

NATIONAL COOPERATIVE HIGHWAY RESEARCH PROGRAM
REPORT

126

DIVERGENCIES IN
RIGHT-OF-WAY VALUATIONS

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126

DIVERGENCIES IN RIGHT-OF-WAY VALUATIONS

**COMMITTEE FOR SPECIAL RESEARCH
AMERICAN INSTITUTE OF REAL ESTATE APPRAISERS
CHICAGO, ILLINOIS**

RESEARCH SPONSORED BY THE AMERICAN ASSOCIATION
OF STATE HIGHWAY OFFICIALS IN COOPERATION
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NATIONAL COOPERATIVE HIGHWAY RESEARCH PROGRAM

Systematic, well-designed research provides the most effective approach to the solution of many problems facing highway administrators and engineers. Often, highway problems are of local interest and can best be studied by highway departments individually or in cooperation with their state universities and others. However, the accelerating growth of highway transportation develops increasingly complex problems of wide interest to highway authorities. These problems are best studied through a coordinated program of cooperative research.

In recognition of these needs, the highway administrators of the American Association of State Highway Officials initiated in 1962 an objective national highway research program employing modern scientific techniques. This program is supported on a continuing basis by funds from participating member states of the Association and it receives the full cooperation and support of the Federal Highway Administration, United States Department of Transportation.

The Highway Research Board of the National Academy of Sciences-National Research Council was requested by the Association to administer the research program because of the Board's recognized objectivity and understanding of modern research practices. The Board is uniquely suited for this purpose as it maintains an extensive committee structure from which authorities on any highway transportation subject may be drawn; it possesses avenues of communications and cooperation with federal, state, and local governmental agencies, universities, and industry, its relationship to its parent organization, the National Academy of Sciences, a private, nonprofit institution, is an insurance of objectivity, it maintains a full-time research correlation staff of specialists in highway transportation matters to bring the findings of research directly to those who are in a position to use them.

The program is developed on the basis of research needs identified by chief administrators of the highway departments and by committees of AASHO. Each year, specific areas of research needs to be included in the program are proposed to the Academy and the Board by the American Association of State Highway Officials. Research projects to fulfill these needs are defined by the Board, and qualified research agencies are selected from those that have submitted proposals. Administration and surveillance of research contracts are responsibilities of the Academy and its Highway Research Board.

The needs for highway research are many, and the National Cooperative Highway Research Program can make significant contributions to the solution of highway transportation problems of mutual concern to many responsible groups. The program, however, is intended to complement rather than to substitute for or duplicate other highway research programs.

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This report was prepared by the contracting research agency. It has been reviewed by the appropriate Advisory Panel for clarity, documentation, and fulfillment of the contract. It has been accepted by the Highway Research Board and published in the interest of effective dissemination of findings and their application in the formulation of policies, procedures, and practices in the subject problem area.

The opinions and conclusions expressed or implied in these reports are those of the research agencies that performed the research. They are not necessarily those of the Highway Research Board, the National Academy of Sciences, the Federal Highway Administration, the American Association of State Highway Officials, nor of the individual states participating in the Program.

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FOREWORD

*By Staff
Highway Research Board*

Wide variations have been reported in the valuation of real estate that is required in the acquisition of right-of-way for highways. These divergencies have plagued highway administrators, trial attorneys, appraisers and the court alike. This report discusses the nature of and reasons for wide divergencies and makes recommendations to properly meet and cope with this problem of unwarranted divergencies. Right-of-way engineers and agents, appraisers, attorneys, and other personnel engaged in the acquisition of property for highway purposes should find this report of special interest.

The objectives of this research were to review, analyze and evaluate actual cases in which wide divergencies existed. Based on this evaluation, reasons for such divergencies were to be identified and corrective measures suggested to diminish the wide variations in value.

Because the American Institute of Real Estate Appraisers (AIREA) is the only known source that has been collecting specific data on divergencies in valuation in litigated condemnation cases throughout the United States over the past several years, AIREA was chosen to conduct the research project. The study was under the direction of the AIREA Committee for Special Research. Because the appraisal review files of the organization are confidential and cannot be made public, all data given and case studies cited are not identified by individuals involved or geographic location. More than 4,000 cases that have been recorded since 1961 were reviewed during the conduct of the study. Selected cases are included in the report to show typical facts and findings.

The report discusses the nature of the problem as it relates to the appraisal process. The various reasons for wide divergencies are presented, including the relation of divergency to the appraisal testimony. The report also discusses the relationship of appraiser and attorney in condemnation cases. Recommendations to reduce the incidence of wide divergencies are made.

Highway personnel engaged in the acquisition of real property for right-of-way and other public purposes should find this report of practical use. Understanding the problem of wide divergencies in valuation and implementing recommendations that are suggested in this report should result in more equitable valuations and awards.

CONTENTS

PART I

- 1 **CHAPTER ONE Recommendations to Reduce the Incidence of Wide Divergencies**
 - Pertaining to the Independent Appraiser**
 - Pertaining to the Acquiring Agency**
 - Pertaining to Attorneys for the Property Owner**
 - Pertaining to the Courts**

- 2 **CHAPTER TWO The Nature of the Problem**
 - Subjective Nature of Economics and Value**
 - Impact on Society**
 - Percentage of Contested Condemnation Acquisitions**

- 4 **CHAPTER THREE The Nature of Appraisals**
 - The Appraisal Process**
 - The Kind of Property and Use**
 - The Interest to Be Acquired**

- 6 **CHAPTER FOUR The Reasons for Wide Divergencies**
 - Difference in Highest and Best Use Concept**
 - Severance Damages and Special Benefits**
 - Difference in the Understanding of Compensability**
 - Conflicting Legal Premise**
 - Conflicting Engineering Premise**
 - Different Methods of Valuation**
 - Inadequate Factual Data**
 - Misunderstanding of Factual Data**
 - Professional Shortcomings**
 - Use of the Cost Approach to Value**
 - Use of the Market Data Approach**
 - Use of the Capitalization Approach**
 - Some Basic Valuation Principles**
 - Easements, Restrictions, and Leases**
 - Advocacy**
 - Contingent Fees**
 - Instructions from the Attorney**

- 13 **CHAPTER FIVE Relation of Divergency to Appraisal Testimony**
 - The Rules of Evidence**
 - Rules of Evidence in Relation to the Real Estate Market**
 - Relation of the Hearing Body to Divergency**
 - Relation of Divergencies to Level of Government**
 - Discovery Proceedings in Relation to Divergency**

- 15 **CHAPTER SIX Relationship of Appraiser and Attorney in Condemnation Cases**
 Attorney's Function
 Appraiser's Function
 Responsibility of the Expert Witness
 Responsibility of the Attorney
 Instructions of the Attorney
 Ruling of the Court
- 16 **CHAPTER SEVEN The Review Appraiser**
 Function and Responsibilities
 Appraisal Report-Writing Criteria
- 17 **CHAPTER EIGHT Relation of Divergencies**
 To Special Training for Condemnation Appraisers
 To Agency Classification of Appraisers
 To Use of Court-Appointed Appraisers
 To Certification and Licensing of Appraisers
 To Policing the Appraisal Profession
- 20 **CHAPTER NINE The Appraisal Review Committee Report on Wide Divergencies**
 The Appraisal Review Committee of the American Institute of Real Estate Appraisers—Its Functions and Responsibilities
 ARC Findings
- PART II**
- 22 **APPENDIX A ARC Case Resumes**
- 40 **APPENDIX B Supplementary Materials**

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Hewitt, Hingham, Mass., Frances M. Hokanson, Chicago, Ill., Richard J. Leyden, Chicago, Ill., Frank B. Roberts, Atlanta, Ga., J. Edward Rountrey, Richmond, Va., James G. Smith, Columbus, Ohio, A. C. Svoboda, Chicago, Ill., and Alan E. Waldman, Chicago, Ill.

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DIVERGENCIES IN RIGHT-OF-WAY VALUATIONS

CHAPTER ONE

RECOMMENDATIONS TO REDUCE THE INCIDENCE OF WIDE DIVERGENCIES

There are practical actions that can be taken now to lessen the incidence of unwarranted divergency among appraisers in condemnation proceedings, but no one group can successfully instigate remedies for a problem that arises from the action of the several participants involved in a condemnation action.

Although the Appraisal Review Committee (ARC) of the American Institute of Real Estate Appraisers (AIREA) has made a substantial contribution to the lessening of wide divergencies among its Members and Candidates, as indicated by the decreasing number of files to be reviewed, it obviously does not have a direct influence on wide divergencies among nonmembers.

The function of the ARC has acted as a major deterrent to advocacy among its Members and Candidates, as indicated by the findings of the ARC. This encouraging trend has resulted in the refusal of appraisal assignments from clients with preconceived ideas of market value and damages which, to some extent, has impressed on the legal profession that the professional services of a Member or Candidate are not for hire as an advocate.

The researchers believe that corrective measures should emanate from the system that breeds divergencies. With that point in mind, the following recommendations are made, which are confined to the problem of unwarranted divergency between appraisers and specifically not between appraisal testimony and condemnation awards.

PERTAINING TO THE INDEPENDENT APPRAISER

1. The independent appraiser should not appear in court without first having prepared a written appraisal report, or adequate memorandum, in support of his opinion of value, damages, and benefits. The effect of this requirement would be to reduce impromptu or hastily conceived opinions, and hopefully have a moderating effect on the writer.

2. It is essential for the independent appraiser to have special training, or associate with an experienced condemnation appraiser.

3. Independent appraisers should attend and participate in special education courses and seminars, such as:

- a. Condemnation courses.
- b. Regional conferences and chapter seminars of recognized appraisal organizations where condemnation matters are scheduled
- c. Educational courses of other organizations and educational institutions.

4. The independent appraiser should join professional appraisal organizations that enforce observance of high professional standards.

5. The independent appraiser should subscribe to the principles and objectives of appraisal review.

6. The independent appraiser should insist that instructions by the attorney to him on points of law and interpretation of legal matters be in writing. The purpose of this requirement is to avoid the situation wherein the appraiser is placed in an untenable position because of an unsound or improper interpretation by the attorney. Instructions in writing would not necessarily validate the legal assumption but would give the attorney pause for thought before expressing his opinion of the law.

PERTAINING TO THE ACQUIRING AGENCY

1. The acquiring agency should observe the principle of "just compensation," recognizing the obligation of fair play to the property owner as well as to the acquiring agency that will pay for the property.

2. Where such practice prevails, the acquiring agency should abandon any policy that condones offering the lowest appraisal, but offer the best appraisal, based on competent review.

The employment of unprincipled appraisers by some attorneys and some property owners looking for high appraisals should not mislead the acquiring agency into seeking low appraisal testimony in the hope of a split verdict.

3. The acquiring agency should support education on condemnation matters for the reviewing and staff appraisers such as:

- a. Encourage attendance at condemnation courses.
 - b. Encourage attendance at regional, state, and chapter seminars where speakers on condemnation problems are scheduled.
4. The acquiring agency should:
- a. Sponsor on-the-job training in condemnation matters on an objective basis.
 - b. Support and encourage the work of appraisal review committees
 - c. Require that independent appraisers retained by acquiring agencies have special training, experience, and education.
 - d. Make certain that instructions by the agency attorneys on points of law and interpretation of legal matters be given to the appraisers in writing.
 - e. Provide appraisers with sufficiently complete drawings showing cross sections, profiles, cuts and fills, drainage systems, etc., so that engineering data are understood by appraisers for owners and agency.
 - f. Revise and modify requirements for condemning agency's appraisal reports to eliminate minutiae that contribute little or nothing to supporting a professional opinion of value.

PERTAINING TO ATTORNEYS FOR THE PROPERTY OWNER

The canons of the American Bar Association should be enforced so that the attorneys do not knowingly present a distorted appraisal testimony.

In many major cities there are groups of self-styled "appraisers" who make their living by giving "made-to-order" appraisal testimony. They are primarily professional witnesses and should be distinguished from professional appraisers. These witnesses are supported by some legal firms who handle condemnation cases in the same manner as personal injury litigation in which distorted claims for damages commonly occur.

Such situations are the probable cause of many major divergencies in court testimony between appraisers. They are and will remain the most difficult to cure.

PERTAINING TO THE COURTS

The courts should apply strict standards in qualifying appraisers as expert witnesses. Some courts contribute to "legalizing" divergency by permitting the uninformed political appointee and the known "actor" to function as an expert witness when a more strict enforcement of qualifying standards would do much to discourage erroneous valuations and unjust awards.

Under present circumstances virtually anyone can qualify as an expert witness. The resultant testimony is often afforded as much credence by the judge, jury, or commission as is the testimony of a competent and qualified appraiser. For this reason, the court frequently does not have the choice between the testimony of two competent appraisers. Rather, this choice lies between the testimony of one appraiser and one "actor."

Regardless of what reforms may be instituted in other areas relating to condemnation, extreme divergencies in court testimony will continue until more rigid requirements are established and enforced pertaining to witnesses who can properly qualify as expert real estate appraisers

In jurisdictions where discovery proceedings do not require exchange of appraisal reports, the court should require each appraiser to submit a written appraisal report *in camera* (for the court's personal review only). (See comments in Chapter Five.)

The researchers believe that unfettered valuation testimony is a major contribution to divergency and that the lack of a written appraisal report permits too much flexibility. This situation could be immeasurably improved through positive action by the courts to:

- 1 Establish minimum standards of qualifications for an expert witness in order to testify on real estate valuation.

- 2 Require each expert witness to formalize his opinion with a written appraisal report or adequate memorandum that can be examined by the court for its adequacy and conformity to professional standards.

CHAPTER TWO

THE NATURE OF THE PROBLEM

SUBJECTIVE NATURE OF ECONOMICS AND VALUE

By far the most important basic reason for divergencies in estimates of value is the nature of value itself.

Value is a subjective phenomenon. It is the heart and core of economics, a science concerned with trends and

tendencies. At best it is an inexact science fraught with all the whims and caprices of the human beings that constitute our society. It deals with all people and their efforts to make a living.

Economics is based on certain assumptions, one of which is that men in general will tend to act in a uniformly ra-

tional manner. In any given set of circumstances, informed and reasonable men will tend to reach similar conclusions. The emphasis is on "tend," because this science is interlaced with people's attitudes and emotions responsible for typical conduct.

"Economic Man," in being rational, will tend to do what is best for himself. This is to say that if he is selling something, he will try to obtain the best price. In relation to the specific area of interest of this report, the "Economic Man," as a condemnee whose property is being taken in eminent domain proceedings, will try to obtain all he can, and this natural desire makes him look for appraisers and attorneys who can help him do so

Market value of real estate is a summary interpretation of the reactions of typical users and investors in the market. It is the highest price obtainable in the market from informed purchasers who are not forced to buy, and have freedom of choice. Because value lies in the minds of buyers and sellers, it must necessarily fall within a range. The width of the range depends on the nature of the market. An appraisal, therefore, that falls within this range of value must be considered reasonable and acceptable.

Three appraisals of the market value of a residence by three different appraisers who estimate the value of the property at \$18,000, \$20,000, and \$21,000 are acceptable because they are within a range that could easily extend from \$18,000 to \$22,000. On the other hand, a range of value for a "special-purpose" property, which sells infrequently in the market place, could be justifiably greater. It is obvious, therefore, that divergencies must necessarily exist about which there can be no complaint. The very nature of value makes it impossible not to have divergencies.

Add to this basic reason for divergencies the varying judgments of appraisers who honestly are either conservative or liberal in their interpretations and one has divergencies that may be spread over a wider-than-acceptable range.

Still another basic reason for divergencies is the human desire to please one's employer. Most professional men do not want to disappoint their clients, and many appraisers who know they are going to do so will decline the assignment. This situation is apparent when a condemnee or his legal counsel asks an appraiser to appraise the market value, after telling him the offer made by the condemnor. In large communities the attorney may know a reputable appraiser whose outlook is liberal or optimistic and therefore will have no trouble in pleasing his client. The result is wider divergencies without materially violating the appraisal process.

Real estate valuation is an art that calls for the exercise of experienced judgment based on a logical and justifiable approach; it is an observational process—by no means an exact science.

It is inevitable that there will be differences of opinion because individuals with varying degrees of knowledge and skill are allowed to testify. The very nature of the profession, which is that of rendering an opinion, is bound to result in different answers in varying degrees. This is true of all professions, including those more advanced and/or less susceptible to caprice or personality. It is not unusual

for medical and legal opinions to be diametric opposites, or engineering opinions (presumably more exact) to be at wide variance.

This area of opinion difference will always exist—it is part of the appraisal business, but, as professional standards are accorded more recognition, the reasons for wide divergencies will diminish.

IMPACT ON SOCIETY

Wide divergencies in opinions of real estate values in judicial proceedings are a source of inequities to society and a discredit to the appraisal profession. Owners suffer when appraisers testify to low-range values. When value estimates are excessive, condemnors spend more taxpayers' money than they should. As a result, owners and taxpayers are frequently put to extra expense, and important public improvement programs are subjected to possible delays.

It is a fact that courts and juries frequently determine awards by averaging the divergent valuations. If the appraiser for one party testifies to value at or near market value, and the appraiser for the other party supports a value substantially higher or lower, one of the parties often suffers an unfair loss, or benefits from undeserved enrichment. It is apparent that justice in condemnation cases cannot be achieved unless the valuations of all expert witnesses fall within a relatively narrow range. The roadblocks to the attainment of this ideal—and suggestions for alleviation—constitute the reason for this study and report.

Actual experience indicates that most condemnees receive what is believed to be "just compensation"—and frequently considerably more. Most condemning authorities scrupulously follow the policy of resolving doubt in favor of the property owner. If the owner receives less than the amount to which he is entitled under the law, it is the result of error by the appraisers, lawyers, condemning authorities, courts, or a combination of them. It certainly is not planned that way by condemnors, and the very high percentage of amicable settlements (in excess of 95 percent for many projects) confirms adherence to this policy.

As between appraisers for condemnors and condemnees, the former seldom find themselves under pressure to be unobjective in their value estimates because they are less frequently subjected to the influences of former appraisals, advocacy of attorneys, or high hopes of owners. Appraisers for owners, on the other hand, at times find themselves exposed to such pressures and must choose between declining the assignment and finding questionable justification for the hoped-for value.

Of course, the term "divergency" is a matter of degree. Because of the subjective nature of the concept of value and for the other reasons stated in this report, there will always be some differences in value estimates by and between even the most competent and conscientious appraisers. It is when the spread between such opinions becomes unreasonably wide that the objective of "just compensation" and the public image of the appraisal profession are placed in jeopardy.

TABLE 1
CONDEMNATION CASES—NUMBER AND PERCENT RESOLVED
BY CONTESTED ACTION

AREA COVERED	CASES RESOLVED							
	BY NEGOTIATION		BY COMMISSION HEARINGS		BY TRIAL		TOTAL	
	NO.	%	NO.	%	NO.	%	NO.	%
Minn Dept of Hwys.	1,185	58.4	661	32.6	183	9.0	2,029	100
Calif. Div of Hwys , Counties of Los Angeles, Orange, Ventura ^b	3,434	97.47	231 ^a	11.4	89	2.53	3,523	100
City of Chicago ^c	3,193	99.78			7	0.22	3,200	100

^a Appeal from commissioner award of which 48 were settled

^b Period 7/1/68 to 6/1/70

^c Period five years ending July 1969

PERCENTAGE OF CONTESTED CONDEMNATION ACQUISITIONS

Rightfully there is concern about appraisal divergencies, but the subject must be kept in proper perspective. There exists a vast volume of appraisals for condemnation purposes that are processed without contested litigation—a volume far in excess of contested cases.

The researchers did not research in depth the percentage of properties acquired by negotiation versus those acquired by court or jury trial. Data were not readily available from

many agencies, and the statistics were somewhat complicated because of states using commissioner hearings, boards of review, or similar preludes to court or jury trials. But the researchers' inquiry did indicate that only about 1 percent to 9 percent of properties acquired by condemnation go to trial, excepting where commissioner hearings are readily available, or where the condemnor pays all the expenses, including those of the condemnee.

Among others, the examples in Table 1 clearly support the ARC's contention of the minimal number of condemnation cases ultimately resolved by contested proceedings

CHAPTER THREE

THE NATURE OF APPRAISALS

THE APPRAISAL PROCESS

The nature of divergencies is related to a number of elements that often appear in condemnation appraisal work. One of these is the Appraisal Process, which is an orderly outline of the steps an appraiser must take to complete an appraisal. He defines the problem; determines the amount and character of the data to be assembled; and decides which processes and what logic will properly interpret the data into a supportable conclusion.

The appraiser defines the problem in a number of steps. Some of these are:

1. Identification of property to be appraised.

2. Definition of rights involved.
3. Statement of purpose of appraisal.
4. Ascertainment of date of appraisal.
5. Definition of value to be estimated.

The Appraisal Process is then completed in the sequence shown in Figure 1

THE KIND OF PROPERTY AND USE

A market value appraisal, in the last analysis, is an interpretation of reactions of typical buyers and sellers in the market. Whatever influences typical people in the market is important to the appraiser. People in the market are

influenced by cost to replace and/or market transactions of similar property, and/or income; hence, the classic three approaches (cost, market data, and income) are accepted by practically all professional appraisers in the United States.

Market transactions of comparable properties are the best indicator when available in volume. This is so because they are the result of a much longer comparison process. Prudent purchasers look at many properties before they buy. Each time they look they compare. When they do buy, they are usually reasonably well informed. Likewise, sellers usually ask more than they expect to get in the hope a nontypical purchaser will pay more. After they have tested for a reasonable period, sellers usually take less. Therefore, market transactions in volume tend to portray the reactions of typical buyers, investors, and sellers in the market.

Cost of replacement influences people in the market. Under normal conditions no rational man will pay more for a property than it would cost to replace it. The cost of replacement, therefore, represents the upper limit of value. When a structure is new and represents the highest and best use of the land, the cost approach will play an important role in the appraisal process.

The income from investment-type property is paramount in the minds of investors in this type of property. The net income based on economic rentals under typically competent management, capitalized at a rate commensurate with the risk, is a good indication of value.

There may be other data that influence the thinking of people, but it is generally agreed and accepted by most professional appraisers and professional appraisers' organizations that the three approaches (cost, market data, and income), or a correlation thereof, best portray the reactions of typical users and investors in the market. Where all of the approaches are not applicable, a good appraisal report will explain why.

The researchers believe that wide divergencies are not the result of a defective appraisal process, but rather the shortcomings of the appraisers using the process. Exceptions would include different premises based on legal instructions, engineering data, etc., that the appraiser accepts.

The nature and use of the property plays an important role in divergencies. Usually, properties that enjoy a good demand as evidenced by many market transactions are not subject to wide divergencies. For example, from 1965 to 1968, single-family residences were sold in great numbers. Comparable sales were abundant. Under such conditions wide divergencies are most unusual.

Special-purpose property with a limited market may be the source of divergencies because it is difficult to find sales of any kind, to say nothing of comparability. This may result in wide differences of opinion.

The appraisal of vacant land on the fringe of a community may result in a difference of opinion as to the highest and best use. It is sometimes fraught with "reasonable probability" of rezoning to a higher use. This frequently results in divergencies.

THE INTEREST TO BE ACQUIRED

Frequently, less than fee interests in real estate are acquired. They are in the nature of easements that take many forms, few of which are temporary.

