location: Steven's Steakhouse,
 5332 Steven's Place, Commerce, CA 90040
 Luncheon choice: New York Steak or Chicken Oscar
 Cost: \$16

To reserve your space and make your luncheon selection, please contact our Luncheon Chair, Tracy Washburn at twashburn@sphvalue.com or 310-571-3400. Please note: in order to cover increasing expenses charged by our luncheon venue, the cost for a luncheon will be increased to \$16, effective the May meeting. It is still one of the best values around!

New Members

Those approved for membership in IRWA Chapter 1 in March 2004 are:

Angela C. Aldridge, Real Estate Representative, MWD, Los Angeles

John A. Kirby, Senior Manager, Singer, Lewak, Greenbaum, & Goldstein; Los Angeles

**IRWA Chapter 1
2004 Calendar of Events**

- April 13 **Board of Directors meeting:** 11:30 AM to 1:00 PM
Nossaman offices: 445 S. Figueroa St, 31st Floor, Los Angeles
- April 16 **Education Course 503** (Mobile Home Relocation) (R/W-RAC)
Contact Lorna Foster (909) 383-4473 Lorna_Foster@dot.ca.gov
- April 22 **Valuation Seminar** (and Membership Meeting)
Quiet Cannon, 901 N. Via San Clemente, Montebello (636-A/7)
RSVP to Deborah Martinez, Luncheon Chair, at (714) 379-3376; dmartinez@paragon-partners.com
- May 11 **Board of Directors meeting:** 11:30 AM to 1:00 PM
Nossaman offices: 445 S. Figueroa St, 31st Floor, Los Angeles
- May 25 **Chapter 1 Membership Meeting**
Stevens Steak House, 5332 Stevens Place, Commerce (675-G/3)
- June 5 & 6 **Education Course 900** (Principles of Real Estate Engineering) (SR/WA)
Contact Deborah Martinez, Education Co-Chair, at (714) 379-3376; dmartinez@paragon-partners.com
- June 8 **Board of Directors meeting:** 11:30 AM to 1:00 PM
Nossaman offices: 445 S. Figueroa St, 31st Floor, Los Angeles
- June 20-24 **IRWA International Education Conference**
Wyndham Franklin Plaza Hotel; Philadelphia, Pennsylvania
- June 29 **Membership Meeting**
Stevens Steak House, 5332 Stevens Place, Commerce (675-G/3)
- July 13 **Board of Directors meeting:** 11:30 AM to 1:00 PM
Nossaman offices: 445 S. Figueroa St, 31st Floor, Los Angeles
- July 27 **Chapter 1 Membership meeting**
Shanghai Red's, Marina Del Rey
- August **Chapter 1 dark**, No Membership Meeting
- September 14 **Board of Directors meeting:** 11:30 AM to 1:00 PM
Nossaman offices: 445 S. Figueroa St, 31st Floor, Los Angeles
- September 16 & 17 **Education Course 800** (Principles of Real Estate Law) (SR/WA)
Contact Deborah Martinez, Education Co-Chair, at (714) 379-3376; dmartinez@paragon-partners.com
- September 28 **Chapter 1 Membership Meeting** (and SR/WA Free Lunch with RSVP)
Stevens Steak House, 5332 Stevens Place, Commerce (675-G/3)
- October 12 **Board of Directors meeting:** 11:30 AM to 1:00 PM
Nossaman offices: 445 S. Figueroa St, 31st Floor, Los Angeles
- October 14 & 15 **Education Course 200** (Principles of Real Estate Negotiations) (SR/WA)
Contact Deborah Martinez, Education Co-Chair, at (714) 379-3376; dmartinez@paragon-partners.com
- October 26 **Fall Seminar** (and Membership Meeting)
Quiet Cannon, 901 N. Via San Clemente, Montebello (636-A/7)
Contact Michael Fischer, Fall Seminar Chair, at (323) 890-7250.
- November 9 **Board of Directors meeting:** 11:30 AM to 1:00 PM
Nossaman offices: 445 S. Figueroa St, 31st Floor, Los Angeles
- November 23 **Chapter 1 Membership Meeting** (and Past Presidents Free Luncheon)
Stevens Steak House, 5332 Stevens Place, Commerce (675-G/3)
- December **Tri-Chapter Installation Banquet**
Chapter 57, Riverside, is Host

CASE OF THE MONTH

City of Saratoga v. Hinz

(2004) DJDAR 2265

By: Bradley D. Pierce

In this month's case of the month, the Court of Appeal reviews a Santa Clara County Superior Court determination that a property owner's challenges to the right to acquire his property were not valid.

The case stems from a road improvement project undertaken and financed by the Vessing Road Assessment District ("VRAD"), a special assessment district composed of property owners who own parcels that adjoin Lester Hinz's property.