Property is sometimes defined as a "bundle of rights" and an easement may consist of one or more of the "bundle of rights" but not all of them, for an easement is an acquired privilege, or right of use or enjoyment falling short of ownership, that one may have in the land of another. An easement may be created by grants from the owner, or by continued use over a long period of time that may establish a "right" by prescription. Easements are merely rights and privileges against physical property, an intangible right to which there are two parties. One is called the "dominant estate" to which the right belongs, and the other "servient property" on which the obligation rests. An easement may be affirmative, as when actual physical use of the land is involved as in a right-of-way, or negative, as when barring use of some right on an adjoining property.

The most common of all easements is the right-of-way, the privilege granted to pass over another's land. For sub-surface use such an easement could be for sewers and water, oil, and gas lines. For surface use it could accommodate roads, driveways, and drainage channels. For overhead use the easement could relate to power lines, pole

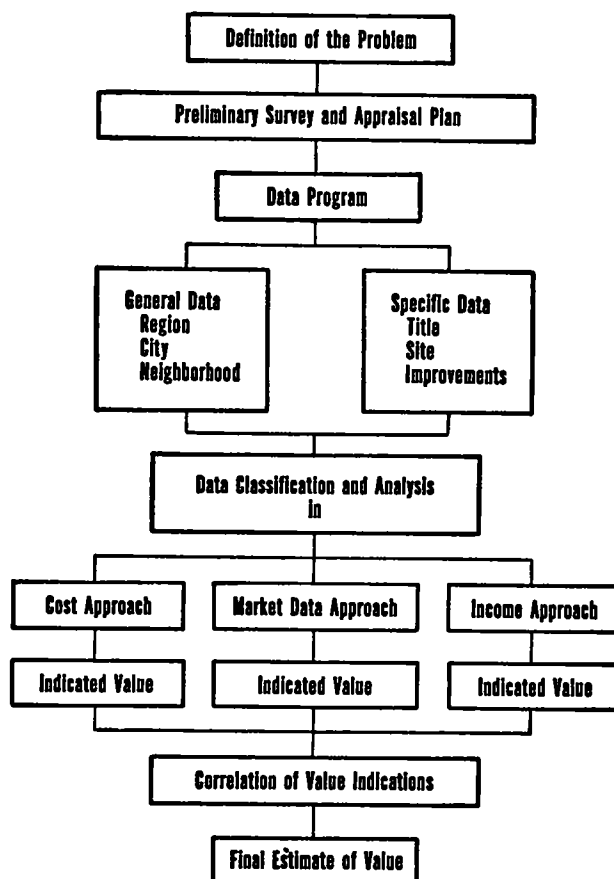


Figure 1. The appraisal process.

lines, etc. Such a right, when granted, carries with it a definite limitation of use that will affect the value of the fee in varying degrees depending on the terms of the easements and the extent of the rights transferred.

There are also easements created for flowage easements, clearance and avigation easements, security easements, and slope easements.

The appraisal problem is to evaluate the rights acquired, or the limitation on use, and to interpret the language of the document. Some easements are so worded that their meaning is ambiguous and requires a ruling of the court to interpret the rights to be acquired or rights affected. A difference in legal interpretations would naturally result in a divergence of appraisal opinion.

CHAPTER FOUR

THE REASONS FOR WIDE DIVERGENCIES

The basis for this chapter is the ARC analysis of the hundreds of cases that have been reviewed by the researchers, the reasons for which are categorized in Table 2 (Chapter Nine), and the inclusion in this report of 70 selected case resumes (Appendix A) that illustrate the variety of causes from which appraisal divergencies arise.

Also, there is a Checklist (Appendix B) for use by public agencies and others to identify the reasons for divergencies on a particular case that is correlated with this chapter and with Table 2.

DIFFERENCE IN HIGHEST AND BEST USE CONCEPT

The appraiser's opinion of highest and best use is the foundation of market value estimates. Knowledge of buyers and sellers as to all the uses to which a property is adapted is an essential requirement of the concept of market value as defined by the courts and, as indicated by this widely cited definition of the Supreme Court of California:¹

The highest price estimated in terms of money which the property will bring if exposed for sale in the open market with a reasonable time allowed to find a purchaser buying with knowledge of all the uses and purposes to which it is adapted and for which it is capable of being used.

The federal courts have explained their viewpoints in the following excerpts.

[The] highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonable near future is to be considered, not necessarily as the measure of value, but to the full extent that the prospect of demand for such use affects the market value.²

However, elements

. . . affecting value that depend upon events or combinations of occurrences which, within the realm of possibility, are not fairly shown to be reasonably probable, should be excluded from consideration, for that would be to allow mere speculation and conjecture to become a guide for the ascertainment of value . . .³

Stability of neighborhoods and growth factors pertaining to land use will result in confining the highest and best use estimate within well-defined parameters that leave limited room for difference of opinion as to the highest and best use.

The exception would be when there is a reasonable probability of change in the existing zoning to a different use, in which case there could be, for political and economic reasons, a difference of opinion as to the reasonable probability of such change or use variance. This is an open matter, subject to the interpretation of the probable future action of the applicable zoning body, be it planning commission, council, board, etc., as well as the appraiser's opinion of such influencing factors as the courts permit to be considered.

Lack of understanding of the limiting effect of easements and restrictions is also a contributing factor.

The advice of the attorney concerning pertinent legal points has to be considered by appraisers. When opposing attorneys have different legal opinions and advise their respective appraisers accordingly, divergencies in value estimates obviously result.

It is well to remember that the function of the appraiser is to interpret the real estate market. As part of this function it is sometimes necessary to render an opinion of the market value that would prevail under legal premises that differ.

It is also well to remember that differences of opinion as to highest and best use are most likely to occur where land use is in a transitional phase from one probable use to another. Differences of opinion of the many variables in-

¹ Sacramento Southern R.R. Co v Heilbron, 156 Cal 408, 104 Pac 979 (1909)

² Olson v United States, 292 U.S. 246, 255 (1934).

³ Olson v United States, *supra*, McGovern v. New York, 229 U.S. 363 (1913), United States ex rel T.V.A. v Powelson, 319 U.S. 266, 289, 87 L. Ed. 1390, 1405-06, 63 S. Ct. 1047, 1059-60 (1943)

fluencing the demand for and value of land under such circumstances are illustrated in the following examples:

1. Unimproved suburban acreage where zoning and planning is not stabilized due to political factors, or where influx of population has created a demand and need that the original planning did not contemplate.

2. Unimproved land or lots where the "reasonable probability" of a zone change is a judgment factor.

3. Unimproved land or lots where the analysis of market absorption is a matter of judgment.

4. Improved properties that are in transition from one use to another because of changes in economic use or neighborhood changes.

5. District disintegration and transition that created the need for urban renewal projects and resulting changes in land use.

SEVERANCE DAMAGES AND SPECIAL BENEFITS

The inherent characteristics of severance damages and special benefits are conducive to wide divergencies because of the difficulty of finding reliable guidelines to measure the effect of the taking and the effect of the proposed public improvements on the remainder lands.

Because severance damage to the remainder is a result of a partial taking, resulting in a disturbance of property rights, the measure of severance damages and special benefits requires an analysis of the proposed public improvement as well as a visual projection of the remainder lands in the after situation.

In some instances the remainder is a different shape and size for which there are no valid comparisons in the market. Under such conditions, any opinion of its market value must be derived from less reliable indices than comparable market sales.

Frequently, the highest and best use of the remainder is affected or changed as a consequence of the partial taking. Also, economic growth trends affecting land value in the district may be accelerated or depressed by the proposed public improvement. This requires the real estate appraiser to base an opinion on future trends and happenings that may well open the door for different appraisers to reach different conclusions.

Add to all this the tendency of some acquiring agencies to minimize damages and to maximize benefits, and that of some property owners to exaggerate damages and minimize special benefits, and it is not surprising that the greatest number of divergencies fall in the area of severance damages and special benefits.

The causes of wide divergencies in this category can be summarized as follows:

1. Lack of understanding on the part of the appraiser of the proposed public improvement and its effect on the remainder property.

2. Instructions of lack of instructions from attorneys on points of law such as the legal definition of the larger parcel, and reasonable probability.

3. Legal interpretation as to compensable or non-compensable items.

4. Confusion in the law pertaining to abutters' rights.

TABLE 2
CAUSAL ANALYSIS
OF CONDEMNATION VALUATIONS

CAUSES FOR DIVERGENCIES	% OF CASES REVIEWED ^a
Misapplication of market approach:	
a. Insufficient data	20.58
b. Sales not comparable	9.27
c. Data not properly analyzed	23.06
d. Other	11.40
Judgment factor—or honest difference of opinion	19.33
Severance damages:	
a. Not supported	17.36
b. None or offset by special benefits	1.60
Highest and best use:	
a. Present versus other	14.67
b. Hypothetical subdivision	3.16
Legal premise—based on instructions of attorney	13.89
Inadequate report or memorandum	12.07
Poor analysis or reasoning	11.19
Cost approach:	
a. Cost estimate, unit price	7.36
b. Depreciation rate	6.99
Incompetence or inexperience	6.73
Reasonable probability of rezoning	4.25
Misapplication of income approach:	
a. Contract versus economic rent	3.88
b. Capitalization or interest rate	7.41
c. Expense estimate	3.05
d. Other	5.59
Different date of valuation	3.68
Difference in engineering reports	1.71
Difference in size of property appraised	1.14
Error in mathematics	1.14
Inadequate preparation	0.57

^a In many instances the causes fell into two or more categories, therefore, the total percentage will exceed 100

5. Legal interpretation of the extent of police power in access problems

6. Confusion in the law concerning special benefits.

7. Difference in interpretation of engineering data.

8. Lack of market data to support the "after value" estimate.

9. Failure on the part of the appraiser to distinguish between compensable and noncompensable items.

10. Inexperience of the appraiser in condemnation valuation.

Following is an explanation of the nature of severance damage and special benefits, emphasizing that where partial takings are involved, skills and training of a special nature are required on the part of the appraiser.

Because the acquisition of private property for public use is frequently for streets, highways, flood control channels, and other rights-of-way, only a portion of the whole property is acquired. This may result in damage to the remainder property called "Severance Damages" or "Benefits," which is categorized as "Special" or "General Benefits."

Severance Damage

Severance damage represents a lessening in value to the remainder—that is, to the part not taken. The damage to the remainder or residual property to be compensable must be created by (1) the taking, and (2) the construction of improvement in the manner proposed on the land involved.

Market value is not based on a special use or purpose, and likewise severance damage must not be considered or predicated on some special or peculiar use to the owner. Rather, it must be estimated in the light of the concept of market value that affirms that it is the value in the market place to buyers as a group.

Severance damage should not be based on speculation. It must not be vague and speculative in character and must not deal with possibilities more or less remote.⁴

Federal Rules as to Damages

If only a portion of a single tract is taken, the owner's compensation for the part taken includes any element of value arising out of the relation of the part taken to the entire tract. Such damage is often, though somewhat loosely, spoken of as "Severance Damage."⁵

Because there is no "and damage" clause in the federal statutes, "just compensation" is to be measured by a strict "before and after" value.

The rule is well settled that when part of a tract of land is taken for public use by eminent domain, the "just compensation" to which the owner is entitled by the Constitution includes those damages to the remainder of the tract that result from the taking as well as the value of the land taken.

In other words, the "just compensation" guaranteed by the Constitution implies not merely the value of so much land separately from its connection with the whole tract, but the injury or loss to the whole estate caused by the taking from it of the part that is appropriated.

State Rules as to Damage

State rules as to damage present varying rules. Most states have a constitutional or statutory provision that requires the condemnor to pay "market value" for the part taken "and damages" to the remainder resulting from the taking and the construction of the public improvement.

This permits—and sometimes requires—a different method of valuation from the before and after method in order that the item of severance damage may be separately stated.

Specific Causes of Severance Damages

Some of the most frequent causes of severance damages are.

1. A change in use to a less profitable use.
2. Distorted shape—not acceptable in the market.
3. Creation of substandard size.
4. Change of grade of street where a partial taking

could create problems, retaining walls, ramps, steep drive-ways, etc.

5. Physical interference with the use of the remainder such as loss of access, or limitation of access by closing of a street, or by constructing a drainage channel.

6. Loss of trackage in some cases.

7. Increased cost of constructing a building caused by change of shape and/or size.

8. Cost of fencing in some cases.

9. Increased cost of irrigation.

10. Increased cost of subdivision.

11. Lower lot yield.

12. Proximity damage

13. Impaired drainage.

Noncompensable Items

Of course, losses suffered by the owner that are not reflected in a depreciation in the value of his remaining real property are generally not compensable, such as:

1. Frustration of his plans to develop, improve, or use his remaining property.
2. Loss of business.
3. Loss of good will.
4. Loss of anticipated profits.
5. Expense of moving personal property.
6. Inability to locate an acceptable substitute location.
7. Circuity of travel.

(Items 5, 6 and others may by statute or administrative policy be additive to the appraisal.)

Benefits

General Benefits

General benefits consist of an increase in value resulting from the construction of the public project and are enjoyed by the entire community. Benefits that may result from the increased population growth, opening of highways that reduce travel time for entire districts, etc., are some examples.

Special Benefits

Special benefits are those that are direct to the property in question, that result in an increase in the utility and value of the remainder property

Although the interpretation of special benefits varies in different states the general rule is that a special benefit is one that:

1. Would be peculiar and direct to the property.
2. Could be shared in common with other properties, although the test is not whether it benefits one or more owners.
3. Must flow from the construction of the public project.
4. Is reasonably certain to result from the public project

The burden of proof, however, is on the condemnor to show deductible benefits.⁶ The burden of proof as to the value of the land and damages to the remainder is on the

⁴ Sharp v. United States, 191 U.S. 341 (1903)

⁵ United States v. Miller, 317 U.S. 369, 376 (1943)

⁶ United States v. Crary, 2 F.Supp. 870 (Va. 1932).

landowners.⁷ (For further study, reference is made to *NCHRP Report 88*, "Recognition of Benefits to Remainder Property in Highway Valuation Cases.")

Methods of Computing Benefits

In the use of the "before and after" method of estimating value, any benefit would automatically be allowed for (unless qualified) because the difference would represent all damages and benefits accruing to the remainder.

In states with the "and damage" clause in the constitution and where benefits may also be offset against the severance damage estimate, a separate computation would be necessary.

Offsetting Special Benefits

Federal Rule.—The federal rule holds that benefits may be offset against the part taken and the damage to the remainder.

In arriving at just compensation an offset should be made against the value of the thing taken, and the damage to the remainder, whatever enhancement in value may have resulted from the public work requiring the taking.⁸

The rule of just compensation should account for

... any special and direct benefits, capable of present estimate and reasonable computation, and should be deducted from the value of the land taken and the damages, if any to the remainder.⁹

The federal viewpoint is expressed by Clyde O. Martz, Assistant Attorney General in the Land and Natural Resources Division, Department of Justice, Washington, D.C., when he said:

A controversial setoff question relates to the character of benefits that may be considered. Too frequently it is loosely stated on the basis of *dicta* removed from context, that only special benefits may be considered and general benefits must be excluded. It is the federal view that such position is supportable only if special benefits encompass all real and direct project benefits, and general benefits are equated to non-project related value appreciation. If the before and after rule is applied, and the same care is used in measuring after value as is used in measuring before value, the landowner will be amply protected.¹⁰

State Rules.—The state rules as set-off vary as indicated:

1. About 14 states follow the federal rule that special benefits can be set off against both damages to the remainder and the value of the part taken.

2. About 20 states follow the rule that special benefits may be set off against damages to the remainder but not against the value of the part taken.

3. In a few states benefits cannot be considered at all.

4. Only a few states follow the rule that both general and special benefits may be set off against both the severance damages and the value of the part taken.

Some examples of special benefits in highway takings are:

1. Installation of street improvements that did not exist before.
2. Increased access resulting from realignment, widening, opening of streets.
3. Change of the remainder property to a higher and better use.
4. Change to a better zone as a result of the public improvement.
5. Creation of a corner lot from an inside lot.
6. Improved drainage.
7. Better site prominence and identity.
8. More road frontage.
9. More useful shape.

DIFFERENCE IN THE UNDERSTANDING OF COMPENSABILITY

There are areas in the legal concept of severance damages where compensability is controversial, but there are many more in the field of special benefits because the legal concept of special benefits accruing to the remainder lands as a result of the construction of the improvement in the manner proposed is not consistent in court rulings throughout the United States. Frequently within the respective states court rulings are confusing or not clear on controversial points not yet clarified by the higher courts.

In view of conflicting opinions in the courts and among attorneys, it is difficult for the appraiser to form an opinion as to whether special benefits are actually present. It is equally difficult for the attorney to instruct the appraiser that special benefits are legally present. This results in wide divergency of appraisal opinion that cannot be resolved until the court has ruled. This lack of understanding of compensability in the field of damages and benefits is a major contributing factor to divergent appraisal opinion.

CONFLICTING LEGAL PREMISE

The legal rules governing the noncompensability or compensability of the rights and interest in the property to be acquired are subject to interpretation by attorneys representing the acquiring agency and the property owner. Because an action in eminent domain is an adversary proceeding, it is not unusual for the opposing attorneys to have different ideas as to the rules of compensability that apply to the property taken.

One of the frequent causes of divergency between appraisers is the instructions of the attorney to the appraiser on points of law that affect the value. This is most likely to occur where the law is not clear or there are ambiguous and contradictory legal decisions such as may be found to some extent in the field of severance damages and more often in the case of special benefits.

Another area is the interpretation of the law pertaining to fixtures, machinery, and equipment that is controversial. Often it is necessary to make the appraisal on an alternate basis as to what is considered realty and what items are

⁷ *United States v. 26 07 acres of land*, 126 F.Supp. 374 (E.D.N.Y. 1954).

⁸ *Dick v. United States*, 169 F.Supp. 491 (Ct. Cl. 1959).

⁹ *Bauman v. Ross*, 167 U.S. 548 (1897); *United States v. Miller*, 317 U.S. 369 (1943); *Aarson v. United States*, 79 F.2d 139 (C.C.A. D.C. 1935).

¹⁰ AMERICAN INSTITUTE OF REAL ESTATE APPRAISERS, *The Appraisal Journal* (Apr. 1969).

considered personalty and leave the decision to a ruling from the court.

Conflicting legal premises arise from different legal interpretation as to the reasonable probability of zoning, interpretation of restrictions, easements, lease clauses, and the property rights involved.

Instructions by the attorney to the appraiser on a matter of law are certainly a proper element to be expressed in the attorney-appraiser relationship, but instructions to the appraiser on valuation are another matter. The appraiser has the choice of accepting or rejecting the attorney's premise. Once accepted without reservation, the premise becomes the appraiser's responsibility.

The researchers are not speaking of instructions from the attorney as to legal interpretations, but are thinking of the attorney's role as an advocate, advancing a premise that may or may not be tenable, that the appraiser is expected to adopt under the guise of legal instructions as to a point of law. Some attorneys want appraisers they can influence. This is perhaps understandable, but the instructed appraisal is the antithesis of ethical requirements of the profession.

At this point it is well to bear in mind that there is a big difference between the opinion of the attorney and the ruling of the court on a point of law involving instructions to the appraiser. The ruling of the court is binding on all parties, whereas the appraiser should recognize that the opinion of the attorney is one that may or may not be accepted by the trial court.

The researchers subscribe to the principle that the professional appraiser should not be influenced by the demand of either the acquiring agency or the property owner. He must have freedom to express an honest opinion backed by reasons that he is not afraid to expose to the scrutiny of the court, the jury, and fellow members of his appraisal organization.

The researchers believe that professional stature demands skilled, competent, and objective appraisal testimony for both owner and condemning body, not as an advocate of one party or the other, but as an objective and unbiased professional.

CONFLICTING ENGINEERING PREMISE

Engineering data and opinion are frequently basic to an appraisal, and a difference in the engineering premise can lead to a divergence in appraisal testimony beyond the control of the appraiser.

The need for engineering information necessary to an appraisal extends to the field of civil, soil, water, electrical, and mining engineering for such properties as:

1. Deposit of natural resources.
2. Cut and fill for rubbish dumps.
3. Soil and geological matters.
4. Underground water supply.
5. Electrical installation.
6. Railroads and public utilities.
7. Machinery and equipment.
8. Subdivision planning.
9. The construction of such public improvements as highways, flood-control channels, dams, and reservoirs by acquiring agencies

Any conflict with the engineering data is reflected in the appraised value. Thus, divergencies resulting from a conflicting engineering premise are due to the appraiser expressing an opinion of market value, damages, and special benefits based on the engineering premise accepted.

The appraiser should be familiar with all aspects of the construction of the project to be built, such as an interchange with off- and on-ramps, frontage roads, grade changes, and drainage facilities, and the effect on the remainder lands. This is foundational to his estimate of damages, special benefits, and after value.

One of the causes of unwarranted divergencies was the failure of the appraiser in a number of cases to acquaint himself with and to understand the effect of the "construction of the improvement in the manner proposed" on the remainder lands.

There is a need for better understanding of the engineering phase of a partial taking. The appraisal report should contain a clear and concise explanation of the "construction of the improvements in the manner proposed."

Separate sections in the report should adequately explain:

1. The portion of the property to be acquired.
2. The shape, size, and uses to which the remainder(s) may be put.
3. Full effects of the acquisition.

DIFFERENT METHODS OF VALUATION

Each of the three classic approaches to value is based on methods that, if properly applied by trained experienced appraisers, should result in similar opinions of market value.

Within the framework of the three approaches to value there can be a difference of opinion as to the applicability of each, and also differences of opinion in the application of the basic principles pertaining to real estate value. But new and untested appraisal theory as such has not contributed to unwarranted divergency.

INADEQUATE FACTUAL DATA

Appraisers having similar qualifications should arrive at nearly the same opinion of value on the usual run of properties, but one or both appraisers operating with inadequate appraisal data cannot help but arrive at an improper and unsupported opinion of value.

To be sound, the value of opinion must be rooted in factual data acquired from the real estate market and processed into an opinion by one trained to do so.

Some of the reasons for appraisers completing appraisals with inadequate factual data are:

1. Inexperience.
2. Incompetence.
3. Dishonesty.
4. The pressure of time and/or inadequate fees that do not permit a thorough appraisal investigation. The result is that the competent appraiser must either refuse the assignment or compromise his judgment in trying to do the job without time to acquire the necessary information.

MISUNDERSTANDING OF FACTUAL DATA

The misunderstanding of factual data by appraisers may be due to a lack of education and training necessary to properly interpret and analyze all data gathered in the appraisal investigation. The answer to this problem is recognition that the appraisal of real estate should be done by those qualified to do so, and that appraisal qualifications are acquired by specialized study and years of experience.

PROFESSIONAL SHORTCOMINGS

Where there are definite shortcomings in adhering to the standards of professional conduct as enumerated in the AIREA's Regulation No. 10 (Appendix B), the recourse is reference to the Institute Ethics Committee if the appraiser is a Member or Candidate. Here, the action taken may be admonishment, censure, suspension, or expulsion. However, there are many cases where the deficiencies are not matters of ethical violations as such, but are shortcomings that the ARC believes can be materially lessened by corrective action.

The ARC believes that progress can be made through continued education. With its always expanding educational program, the AIREA has taken definite steps toward the accomplishment of this objective in the condemnation field. Among these efforts are development of condemnation courses, remainder land-use seminars, proximity damage seminars, report-writing seminars, and regional conferences.

USE OF THE COST APPROACH TO VALUE

The cost approach is an estimate of the replacement or reproduction cost of the improvement on the date of valuation, less an estimate of accrued depreciation—using the term depreciation as loss in value from all causes—plus land value.

The courts generally look with some disfavor on the cost approach as the sole criterion of value. Its use is therefore secondary except in the valuation of special-purpose properties where a limited market exists.

The courts hold that the measure of value for improvements is the amount by which they enhance the value of the land.

The most general reaction to use of the cost approach as the criterion of value was expressed by the United States Supreme Court:

But there are few of these substitute standards which are in fact of assistance in assessing the value. . . . Original cost is well termed the "false standard of the past" where, as here, present market value in no way reflects the cost. So with reproduction cost when no one would think of reproducing the property.¹¹

The misuse of the cost approach contributes to divergency because failure or distortion on the part of the appraiser in either of the estimates will result in different opinions of value.

USE OF THE MARKET DATA APPROACH

The basis for the market data approach is the analysis of the sale of other properties, and, by comparison, the relation of these prices to the subject property.

The courts agree that sales on the open market of the same, or similar, property are generally the best evidence of market value. If there is a market, the market controls. It is only in the absence of such sales that secondary evidence of value is admissible.¹²

Although the market data approach is undoubtedly the most reliable approach to market value and is therefore accorded the most weight by the courts, comparability in essence is a relative term. Properties, like people, are rarely identical, so the appraiser must use his judgment to develop factors of comparison to assist him in presenting a convincing analysis.

A comparable sale is one of any similar property that, when subjected to an analysis of the pertinent facts, will logically indicate by adjustment and comparison the probable price that could have been obtained had the property been offered for sale on that certain date of valuation.

These safeguarding limits are identified in the case of *Los Angeles County v. Faus*:

1. The sales of the other tracts must have been sufficiently near in time.
2. The other land must be located sufficiently near the land to be valued.
3. Must be sufficiently alike in respect to character.
4. Must be sufficiently alike in respect to situation.
5. Must be sufficiently alike in respect to usability.
6. Must be sufficiently alike in respect to improvements.

To make it clear that the two tracts are comparable in value, the price realized for the other land must be considered as shedding light on the value of the land in question. Manifestly, the trial judge in applying so vague a standard must be granted a wide discretion.¹³

Another contributing factor to divergency by misuse of the market data approach is the use of sales occurring after the date of valuation that may reflect enhancement by reason of the construction of the improvement in the manner proposed.

USE OF THE CAPITALIZATION APPROACH

The valuation of an income-producing property is predicated on an intelligent processing of the income derived or to be derived because the price at which income properties sell in the market is related to the income—real or anticipated.

The capitalization approach is sensitive, and can be dangerous in the hands of the unskilled appraiser because assumptions must be made, requiring a high degree of judgment by the appraiser. A 1 percent variation in the capitalization rate in the range of 6 percent to 8 percent may cause a difference in an indicated value of 14 percent to 20 percent.

Because the existing income may not be predicated on highest and best use it is necessary for the appraiser in many cases to set up a projected operating statement of

¹¹ *United States v. Toronto Nav. Co.*, 338 U.S. 369, 403 (1949)

¹² *United States v. Miller*, *supra*

¹³ *County of Los Angeles v. Faus*, 48 Cal 2d 672, 312 P 2d 680 (1957).

income and expense which brings the method under attack as "forecasting."

In the capitalization approach it is necessary to:

1. Estimate the rent schedule.
2. Allow for vacancy.
3. Estimate effective gross income.
4. Estimate fair expense of operation.
5. Estimate fixed charges.
6. Allow for reserve for replacements.
7. Estimate the net income to land and building before recapture.
8. Estimate provision for capital recapture.
9. Select the capitalization rate.
10. Select and apply the proper method and technique of processing income into value.

The courts state as follows:

As a rule profits are *not* a basis of value when they depend upon the skill and knowledge of the owner; but when they depend upon the location, soil, and character of the property they are reliable evidence of value.¹⁴

The truth is the amount of actual net revenue does not determine the value of land in any case. The revenue would vary according to the industry, skill and wisdom of the person cultivating the land.

The actual market value is the thing to be determined, and while NET revenue should be considered, it does not, in general, furnish a conclusive measure of such market value.¹⁵

As a safe working rule if property is rented for the use to which it is best adapted, the actual rent received, capitalized at the prevailing rate for that purpose, forms one of the best tests of value, and accordingly, evidence of the rent actually received at a time reasonably near the date of taking, should be admitted.¹⁶

The misuse of the capitalization approach is a contributing factor to appraisal divergency because:

1. It is a dangerous tool in the hands of the inexperienced
2. The charlatan can distort the valuation and create a wide divergency by maximizing income and minimizing expenses

SOME BASIC VALUATION PRINCIPLES

Certain valuation principles are self-evident. Among these are:

1. Doctrine of surplus productivity.
2. Principle of change.
3. Principle of balance.
4. Principle of increasing and decreasing returns.
5. Principle of contribution.
6. Principle of conformity.
7. Principle of substitution.
8. Law of competition
9. Principle of utility.

10. Principle of anticipation.
11. Principle of integration and disintegration.

Appraisal divergency due to ignorance or misapplication of these principles relates to the education and training necessary to the skilled appraiser.

EASEMENTS, RESTRICTIONS, AND LEASES

Appraisal divergency involving easements, restrictions, and leases usually arises from different legal interpretation of the property rights taken or affected. The ambiguous wording of an easement, the interpretation of a restriction, the wording of a clause in a lease all inherently contribute to divergent appraisal testimony.

Divergency from these causes comes under the heading of legal instructions from the attorney, or different interpretations by appraisers of the language of the lease easement or restrictions, etc.

The valuation of an easement right-of-way or other easement taking entails the same market value considerations as a fee taking, except for the additional judgment factor as to the property rights acquired and property rights not disturbed.

Divergencies from these valuations would come under the same classification as for fee partial takings.

ADVOCACY

Advocacy on the part of the appraiser is a common cause of divergency. It is understandable when one considers the economic and social atmosphere in which the appraiser functions.

The real estate appraiser is often confronted with:

1. The attorney as an advocate who wants the very highest opinion of value and damages for his client.
2. Some bureaucratic acquiring departments who feel they are doing a public duty by acquiring the property as cheaply as possible without regard for the principle of just compensation.
3. The property owner who prefers an appraisal to suit his concept of value.
4. The entrepreneur who needs a distorted appraisal to obtain favorable financing.
5. The financial institution that wants its real estate assets distorted.

CONTINGENT FEES

It has long been recognized that it is unethical for an appraiser to accept an assignment on a contingent fee basis, and although this practice undoubtedly exists among unprincipled appraisers, its extent among them is not possible to document. Certainly, this situation would result in a major contribution to divergency of appraisal opinion. Bear in mind that the amount of the appraisal fee and the per diem rate for testimony can always be elicited from the witness on cross-examination.

INSTRUCTIONS FROM THE ATTORNEY

Instructions from the attorney are covered in Chapter Six.

¹⁴ Brainerd v State, 74 Misc (NY) 100 and 131 N.Y.S. 221.

¹⁵ De Freitas v. Sulson City, 170 Cal 263, 149 Pac 353

¹⁶ United States v Shingle, 91 F 2d 85

RELATION OF DIVERGENCY TO APPRAISAL TESTIMONY

The researchers made inquiry on the relationship of divergency to appraisal testimony to Members of the American Institute of Real Estate Appraisers in 50 states who are engaged in appraising for condemnation purposes. In turn, these Members solicited opinions from knowledgeable private and government attorneys on the question: "Is there anything in your law of condemnation that would unduly limit the presentation of appraisal testimony and thus contribute to divergent testimony?"

All the answers were in the negative as applied strictly to the rules of evidence, but complaints from many states stressed the fact that courts were too lenient in permitting appraisal testimony from witnesses who were not qualified to give expert testimony, such as:

1. Unqualified real estate people
2. Insurance agents.
3. A neighborhood businessman.
4. A friendly neighbor.

Such witnesses have little or no appraisal experience much less maintain membership in any professional appraisal organization with an obligation to abide by any code of ethics or standards of practice.

To compare the testimony of friendly advocates with that of a professionally qualified appraiser cannot help but result in valuation divergency and thus contribute to public disrespect for the appraisal profession as a whole. Courts that give recognition to such minimum qualifications (or none at all) for the expert valuation witness demean the qualified professional appraiser trying to function as an objective expert on the real estate market.

The researchers recognize that local witnesses without professional appraisal experience can abide by ethical standards that may be just as high as those of a member of a professional appraisal organization, and may, by reason of local experience, be qualified to render an opinion of value, damages, and benefits. However, the researchers do wish to point out that frequently the "friendly" advocate is not concerned with the niceties of ethics.

THE RULES OF EVIDENCE

Some appraisers expressed criticism on limitations placed on appraisal testimony by the rules of evidence. A number of respondents had suggestions pertaining to more liberal admissibility of such matters as:

1. Sales from outside the district or the county.
2. Income approach data a buyer would consider.
3. Details of feasibility studies.
4. Options under certain circumstances.
5. Listings that are qualified as legitimate offerings.
6. Offers to purchase, properly safeguarded.

7. Reproduction or replacement cost less depreciation as a check on the other valuation approaches.

This committee recognized that good legal and practical reasons exist for limiting appraisal testimony on the foregoing matters. To have it otherwise might possibly open the door to greater evils.

The researchers believe that the occasional inability to make a full presentation of appraisal testimony arises from the rulings and prejudices of a relatively few inexperienced or incompetent judges.

RULES OF EVIDENCE IN RELATION TO THE REAL ESTATE MARKET

The response from M.A.I.'s* and attorneys to an inquiry as to whether the rules of evidence in regard to appraisal testimony conflict with economic factors that influence the real estate market was generally to the effect that they did not, except that in Texas the "severed land" rule (valuation of the part taken as a unit without regard to the whole) was criticized by appraisers as unrealistic in relation to the real estate market.¹⁷

The fact that a few states do not permit mention of the price of the "comparable" sale on direct examination also came under criticism as too restrictive on the appraisal testimony. The researchers believe that if a comparable sale has merit, its usefulness is diminished by prohibiting the admission of the sale price and would contribute to an unjust award rather than to an appraisal divergency.

There are also instances where legal rulings of compensability such as pertain to conflicts between police power and power of eminent domain at times run counter to actual damages suffered in the real estate market because damages from the exercise of police power are not legally compensable. Examples are installation of median strips, traffic control resulting in circuity of travel, and loss of on-street parking.

RELATION OF THE HEARING BODY TO DIVERGENCY

The question has been asked whether the type of hearing body (judge, jury, commissioners, etc.) makes a difference in the award. The answer is that there is no one solution because the question extends to the competency of each.

An inexperienced judge, a confused jury, or politically motivated commissioners can distort the principle of "just compensation."

The divergency between appraisers usually will occur

* Member, American Institute of Real Estate Appraisers

¹⁷ State v. Carpenter, 89 S W 2d 194, 126 Texas 604 (1936).

before court testimony. The divergency between appraisal testimony and the award is another matter.

The researchers have confined their analysis of those factors that contribute to divergency between appraisers, and not between appraisal testimony and court and jury awards. This is another subject entirely and outside the scope of this project.

Whether the case is heard by a justice of the peace, a board of review, a board of commissioners, a judge, or a jury will not contribute to divergency between appraisers so long as the legal rulings apply equally to all sides. The exception of course is the admissibility of any appraisal evidence that unduly favors one side or the other. This could pertain to factors in the cost and income approach, but more frequently occurs in the market data approach wherein the courts permit

1. Admissibility of sales evidence that lacks comparability
2. Admissibility of "after" sales that reflect project enhancement as evidence of value "before."

The application of evidentiary rules of law that are discretionary with the trial court may be frustrating to the appraisal witness but may not necessarily contribute to appraisal divergency

There are unquestionably instances of bias, prejudice and incompetency on the part of the hearing body that may belittle or ignore expert appraisal testimony and thus contribute to an unjust award, but not necessarily to appraisal divergency

RELATION OF DIVERGENCIES TO LEVEL OF GOVERNMENT

Based on the experience of the ARC of the review of hundreds of files, the researchers conclude that there appears to be no relation between appraisal testimony and divergencies as between city, county, state, or federal acquisition except where there is domination by the acquiring agency of the appraisers employed, either independent or staff

The pattern of domination follows no one agency or no one state. It appears to exist in situations where overzealous public officials develop a philosophy of acquisition that fails to take into account the fact that "just compensation," in principle, means objective appraisals that are fair to the public as well as to the acquiring agency

Divergency may result where incompetent or inexperienced second- and third-level appraisal personnel are employed. The practice of some acquiring agencies of using their lowest appraisal for court testimony in the hopes of getting a split verdict violates the principle of "just compensation" and thereby contributes to divergency and unjust awards.

Also, it appears that in the past there have been instances

where the state or local agency has gone beyond the bounds of propriety by instructing appraisers to minimize or exclude severance damages from their considerations. Consequently, their staff or the independent appraisers who adopt this unethical procedure are at wide variance with established appraisal practice

DISCOVERY PROCEEDINGS IN RELATION TO DIVERGENCY

Discovery proceedings relate to any pre-trial effort to obtain a preview of the opponent's case either through interrogatories, depositions, or exchange of appraisal reports before trial. (See *NCHRP Report 87* "Rules of Discovery and Disclosure in Highway Condemnation Proceedings")

Pre-trial proceedings are for the purposes of defining the issues before trial, disposing of legal issues if possible, and avoiding the element of surprise. Discovery may take the form of submitting the appraisal reports for the court's review, or may provide for an exchange of appraisal reports subject to the discretion and direction of the court.

Pre-trial rules may also provide that each side file with the court a list of their expert witnesses and the nature of their testimony. Failure to include factual data precludes reference thereto at the trial unless good cause exists for the omission.

In the early days of "discovery," appraisal reports submitted for exchange did not always result in a full and fair exchange of appraisal data. For this reason criteria had to be established by courts as to minimum contents exchanged.

So long as the exchange of information is not one-sided—and the court will determine that the exchange of appraisal reports represents a fair exchange—and so long as the attorney-client privilege protecting the work product is not affected, the researchers believe that "discovery" will result in better appraisals and in minimizing divergent appraisal testimony because:

1. It eliminates off-the-cuff unsupported appraisal opinion.
2. It compels appraisers for both sides to make better appraisal investigation to meet required criteria for the report. The required criteria for the appraisal report can be spelled out by the trial court, such as in Los Angeles County, Calif., where the Superior Court issued in 1967-68 criteria for the exchange report in detail entitled "Eminent Domain Policy Memorandum," dated May 6, 1969 (reproduced in Appendix B). The Legislature also adopted similar rules for other counties of the state.
3. It removes from appraisers the area of flexibility of opinion between the date of the appraisal report and date of testimony.
4. It takes away from the appraiser for the acquiring agency the advantage of hearing the defendant's case before testifying.

CHAPTER SIX

RELATIONSHIP OF APPRAISER AND ATTORNEY IN CONDEMNATION CASES

The relationship between attorney and appraiser can be the cause of divergency in condemnation cases. This is understandable because their respective functions are different. The attorney is an advocate, the appraiser is presumed to be a qualified unbiased expert.

ATTORNEY'S FUNCTION

Rightfully, the attorney is an advocate for his client's best interests. As he is an officer of the court, his practice must be free from deliberate wrongs, but there is nothing to stifle his honest efforts as an advocate practicing artfully within the limits of the law to win his case.

If counsel selects the appraisers, he may easily conclude that it is in the best interest of his client and himself to select those with an honest liberal or conservative outlook, and those who are extremely anxious to please clients. Frequently, attorneys take condemnation cases on a contingent basis, and therefore their desire to win is intensified.

Attorneys sometimes attempt to influence appraisers by giving speculative or controversial legal opinions, or call to their attention the reasonable probability of certain events that may have a bearing on the appraiser's conclusion. For some attorneys, influencing the appraiser is part of the advocate's business.

In cases where the attorney has a theory contrary to existing law the researchers believe the attorney is entitled to a competent appraisal of market value, damages, and/or benefits based on his theory, but the appraiser should make it clear in his testimony that he is testifying under instructions from his attorney either based on a reasonable probability that the existing law would be changed to legalize his premise of value, or based on his attorney's interpretation of the point in question.

APPRAISER'S FUNCTION

It is the duty of an appraiser to "estimate value." This must be accomplished with an open mind, and judgment must be exercised as a result of a thorough investigation together with appropriate analyses derived from competence and experience.

The opinion of value should be supported and all factual data obtained during the research should be properly compiled, edited, and presented in the appraisal report that must be available on request.

Proper research and analysis will lead the professional appraiser to a supportable conclusion. Any conclusion that is basically unsupported, in the opinion of the attorney after a study of the report, should be rejected and thoroughly discussed with the appraiser. Under all circumstances both

the attorney and the appraiser must have complete understanding of the nature of the problem and the methods used to resolve the problem. Under these circumstances the appraiser will fulfill his function as an aid to the court and the jury in order that "just compensation" may be obtained.

Finally, when participating in a condemnation case, the appraiser must be more than an expert in appraising the value of the specific class of property involved. Just as the condemnation lawyer, by experience, knows something about appraisal procedure, the appraiser learns something about condemnation law. At least, he should know enough about the general law of condemnation, and more importantly the prevailing laws in the instant jurisdiction, to enable him to recognize the need to seek the counsel and advice of the attorney with respect to specific facets of his appraisal and his testimony.

RESPONSIBILITY OF THE EXPERT WITNESS

The sole obligation of an expert witness is to present his reasoning, analysis, and conclusions (generally on direct examination) that are given to support the estimate of value that has been indicated for a specific property. Properly stated on direct examination, by virtue of study and preparation, it will tend to minimize the effect of cross-examination. Courts grant considerable leeway in cross-examination and adequate preparation will convey to the court and the jury the reasoning, analysis, and conclusions of the appraiser in the stated opinion of value.

There are no restrictions on qualifications for an appraiser or anyone calling himself an appraiser, and most courts tend to give wide latitude to what does and what does not constitute an expert witness. Minimum requirements should be established and, within the jurisdiction of any specific court, adhered to. The name "appraiser" covers a multitude of individuals, some members of recognized professional organizations, others members of organizations seeking to reflect professionalism, members of real estate boards, and others engaged in the sale of real estate.

The question of whether an appraiser should be an advocate for his client's case was laid to rest many years ago with the enactment and enforcement of accepted standards of practice by professional appraisal organizations.

It is proper for the appraiser to be an advocate of his opinion, but this is different than being an advocate of his client's case, which is the function of the attorney.

It is not good practice for the appraiser to sit at counsel table and assist the attorney in cross-examination, but, in rare instances where it does occur, good and cogent reasons should be stated in asking the court's permission; otherwise, the appraiser could be liable to the charge of advocacy by

the opposing attorney. He may, however, act as a consultant to the attorney when he has not appraised the property.

RESPONSIBILITY OF THE ATTORNEY

It is the responsibility of the attorney to make certain all pertinent information is obtained to ascertain the nature of the problem, and to determine the extent and scope of the investigation required to logically support the conclusions that have been reached. It is his responsibility to obtain such information or direct the necessary request to the proper authority. He must remain in close contact with the case from its inception to its final conclusion.

The ultimate verdict, whether before a commission or a jury, will rest largely on the presentation by the attorney of the material and evidence testified to by the expert witness. Therefore, it is of the utmost importance that the attorney and appraiser share the same opinions of the basic evaluation problem and the applicable legal and appraisal principles.

The responsibility of an attorney must be fulfilled in keeping with the law, customs, and procedures that apply. It is a most important function in a condemnation case if the concept of "just compensation" is to be fulfilled.

INSTRUCTIONS OF THE ATTORNEY

It is essential that attorneys instruct appraisers on all matters pertaining to or stemming from the legal principles involved in the case. These instructions must be valid and well-founded. Opinions expressed by an attorney that are not valid and are without foundation should be disregarded by an appraiser. This is not to preclude an attorney from giving specific instructions to an appraiser concerning a point of law with which he disagrees, and under these circumstances to attempt to "write new law." But these points should be discussed, understood, and accepted by the appraiser, based on written instructions from the attorney. In an attempt to change existing law which, in the opinion of the attorney, is outmoded or inconsistent with

modern-day practice, the intent is to correct what legally constitutes an injustice to his client.

An appraiser accepting such an assignment, under conditions specifically outlined in writing by counsel, must also be prepared to give an estimate of market value under existing law should the court rule against the "new" legal premise.

The more common examples where an attorney's instructions to an appraiser are often necessary are:

1. Interpretation of a private or public restriction.
2. Interpretation of a lease as to lessor and lessee rights.
3. Interpretation of the right acquired or retained in an easement such as for power transmission lines.
4. The manner of presenting evidence on the "reasonable probability" of a zone change or variance from existing zone.
5. The definition of the larger parcel.
6. The admissibility of a certain sale, which could involve such items as time and motivation, affecting the consideration.
7. The admissibility of feasibility studies.
8. Interpretation of stipulations between the parties.

RULING OF THE COURT

There are many diverse laws concerning admissibility of evidence relative to real estate in various jurisdictions. Rulings in one jurisdiction may not apply in another. However, the ruling of the court must be followed in proceedings in eminent domain.

It is the responsibility of counsel to argue before the court prior to any ruling that may be made by the court which, in effect, would not result in achievement of "just compensation" through due process of law.

On occasion the appraiser's client's attorney will appeal to the trial judge before the trial begins for a ruling on a specific point that will control the mode or basis of the appraised value to be testified to at the trial. The appraiser must be guided by the judge's ruling or possibly be dismissed as an unacceptable witness during the trial. The appraiser's opinion of the propriety of the ruling has no standing in court.

CHAPTER SEVEN

THE REVIEW APPRAISER

FUNCTION AND RESPONSIBILITIES

Many large condemnors, such as federal or state highway departments, or large urban renewal projects, employ Review Appraisers. The function of these appraisers is to

review appraisals generally and to compare two or more appraisals of the same property. Usually the condemning body employs two appraisers to appraise each property independently. If the two appraisals have very little diver-

gence and meet other requirements of the Review Appraiser, approval is given. If, however, the two appraisals are far apart as to value indicated, he will counsel with each appraiser independently to ascertain the reason for the divergence. He may have new facts and legal interpretations that shed more light on the appraisal problem. If both decide they cannot change their opinions, the Review Appraiser may make his own estimate of value.

In the process, the Review Appraiser satisfies himself that the appraisers are investigating the right property, and that the measurements and areas are in accordance with the factual data supplied to the appraisers. He will make certain that both appraisers included the description of the whole property from which only a part will be taken. So far as possible, he will ascertain whether all the items of damage are compensable and will call any factual difference of opinion to the appraiser's attention.

The chance of having an unsupportable appraisal of the value when a good Review Appraiser is employed is greatly reduced. Divergencies are generally reduced because any mistakes the condemnor's appraisers may have made have probably been corrected.

The researchers believe that it is good practice to employ a qualified Review Appraiser. If he functions well, he not only improves public relations but also tends to reduce the incidence of unwarranted divergencies.

APPRAISAL REPORT-WRITING CRITERIA

Good appraisal report-writing criteria would be observed if the steps of the Appraisal Process (Fig. 1) were followed. Frequently there are witnesses (especially for the condemnee) who are not professional appraisers and, therefore, are probably not acquainted with the Appraisal Process. In many cases no written report is made. Sometimes reports consist of a few paragraphs indicating that the witness looked at the property and concluded that the value was x dollars. This procedure is also bad practice.