Hinz owns an 11-acre parcel in the City of Saratoga. In early 1996, 16 of the 20 property owners who reside on Vessing Road petitioned the City to assist them in improving Vessing Road to minimum city standards, so that Vessing Road could be dedicated to the City and accepted into the City's system of publicly-maintained streets. Hinz is the owner of a piece of property on the corner of Vessing Road and Quito Road, which is a public thoroughfare. In other words, Hinz had access to his property from a road that was already part of the City's system of publicly-maintained streets.

After a series of public meetings, City representatives advised the homeowners that the City would not contribute financially to the costs of the proposed improvements and that the improvements would have to be funded 100 percent by the members of the proposed assessment district. As part of the decision-making process, the City reasoned that although the project was a public project involving the construction of a road, the properties and the proposed assessment district were the only properties that benefitted from the project, and that the property owners therefore had to pay the entire cost of the improvements. The City helped assist them in the formation of the assessment district.

In April 1999, the City adopted a Resolution approving an engineer's report for the improvement project, the proposed special assessments to fund the project, the formation of the assessment district ("VRAD"), and the ordering of improvements. According to the Resolution, the construction of the improvements included the "acquisition of all lands, easements and rights of way" necessary to complete the project.

As part of the project, the City acquired a permanent easement for ingress and egress over a 17-foot wide, 383-foot long strip of land along the southern most portion of Hinz's property. That part of Hinz's land was already encumbered by the express easement for ingress and egress for the existing private road. The City then had the easement appraised and in August 1999, the City sent Hinz a copy of the appraisal and a written offer to purchase the easement for \$1,000 pursuant to Gov. Code § 7267.2. Shortly thereafter, the City sent Hinz a letter giving him notice that the City would consider the adoption of a Resolution of Necessity condemning the easement.

At the September 1, 1999 hearing, Hinz appeared and objected to the City's right to acquire the property. Hinz asserted that there was no general benefit to the City and that there was no public convenience or necessity to justify the acquisition of the property by eminent domain.

Later that month, the City filed its Complaint in Eminent Domain. Hinz objected to the City's right to acquire the property, asserting three grounds: (1) the VRAD was not valid; (2) the Resolution of Necessity was affected by gross abuse of discretion, and (3) that there was no public use.

The eminent domain action was bifurcated for the purpose of trial. In the first phase of the trial, the Court adjudicated Hinz's defenses and objections to the City's right to exercise its eminent domain power to acquire the easement. The issue of just compensation for the taking was reserved for the second phase of the trial.

Hinz's first affirmative defense asserted the invalidity of the assessment district. Since the VRAD was financing the improvement of the property, Hinz reasoned that if the VRAD was invalid, then the project could not go forward. However, the Court found that Hinz's challenges to the VRAD were barred by the statute of limitations expressly set forth in Streets & Highways Code § 10400.

Hinz also asserted that the Resolution itself was invalid in that it was affected by a gross abuse of discretion. Hinz asserted that the City had irrevocably committed itself to the taking in violation of the principles set forth in Redevelopment Agency v. Norm's Slauson (1985) 173 Cal.App.3d 1121. Norm's is the case cited by property owners asserting that the Resolution of Necessity was not a judicious consideration of all of the factors involved in the acquisition and that the property owner was therefore denied his constitutional right to be heard prior to being deprived of property. In Norm's, the Agency had already committed itself by contract to the acquisition of the Norm's property prior to the hearing on the Resolution of Necessity. In other words, Hinz asserted that no matter what evidence was presented at the hearing, the decision to acquire his property had already been made. Simply put, he contended that the City had rubber-stamped the taking when it considered the Resolution of Necessity and that therefore the hearing on the Resolution was a sham.

The Court rejected the argument, noting that the record revealed that there was meaningful discussion of the public interest and necessity for the project. The hearing lasted 75 to 80 minutes and revealed that the council members debated the merits of proceeding with the eminent domain action. In fact, one member voted in opposition to the Resolution.

Hinz also asserted that there was no public necessity as required by Code of Civil Procedure § 1240.030. Hinz asserted that the City adopted the Engineer's Report when it formed the VRAD, and that the Engineer's Report specifically stated that the VRAD does not confer any general benefit and, therefore, the City could not condemn his property. Hinz attempted to assert that the term "general benefit" referenced in the Engineer's Report was the same as the "public interest and necessity" requirement in the Code of Civil Procedure. The Court rejected the argument, finding that the fact that an improvement project does not confer any general benefit on the community at large, does not make the project any less public. The Court noted that if it were to accept Hinz's argument, then there would never be a public interest or necessity in the construction of local street improvements that benefit a small area, especially those involving dead-end streets and cul-de-sacs. For these reasons, the Court concluded that "general benefit" and "public interest and necessity" are not the same thing and that the trial court did not err when it upheld the City's findings of public interest and necessity.