Minimum report criteria should include, among other items, an adequate description of the property and the neighborhood, date of valuation, an enumeration of the market data (or the lack of it), other approaches if market data are not available, and the processes or logic employed to reach a supportable conclusion. (Refer to Regulation No. 10 and to the Eminent Domain Policy Memorandum "Criteria for Exchange Appraisal Reports," in Appendix B.)

The tendency in many jurisdictions to broaden rules of discovery makes it even more necessary to have a written report. The practice in some jurisdictions of furnishing only a partial report tends to defeat the objective of the discovery procedure. The exchange of complete appraisal reports that include at least minimum criteria should tend to reduce the incidence of unwarranted divergencies.

CHAPTER EIGHT

RELATION OF DIVERGENCIES

TO SPECIAL TRAINING FOR CONDEMNATION APPRAISERS

Proper functioning of the appraiser in the field of condemnation requires knowledge of matters wholly apart from those of the appraiser who appraises for the purchase or sale of property, mortgage loan purposes, or for other purposes. To evaluate the effect of a partial taking and the construction of the improvement in the manner proposed on the part taken and its effect on the remainder lands, condemnation appraisers must be familiar with basic legal concepts that pertain to such matters as the definition of the larger parcel, severance damages, special benefits, law of eminent domain, police power, and abutters' rights.

The appraiser for condemnation purposes must have knowledge of the rules of evidence lest improper answers to questions on direct and/or cross-examination result in part or all of his testimony being stricken.

In all the foregoing matters classroom education is essential because appraising for condemnation purposes is

a complex speciality. However, classroom training in itself will not prepare the condemnation appraiser for every problem to be encountered in the field unless it is augmented by experience gained in working with or serving an apprenticeship under an experienced condemnation appraiser.

The ARC found in its review experience that some divergencies can be attributed to inexperience for which special training would have been a counteracting force.

Inexperience not only was the cause of the young appraiser getting involved beyond his capabilities, but it also applied to some governmental and institutional appraisers in housing and mortgage lending who, on retirement, entered the independent appraisal field for condemnation purposes only to discover they lacked the training and specialized knowledge to successfully solve such problems.

The American Institute of Real Estate Appraisers has offered Course IV in condemnation which has been given since 1958. Education on condemnation matters has been augmented by the AIREA sponsoring "Remainder Land

Use Studies" and by seminars on "Proximity Damages and Special Benefits." The subject of condemnation also has held a prominent place on programs of the AIREA's regional conferences and chapter seminars.

The researchers recommend that special educational training be a requirement for condemnation appraisers except where there is proven ability through long experience and reputation.

TO AGENCY CLASSIFICATION OF APPRAISERS

Any movement by acquiring agencies to classify appraisers according to individual qualifications would be a forward step in professional status so long as the classification is based on professional qualifying standards administered by those competent to do so, and is not politically influenced or controlled. By this is meant competent administrators who understand the Appraisal Process.

Two examples of interest are found in California:

1. Inheritance Tax Appraisers appraise all estates on a fee basis. It is a matter of record that some 150 appointments have been made by the State Controller on a strictly political basis. The personnel appointed consist mainly of attorneys, and a few labor union officials, etc., who have practically no appraisal qualifications. A proposal to change this law was defeated in the legislature, but currently a proposal is pending to require civil service status for staff appraisers and qualifications for fee appraisers.

2. In recent years, the California Savings and Loan law has provided for the classification of appraisers into four categories, each with appropriate required qualifications as to education and experience. Under this law, authority is granted by the Savings and Loan Commissioner to all state licensed savings and loan associations to approve appraisers in four classes, subject to final determination by the Savings and Loan Commissioner.¹⁸

A brief summary of the four classifications follows.

- a. *Appraiser One*—An appraisal trainee who may assist an appraiser two, three, or four in appraising residential properties.
- b. *Appraiser Two*—Permitted to appraise the fee interest in residential property up to and including four units and also residential lots.
- c. *Appraiser Three*.—Permitted to appraise the fee or leasehold interest in existing and proposed residential properties, and also developed or undeveloped land zoned for residential use only.
- d. *Appraiser Four*—An approved appraiser who is permitted to appraise any type of real property that may be accepted as the security for a loan by an association.

The merit of this law is that it alerts savings and loan officials to the fact that appraisal qualifications are necessary and by its diligent application will prevent the inexperienced appraiser from accepting assignments beyond his capabilities.

Although appraising for inheritance tax purposes and for loan and sale purposes are not the same as for condemnation, the foregoing is cited as a practical example of agency certification of appraisers.

Many acquiring agencies such as Divisions of Highways have set their own qualifying standards. Also, Civil Service requirements for staff appraisers tend to classify appraisers according to grades. In New York State, an appraiser who wants accreditation by the State Highway Department must have five years of real estate experience and at least two years of actual appraisal experience. Successfully passing a comprehensive examination is still another requirement.

TO USE OF COURT-APPOINTED APPRAISERS

There have been instances in condemnation cases where wide divergencies have concerned the court to the extent that it has felt compelled to exercise its discretionary powers to appoint or recommend to counsel that they stipulate to the court to appoint another appraiser in whom the court has confidence.

Expert opinion should be the means of assisting the court and juries to arrive at just decisions, and it is when this principle is violated that courts lose confidence in expert opinion.

TO CERTIFICATION AND LICENSING OF APPRAISERS

The certification or licensing of real estate appraisers by the state would of necessity require qualifying standards such as minimum education, minimum experience and a passing grade in a comprehensive examination conducted by the state.

From a practical viewpoint, certification of appraisers could compound the problem of divergency. Because certification would imply a competency to the public, this would have to be measured by comprehensive qualifications and the standards of performance would have to be enforced by strict policing. This is a most difficult task for a profession that is an art and an inexact science within the framework of an opinion.

At this time, no states require certification of appraisers. There are no license requirements for real estate appraisers by any state, but eight states require a real estate appraiser to hold a broker's license.

In the event of certification or licensing, there is the grandfather clause to consider because no existing appraiser can be deprived of practicing.

A license law would be a practical approach to the beginning of regulation of the appraisal profession, but the grandfather clause would grant a license to anyone who ever made an appraisal, qualified or not. This would result in an unknown quantity of people licensed to make an appraisal that would take a generation to outgrow. A newcomer in the field could be required to meet minimum qualifying standards which could be upgraded constantly, and thus eventually the license law would be meaningful.

The licensing of appraisers could become a foundation for a minimum level of competence required of all appraisers. From this base the appraisers could work toward

¹⁸ Subchapter 2 of Section 7250 or Section 10608 of the Savings and Loan Association Law

greater professional recognition by meeting the high standards of professional appraisal organizations. Thus, a license law would not be competitive with a professional designation but would set minimum qualifying standards.

TO POLICING THE APPRAISAL PROFESSION

Because the objective of a certification or license law would be to regulate the appraisal profession and enforce certain minimum qualifying standards, it follows that any discussion of this subject should include an inquiry into the problem of policing the industry.

Because the appraising of real estate is an art and an inexact observational science where the opinion is the end product, it is difficult to prove that a divergent opinion of market value does or does not derive from unethical conduct. (See Regulation No. 10 in Appendix B.)

Adding difficulties to enforcing ethical standards are such factors as:

1. The confidential nature of the report between appraiser and client. Many appraisals are confidential in nature, and rightfully the client may object to disclosure of the appraisal report to others. It is unfortunate that there are employers of appraisal services who do not want an objective honest appraisal and will do everything possible to protect their source.

2. The privileged nature of a report between appraiser and attorney

3. The obvious difficulty in expecting one appraiser to testify against another, because of social or business reasons.

4. The fear of libel action.

5. The fact that governmental agencies and financial institutions will not permit their personnel to initiate or participate in an ethics committee hearing.

6. The many "gray" areas in appraisal divergencies where proof of unethical conduct is inconclusive.

In view of the foregoing it does not appear to the researchers that it is sensible to expect that a state board of appraisers or similar body would have any greater success than, or as much as, professional appraisal organizations in enforcing professional standards related to divergencies.

Should a state board of appraisers ever be created, the researchers believe that only flagrant cases of misconduct could be expected to compel punitive action, and then prob-

ably only after conviction in a court of law for such crimes as fraud, forgery, perjury, and other felonies.

Also to be considered is the "grandfather" clause, which could mean a delay of a generation before qualifying requirements could be expected to be enforced.

This is not to say that in states where licensing laws are enacted that minimum qualifying standards should not be required, nor that efforts should not be continued to raise these qualifications as the needs of the public for professional competency are recognized.

The difficulty of enforcing ethical standards and handling cases of misconduct in a profession is indicated by the problem of the state bar associations as shown by a recent three-year study by a committee of the American Bar Association headed by former Supreme Court Justice Tom C. Clark, whose report was recently made public. Reference is made to this report because it outlines the scope and complexity of the problem and makes specific recommendations as to procedure for processing cases of misconduct.

The Certified Public Accountants (CPA) who are licensed under a State Board of Accountants have also come under criticism for questionable accounting practices.

It is in the field of unrealistic divergencies that this report is concerned and to which the remarks on "policing" are directed.

Whether policing for the appraisal industry is to be by a state board or similar, or by appraisal organizations, the researchers believe that certain basic factors must be taken into account for the policing procedure to be meaningful:

1. The researchers' experience in ethics matters is conclusive that one professional man will not usually initiate a report of misconduct against another. This is why the "screening" process as implemented by the ARC is so vital to the success of its "policing" policy.

2. So as not to violate the confidential nature of the appraisal report, each appraiser testifying at any public hearing or trial should be required to submit to a central review board a record of his testimony (or appraisal report if requested) after the testimony is a matter of public record and the case adjudicated.

The foregoing procedure would do much to eliminate unrealistic divergencies because the offenders would soon build up a statistical record that would be self-incriminating.

THE APPRAISAL REVIEW COMMITTEE REPORT ON WIDE DIVERGENCIES

THE APPRAISAL REVIEW COMMITTEE OF THE AMERICAN INSTITUTE OF REAL ESTATE APPRAISERS—ITS FUNCTIONS AND RESPONSIBILITIES

The Appraisal Review Committee (ARC) has been in continuous operation since its inception July 1, 1961, when Regulation No. 12 was adopted (see Appendix B).

Established by action of the Governing Council of the AIREA on that date, the ARC's principal function concerns adherence to professional appraisal standards where two or more Members and/or Candidates testify, at the request of opposing litigants, to value, damages, or benefits in a judicial proceeding, or any other public hearing. To properly achieve the objective of this and related functions, the ARC is required and empowered to review such valuations and, where necessary, institute remedial action designed to correct errors in the future application of professional appraisal techniques. This authority, together with attendant remedial responsibilities, is given the ARC under the provisions of Regulation No. 12.

It is a fact that divergencies in condemnation value opinion have always been troublesome if for no other reason than the publicity (frequently uninformed or misinformed) that accompanies the taking of any private property.

The identification of errors known to be the causal factors of divergency involves the understandable human reluctance to make and/or receive constructive criticism by and between professional appraisers.

These two factual elements constitute much of the environment in which the ARC has operated and will continue to operate. It is an environment where the sense of urgency "to do something" about condemnation divergencies might easily have led the organization to concentrate on preservation of a professional image, as opposed to the preservation of known and recognized appraisal standards. That the latter course has been tenaciously and aggressively pursued by the ARC reflects credit on the professional dedication of the AIREA, and on its come-what-may insistence in maintaining the highest levels of professional competency for the AIREA as a whole—despite sporadic contrary attitudes, disagreements, and desires voiced by a relatively few Members and Candidates.

In the beginning, the ARC evolved a single divergency policy that, throughout the years that have followed, has remained unchanged. In effect, this policy holds that correction of appraisal errors in condemnation value opinions is most effectively accomplished through upgraded education, whether undertaken by supplementary formal and official study courses, by attendance at specialized

seminars, or by dialog with the case reviewer or other authorized review personnel. It is therefore obvious that ARC has functioned and will continue to function as an effective arm of the AIREA's Education Committee.

Contrary to what has sometimes been believed, ARC does not work extremely closely with the AIREA's National Professional Ethics Committee except in those instances where violation of the Code of Ethics is evident, and Regulation No. 12 requires that the file be referred to the Ethics Committee.

In respect to operational procedures, however, the ARC has recorded a considerable history of changes, most of which have been for the better. As with any new and untried group or organization, ARC's first attempts at administration—at least in retrospect—were characterized by trial and error. For example, before the adoption of Regulation No. 12, it was considered feasible for AIREA Members to participate in the review work of the ARC by submission of condemnation appraisal reports on a voluntary basis. This particular procedure left much to be desired. It is now mandatory for Members to submit to the ARC all condemnation appraisals as spelled out in Regulation No. 12. There are no exceptions to this requirement. The submission takes the form of a statement of valuation to AIREA headquarters office within ten days following the decision of the lower court, or not more than 30 days following conclusion of testimony, whichever is earlier. Further, if requested, the Member or Candidate must also forward a complete copy of his appraisal report to the proper review authority.

Numerous changes have also been necessary in the routing and flow of these appraisal review cases. This situation could hardly have been avoided when consideration is given to the sharply increased number of condemnation appraisals brought on by accelerated highway programs and urban renewal projects.

Currently, the review process is conducted across a three-tiered structure, beginning with the Member's own Chapter ARC. The ARC at national level has long held that reviews-in-depth are best accomplished at the local level where familiarity with conditions applicable to the real properties in question probably will surpass expert knowledge from afar. More than this, where deficiencies in value opinion are found to exist, the confidential counseling as to pertinent causes and remedies that follow are known to be heeded rather than resented or perhaps disregarded. It is one thing to receive constructive criticism from those familiar with the area and another to accept the same constructive remarks from a fellow professional whose

knowledge of the area may be confined to the materials he has read.

Recommendations and action taken by the Chapter ARC next move to the Regional ARC member. This member further reviews the facts in hand, and may or may not concur with the corrective action recommended by the Chapter ARC. There are many reasons for nonconurrence, but identification of such reasons in this section of the report would contribute little to the commendable results that the present flow of condemnation reviews has achieved. Both the AIREA and the National ARC are adamant in the enforcement of a policy that holds that the work of the ARC must never degenerate into a witch-hunt, and they are equally adamant in their position that faulty opinions of value perpetrated by any Member or Candidate should not simply be ignored.

The final movement in the ARC review flow requires the Regional ARC member to forward all pertinent data to the National ARC for final review and disposition. Again, the right to concur or not to concur with the findings and recommendations of the Chapter ARC and the Regional ARC member is the prerogative of the National ARC; and this prerogative is exercised. The recommendations of the ARC review may take one of the following forms: the file may be closed without further action; the file may be closed after the Member or Candidate has been verbally advised, counseled, cautioned, or criticized; or the file may be referred to the Ethics Committee.

In addition to reviewing the adequacy of appraisal theory and techniques in condemnation valuations, the National ARC has maintained a continuing study of its case histories to determine the causes of divergencies in valuation opinions, and to establish a range of acceptability consistent with the recognized fact that the most proficient professional appraiser must, in addition to the use of a sound education, exercise judgment tempered by day-to-day experience. The appraising of real estate is a professional science, but, like economics and medicine, it is less than an exact science. For this reason, divergencies in value opinion will always exist, just as the National ARC will always be concerned with the degree of divergency range that can be tolerated given a fully professional performance on the part of its Members and Candidates.

The AIREA believes that the demands of skilled, competent, and objective appraisal testimony must be available to both owner and condemning body—not to adopt their

point of view as an advocate, but to render objective and unbiased professional service.

The AIREA encourages the appraiser to be an advocate of his opinion, not the advocate of his client.

ARC FINDINGS

From July 1, 1961, until October 31, 1969, a total of 4,372 condemnation files were opened under Regulation No. 12, with 9,821 instances of ARC Form No. 1 (reporting forms) being filed.

Of these files, 11 percent were closed because there was no opposing witness (instances where Members or Candidates presupposed that another member or candidate would testify to value on the opposing side); or because candidacy for AIREA membership of one of the witnesses was terminated and the ARC no longer had the right to review the appraisal. The death, resignation, or expulsion of a Member also acted to preempt a limited number of reviews.

A total of 24 percent of the files were closed because the divergency in testimony fell within the allowable percentage accepted by the ARC. It is noted here that these percentages were set by the very nature of appraising, giving weight to differences encountered in the appraisal of various property types. Thus, the acceptable divergency for a single-family residence is not the same as for a special-purpose property, etc. These controls are carefully reviewed each year to determine whether each should be tightened or extended.

Another 5 percent of the files were closed because of the nature of the problem involved. It was believed that a review would serve no educational purpose.

An additional 12 percent of the cases were not yet adjudicated and thus could not be reviewed. Therefore, it is the remaining 48 percent of the cases with which this report is concerned.

The causes for wide divergencies in testimony are given in Table 2.

Of the cases reviewed, 46 percent were takings in full and 54 percent were partial takings. As might be expected, it was in the area of partial takings that the greatest divergencies occurred. This is treated elsewhere in this report.

Appendix A consists of a number of studies taken from the files. These cover a range of states as well as a range of reasons for wide divergencies. All identity as to the appraisers or property involved has been eliminated.

APPENDIX A

ARC CASE RESUMES

A.R.C. CASE RESUME		NO. 1
ITEM	FACTS AND FINDINGS	
PROPERTY	100 acre farm with farm buildings	
ZONING	Industrial	
H & B USE	Industrial	
TAKING	Full	
VALUATION	Appraiser A \$492,000	Appraiser B \$940,000
DIVERGENCY	91%	
AWARD	\$625,000	
DATE OF VALUATION	Same	
REMARKS	Appraiser A found no industrial sales, used commercial sales and adjusted Appraiser B used industrial sales in city without adjustment	
CAUSE OF DIVERGENCY	Use of industrial vs commercial sales, and failure on the part of Appraiser B to adjust for location	

A.R.C. CASE RESUME		NO. 2
ITEM	FACTS AND FINDINGS	
PROPERTY	Laboratory used for the manufacture of special products	
ZONING	Industrial	
H & B USE	Present use	
TAKING	Full	
VALUATION	Appraiser A \$153,000	Appraiser B \$253,000
DIVERGENCY	65%	
AWARD	\$243,000	
DATE OF VALUATION	Same	
REMARKS	Property consisted of three buildings designed, developed and used for a particular operation. Appraiser A approached the problem as market value Appraiser B recognized and appraised as "value in use"	
CAUSE OF DIVERGENCY	Appraisal of property under "value in use" concept vs. market value	

A.R.C. CASE RESUME		NO. 3
ITEM	FACTS AND FINDINGS	
PROPERTY	Garage used for storage of heavy duty construction equipment.	
ZONING	Industrial	
H & B USE	Industrial	
TAKING	Full	
VALUATION	Appraiser A \$35,000	Appraiser B \$91,000
DIVERGENCY	160%	
AWARD	\$47,500	
DATE OF VALUATION	Same	
REMARKS	Appraiser B, very young and inexperienced, misapplied all three approaches, compounded by several mathematical errors. He also treated the business loss as a compensable item	
CAUSE OF DIVERGENCY	Inexperience of Appraiser B.	

A.R.C. CASE RESUME		NO. 4
ITEM	FACTS AND FINDINGS	
PROPERTY	Vacant lot with billboards	
ZONING	Unknown	
H & B USE	As zoned	
TAKING	Full	
VALUATION	Appraiser A \$3,500	Appraiser B \$13,500
DIVERGENCY	286%	
AWARD	\$5,500	
DATE OF VALUATION	Same	
REMARKS	Appraiser A treated the billboards as personal property producing an income of \$330/year rental, which he capitalized at 10% or \$3300, rounding to \$3500 Appraiser B treated the billboards as a part of the real estate, indicating the highest and best use of the land was for billboards because of its corner location. He used a gross rental of \$2,000/year, a net rental after depreciation of \$1,365/year, which he capitalized at 10% giving an indicated value of \$13,365, rounded to \$13,500 Neither appraiser used comparable sales, depending solely on the Income Approach. Owner of property refused to give information even to his own appraiser, who should then have refused this assignment. Each might have sought information from the sign company	
CAUSE OF DIVERGENCY	Lack of cooperation of the litigant with the appraisers and inexperience of appraisers	

A.R.C. CASE RESUME		NO. 5	
ITEM	FACTS AND FINDINGS		
PROPERTY	Wholesale and retail stores		
ZONING	Commercial		
H & B USE	Present use		
TAKING	Full		
VALUATION	Appraiser A \$80,000	Appraiser B \$85,000	Appraiser C \$115,000
DIVERGENCY	44%		
AWARD	\$94,000		
DATE OF VALUATION	Same		
REMARKS	None		
CAUSE OF DIVERGENCY	Difference of opinion as to rental value of owner-occupied operation		

A.R.C. CASE RESUME		NO. 6	
ITEM	FACTS AND FINDINGS		
PROPERTY	80 acres with a residence		
ZONING	Residential		
H & B USE	As zoned		
TAKING	Partial		
VALUATION		Appraiser A	Appraiser B
	Before	\$175,000	\$195,000
	After	\$130,000	\$ 87,000
	Comp	\$ 45,000	\$108,000
DIVERGENCY	11% in value of the whole 140% in total compensation		
AWARD	\$72,000		
DATE OF VALUATION	Same		
REMARKS	The entire parcel consisted of 80 acres. The taking was 18 acres Both appraisers were relatively close in the "before" situation Highway map showed that an access road would be constructed in the "after" condition. Appraiser B under legal instructions ignored this, and appraised the remainder as being landlocked.		
CAUSE OF DIVERGENCY	Appraiser B acted under legal instructions		

A.R.C. CASE RESUME		NO. 7	
ITEM	FACTS AND FINDINGS		
PROPERTY	Store and apartment above, plus additional vacant land.		
ZONING	Commercial		
H & B USE	Small shopping center or gas station with additional facilities		
TAKING	Partial		
VALUATION		Appraiser A	Appraiser B
	Before	\$88,000	\$136,500
	After	\$ 1,000	\$ 1,800
	Comp	\$87,000	\$134,700
DIVERGENCY	55% in the value of the whole 55% in the total compensation		
AWARD	\$115,500		
DATE OF VALUATION	A - 6/64 B - 12/68		
REMARKS	Appraiser A was not permitted to update his appraisal report because of lack of funds. He admitted his error and should have refused to testify for State, however, he was afraid he would lose any future contracts from that source Rise in values due to six service stations being taken in area, and vacant sites were at a premium Appraiser B used later date, taking these facts into consideration		
CAUSE OF DIVERGENCY	Failure of Appraiser A to update his appraisal report.		

A.R.C. CASE RESUME		NO. 8	
ITEM	FACTS AND FINDINGS		
PROPERTY	Residence		
ZONING	Residential		
H & B USE	Present Use		
TAKING	Full		
VALUATION	Appraiser A \$10,000	Appraiser B \$20,000	
DIVERGENCY	100%		
AWARD	\$15,000		
DATE OF VALUATION	Same		
REMARKS	Appraiser B an inexperienced appraiser failed to adjust location which was on an impassible dirt road with no services except electricity against comparables with full services.		
CAUSE OF DIVERGENCY	Failure by Appraiser B to adjust comparable sales to subject property		

A.R.C. CASE RESUME		NO. 9	
ITEM	FACTS AND FINDINGS		
PROPERTY:	Drive-in restaurant.		
ZONING.	Commercial		
H & B USE:	Present use		
TAKING.	Full		
VALUATION.	Appraiser A \$17,000	Appraiser B \$35,000	
DIVERGENCY.	106%		
AWARD.	\$23,000		
DATE OF VALUATION:	A-6/65	B-3/65	
REMARKS	<p>Building was vandalized by former tenant and many usable items removed for use in his own new building.</p> <p>Appraiser A used date he received order from State to appraise</p> <p>Appraiser B used date one month after tenant moved out because of knowledge of condemnation.</p>		
CAUSE OF DIVERGENCY:	Difference in condition on different dates of valuation.		

A.R.C. CASE RESUME		NO. 10	
ITEM	FACTS AND FINDINGS		
PROPERTY.	Vacant land		
ZONING	Industrial - formerly recreational		
H & B USE.	As zoned		
TAKING	Full		
VALUATION	Appraiser A \$12,590	Appraiser B \$144,000	
DIVERGENCY:	1044%		
AWARD	\$22,500		
DATE OF VALUATION	Same		
REMARKS:	<p>Appraiser for Condemnor used sales from 1960, 1961 and 1962 while Appraiser for Condemnee used more current ones</p> <p>Appraiser for Condemnee used sales out of area and failed to show proper adjustments.</p> <p>Appraiser A indicated land values were static in area and that there was no difference as to value of land-locked properties and land having road frontage. Case appealed. Verdict upheld</p> <p>Appraiser B's report was entirely inadequate.</p> <p>Appraiser for Condemnee ignored site problem.</p>		
CAUSE OF DIVERGENCY	Use of comparable sales, inexperience of Appraiser A; incompetency of Appraiser B.		

A.R.C. CASE RESUME		NO. 11	
ITEM	FACTS AND FINDINGS		
PROPERTY	Vacant land		
ZONING	Commercial		
H & B USE	As zoned		
TAKING	Partial		
VALUATION		Appraiser A	Appraiser B
	Before.	\$25,000	\$56,000
	After	\$ 1,000	\$ 3,000
	Comp	\$24,000	\$53,000
DIVERGENCY	124% in value of the whole 121% in the total compensation		
AWARD	\$42,000		
DATE OF VALUATION	Same		
REMARKS	<p>Property was second from corner. There was a lease to a drive-in restaurant which included subject property plus proposed 30' right-of-way from subject to side street. Owner testified right-of-way had not been obtained on date of taking. The lease included land and buildings to be constructed. Building not constructed because of condemnation. Attorney told Appraiser A to ignore lease because of easement. Appraiser B based his testimony on lease</p>		
CAUSE OF DIVERGENCY	Appraiser A, acting under legal instructions, ignored the lease.		

A.R.C. CASE RESUME		NO. 12	
ITEM	FACTS AND FINDINGS		
PROPERTY	Service station		
ZONING	Commercial		
H & B USE	Appraiser A - for office space	Appraiser B - for gas station	
TAKING	Partial		
VALUATION		Appraiser A	Appraiser B
	Before	\$34,000	\$56,500
	After.	\$32,500	\$39,000
	Comp.	\$ 1,500	\$17,500
DIVERGENCY.	66% in the value of the whole 1067% in total compensation		
AWARD	\$9,000		
DATE OF VALUATION	Same		
REMARKS	<p>Owner was using some land adjacent to subject property which belongs to the State</p> <p>Appraiser A assumed the State could stop this use.</p> <p>Appraiser B assumed the continued use created an easement in favor of the owner</p> <p>Difference in opinion as to highest and best use in the "before" situation.</p> <p>Appraiser B included in his direct damages the loss of the pump island and leveling pads plus some site improvements His indirect damages included the cost of replacing these items</p>		
CAUSE OF DIVERGENCY	Interpretation of easement rights		

A.R.C. CASE RESUME		NO. 13
ITEM	FACTS AND FINDINGS	
PROPERTY	Vacant land	
ZONING	Residential	
H & B USE	Residential development	
TAKING	Full	
VALUATION	Appraiser A \$152,000	Appraiser B \$240,000
DIVERGENCY	58%	
AWARD	\$204,000	
DATE OF VALUATION.	Same	
REMARKS	Preliminary subdivision plat recorded nine years before taking. This was good for three years. Not renewed by owner since activity by Highway Department allegedly already taking place in area. Building Inspector indicated renewal was routine. Highway Department took possession in 1965 but did not start condemnation proceedings until 1968.	
CAUSE OF DIVERGENCY.	Instructions given Appraiser A by Highway Department	

A.R.C. CASE RESUME		NO. 14
ITEM	FACTS AND FINDINGS	
PROPERTY	9.5 acres with farm buildings	
ZONING	Agricultural	
H & B USE	Appraiser A - Farmland	Appraiser B - Residential development
TAKING	Partial	
VALUATION	Appraiser A	Appraiser B
	Before \$56,000	\$60,000
	After \$29,000	\$1,750
	Comp \$27,000	\$59,250
DIVERGENCY	7% in value of the whole 119% in total compensation	
AWARD	\$32,500	
DATE OF VALUATION	Same	
REMARKS	The taking involved approximately three acres of the property for an interchange. This three acres included the old farm buildings. Nearest town of any size was 50 miles away. Appraiser A indicated the highest and best use of the property remained the same in the "after" condition. Appraiser B indicated the highest and best use to be for residential development in the "before" situation, but "because of the noise, dust, etc. in the "after" situation, the land would be reduced to agricultural use."	
CAUSE OF DIVERGENCY	Highest and best use in the "after" condition	

A.R.C. CASE RESUME		NO. 15
ITEM	FACTS AND FINDINGS	
PROPERTY	One story store containing a tavern	
ZONING	Commercial	
H & B USE	As zoned	
TAKING	Full	
VALUATION	Appraiser A \$14,000	Appraiser B \$50,000
DIVERGENCY	257%	
AWARD	\$37,000	
DATE OF VALUATION.	Same	
REMARKS	Appraiser A did not consider the value of the business as part of the real estate. Appraiser B gave a total value of \$50,000 with a value of \$7,000 for the license which could be transferred subject to Liquor Board's consent to transfer, leaving a Compensation of \$43,000 for the real estate and personal property.	
CAUSE OF DIVERGENCY	Conflict as to compensability between realty and personalty.	

A.R.C. CASE RESUME		NO. 16
ITEM	FACTS AND FINDINGS	
PROPERTY	Small hotel	
ZONING	Commercial	
H & B USE	Present use	
TAKING	Full	
VALUATION	Appraiser A \$38,000	Appraiser B \$75,000
DIVERGENCY	97%	
AWARD	\$55,000	
DATE OF VALUATION	Same	
REMARKS	Appraiser A failed to support the estimate of depreciation, the land value and the expenses used. He used the contract rent rather than an economic rent, he failed to relate sales to the subject property.	
CAUSE OF DIVERGENCY	Improper use of the market data approach and capitalization approach. Inexperience; incompetency.	

A.R.C. CASE RESUME		NO. 17	
ITEM	FACTS AND FINDINGS		
PROPERTY	Farmland		
ZONING	Agriculture		
H & B USE	As zoned		
TAKING	Partial		
VALUATION:		Appraiser A	Appraiser B
	Before	\$64,000	\$69,000
	After	\$58,500	\$51,000
	Comp	\$ 5,500	\$18,000
			Appraiser C
			\$75,000
			68,700
			6,300
DIVERGENCY	17% in value of the whole 227% in the total compensation		
AWARD	\$9,500		
DATE OF VALUATION	Same		
REMARKS	Difference of opinion as to damage caused by creating easement which was for a period of three years with an option to renew for three one-year periods		
	Appraiser A and C indicated land would have limited use by owner		
	Appraiser B indicated he could not use land at all		
CAUSE OF DIVERGENCY	Difference of opinion as to property right acquired and the effect on the remainder of easement rights acquired.		

A.R.C. CASE RESUME		NO. 18	
ITEM	FACTS AND FINDINGS		
PROPERTY	Diner and restaurant		
ZONING	Commercial		
H & B USE	Present use		
TAKING	Partial		
VALUATION		Appraiser A	Appraiser B
	Before	\$94,000	\$110,000
	After	\$93,000	\$ 90,000
	Comp	\$ 1,000	\$ 20,000
DIVERGENCY	17% in the value of the whole 1900% in the total compensation		
AWARD	\$15,000		
DATE OF VALUATION	Same		
REMARKS	Question involved the slope area		
	Appraiser A contended slope area taken was fully restored to owner after highway construction was completed		
	Appraiser B contended State has continued rights in area for the future.		
	Both appraisers acted under legal instructions		
CAUSE OF DIVERGENCY	Different legal interpretation of rights acquired		

A.R.C. CASE RESUME		NO. 19	
ITEM	FACTS AND FINDINGS		
PROPERTY	Dairy farm		
ZONING	Agriculture		
H & B USE	Present use		
TAKING:	Partial		
VALUATION.		Appraiser A	Appraiser B
	Before	Not appraised	\$260,000
	After	Not appraised	\$120,000
	Comp	\$ 82,000	\$140,000
DIVERGENCY	71% in the total compensation		
AWARD	\$210,000		
DATE OF VALUATION	Same		
REMARKS	Entire property consisted of two separate parcels two miles apart of which one was the "part taken "		
	Appraiser A, acting under legal instructions, appraised only the part taken		
	Appraiser B appraised under the "unity of use" concept		
	Board of View ruled in favor of "unity of use" theory. In spite of this, attorney instructed Appraiser A to testify to value of the one farm only.		
CAUSE OF DIVERGENCY	Different legal interpretation as to "larger parcel."		

A.R.C. CASE RESUME		NO. 20	
ITEM	FACTS AND FINDINGS		
PROPERTY	Fraternity house		
ZONING	Residential		
H & B USE	Present use		
TAKING	Full		
VALUATION		Appraiser A	Appraiser B
		\$47,000	\$75,000
DIVERGENCY	60%		
AWARD	\$67,000		
DATE OF VALUATION	Same		
REMARKS	Appraiser B used principle of substitution. Appraiser A evaluated land on an "as is" basis Appraiser A used income approach, Appraiser B did not Appraiser B used sales of property acquired by bodies for special use - not arms' length transactions		
CAUSE OF DIVERGENCY	Improper use of market approach		

A.R.C. CASE RESUME		NO. 21	
ITEM	FACTS AND FINDINGS		
PROPERTY	Acreage with residence		
ZONING	Residential		
H & B USE	Present use		
TAKING	Partial		
VALUATION		Appraiser A	Appraiser B
	Before	\$200,000	\$223,500
	After	\$180,000	\$214,500
	Comp.	\$ 20,000	\$ 9,000
DIVERGENCY	12% in the value of the whole 122% in the total compensation		
AWARD	\$13,000		
DATE OF VALUATION	Same		
REMARKS	Different comparable sales used Each supported his opinion Difference of opinion as to damages to the residence site since Appraiser B felt that with so many of the trees being taken, the improvements themselves suffered		
CAUSE OF DIVERGENCY	A difference of opinion as to severance damages caused by the taking		

A.R.C. CASE RESUME		NO. 22	
ITEM	FACTS AND FINDINGS		
PROPERTY	Vacant land		
ZONING	Industrial		
H & B USE	As zoned		
TAKING	Partial		
VALUATION		Appraiser A	Appraiser B
	Before	\$16,200	\$27,000
	After	\$13,900	\$14,500
	Comp	\$ 2,300	\$12,500
DIVERGENCY	67% in the value of the whole 443% in the total compensation		
AWARD	\$6,350		
DATE OF VALUATION	Same		
REMARKS	Subject property was purchased in 1960 for \$22,000. Appraiser A failed to take in rising market in area Appraiser B was perhaps too optimistic in his valuation made two years after purchase		
CAUSE OF DIVERGENCY	Inadequate investigation of market data		

A.R.C. CASE RESUME		NO. 23	
ITEM	FACTS AND FINDINGS		
PROPERTY	Vacant land		
ZONING	Residential and Rural		
H & B USE	Appraiser A - As zoned	Appraiser B - Potential Subdivision	
TAKING	Partial		
VALUATION		Appraiser A	Appraiser B
	Before	\$15,000	Not appraised
	After	\$ 9,250	Not appraised
	Comp	\$ 5,750	\$ 16,825
DIVERGENCY	193% in the total compensation		
AWARD	\$10,000		
DATE OF VALUATION	Same		
REMARKS	Appraiser B appraised part taken only He indicated highest and best use to be potential subdivision in an area far removed from any activity He failed to deduct holding charges, cost of street improvements, etc		
CAUSE OF DIVERGENCY	Incompetency of Appraiser B, inadequate report on his part		

A.R.C. CASE RESUME		NO. 24	
ITEM	FACTS AND FINDINGS		
PROPERTY	Commercial improved retail strip		
ZONING	Commercial		
H & B USE	Present use (see remarks)		
TAKING	Partial		
VALUATION		Appraiser A	Appraiser B
	Before	\$125,000	\$136,000
	After	\$ 72,500	\$108,000
	Comp	\$ 52,500	\$ 28,000
DIVERGENCY	9% in value of whole 88% in total compensation		
AWARD	\$33,000		
DATE OF VALUATION	Same		
REMARKS	Strip taking reduced the on-site parking Purpose was to determine the effect on the rental value of the untouched 9500 square feet of improvements Front parking space reduced 70%, side parking space by 25%		
CAUSE OF DIVERGENCY	Neither of the appraisers found comparable rents for parcels with similar ratio of store area to parking Appraiser A (working with the condemnee) aimed at his "after" value under the assumption that because the income was reduced, the highest and best use was no longer the same, that in the "after" condition its highest and best use was for a service station, and that the value of the land was \$75,000 less \$2,500 for clearing		
CAUSE OF DIVERGENCY	Difference of opinion as to highest and best use in the "after" situation		

A.R.C. CASE RESUME		NO. 25	
ITEM	FACTS AND FINDINGS		
PROPERTY	Single family residence		
ZONING	Residential		
H & B USE	Present use		
TAKING	Partial		
VALUATION		Appraiser A	Appraiser B
	Before	\$15,500	\$18,750
	After	\$14,750	\$16,000
	Comp	\$ 750	\$ 2,750
DIVERGENCY	21% in value of the whole 267% in the total compensation		
AWARD	\$1,800		
DATE OF VALUATION	Same		
REMARKS	The taking included some large trees. The contribution these trees made to the "scenic beauty" of the residence became a question		
CAUSE OF DIVERGENCY	Difference of opinion as to the damage in the "after" condition		

A.R.C. CASE RESUME		NO. 26	
ITEM	FACTS AND FINDINGS		
PROPERTY	50 acre subdivision with only ten lots improved with residences		
ZONING	Residential		
H & B USE	Present use		
TAKING	Partial		
VALUATION		Appraiser A	Appraiser B
	Before	\$66,750	\$96,000
	After	\$57,750	\$71,000
	Comp	\$ 9,000	\$25,000
DIVERGENCY	44% in value of whole 178% in total compensation		
AWARD	\$22,500		
DATE OF VALUATION	Same		
REMARKS	Appraiser A discounted large tract as subdivision since it had been plotted 19 years prior to taking, and only 10 homes built on it. Valued portion as acreage		
	Appraiser B stated that individual lots were sold, but not improved, and that it should be regarded as subdivision.		
CAUSE OF DIVERGENCY	Difference of opinion as to highest and best use and method of valuation		

A.R.C. CASE RESUME		NO. 27	
ITEM	FACTS AND FINDINGS		
PROPERTY	Vacant land - 10 acres		
ZONING	Residential		
H & B USE	Appraiser A - Development into four residential lots in the "before" condition and into three in the "after" condition		
	Appraiser B - Development into 14 residential lots in the "before" condition and into seven in the "after" condition.		
TAKING	Partial		
VALUATION		Appraiser A	Appraiser B
	Before	\$32,000	\$64,000
	After	\$24,000	\$32,000
	Comp	\$ 8,000	\$32,000
DIVERGENCY	100% in value of the whole 300% in the total compensation		
AWARD	\$18,000		
DATE OF VALUATION	A - 5/66 B - (67)		
REMARKS	The property was on a slope. Appraiser A considered property could be subdivided into the usual 100' x 200' lots along the front with the wooded area at the rear being excess land to which he failed to give adequate value.		
	Appraiser B, on the other hand, failed to take into consideration the cost of developing the 14 lots as well as the seven lots, including such items as streets, water, sewers, etc. His appeared to be a "paper" subdivision only.		
CAUSE OF DIVERGENCY	Complete disregard of market data for similar tracts as "raw" land and failure of Appraiser B to allow for subdivision costs.		

A.R.C. CASE RESUME		NO. 28	
ITEM	FACTS AND FINDINGS		
PROPERTY	Vacant Land		
ZONING	Agriculture		
H & B USE	Potential subdivision		
TAKING	Partial		
VALUATION		Appraiser A	Appraiser B
	Before	\$111,000	\$120,000
	After	\$ 80,000	\$112,000
	Comp	\$ 31,000	\$ 8,000
DIVERGENCY	8% in value of the whole 287% in the total compensation		
AWARD	\$10,000		
DATE OF VALUATION	Same		
REMARKS	Taking involved widening of an existing drainage ditch across a portion of the property.		
	Both appraisers were close in "before" situation. Difference in "after" based on different engineering premise as to whether value or speed of water flow would be increased.		
CAUSE OF DIVERGENCY	Analysis and conclusion based on different engineering premises.		

A.R.C. CASE RESUME		NO. 29		
ITEM	FACTS AND FINDINGS			
PROPERTY	Residence and Christmas tree farm			
ZONING	Special purpose			
H & B USE	Present use			
TAKING	Partial			
VALUATION		Appraiser A	Appraiser B	Appraiser C
	Before	\$85,000	\$95,000	\$225,000
	After	\$25,000	\$31,000	\$ 25,000
	Comp	\$60,000	\$64,000	\$200,000
DIVERGENCY	165% in value of whole 233% in total compensation			
AWARD	\$69,500			
DATE OF VALUATION	Same			
REMARKS	Property improved with two residences and a Christmas tree farm. Taking included one residence and all the trees.			
CAUSE OF DIVERGENCY	Difference of opinion as to value of trees in various stages of growth. Appraiser C thought he was Santa Claus.			

A.R.C. CASE RESUME		NO. 30		
ITEM	FACTS AND FINDINGS			
PROPERTY	Vacant land - potential development			
ZONING	Residential			
H & B USE	As zoned			
TAKING:	Partial			
VALUATION		Appraiser A	Appraiser B	Appraiser C
	Before	\$1,219,500	\$1,304,000	\$1,310,000
	After	\$1,071,500	\$1,221,000	\$1,226,000
	Comp	\$ 148,000	\$ 83,000	\$ 84,000
DIVERGENCY	7% in value of the whole 78% in the total compensation			
AWARD	\$92,000			
DATE OF VALUATION.	Same			
REMARKS:	A new limited access road with 2,000 lineal feet of frontage was created.			
CAUSE OF DIVERGENCY	Appraisers B and C felt the special benefits exceeded the damage caused by the limited access arising from the taking. Appraiser A did not. Difference of opinion as to the effect of this limited access road even though the frontage was increased.			

A.R.C. CASE RESUME		NO. 31		
ITEM	FACTS AND FINDINGS			
PROPERTY	Service station and restaurant			
ZONING	Commercial			
H & B USE	As zoned			
TAKING	Partial			
VALUATION		Appraiser A	Appraiser B	Appraiser C
	Before	\$47,000	\$73,000	\$145,000
	After	\$ 9,000	\$ 4,000	\$ 2,500
	Comp	\$38,000	\$69,000	\$142,500
DIVERGENCY.	209% in value of the whole 275% in the compensation			
AWARD	\$124,000			
DATE OF VALUATION	Same			
REMARKS	<p>Property was at a major intersection. The road, when constructed in 1952 was a limited access highway subject to closing whenever the State desired. Owner bought and improved the property in 1957.</p> <p>In 1964 the North/South road was vacated and notice filed that East/West road was to become an overpass. Appraisers A and B took into consideration that previous owner was paid for the taking, damage to the remainder and extinguishment of ingress and egress to the highway in 1952; that such matter should not be compensated a second time, and that they were non-compensable items. Appraiser C appraised under theory they were compensable.</p> <p>Court issued several ground rules during the course of the trial.</p> <p>1 This was an operating business on date of taking</p>			

A.R.C. CASE RESUME		CONT'D	
ITEM	FACTS AND FINDINGS		
CAUSE OF DIVERGENCY	<p>2 Although it did not have direct access to highway which was to become interstate, it did have indirect access by means of North/South and East/West roads previously mentioned.</p> <p>3. Although valuation was to be made as of date of taking, the fact that the plans were known beforehand should be taken into consideration because this could have a depreciating or appreciating effect on the value.</p> <p>Compensability of ingress and egress</p>		

A.R.C. CASE RESUME		NO. 32	
ITEM	FACTS AND FINDINGS		
PROPERTY	Vacant land		
ZONING	Commercial		
H & B USE	As zoned		
TAKING	Full		
VALUATION	Appraiser A \$15,000	Appraiser B \$25,000	
DIVERGENCY	67%		
AWARD	\$20,000		
DATE OF VALUATION	Same		
REMARKS	The subject was a corner parcel in a large city, in an area of huge land clearance for Urban Renewal. Sales were difficult to find, and both appraisers utilized the sales most helpful to their respective client.		
CAUSE OF DIVERGENCY	Analysis of market data		

A.R.C. CASE RESUME		NO. 33		
ITEM	FACTS AND FINDINGS			
PROPERTY	Vacant land improved with concrete pavement			
ZONING	Commercial			
H & B USE	As zoned			
TAKING	Full			
VALUATION	Appraiser A \$18,000	Appraiser B \$20,000	Appraiser C \$27,000	
DIVERGENCY	50%			
AWARD	\$23,500			
DATE OF VALUATION	Same			
REMARKS	Property is concrete paved. Subject is net lease to large oil company for an additional 15 years			
CAUSE OF DIVERGENCY	Appraiser A and B used Inwood method of capitalizing at 7% Appraiser C relied on lessee's option to purchase property in 1982 for \$27,000			
	Use of Inwood vs Lessee's option			

A.R.C. CASE RESUME		NO. 34	
ITEM	FACTS AND FINDINGS		
PROPERTY	Lodge hall		
ZONING	Commercial		
H & B USE	Present use		
TAKING	Partial		
VALUATION		Appraiser A	Appraiser B
	Before	\$70,300	\$76,000
	After	\$59,200	\$40,000
	Comp	\$11,100	\$36,000
DIVERGENCY	8% in value of the whole 224% in the total compensation		
AWARD	\$20,000		
DATE OF VALUATION	Same		
REMARKS	Appraiser A stated that the highest and best use of the property was unchanged after the taking.		
	Appraiser B stated the taking reduced the potential immediate use of the lodge hall to that of a warehouse building		
	Appraiser A felt that lodge hall suffered from a functional inadequacy in the form of inadequate parking area before the taking and that by reason of the taking, this was intensified rather than created at the time.		
CAUSE OF DIVERGENCY	Difference of opinion as to highest and best use after the taking		

A.R.C. CASE RESUME		NO. 35		
ITEM	FACTS AND FINDINGS			
PROPERTY	Vacant land			
ZONING	Multi-residential			
H & B USE	As zoned			
TAKING	Full			
VALUATION:	Appraiser A \$5,600	Appraiser B \$11,500		
DIVERGENCY	105%			
AWARD	\$10,000			
DATE OF VALUATION	Same			
REMARKS:	Appraiser A appraised on basis of present zoning.			
	Appraiser B based his opinion upon likelihood of zoning change.			
CAUSE OF DIVERGENCY	Difference of opinion as to the reasonable probability of change in zoning.			