The Court of Appeal found that the trial court was correct in finding that none of Hinz's challenges to City's right to acquire the property had merit and affirmed the trial court's judgment.

Pipeline Projects and Eminent Domain

By: Gary Valentine, MAI, ASA, SR/WA

Often new pipelines are created through the right of eminent domain. According to the Fifth Amendment of the U.S. Constitution, eminent domain is the right of government to take private property for public use on payment of just compensation.

In order to create a pipeline, it often requires experts in several fields, including relocation, environmental, engineering, appraising, acquisition, title, and law. As such, these opportunities often lead to expert witness testimony in a deposition and/or in court before a trier of fact (judge or jury).

In order to be a good expert witness, the expert needs to be prepared for giving testimony, needs to know what the juror really wants, and the expert needs to maintain credibility.

Prepare yourself for testimony by:

- Organize your case file
- Re-read the deposition transcript
- Review your report
- Memorize key names, dates, facts, and proper pronunciation of names and definitions
- Review all documents to the case
- Prepare answers to weak points in your opinion
- If possible, come out and visit the courtroom

According to research, jurors really want from the experts the following:

- Appear confident
- To be interested at all times
- Explain complex material in everyday terms
- Describe process or procedures in a story format
- Use analogies and everyday examples
- Admit limitations
- Teach but do not lecture
- Make a good first impression
- Maintain eye contact with the juror

To help maintain credibility while testifying, do the following:

- Prepare thoroughly
- Be yourself
- Actively listen to each and every word, and do not anticipate questions
- Be aware of set-up questions
- If asked about document, demand to see the document
- Do not be evasive

- Do not be afraid to say “I do not know”.
- Try to use the sentence “Please repeat the question” just one time
- Do not argue with counsel
- Think before answering
- Advocate for your opinion, not for your client’s
- Teach to the trier of fact
- Do not use slang
- Address explanations to jury, but do not stare at them
- Do not talk down to jury
- Do not joke or make wisecracks
- Ask opposing counsel to define new terms that you do not understand
- Avoid distracting habits and mannerisms
- Show sympathy
- Be aware of conduct outside of courtroom
- Admit mistakes
- Don’t interrupt the questioner
- Give detail explanations before answering the question
- Dress professionally, and people often prefer dark colors
- Take nothing personally
- Answer the questions, and do not try to outsmart the attorney
- Be organized and pay attention to detail
- Be prepared with a response to your weaknesses
- Communicate your opinion through visuals
- Be calm and collected during deposition, and court testimony
- Have the same expressions and mannerisms during direct and cross examinations
- Do not drop voice during testimony
- ALWAYS TELL THE TRUTH (you don’t have to remember as much)
- You only get one time for a first time impression
- To be more convincing, describe things in threes (The Godhead)
- Use persuasive words (i.e. guarantee, love, money, new, proof, results, save)
- Be nice to court staff
- Be accurate on your CV
- Be brief and not argumentative
- Get out of the witness stand and teach
- Get paid prior to giving testimony
- On the stand, be consistent, objective, polite, professional, and use respectful titles such as Sir and Ma’am
- ANALAGIZE (use every day experiences to convey an important point)

In conclusion, although there is no substitution for experience in becoming a good expert witness, thorough preparation, knowing what jurors want, and knowing what helps the expert witness maintain credibility will shorten the learning curve in becoming a good expert witness.

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Gary Valentine, MAI, ASA, SR/WA

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Courses scheduled for 2004

| Dates | Class code | Class Title | Instructor | Location | Coordinator | Phone | Email |
|-------------|------------|--|--------------------|--|------------------|----------------|--|
| Apr 16 | 503 | Mobile Home Relocation (R/W-RAC) | Barbara Baernstein | Dept of Corrections, 21015 Pathfinder Road, Ste 200, Diamond Bar, CA | Lorna Foster | (909) 383-4473 | Lorna_Foster@dot.ca.gov |
| June 5 & 6 | 900 | Principles of Real Estate Engineering (SR/WA) | Ralph Brown | Torrance | Deborah Martinez | (714) 379-3376 | dmartinez@paragon-partners.com |
| Sep 16 & 17 | 800 | Principles of Real Estate Law (SR/WA) | Ralph Brown | Torrance | Deborah Martinez | (714) 379-3376 | dmartinez@paragon-partners.com |
| Oct 14 & 15 | 200 | Principles of Real Estate Negotiations (SR/WA) | Ralph Brown | Torrance | Deborah Martinez | (714) 379-3376 | dmartinez@paragon-partners.com |

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