A.R.C. CASE RESUME		NO. 36	
ITEM	FACTS AND FINDINGS		
PROPERTY	Large farm tract with buildings		
ZONING:	Farm		
H & B USE	Present use		
TAKING	Partial		
VALUATION:	Appraiser A	Appraiser B	
Before:	\$159,600	\$186,000	
After:	\$139,800	\$146,000	
Comp	\$ 19,800	\$ 40,000	
DIVERGENCY:	17% in value of whole 102% in total compensation		
AWARD:	\$25,000		
DATE OF VALUATION	Same		
REMARKS	None		
CAUSE OF DIVERGENCY	Difference of opinion as to contribution to value of the improvements which were in the taking, to the land.		

A.R.C. CASE RESUME		NO. 37	
ITEM	FACTS AND FINDINGS		
PROPERTY:	Multi-story warehouse		
ZONING:	Commercial		
H & B USE:	Present use		
TAKING	Full		
VALUATION:	Appraiser A	Appraiser B	
	\$137,000	\$226,000	
DIVERGENCY	65%		
AWARD:	\$200,000		
DATE OF VALUATION:	Same		
REMARKS:	Appraiser A used sales of warehouses in two cities of comparable size (there being none in subject city). Appraiser B used sales of warehouses in larger city without making any adjustments.		
CAUSE OF DIVERGENCY:	Improper use of market data approach by Appraiser B		

A.R.C. CASE RESUME		NO. 38	
ITEM	FACTS AND FINDINGS		
PROPERTY	Vacant land - 40 acres		
ZONING	Industrial		
H & B USE	As zoned		
TAKING:	Partial		
VALUATION	Appraiser A	Appraiser B	
Before	\$20,000	Not appraised	
After	\$13,500	Not appraised	
Comp:	\$ 6,500	\$14,000	
DIVERGENCY	115% in the total compensation		
AWARD	\$10,500		
DATE OF VALUATION	Same		
REMARKS	Appraiser B acted under instructions of attorney to appraise property on the basis of valuation of the part taken plus damages, if any. Defended position as being logical since there was a sale of the remainder after the taking by and to knowledgeable parties.		
CAUSE OF DIVERGENCY:	Legal instructions as to premise of value.		

A.R.C. CASE RESUME		NO. 39	
ITEM	FACTS AND FINDINGS		
PROPERTY:	Vacant land		
ZONING	Agriculture		
H & B USE:	As zoned		
TAKING	Partial		
VALUATION	Appraiser A	Appraiser B	
Before:	\$36,000	Not appraised	
After	\$28,500	Not appraised	
Comp.	\$ 7,500	\$14,200	
DIVERGENCY	89% in the total compensation		
AWARD	\$11,500		
DATE OF VALUATION	Same		
REMARKS	Appraiser B was instructed to appraise part taken only and damages to remainder, if any. Option to purchase was used as a comparable sale.		
CAUSE OF DIVERGENCY:	Legal instructions as to premise of value		

A.R.C. CASE RESUME		NO. 40	
ITEM	FACTS AND FINDINGS		
PROPERTY	Two story frame residence converted into rooming house, plus 14 trailer spaces with water, sewer, gas and electricity available		
ZONING	Commercial		
H & B USE	As zoned		
TAKING	Partial		
VALUATION		Appraiser A	Appraiser B
	Before	\$68,500	\$76,000
	After	\$41,000	\$66,000
	Comp	\$27,500	\$10,000
DIVERGENCY	11% in value of the whole 175% in the total compensation		
AWARD	\$23,500		
DATE OF VALUATION	Same		
REMARKS	Subject property contained approximately 1 1/2 acres of land and had 216 feet of frontage and 130 feet at the rear property line Highway Department sought to acquire right-of-way for realignment of old road for right angle crossing to a railroad main line and to connect with a new boulevard. This severed the property line into two parcels, one having a frontage of 160 feet and the other being a corner triangular piece of approximately 1,883 square feet. A 24-foot opening was provided Appraiser A indicated it impaired the adaptability of the property's highest and best use, he further believed no general benefits resulted because of construction of road		
CAUSE OF DIVERGENCY	Difference in concept of highest and best use in the "after" situation.		

A.R.C. CASE RESUME		NO. 41	
ITEM	FACTS AND FINDINGS		
PROPERTY	Carwash		
ZONING	Commercial		
H & B USE	Present use		
TAKING	Partial		
VALUATION		Appraiser A	Appraiser B
	Before	\$67,000	\$85,000
	After	\$57,000	\$66,000
	Comp	\$10,000	\$19,000
DIVERGENCY	27% in value of whole 90% in total compensation		
AWARD	\$14,000		
DATE OF VALUATION	Same		
REMARKS	Neither used market approach Appraiser B used carwash receipts only as a guide without giving due consideration to expense		
CAUSE OF DIVERGENCY	Incompetency, inadequate report, improper use of capitalization approach.		

A.R.C. CASE RESUME		NO. 42	
ITEM	FACTS AND FINDINGS		
PROPERTY	Large school complex		
ZONING	Special purpose		
H & B USE	Present use		
TAKING	Partial		
VALUATION		Appraiser A	Appraiser B
	Before	Not given	Not given
	After	Not given	Not given
	Comp.	\$1 00 and other good, valuable considerations	\$26,000
DIVERGENCY	Dependent upon value of the other considerations		
AWARD	\$15,700		
DATE OF VALUATION	Same		
REMARKS	A "before" and "after" valuation is not required by the state. Damage conclusion of Appraiser A should be nil or a specified amount. His conclusion that property is the same "before" and "after" is inconclusive		
CAUSE OF DIVERGENCY	The divergency is in the severance damage estimates with unsupported opinions.		

A.R.C. CASE RESUME		NO. 43	
ITEM	FACTS AND FINDINGS		
PROPERTY	Vacant land		
ZONING	Industrial		
H & B USE	As zoned		
TAKING	Partial		
VALUATION		Appraiser A	Appraiser B
	Before	\$867,000	\$884,000
	After	\$854,000	\$839,000
	Comp.	\$ 13,000	\$ 45,000
DIVERGENCY	2% in value of the whole 246% in the total compensation		
AWARD	\$26,000		
DATE OF VALUATION	Same		
REMARKS	Taking was for an easement for high line by power company		
CAUSE OF DIVERGENCY	Divergency due to difference of opinion as to effect of new towers in an area in contrast to arch towers presently in use in area Matter of trend Unsupported opinion of severance damages		

A.R.C. CASE RESUME		NO. 44	
ITEM	FACTS AND FINDINGS		
PROPERTY	Special Purpose Plant		
ZONING	Industrial		
H & B USE	Present use		
TAKING	Partial		
VALUATION		Appraiser A	Appraiser B
	Before	\$1,202,000	\$1,428,000
	After	\$1,165,000	\$1,250,000
	Comp:	\$ 37,000	\$ 178,000
DIVERGENCY	19% in the value of the whole 381% in the total compensation		
AWARD	\$70,000		
DATE OF VALUATION	Same		
REMARKS	<p>Appraiser A considered the fact that substitute land abutting the subject property was available for purchase, and that substitute land could replace the land taken in condemnation suit</p> <p>Appraiser B did not</p> <p>During the trial, Appraiser B was recalled to make a study as to the damages, recognizing this substitute land. He testified that inasmuch as the available land was not a result of any State action, the damages remained the same since it would be desirable to own the adjacent land even though there were no highway condemnation</p>		
CAUSE OF DIVERGENCY	Difference in opinion of severance damages due to legal instructions		

A.R.C. CASE RESUME		NO. 45	
ITEM	FACTS AND FINDINGS		
PROPERTY	One story restaurant and tavern		
ZONING	Commercial		
H & B USE	Present use		
TAKING	Full		
VALUATION		Appraiser A	Appraiser B
		\$21,000	\$37,000
DIVERGENCY	76%		
AWARD	\$34,000		
DATE OF VALUATION	A-9/64 B-9/65		
REMARKS	Appraiser A ignored the fact that the rental was net		
CAUSE OF DIVERGENCY	Lack of investigation or incompetence on the part of the appraiser for the condemnor		

A.R.C. CASE RESUME		NO. 46	
ITEM	FACTS AND FINDINGS		
PROPERTY	Five story industrial building		
ZONING	Industrial		
H & B USE:	Present use		
TAKING	Full		
VALUATION	Appraiser A	Appraiser B	Appraiser C
	\$150,000	\$180,000	\$325,000
DIVERGENCY	117%		
AWARD	\$250,000		
DATE OF VALUATION	Same		
REMARKS	<p>Land values basically the same. Appraisers A and B used sales with 60% occupancy, low floor load, and poor maintenance record</p> <p>Appraisers A and B failed to recognize reduction in heating costs because of steam processing units used by the tenants</p> <p>Appraiser C had advantage of engineer's report re: replacement cost and deterioration, floor loads, adaptability, etc</p> <p>Announcement of the taking made five years before taking, served to depress the income. Judge recognized this factor and instructed the jury to consider the fact that a normal market for the parcel did not exist for five years prior to the taking</p>		
CAUSE OF DIVERGENCY	Carelessness or incompetence by appraisers for condemnor		

A.R.C. CASE RESUME		NO. 47	
ITEM	FACTS AND FINDINGS		
PROPERTY	Three family residence		
ZONING	Residential		
H & B USE	As zoned		
TAKING	Partial		
VALUATION		Appraiser A	Appraiser B
	Before	Not appraised	\$18,500
	After	Not appraised	\$14,000
	Comp	\$1,500	\$ 4,500
DIVERGENCY	200% in the total compensation		
AWARD	\$4,500		
DATE OF VALUATION	Same		
REMARKS	<p>2,000 sq ft of rear yard was acquired.</p> <p>Appraiser A was told not to appraise on a "before" and "after" concept as his fee would be low, also told not to include severance damage</p>		
CAUSE OF DIVERGENCY	Advocacy and unethical conduct on part of Appraiser A		

A.R.C. CASE RESUME		NO. 48	
ITEM	FACTS AND FINDINGS		
PROPERTY	Vacant land		
ZONING	Agricultural		
H & B USE	Appraiser A - Farmland	Appraiser B - Commercial, industrial, residential and woodland.	
TAKING	Partial		
VALUATION		Appraiser A	Appraiser B
	Before	\$30,000	\$115,000
	After	\$10,000	\$ 20,000
	Comp	\$20,000	\$ 95,000
DIVERGENCY	283% in value of the whole 375% in the total compensation		
AWARD	\$58,500		
DATE OF VALUATION.	Same		
REMARKS	The property has 4500' frontage on both sides of a U S and a State route This is the only property where the two routes are the same.		
CAUSE OF DIVERGENCY.	Divergency was caused by difference of opinion as to highest and best use Each used comparable sales to substantiate his thinking However, Appraiser B may have been too optimistic in the time element for developing the land to its indicated potential		

A.R.C. CASE RESUME		NO. 49	
ITEM	FACTS AND FINDINGS		
PROPERTY:	9 acre parcel of rural land two miles from city limits		
ZONING	Agricultural		
H & B USE:	Appraiser A - Agriculture	Appraiser B - Commercial	
TAKING:	Partial		
VALUATION:		Appraiser A	Appraiser B
	Before.	\$112,300	Not appraised
	After	\$101,300	Not appraised
	Comp:	\$ 11,000	\$ 25,000
DIVERGENCY	127% in total compensation		
AWARD	\$25,000		
DATE OF VALUATION	Same		
REMARKS	State law permits appraisal of part taken only if there is no damage to the remainder		
CAUSE OF DIVERGENCY.	Difference of opinion as to highest and best use.		

A.R.C. CASE RESUME		NO. 50	
ITEM	FACTS AND FINDINGS		
PROPERTY	Vacant land-inside lot		
ZONING	Commercial		
H & B USE:	As zoned		
TAKING	Full		
VALUATION	Appraiser A	Appraiser B	Appraiser C
	\$16,000	\$16,500	\$32,000
DIVERGENCY	100%		
AWARD	\$24,000		
DATE OF VALUATION:	Same		
REMARKS	The question concerned whether subject property could be considered as part of assemblage with adjoining properties under different ownership.		
CAUSE OF DIVERGENCY.	Question of assemblage. Difference in highest and best use due to plottage increment.		

A.R.C. CASE RESUME		NO. 51	
ITEM	FACTS AND FINDINGS		
PROPERTY	2.15A vacant land - parent tract 0.75A vacant land - taking 2 miles from center of large city Taking at rear of lot		
ZONING:	Commercial at front. Residential at rear		
H & B USE	As zoned		
TAKING:	Partial		
VALUATION:		Appraiser A	Appraiser B
	Before.	\$38,800	\$41,650
	After	\$30,400	\$33,650
	Comp	\$ 8,400	\$ 8,000
DIVERGENCY.	80% in value of the whole 90% in the total compensation		
AWARD	\$13,500		
DATE OF VALUATION	Same		
REMARKS:	Appraisers A and B appraised under present zoning. Appraiser C appraised as commercial because there were numerous zoning changes in the area including some in the same block The tract was 97' x 950' and the taking was off the back end (97' x 331') on a secondary street.		
CAUSE OF DIVERGENCY:	Difference of assumption as to possible rezoning of entire tract to commercial. Reasonable probability of rezoning.		

A.R.C. CASE RESUME		NO. 52
ITEM	FACTS AND FINDINGS	
PROPERTY	1500 acre tract of land	
ZONING	Residential	
H & B USE:	Residential development	
TAKING:	Partial	
VALUATION:	Appraiser A	Appraiser B Appraiser C
	Before: \$3,295,000	\$3,800,000 \$4,000,000
	After: \$3,275,000	\$2,900,000 \$3,000,000
	Comp. \$ 20,000	\$ 900,000 \$1,000,000
DIVERGENCY.	21% in value of the whole 4900% in total compensation	
AWARD.	\$100,000	
DATE OF VALUATION	Same	
REMARKS.	<p>This involves a utility right-of-way across a large tract of land. All appraisers were fairly close in the "before" situation and in the part taken. The wide variance was caused by a difference in legal interpretation as well as by a difference in estimates by two engineering firms. This involved the re-location of utilities and the additional cost to lay utilities and streets after the taking of the easement.</p> <p>The engineers for the Condemnor assumed that crossings would be permitted and the remainder of the land could be served by the existing water main. The engineers for the owners based their estimate on an interpretation of the easement which would prohibit any crossings, and the assumption that the property owners would not be allowed to connect to the water main.</p>	

A.R.C. CASE RESUME		Cont'd
ITEM	FACTS AND FINDINGS	
CAUSE OF DIVERGENCY-	<p>Appraisers B and C relied upon the engineers, and the engineers relied upon the interpretation by the attorney.</p> <p>Legal instructions and engineering premise.</p>	

A.R.C. CASE RESUME		NO. 53
ITEM	FACTS AND FINDINGS	
PROPERTY	Farm land with farm buildings and residence.	
ZONING	Agricultural	
H & B USE.	Appraiser A - Present use	Appraiser B - Residential potential
TAKING-	Partial	
VALUATION	Appraiser A	Appraiser B
	Before \$37,750	\$178,000
	After: \$33,000	\$ 65,000
	Comp: \$ 4,750	\$113,000
DIVERGENCY-	371% in value of the whole 2278% in total compensation	
AWARD:	\$80,000	
DATE OF VALUATION	Same	
REMARKS	<p>Subject property was a three acre site with an old residence and some barns.</p> <p>The taking was a strip along the front of the property, not affecting the improvements.</p> <p>Appraiser B considered it ripe for residential development, affected a "paper" subdivision, failed to allow for development costs, and used sales of smaller city lots as comparable sales.</p>	
CAUSE OF DIVERGENCY:	Creation of a hypothetical subdivision. Advocacy.	

A.R.C. CASE RESUME		NO. 54
ITEM	FACTS AND FINDINGS	
PROPERTY	Vacant land - 2,000 acres	
ZONING	Agriculture	
H & B USE	As zoned	
TAKING-	Full	
VALUATION-	Appraiser A	Appraiser B
	\$100,000	\$300,000
DIVERGENCY	200%	
AWARD-	\$175,000	
DATE OF VALUATION.	Same	
REMARKS	<p>Appraiser B used sales up to five years subsequent to date of taking</p> <p>Appraiser B indicated highest and best use to be residential development, failing to provide discount period, and failing to prove absorption of that many residences in an area near a small town with relatively no industry.</p>	
CAUSE OF DIVERGENCY	Improper use of feasibility or subdivision study. Incompetency.	

A.R.C. CASE RESUME		NO. 55	
ITEM	FACTS AND FINDINGS		
PROPERTY	Residence, illegally converted into office		
ZONING	Residential		
H & B USE	Present use		
TAKING	Partial		
VALUATION:		Appraiser A	Appraiser B
	Before.	\$17,500	\$23,400
	After:	\$10,500	\$10,600
	Comp:	\$ 7,000	\$12,800
DIVERGENCY:	34% in value of the whole 83% in the total compensation		
AWARD	\$12,000		
DATE OF VALUATION	Same		
REMARKS:	Divergency caused by zoning question.		
CAUSE OF DIVERGENCY	Reasonable probability of rezoning.		

A.R.C. CASE RESUME		NO. 56	
ITEM	FACTS AND FINDINGS		
PROPERTY:	Distribution warehouse of major oil company		
ZONING	Industrial		
H & B USE	Present use		
TAKING	Partial		
VALUATION		Appraiser A	Appraiser B
	Before	\$120,000	\$128,750
	After	\$128,000	\$103,500
	Comp:	\$ None	\$ 25,250
DIVERGENCY:	7% in value of the whole 25,250% in the total compensation		
AWARD	0.00		
DATE OF VALUATION:	Same		
REMARKS:	There was no "taking" of land. Both appraisers were for the State. At the time of the trial, Appraiser B was no longer in the employment of the State and was subpoenaed by the owner. Difference of opinion existed as to whether or not the loading dock would have to be replaced when the access road was changed.		
CAUSE OF DIVERGENCY:	Difference of opinion as to the effect the change of access will have on the remainder and its effect on the highest and best use of the loading dock.		

A.R.C. CASE RESUME		NO. 57	
ITEM	FACTS AND FINDINGS		
PROPERTY	Vacant land at intersection of a main highway and Interstate.		
ZONING	Agricultural		
H & B USE	As zoned		
TAKING	Partial		
VALUATION:		Appraiser A	Appraiser B
	Before	\$340,000	\$396,000
	After:	\$232,000	\$151,000
	Comp:	\$108,000	\$245,000
DIVERGENCY:	16% in value of the whole 127% in the total compensation		
AWARD	\$200,000		
DATE OF VALUATION	Same		
REMARKS	Access to property was changed Appraiser B appraised as being land-locked in "after" condition Appraiser A did not. Court ruled in favor of land-locked concept during trial.		
CAUSE OF DIVERGENCY	Legal instructions regarding access in the "after" condition		

A.R.C. CASE RESUME		NO. 58	
ITEM	FACTS AND FINDINGS		
PROPERTY:	Residential Income Property Possible non-conforming use		
ZONING	Residential and commercial		
H & B USE:	Present use		
TAKING:	Partial		
VALUATION:		Appraiser A	Appraiser B
	Before:	\$14,500	\$28,000
	After	\$ 2,250	\$ 8,000
	Comp:	\$12,250	\$21,500
DIVERGENCY:	93% in value of the whole 76% in the total compensation		
AWARD:	\$18,750		
DATE OF VALUATION	A - 12/67 B - 11/66		
REMARKS:	Same sales used by both appraisers, but after extracting the improvements, divergent land values resulted. A number of appraisers share a difference of opinion in this area. One opinion is that zoning in the subject neighborhood is not enforced and many properties are being purchased and used in non-conformance with the zoning. Also that rezoning does take place. The opposite opinion, which a number of appraisers in this area share, is that zoning is difficult to change and that property owners would not permit a non-conforming use in the neighborhood. Reviewer found evidence of zoning changes and of non-conforming uses. Prices are being paid to substantiate this viewpoint.		
CAUSE OF DIVERGENCY:	Difference of opinion as to highest and best use and reasonable probability of rezoning.		

A.R.C. CASE RESUME		NO. 59	
ITEM	FACTS AND FINDINGS		
PROPERTY	Urban - vacant land		
ZONING	Industrial		
H & B USE	As zoned		
TAKING	Partial		
VALUATION		Appraiser A	Appraiser B
	Before	\$15,000	\$18,000
	After	\$14,500	\$12,000
	Comp	\$ 500	\$ 6,000
DIVERGENCY	20% in value of the whole 1100% in total compensation		
AWARD	\$1,200		
DATE OF VALUATION	Same		
REMARKS	The "taking" included two power poles which Appraiser B accepted as being compensable Judge ruled items to be non-compensable		
CAUSE OF DIVERGENCY	Question of compensable or non-compensable items.		

A.R.C. CASE RESUME		NO. 60	
ITEM	FACTS AND FINDINGS		
PROPERTY	Vacant land - grazing		
ZONING	Agricultural		
H & B USE	As zoned		
TAKING	Partial		
VALUATION		Appraiser A	Appraiser B
	Before	\$55,000	\$56,000
	After	\$50,000	\$32,000
	Comp	\$ 5,000	\$24,000
DIVERGENCY	2% in value of the whole 380% in total compensation		
AWARD	\$9,500		
DATE OF VALUATION	Same		
REMARKS	Appraisers were relatively close in the "before" situation. However, Appraiser B acted upon legal instructions and ignored the erection of a future bridge which would lessen the severance damages. The attorney's contention was that "you cannot hold the state to its promise"		
CAUSE OF DIVERGENCY	Legal instructions		

A.R.C. CASE RESUME		NO. 61	
ITEM	FACTS AND FINDINGS		
PROPERTY	Drive-in restaurant		
ZONING	Commercial		
H & B USE	Present use		
TAKING	Partial		
VALUATION		Appraiser A	Appraiser B
	Before	Not appraised	\$50,000
	After	Not appraised	\$39,000
	Comp	\$ 2,400	\$11,000
DIVERGENCY	358% in the total compensation		
AWARD	\$7,500		
DATE OF VALUATION	Same		
REMARKS	The taking was a small strip at the front of the property. State permits an appraisal of the part taken only, if there is no severance damage Appraiser A felt there was no severance damage. Appraiser B stated the loss of the land resulted in angle parking and the loss of four parking spaces		
CAUSE OF DIVERGENCY	Inadequate preparation on part of Appraiser A		

A.R.C. CASE RESUME		NO. 62	
ITEM	FACTS AND FINDINGS		
PROPERTY	Vacant land		
ZONING	Residential		
H & B USE	Appraiser A	Appraiser B	
	Residential	Industrial	
	development	development	
TAKING	Full		
VALUATION	Appraiser A	Appraiser B	
	\$61,800	\$269,800	
DIVERGENCY	336%		
AWARD	Unknown		
DATE OF VALUATION	Same		
REMARKS	Land is zoned residential until 1975 Land is adjoining area rezoned to commercial some years ago. Appraiser B completely ignored zoning restrictions		
CAUSE OF DIVERGENCY	Advocacy on part of Appraiser B		

A.R.C. CASE RESUME		NO. 63	
ITEM	FACTS AND FINDINGS		
PROPERTY	Vacant land used as grazing and timberland		
ZONING:	Agricultural		
H & B USE	Appraiser A - Present use Appraiser B - Residential development		
TAKING	Partial		
VALUATION		Appraiser A	Appraiser B
	Before	\$523,000	\$813,000
	After	\$458,000	\$680,000
	Comp	\$ 65,000	\$133,000
DIVERGENCY:	55% in value of the whole 105% in total compensation		
AWARD:	\$86,000		
DATE OF VALUATION	Same		
REMARKS	<p>Appraiser A valued this large tract on a square foot basis, Appraiser B on a front foot basis.</p> <p>Appraiser B made little or no adjustment for time, location, etc , in his market approach, using sales of residential lots in the city as compared to taking of 300 acres.</p> <p>Appraiser B gave no consideration to such elements as street improvements, or discount for time necessary to sell out a residential development.</p>		
CAUSE OF DIVERGENCY	Improper use of feasibility and subdivision study and improper application of market data by Appraiser B		

A.R.C. CASE RESUME		NO. 64		
ITEM	FACTS AND FINDINGS			
PROPERTY.	Residence on large lot			
ZONING	Residential			
H & B USE	Present use			
TAKING:	Partial			
VALUATION.		Appraiser A	Appraiser B	Appraiser C
	Before	\$23,200	\$23,700	\$34,000
	After	\$19,600	\$19,800	\$16,500
	Comp	\$ 4,600	\$ 3,900	\$17,500
DIVERGENCY.	47% in value of the whole 280% in the total compensation			
AWARD	\$8,300			
DATE OF VALUATION:	Same			
REMARKS	Law of State unclear regarding admissibility and legal interpretation of assemblage Judges differ in ruling			
CAUSE OF DIVERGENCY	Legal interpretation			

A.R.C. CASE RESUME		NO. 65	
ITEM	FACTS AND FINDINGS		
PROPERTY	Grocery store and apartment		
ZONING.	Commercial		
H & B USE	Present use		
TAKING	Partial		
VALUATION.		Appraiser A	Appraiser B
	Before	\$50,000	\$55,000
	After:	\$42,000	\$52,000
	Comp	\$ 6,800	\$ 3,000
DIVERGENCY	10% in the value of the whole 127% in the total compensation		
AWARD:	\$4,800		
DATE OF VALUATION:	Same		
REMARKS	<p>Both appraisers included signs and underground wiring and piping in "before" value, but acting under legal interpretations, Appraiser B extracted them from compensation-offset with benefits (questionable). Appraiser A did not. Appraiser A used sales for neighborhood grocery store. Property was on Interstate. Appraiser A did not consider the fact that a portion of the parking was already using the right-of-way.</p>		
CAUSE OF DIVERGENCY.	Legal premise and application of market data.		

A.R.C. CASE RESUME		NO. 66		
ITEM	FACTS AND FINDINGS			
PROPERTY.	Vacant land			
ZONING:	Multiple residential			
H & B USE.	As zoned			
TAKING.	Full			
VALUATION		Appraiser A	Appraiser B	
		\$ 7,000	\$25,000	
DIVERGENCY	257%			
AWARD	\$23,500			
DATE OF VALUATION.	Same			
REMARKS	<p>Appraiser A assumed highest and best use was residential.</p> <p>Appraiser B assumed it was for a gas station site</p> <p>In 1965 owner had a permit for a gas station, which he did not use. In 1968 he reapplied for a permit, the previous one having expired, and he was refused.</p> <p>Appraiser B, acting under instructions of his attorney, ignored the refusal in 1968.</p>			
CAUSE OF DIVERGENCY	Attorney's instructions should not have been followed without explanation.			

A.R.C. CASE RESUME NO. 67	
ITEM	FACTS AND FINDINGS
PROPERTY:	One residence plus another converted to office use plus vacant land.
ZONING:	R5 - Multi-family
H & B USE	Appraiser A - Multi-family Appraiser B - Commercial
TAKING:	Full
VALUATION:	Appraiser A \$71,000 Appraiser B \$104,500
DIVERGENCY:	47%
AWARD:	\$125,000
DATE OF VALUATION:	A - 1/65 B - 7/69
REMARKS:	Difference of opinion as to highest and best use. Appraiser A used R5 land sales, giving no value to improvements. Appraiser B assumed zoning could be changed to C2, adding \$6,000 for the improvements. Owner's testimony was that he paid \$52,000 in 1962 for the property and added \$3,000 in improvements. He testified to value of \$175,000 Judge ruled property could be appraised as of the date of taking, which was January, 1965, or the date of the hearing, which was July, 1969, whichever produced the higher figure.
CAUSE OF DIVERGENCY:	Difference in highest and best use and court instructions

A.R.C. CASE RESUME NO. 68	
ITEM	FACTS AND FINDINGS
PROPERTY:	Residence plus additional vacant lot
ZONING:	Residential
H & B USE	Appraiser A - Present use Appraiser B - Commercial potential
TAKING:	Partial
VALUATION:	Appraiser A Appraiser B Before: \$65,800 \$149,000 After: \$61,800 \$41,500 Comp: \$4,000 \$107,500
DIVERGENCY:	126% in the value of the whole 2587% in the total compensation
AWARD:	\$50,000
DATE OF VALUATION:	Same
REMARKS:	Taking was a 20' strip from the front of the lots. Area is a residential area with restrictions running until 1989. Taking was in 1967 Appraiser B testified to commercial potential-probability to rezoning which was, according to the presiding judge, not to be considered by the jury in its deliberations, since 22 years is hardly within the "reasonable near future."
CAUSE OF DIVERGENCY:	Advocacy on part of Appraiser B. Unrealistic premise

A.R.C. CASE RESUME NO. 69	
ITEM	FACTS AND FINDINGS
PROPERTY:	Single family residence
ZONING:	Residential
H & B USE	Present use
TAKING:	Full
VALUATION:	Appraiser A \$8,700 Appraiser B \$17,500
DIVERGENCY:	101%
AWARD:	\$15,000
DATE OF VALUATION:	Same
REMARKS:	Residential zoned lot was improved with a single family residence Appraiser B stated highest and best use was for investment purposes with ultimate potential for commercial use, and therefore, the existing improvements were only an interim use. Yet in his depreciation, he uses only 50%, which would indicate a period longer than an interim use. Appraiser B ignored the sale of an identical property next door, and went into a commercial area to develop land value. Appraiser B's highest comparable property was a \$10,000 sale made the previous month, yet gave an indicated value to subject of \$17,500
CAUSE OF DIVERGENCY:	Difference in highest and best use and improper use of market data approach.

A.R.C. CASE RESUME NO. 70	
ITEM	FACTS AND FINDINGS
PROPERTY:	Vacant land - 5 acres
ZONING:	Residential (county)
H & B USE:	Appraiser A - Farmland Appraiser B - Potential subdivision
TAKING:	Partial
VALUATION:	Appraiser A Appraiser B Before \$1,600 \$8,200 After \$500 \$1,900 Comp \$1,100 \$6,300
DIVERGENCY:	413% in the value of the whole 473% in the total compensation
AWARD:	\$8,000 (Owner testified to \$10,000 compensation)
DATE OF VALUATION:	Same
REMARKS:	In the center of the property was a dedicated road. Appraiser A, acting under legal instructions, stated access existed Appraiser B, acting under legal instructions, indicated access would be refused if requested This case was further confused by difference of opinion as to the remainder, which was ruled by the Court to be one acre, as indicated by Appraiser A, as against 0.4 acres, as indicated by Appraiser B.
CAUSE OF DIVERGENCY:	Neither report conclusive Both used sales unlike subject property Different legal instructions from respective attorneys.

APPENDIX B

SUPPLEMENTARY MATERIALS



American Institute of Real Estate Appraisers

of the National Association of Real Estate Boards



REGULATION No. 10 - CODE OF PROFESSIONAL ETHICS AND STANDARDS OF PROFESSIONAL CONDUCT

(ADOPTED BY THE GOVERNING COUNCIL OF THE INSTITUTE ON NOVEMBER 16, 1970, TO BE EFFECTIVE FROM AND AFTER JANUARY 1, 1971. THE FULL TEXT OF THE RESOLUTION OF THE GOVERNING COUNCIL IS SET FORTH ON PAGE 12.)

PREAMBLE

Real estate is one of the basic sources of wealth and its proper use is essential to the economic well-being of any society. If real estate is to be used properly, however, it is essential that governmental bodies, business institutions, individuals and others who own, manage, sell, purchase, invest in and lend money on the security of real estate have ready access to the services of men of integrity and independent judgment who can properly evaluate real estate and make sound determinations as to the manner in which it can or should be used. The proper evaluation of real estate and the making of sound determinations concerning its utilization are essential to the orderly growth and development of cities, suburbs and rural areas. In addition, the proper evaluation and utilization of real estate gives stability to real estate investments, thereby promoting confidence in the economy which sustains a free society.

The professional real estate appraiser is charged therefore with a solemn responsibility and obligation to both the public and his profession. In recognition of this professional responsibility and obligation, the American Institute of Real Estate Appraisers of the National Association of Real Estate Boards has promulgated this Regulation No. 10, entitled Code of Professional Ethics and Standards of Professional Conduct, and each professional real estate appraiser who is a Member or Candidate of the Institute is required to conduct his professional activities in accordance with this Regulation.

In the practice of his profession, the professional real estate appraiser performs a variety of functions and services. In addition to making valuations of individual parcels or tracts of real estate, the professional real estate appraiser often prepares marketability, feasibility, highest and best use and land utilization studies, and renders advice in the form of real estate counseling. These functions and services frequently require the appraiser to make determinations and exercise his judgment in complex conceptual and factual situations. Without professional standards to assist him in rendering his opinions, it would be difficult for the real estate appraiser to function as a professional. Without ethical guidelines to follow, the complexity of the ethical problems involved in the practice of his profession would place an intolerable burden upon the conscientious professional appraiser.

Although it would be difficult to devise a set of rules to cover specifically every professional and ethical problem that might be presented to a real estate appraiser, there are cer-

tain fundamental professional standards and certain fundamental ethical principles which can resolve most of the professional real estate appraiser's professional and ethical problems. These basic standards and ethical principles not only serve as the foundation of the Canons set forth in this Regulation, but they also may be used as guidelines to resolve other problems for which there is no specific rule.

Each Canon in this Regulation consists of three separate but inter-related parts: a statement of the Canon, Explanatory Comments relating to the Canon, and specific Disciplinary Rules based upon the Canon.

The Canons are axiomatic norms that express in general terms the standards of professional and ethical conduct which are expected of Members and Candidates of the Institute in their relationships with their clients, the public, and the appraisal profession. Each Canon is followed by Explanatory Comments that discuss and amplify the concepts embodied in such Canon.

The Disciplinary Rules following each Canon are derived from the Canons and Explanatory Comments and are mandatory in character. They define a minimum level of conduct below which no Member or Candidate of the Institute can fall without being subject to disciplinary action. In applying the Disciplinary Rules, interpretive guidance may be found in the basic principles embodied in the Canons and discussed in the Explanatory Comments.

In summary, the purpose of the Code of Professional Ethics and Standards of Professional Conduct is two-fold. Its primary purpose is to establish clear, precise, ethical and professional guidelines for the real estate appraiser who earnestly seeks to discharge his professional responsibilities in a manner consistent with his duty to the public and the profession. Its secondary purpose is to provide minimum standards by which to judge Members of the Institute and Candidates for membership whose conduct is in question.

Each Member and Candidate must determine for himself the extent to which his actions should rise above these minimum standards. Although the threat of disciplinary action does provide an incentive towards ethical conduct, in the final analysis it is the desire for individual excellence, coupled with a desire for the respect and confidence of his profession and of the society which he serves, that provides a professional man with the most effective incentive towards the highest degree of ethical conduct and the most effective deterrent to unethical conduct.

PREFACE

For convenience, the American Institute of Real Estate Appraisers of the National Association of Real Estate Boards will be referred to in this Regulation as the "Institute". All references to Members of the Institute shall be construed to refer to both male and female members and are equally applicable to Candidates of the Institute unless the context clearly indicates that the Canon or Disciplinary Rule is intended to apply only to members.

The term "appraisal" has been used throughout this Regulation in its broadest sense and is intended to cover all professional activity that involves the study of a real estate problem and results in an analysis, conclusion or opinion concerning such problem. It is recognized that a large percentage of the work performed by appraisers is directly concerned with the valuation of a particular parcel or tract of real estate at a given point in time, and the term "appraisal" is often used in this limited sense. Where this limited meaning is intended in Regulation No 10, the term "a valuation of a particular parcel or tract of real estate" is used.

This Regulation does not attempt to set forth disciplinary procedures or to prescribe penalties for the violation of a Disciplinary Rule, nor does it undertake to define standards with respect to the civil liability of real estate appraisers for negligent or unprofessional conduct.

Any Disciplinary Rule which is contrary to law or public policy in any jurisdiction shall be void and of no force or effect in such jurisdiction.

Although each Canon or Disciplinary Rule does not contain a specific statement setting forth the circumstances and conditions which will excuse a Member from strict observance of the Canon or Disciplinary Rule, it is recognized that illness, acts of God, and various other events beyond the control of the Member may make it inequitable to insist upon strict observance of the Canon or Disciplinary Rule in a particular case. When a Member of the Institute, in the exercise of reasonable care, violates a Canon or Disciplinary Rule due to illness, acts of God or other circumstances beyond his control, it is expected that the Grievance Committee or other agency of the Institute charged with responsibility for enforcing this Regulation will act in a manner to avoid an inequitable result. For example, in the event that a Member of the Institute is testifying in court and is required by a Canon or Disciplinary Rule to testify as to certain facts, conditions or assumptions but is prevented from doing so by the presiding judge, opposing counsel or other events beyond his control, this failure should not be deemed a violation of this Regulation.

CANON 1: A MEMBER OF THE INSTITUTE MUST REFRAIN FROM CONDUCT THAT IS DETRIMENTAL TO THE REAL ESTATE APPRAISAL PROFESSION.

EXPLANATORY COMMENTS.

The stability of real estate investments and the orderly growth and development of cities, suburbs and rural areas are vitally affected by the day-to-day decisions of those who own, manage, sell, purchase, invest in and lend money on the security of real estate. It is becoming more difficult, however, to make these day-to-day decisions in our complex, rapidly changing and expanding economy. Those who are required to make these decisions therefore have come to rely upon the

services of the professional real estate appraiser and have placed their trust in his integrity and competence. A Member of the American Institute of Real Estate Appraisers must at all times be mindful of this trust and of the adverse effect that his misconduct can have upon public confidence in the real estate appraisal profession. Therefore, a Member of the Institute must refrain from all conduct which has a tendency to cast discredit upon his profession.

DISCIPLINARY RULES.

D.R. 1-1. It is unethical for a Member of the Institute to engage in conduct that in fact is detrimental to, or has a substantially adverse effect upon, the real estate appraisal profession.

D.R. 1-2. It is unethical for a Member of the Institute, in the practice of his profession, to conduct himself in a manner that is dishonest or fraudulent, or involves deceit or misrepresentation, since all such conduct is conclusively presumed to be detrimental to the real estate appraisal profession.

D.R. 1-3. It is unethical for a Member of the Institute to engage in any conduct which results in his conviction of a felony involving moral turpitude, since all such conduct is conclusively presumed to be detrimental to the real estate appraisal profession.

CANON 2: A MEMBER OF THE INSTITUTE MUST ASSIST THE INSTITUTE IN CARRYING OUT ITS RESPONSIBILITIES TO THE PUBLIC AND TO THE OTHER MEMBERS OF THE INSTITUTE.

EXPLANATORY COMMENTS.

It is essential that each Member of the Institute cooperate with the Institute, its officers and committees in all matters relating to the professional activities of the Institute, especially those relating to admissions matters, disciplinary proceedings and appraisal review. If a Member of the Institute is elected or appointed to serve as a National or Chapter officer, he must carry out his responsibilities with diligence and objectivity.

In the mind of the public, membership in the American Institute of Real Estate Appraisers signifies that an individual real estate appraiser possesses a high degree of personal integrity and professional competence. If this public confidence is to be maintained, it is essential that Members of the Institute continue to use a high degree of care, and exercise their judgment with fairness and frankness, in passing upon applications for admission to candidacy and for admission to membership. Members of the Institute must make a reasonable and conscientious effort to report to the proper Institute official or committee all favorable and unfavorable information they possess relating to the character or other qualifications of an applicant. Fairness and frankness are essential because the rejection of a qualified individual is as detrimental to the Institute as the acceptance of an unqualified individual.

A Member of the Institute should serve on the committees of the Institute which have responsibility for admissions matters when he is requested to do so and is qualified to serve. Upon acceptance of an appointment to a committee of the Institute which has responsibility for admissions matters, a Member of the Institute must carry out his responsibilities with diligence and objectivity.

Further, it is essential that each Member of the Institute cooperate with those Members of the Institute who are charged with responsibility for administering disciplinary

proceedings. A Member of the Institute should voluntarily bring to the attention of the proper Institute official or committee all knowledge that he may possess with respect to the conduct of another Member which he reasonably believes to be in violation of the Code of Professional Ethics and Standards of Professional Conduct set forth in this Regulation

A Member of the Institute should serve on the committees of the Institute which have responsibility for the enforcement of this Regulation when he is requested to do so and is qualified to serve. Upon acceptance of an appointment to a committee of the Institute which has responsibility for the enforcement of this Regulation, a Member of the Institute must carry out his responsibilities with diligence and objectivity.

It is also essential that each Member of the Institute cooperate with the Institute, its officers and committees in all matters relating to the appraisal review process, since failure of a Member to cooperate with the Institute in this regard will hamper the Institute's efforts to educate and counsel its members and discharge its responsibilities to both the public and the Members of the Institute.

A Member of the Institute should serve on the committees of the Institute which have responsibility for the appraisal review process when he is requested to do so and is qualified to serve. Upon acceptance of an appointment to a committee of the Institute which has responsibility for the appraisal review process, a member of the Institute must carry out his responsibilities with diligence and objectivity.

A Member's obligations to the Institute also preclude him from entering into a contract for his services that will make it impossible for him to comply with the Institute's By-Laws or Regulations, and therefore if a potential client suggests such a contractual relationship, a Member of the Institute must refuse to enter into the contract.

A Member of the Institute should also use his best efforts to make a contribution to the growth and development of his profession. A contribution is made by participating in the professional activities of the Institute, either as an officer or as a Member, and by sharing with other members of the real estate appraisal profession, through speaking assignments, articles in professional journals or other publications, the Member's individual experience and techniques or his ideas for the improvement and development of the profession. A contribution also is made by participating, either as a teacher or a student, in the various educational programs sponsored by the Institute and other educational institutions

DISCIPLINARY RULES

D.R. 2-1. When responding to inquiries of a duly authorized Admissions Committee or a member thereof, it is unethical for a Member of the Institute knowingly to submit false or misleading information or to refrain from submitting any information which a reasonably conscientious man would deem relevant to the admissions process

D.R. 2-2 When responding to inquiries of a duly authorized Professional Ethics Committee or a member thereof, it is unethical for a Member of the Institute knowingly to submit false or misleading information or to refrain from submitting any information which a reasonably conscientious man would deem relevant to the initiation, orderly processing or proper disposition of a disciplinary proceeding.

D.R. 2-3. It is unethical for a Member of the Institute possessing knowledge of illegal or improper conduct by another Member or possessing documentary evidence relating thereto, who is summoned to appear and testify or to produce such documentary evidence in a disciplinary proceeding held pursuant to Regulation No. 6, to fail to comply with the terms of such summons.

D.R. 2-4. It is unethical for a Member of the Institute to fail to prepare a written appraisal report (or a complete memorandum containing the data, reasoning and conclusions upon which his testimony is to be based) before testifying in court or before any public commission or other tribunal as an appraiser, *provided, however*, that in the event circumstances do not permit the preparation of such report or complete memorandum prior to such testimony, this requirement may be satisfied by the preparation of such appraisal report or complete memorandum immediately after the completion of such testimony. This written appraisal report or complete memorandum shall be preserved for a period of two years following final disposition of the judicial or other proceeding (including all appeals thereof), and must be made available on request to the duly authorized committees or representatives of the Institute.

D.R. 2-5. When responding to inquiries of a duly authorized Appraisal Review Committee or a member thereof, it is unethical for a Member of the Institute knowingly to submit false or misleading information or to refrain from submitting any information which a reasonably conscientious man would deem relevant to the appraisal review process.

D.R. 2-6. It is unethical for a Member of the Institute who has accepted an assignment to a committee of the Institute, especially those committees which have responsibility for admissions matters, the enforcement of Regulation No 10, or the administration of the appraisal review process, to fail to carry out his responsibilities with diligence and objectivity.

D.R. 2-7. It is unethical for a Member of the Institute to accept employment which precludes such Member from complying with the By-Laws or Regulations of the Institute.

CANON 3: WHEN PERFORMING A REAL ESTATE APPRAISAL ASSIGNMENT. A MEMBER OF THE INSTITUTE MUST RENDER HIS PROFESSIONAL SERVICES WITHOUT ADVOCACY FOR HIS CLIENT'S INTERESTS OR THE ACCOMMODATION OF HIS OWN INTERESTS.

EXPLANATORY COMMENTS.

A real estate appraisal prepared by a Member of the Institute must be factual and objective, and in rendering real estate appraisal services a Member must take particular care to insure that each analysis, conclusion or opinion concerning real estate is made without advocacy for the client's interests or the accommodation of the Member's own interests.

The term "advocacy for a client's interests" is intended to prohibit bias in favor of the client *in arriving at* an analysis, conclusion or opinion and should not be construed to prohibit a Member of the Institute from explaining, defending or advocating the correctness of his analyses, conclusions or opinions concerning real estate.

The prohibition against "advocacy for a client's interests" should not be construed to mean that a Member of the Institute is precluded from making an appraisal based upon a hypothetical condition posited by his client or required by a legal instruction from his client's attorney, since a Member of the Institute may make an appraisal based upon a hypothetical condition if

(i) the Member concludes that there is a reasonable possibility that such hypothetical condition may, in fact, come into being, *and*

(ii) a reasonable man, under the same circumstances, would also conclude that there is a reasonable possibility that such hypothetical condition may, in fact, come into being.

To insure the objectivity required by this Canon, a Member of the Institute who is tendered an appraisal assignment relating to property in which he has a direct or indirect current or prospective personal interest, or which involves parties towards whom he has a personal bias, must carefully consider the degree to which such personal interest or bias may affect his objectivity. If the Member concludes that his professional judgment will be affected, or if a reasonable man, under the same circumstances, would conclude that his professional judgment would be affected, the Member must refuse the proffered assignment.

If, however, a Member of the Institute concludes that his personal interest in the subject matter of the assignment or his personal bias toward the parties involved will not affect his objectivity and that a reasonable man, under the same circumstances, would reach a similar conclusion, he may accept the proffered assignment *provided* that he fully discloses such personal interest or bias to his client prior to such acceptance.

From the time that a Member of the Institute is contacted concerning a real estate appraisal assignment and until a reasonable length of time after the completion of such assignment, a Member of the Institute must carefully refrain from acquiring property or assuming a position that will, in fact, affect his professional judgment or violate his fiduciary duty to his client, however, during this period a Member of the Institute may acquire property or change his position in a manner that could possibly affect his professional judgment or violate his professional duty to his client if, prior to the completion of any such acquisition or change of position, the following conditions have been met:

(a) the Member reasonably concludes that in fact his proposed acquisition or change of position will not violate his fiduciary duty to his client,

(b) the Member reasonably concludes that in fact his professional judgment will not be affected by such acquisition or change of position,

(c) the Member makes full disclosure thereof to his client and obtains from his client a statement consenting to or approving such acquisition or change of position, and

(d) the Member gives his client the right to terminate the appraisal assignment without payment of any fee or other charge.

As used in this Canon, the prohibition against the accommodation of the Member's own interest in rendering professional real estate appraisal services is not intended to apply to a Member testifying on his own behalf when property he owns is involved in a condemnation proceeding

As used in this Canon, the prohibition against the "accommodation of the Member's own interests" in rendering professional real estate appraisal services is not limited to situations involving the exercise of a Member's professional judgment. If an appraiser makes false or misleading statements in setting forth his qualifications or fails to accurately identify the person or persons who render professional appraisal assistance in arriving at the analyses, conclusions or opinions concerning real estate in an appraisal report, this is also deemed to be an "accommodation of his own interests." Both of these rules are rooted in the public interest

By mis-stating his qualifications, an appraiser may mislead the public as to his fitness for future appraisal assignments.

By failing to accurately identify the person or persons who actually prepared, or participated in the preparation of, an appraisal report an appraiser may (i) mislead the public as to his fitness for future appraisal assignments, (ii) mislead the public as to the weight to be given to the analyses, conclusions or opinions concerning real estate contained in such report, and (iii) prevent the public from evaluating the professional qualifications of those who prepared or participated in the preparation of the report.

To avoid misleading the public, each written appraisal report signed by a Member of the Institute must acknowledge all professional assistance received in arriving at the analyses, conclusions and opinions concerning real estate contained in such report, and such acknowledgement must refer by name to any party rendering such assistance unless such party specifically requests that his name not be used. This rule does *not* require a Member of the Institute to acknowledge (i) assistance received in obtaining the data upon which the appraisal report is based, (ii) assistance received in the physical preparation of the report (such as taking photographs, preparing charts, maps or graphs, or typing or printing the report) or (iii) any other assistance that does not directly involve the exercise of judgment in arriving at the appraisal report's analyses, opinions or conclusions concerning real estate

The above rule requiring an acknowledgment of the professional contribution of others does not reduce the responsibility of those who sign a written appraisal report, for in evaluating such reports, clients, mortgage lenders and others who use such reports are entitled to rely upon the signature of all who sign. Therefore, although others may participate in the preparation of a written appraisal report, any Member of the Institute who signs or co-signs such report must accept responsibility for the contents of the entire report.

DISCIPLINARY RULES

DR 3-1 It is unethical for a Member of the Institute to render a biased or non-objective analysis, opinion or conclusion concerning real estate

D.R. 3-2 It is unethical for a Member of the Institute to accept an appraisal assignment if the assignment is contingent upon his reporting a predetermined value or is contingent upon his reaching any other predetermined analysis, opinion or conclusion

DR. 3-3 It is unethical for a Member of the Institute to accept an appraisal assignment for which his compensation will be a percentage of the amount of his value estimate, or a percentage of the amount by which his value estimate exceeds or is less than a value estimate of a third party, such as a condemnor or tax assessor

D.R. 3-4. It is unethical for a Member of the Institute to accept an appraisal assignment on the condition that his compensation will be a percentage of the damages which may be agreed upon or finally decreed

DR 3-5 It is unethical for a Member of the Institute to accept an appraisal assignment if he has any direct or indirect current or prospective personal interest in the property which is the subject matter of the appraisal assignment or any personal bias towards the parties involved in the assignment, unless (i) prior to accepting such assignment, he concludes that his professional judgment will not be affected, and (ii) prior to accepting such assignment he concludes that a reasonable man, under the same circumstances, would conclude that his professional judgment would not be affected

D.R. 3-6 It is unethical for a Member of the Institute, during a period which commences at the time that he is contacted concerning an appraisal assignment and expires a reasonable length of time after the completion of such assignment, to acquire property or assume a position that will affect his professional judgment or violate his fiduciary duty to his client.

D.R. 3-7 It is unethical for a Member of the Institute, during a period which commences at the time that he is contacted concerning an appraisal assignment and expires a reasonable length of time after the completion of such assignment, to acquire property or assume a position which could possibly affect his professional judgment or violate his professional duty to his client unless (a) the Member reasonably concludes that his proposed acquisition or change of position will not, in fact, violate his fiduciary duty to his client, (b) the Member reasonably concludes that his professional judgment will not be affected by such acquisition or change of position, (c) the Member makes full disclosure to his client and obtains from his client a statement consenting to or approving such acquisition or change of position and (d) the Member gives his client the right to terminate the appraisal assignment without payment of any fee or other charge.

D.R. 3-8 It is unethical for a Member of the Institute to make a false or misleading statement in that portion of a written appraisal report that deals with his professional qualifications or in any testimony concerning his professional qualifications.

D.R. 3-9 It is unethical for a Member of the Institute who receives professional assistance in arriving at the analyses, conclusions or opinions concerning real estate contained in an appraisal report signed by him to fail to acknowledge such fact in the report, or to fail to acknowledge by name a party who rendered such assistance when such party did not specifically request that his name not be used.

D.R. 3-10. It is unethical for a Member of the Institute to sign or co-sign an appraisal report without accepting responsibility for the contents of the entire report.

CANON 4: IN RENDERING PROFESSIONAL REAL ESTATE APPRAISAL SERVICES, A MEMBER OF THE INSTITUTE MUST PERFORM COMPETENTLY AT ALL TIMES.

EXPLANATORY COMMENTS.

Although it is often difficult to distinguish between the substance of an appraisal and the form and content of the appraisal report, this Canon is directed towards the substantive aspects of rendering appraisal services and the rules relating to the contents of an appraisal report are set forth separately in Canon 5.

A Member of the Institute must always act with competence and proper care in rendering real estate appraisal services to his clients.

Continuing changes and developments in the real estate field have a substantial impact upon the cost and manner of constructing improvements, the marketing of commercial, industrial and residential real estate, and the legal framework by which real property rights and interests are created, conveyed and mortgaged. To keep abreast of these changes and developments, the real estate appraisal profession is continually devising new appraisal methods and techniques. For this reason, it is not sufficient for a Member of the Institute to simply maintain the skills and the level of proficiency which

he possessed at the time he became a Member and a Member of the Institute must continually attempt to improve his skills so as to remain proficient in his profession.

On the other hand, this Canon should not be construed to mean that each and every human error committed by a Member of the Institute in the performance of his professional services may be the basis of a disciplinary action. Perfection is impossible to attain and competence does not require perfection. The types of error that do affect an appraiser's competence and place him in violation of this Canon may be classified as follows:

First, an error (of omission or commission) which is substantial and materially affects the analysis, opinion or conclusion concerning real estate contained in an appraisal.

Second, a series of errors which, considered individually, do not substantially or materially affect the results of individual appraisal assignments, but nevertheless evidence the fact that an appraiser is repeatedly rendering his professional services in a careless and negligent manner.

Prior to accepting a real estate appraisal assignment, a Member of the Institute must give careful consideration to both his knowledge and his experience with respect to the subject matter of the proposed assignment.

If, in contemplating the acceptance of an appraisal assignment, a Member of the Institute realizes that he lacks the knowledge necessary to complete the assignment competently, or if he has some doubt as to whether he possesses the knowledge necessary to complete the assignment competently, then prior to completing the assignment he must take all steps necessary to acquire the knowledge he lacks.

If, in contemplating the acceptance of an appraisal assignment, a Member of the Institute knows that his previous experience with respect to the subject matter of the assignment is insufficient to enable him to complete the assignment competently (or if a reasonable man with the same experience would conclude that his experience with respect to the subject matter of the assignment was insufficient to permit him to complete the appraisal assignment competently), then he must either (i) associate himself with another appraiser who has had experience in such field, or (ii) disclose his lack of experience to his client before accepting the assignment.

The Institute has developed and is continuing to develop procedures relating to appraisal assignments. Although all of the procedures developed by the Institute are important and have a direct bearing upon the competency with which an appraiser has rendered his professional services, the variety and complexity of appraisal assignments makes it impossible to set forth in this Explanatory Comment every procedure of the Institute. However, to illustrate the nature of the procedures to which this Explanatory Comment refers, certain procedures are set forth below:

(1) In performing an appraisal assignment it is improper to arrive at an analysis, conclusion or opinion concerning real estate without utilizing all of the recognized appraisal methods and techniques that will materially contribute to a proper evaluation of such real estate or to a solution of the real estate problem under consideration.

(2) It is improper to make an appraisal containing a valuation of a particular parcel or tract of real estate which is predicated upon anticipated rentals from and expenses of such parcel or tract unless it is highly probable that such anticipated rentals and expenses will be realized and such probability can be demonstrated by clear and competent evidence.

(3) It is improper to make an appraisal containing a valuation of a particular parcel or tract of real estate which is based upon the completion of a proposed real estate project (either new construction or remodeling) to be located upon such parcel or tract (or upon the completion, as planned, of a real estate project under construction on such parcel or tract) unless

(a) Specific, identified plans and specifications are examined by the appraiser and are available for future review and verification; or, in lieu thereof, the appraiser examines a structure or project which is substantially similar to the structure or project to be located upon the parcel or tract that is the subject of the appraisal, and all variations from the similar structure or project are clearly stated and taken into account in the analyses, opinions or conclusions reached by such appraisal;

(b) When applicable, the appraiser makes an independent estimate of the net earnings which can reasonably be expected from the project when completed and takes such net earnings into account in arriving at the analyses, conclusions or opinions reached by such appraisal; and

(c) When applicable, the appraiser makes an estimate as to the period of time reasonably required to attain normal occupancy or usage and takes such time period into account in arriving at the analyses, conclusions or opinions reached by such appraisal.

(4) In making an appraisal containing a valuation of a particular parcel or tract of real estate, it is improper for an appraiser to fail to consider existing zoning restrictions as well as all other existing legal restrictions on the use of such real estate which reasonably should be known to him, and if the value of such parcel or tract is affected by the possibility that such existing legal restrictions may be changed or nullified, it is improper for an appraiser to fail to take such possibility into account.

(5) It is improper to make an appraisal containing a valuation of a particular parcel or tract of real estate which is based upon the anticipated completion of a public or private improvement, either on or off such parcel or tract, unless it is reflected in the market, or unless it is highly probable that such public or private improvement will be completed and the time of completion is taken into account.

(6) When real estate is encumbered with a lease, two or more estates may be created: the leased fee and the leasehold estate. It is therefore improper for an appraiser to make an appraisal containing a valuation of a particular parcel or tract of real estate that is subject to an existing lease without considering the effect of such lease upon the valuation of the various estates created by such lease, unless such consideration is precluded by the terms of the appraisal assignment.

(7) It is improper for an appraiser to make an appraisal containing a valuation of the security for a leasehold loan that is based solely on the value of the improvement and fails to take into account the terms and conditions of the lease and the effect that such terms and conditions have on the value of such security.

(8) Although "real estate" is an aggregate of various rights and often is compared to a bundle of rights, it is improper for an appraiser to make an appraisal containing a valuation of a particular parcel or tract of real estate that is derived solely by adding together the individual values of the various rights or estates and fails to take into account the effect (if any) of the assemblage upon such valuation.

(9) It is improper for an appraiser to make an appraisal containing a valuation of a particular parcel or tract of real estate that is derived solely by adding together the individual values of the various geographical parts of such parcel or tract and fails to take into account the effect (if any) of the assemblage upon such valuation.

If a Member of the Institute does not perform an appraisal assignment in accordance with the procedures of the Institute, the appraisal service rendered will be deemed to have been performed in an incompetent manner unless (a) the facts and circumstances relied upon in departing from the procedures are a valid basis for such departure and (b) the reasons for such departure from the procedures are clearly set forth in the appraisal report. In such event, the Member must be prepared to demonstrate the propriety of such departure by clear and competent evidence.

The procedures developed by the Institute are not absolute. Since the real estate appraiser performs his services in a variety of factual situations and since time, specialized experience, special client relationships, and the cost of an appraisal often play an important part in the scope of the assignment that a client gives to an appraiser, Members of the Institute must be allowed to accept appraisal assignments that call for something different from the work that otherwise would be required

If a client limits the scope of an appraisal assignment given to a Member of the Institute, the Member may accept such assignment provided that he complies with the following requirements:

(1) Prior to accepting such limited assignment the Member must advise his client that the assignment calls for something less than the work required for a full and complete appraisal and that his appraisal report will be qualified to reflect the limited scope of the assignment,

(2) The limited scope of the assignment must be set forth in the appraisal report (and in any testimony concerning the appraisal) in a clear, precise manner;

(3) The scope of the assignment must not be so limited that the results obtained cannot possibly be meaningful, or so limited that the effect would be to mislead the client or the public.

If a client changes or expands the scope of an appraisal assignment given to a Member of the Institute, the Member may accept such assignment provided that he complies with the following requirements:

(1) Prior to accepting such changed or expanded assignment the Member must advise his client that the assignment calls for something different from the work required for a full and complete appraisal and that his appraisal report will be qualified to reflect this fact;

(2) The changed or expanded scope of the assignment must be set forth in the appraisal report (and in any testimony concerning the appraisal) in a clear, precise manner,

(3) The scope of the assignment must not be so changed or expanded that the results obtained cannot possibly be meaningful, or so changed or expanded that the effect would be to mislead the client or the public

A client may limit, change or expand the scope of an appraisal assignment by means of a direct instruction to the appraiser, or he may limit, change or expand the scope of an appraisal assignment by means of a legal instruction given to the appraiser by the client's attorney.

DISCIPLINARY RULES

D.R. 4-1. It is a violation of the Institute's Standards of Professional Conduct for a Member of the Institute to render

a professional real estate appraisal service to a client containing an error of omission or commission which is substantial and materially affects his analysis, opinion or conclusion concerning real estate.

D.R. 4-2. It is a violation of the Institute's Standards of Professional Conduct for a Member of the Institute, in rendering his professional real estate appraisal services over a period of time, to make a series of errors which, considered individually, do not substantially or materially affect the results of individual appraisal assignments, but which, considered together, evidence the fact that he repeatedly renders his professional services in a careless and negligent manner

D.R. 4-3. It is unethical for a Member of the Institute to accept, undertake and complete a real estate appraisal assignment without having or acquiring the knowledge necessary to complete such assignment competently.

D.R. 4-4. If a Member of the Institute is requested to render professional real estate appraisal services and he knows (or if a reasonable man with the same experience would conclude) that his previous experience with respect to the subject matter of the assignment is insufficient to enable him to complete the assignment competently, it is unethical for him to accept, undertake and complete such assignment without either (i) associating himself with another appraiser who has had such previous experience; or (ii) disclosing such lack of experience to his client prior to accepting the assignment.

D.R. 4-5. It is unethical for a Member of the Institute to render to a client professional real estate appraisal services that fail to comply with the procedures developed by the Institute unless (i) the facts and circumstances relied upon in departing from the procedures are a valid basis for such departure, (ii) the facts and circumstances relied upon in departing from the procedures are clearly set forth in the appraisal report, and (iii) the member is prepared to demonstrate the propriety of such departure.

D.R. 4-6. It is unethical for a Member of the Institute to accept a limited appraisal assignment (received by means of a direct instruction from the client or by means of a legal instruction from the client's attorney) unless (i) prior to accepting such assignment he advises his client that the assignment calls for something less than the work required for a full and complete appraisal and that his report will be qualified to reflect the limited scope of the assignment; (ii) the limited scope of the assignment is clearly and precisely set forth in his appraisal report and in any testimony concerning the appraisal; and (iii) the scope of the assignment is not so limited that the results are meaningless or so limited that the client or public will be misled

D.R. 4-7. It is unethical for a Member of the Institute to accept a changed or expanded appraisal assignment (received by means of a direct instruction from the client or by means of a legal instruction from the client's attorney) unless (i) prior to accepting such assignment he advises his client that the assignment calls for something different from the work required for a full and complete appraisal and that his report will be qualified to reflect the changed or expanded scope of the assignment; (ii) the changed or expanded scope of the assignment is clearly and precisely set forth in his appraisal report and in any testimony concerning the appraisal; and (iii) the scope of the assignment is not so changed or expanded that the results are meaningless or so changed or expanded that the client or public will be misled.

REPORTS. A MEMBER OF THE INSTITUTE MUST COMPLY WITH THE RULES OF THE INSTITUTE RELATING TO THE CONTENTS OF SUCH REPORTS.

EXPLANATORY COMMENTS.

Although it is often difficult to distinguish between the substance of an appraisal and the form and content of the appraisal report, this Canon sets forth the rules relating to the contents of an appraisal report and Canon 4 is directed towards the substantive aspects of rendering appraisal services.

As noted in the Explanatory Comments under Canon 4, the Institute requires its Members, in arriving at an analysis, conclusion or opinion concerning real estate, to employ all of the recognized appraisal methods and techniques that will materially contribute to a proper evaluation of such real estate or to a solution of the real estate problem under consideration. As a corollary to this rule, the Institute also requires that the appraisal report that is given to the client at the conclusion of the appraisal process contain a clear statement of all of the assumptions made, together with a reasonably complete summary of the work done in arriving at each analysis, conclusion or opinion concerning real estate contained in the report. Appraisal reports should be in written form; however, in the event that circumstances do not permit the preparation of a written report, an oral report may be made. In such event, a Member of the Institute must preserve his notes and factual records as well as a complete memorandum of each analysis, conclusion and opinion contained in the oral report.

To aid its Members in complying with this requirement, the Institute has adopted a series of specific reporting rules relating to the contents of all written and oral real estate appraisal reports prepared by Members of the Institute. These specific reporting rules are as follows:

(1) A written appraisal report must contain a clear and reasonably complete description of the property that is the subject of the appraisal, an oral appraisal report must clearly identify the real estate which is the subject of such report.

(2) All appraisal reports, written and oral, must clearly and unequivocally set forth all of the facts, assumptions and conditions upon which the appraisal is based.

(3) All appraisal reports, written and oral, that contain a valuation of a particular parcel or tract of real estate must set forth the date of such valuation and the reasoning of the appraiser that supports such valuation. All other appraisal reports, written and oral, must set forth the reasoning of the appraiser supporting his analysis, opinion or conclusion with respect to the real estate that is the subject of such appraisal.

(4) All appraisal reports, written and oral, that contain a valuation relating to an estate in land that is less than the whole fee simple estate, must contain a clear statement that (i) the value reported for such estate relates to a fractional interest only in the real estate involved and (ii) the value of this fractional interest plus the value of all other fractional interests may or may not equal the value of the entire fee simple estate considered as a whole.

(5) All appraisal reports, written and oral, that contain a valuation relating to a geographical portion of a larger parcel or tract of real estate must contain a clear statement that (i) the value reported for such geographical portion relates to such portion only and should not be construed as applying with equal validity to other portions of the larger parcel or tract, and (ii) the value reported for such geographical portion plus the value of all other geographical

CANON 5: IN MAKING WRITTEN AND ORAL REAL ESTATE APPRAISAL RE-

portions may or may not equal the value of the entire parcel or tract considered as an entity.

(6) All written appraisal reports must contain a statement that the appraiser has no present or contemplated future interest in the property appraised and that the appraiser has no personal interest or bias with respect to the subject matter or the parties involved in the appraisal; *provided, however*, that if a statement of this nature cannot be made, then such appraisal report must contain a clear, frank statement disclosing all such personal interest or bias.

(7) All written appraisal reports must contain a certificate substantially in the following form:

"I (we), the undersigned, do hereby certify that to the best of my (our) knowledge and belief the statements contained in this report, upon which the analyses, opinions and conclusions expressed herein are based, are true and correct; also, this report sets forth all of the limiting conditions affecting the analyses, opinions and conclusions contained in this report; also, this report has been made in conformity with and is subject to the requirements of the Code of Ethics and Standards of Professional Conduct of the American Institute of Real Estate Appraisers of the National Association of Real Estate Boards."

(8) All written appraisal reports must contain either (i) a statement in compliance with Canon 3 acknowledging the professional contributions of others in arriving at the analyses, conclusions or opinions concerning real estate contained in such appraisal report, or (ii) a statement that no one other than the person or persons signing the report prepared the analyses, conclusions and opinions concerning real estate set forth in such report.

(9) All written appraisal reports must contain a statement relating to the disclosure and public dissemination of the contents of such report in accordance with the requirements of Canon 7.

The specific reporting rules set forth above are not absolute. Since the real estate appraiser performs his services in a variety of factual situations and since time, specialized experience, special client relationships, and the cost of an appraisal often play an important part in the scope of the assignment that a client gives to an appraiser, Members of the Institute must be allowed to accept appraisal assignments that call for something different from the appraisal report that would otherwise be required.

If a client requests that something less than a full and complete written appraisal report be prepared by a Member of the Institute, the Member may accept such limited assignment provided that he complies with the following requirements:

(1) Prior to accepting such limited assignment the Member of the Institute must advise his client that the assignment calls for something less than a full and complete appraisal report and that his appraisal report will therefore be qualified to reflect the limited scope of the assignment;

(2) The limited scope of the appraisal report must be set forth and described in the report in a clear, precise manner;

(3) The contents of the appraisal report must not be so limited that the report cannot possibly be meaningful, or so limited that the effect would be to mislead the client or the public.

If a client requests that something more than a full and complete written appraisal report be prepared by a Member of the Institute, the Member may accept such expanded assignment provided that he complies with the following:

(1) Prior to accepting such expanded assignment the Member of the Institute must advise his client that the as-

signment calls for something more than a full and complete appraisal report and that his appraisal report will be qualified to reflect the expanded scope of the assignment;

(2) The expanded scope of the appraisal report must be set forth and described in the report in a clear, precise manner;

(3) The contents of the appraisal report must not be so expanded that the report cannot possibly be meaningful or so expanded that the effect would be to mislead the client or the public.

A client may limit or expand the scope of an appraisal report by means of a direct instruction to the appraiser, or he may limit or expand the scope of an appraisal report by means of a legal instruction given to the appraiser by the client's attorney.

For the purposes of this Canon, the testimony of an appraiser concerning his analyses, conclusions or opinions concerning real estate is considered to be the equivalent of an oral appraisal report. Therefore, a Member of the Institute must comply with the specific reporting rules relating to oral appraisal reports when he testifies in a judicial proceeding with respect to any of his analyses, conclusions or opinions concerning real estate.

DISCIPLINARY RULES

D.R. 5-1. It is a violation of the Institute's Standards of Professional Conduct for a Member of the Institute, in making an oral appraisal report, to fail to comply with the specific reporting rules established by the Institute which govern the contents of all oral appraisal reports made by Members of the Institute.

D.R. 5-2. It is a violation of the Institute's Standards of Professional Conduct for a Member of the Institute, in preparing a written appraisal report, to fail to comply with the specific reporting rules established by the Institute which govern the contents of all written appraisal reports prepared by Members of the Institute, provided, however, that a Member may accept a limited or expanded assignment with respect to the contents of a written appraisal report if he complies with Disciplinary Rule 5-3.

D.R. 5-3. It is unethical for a Member of the Institute to accept an appraisal assignment that requires him to prepare a written appraisal report that contains something more or something less than that which would comply with the specific reporting rules of the Institute governing the contents of written appraisal reports unless (i) prior to accepting such assignment he advises his client that the assignment calls for something more or something less than a full and complete appraisal report and his appraisal report will therefore be qualified to reflect the limited or expanded scope of the assignment; (ii) the limited or expanded scope of the appraisal report is clearly and precisely set forth and described in the report; and (iii) the contents of the appraisal report are not so expanded or so limited that the report cannot possibly be meaningful or so expanded or limited that the client or the public will be misled.

CANON 6: A MEMBER OF THE INSTITUTE MUST NOT VIOLATE THE CONFIDENTIAL NATURE OF THE APPRAISER-CLIENT RELATIONSHIP BY IMPROPERLY DISCLOSING THE CONFIDENTIAL PORTIONS OF A REAL ESTATE APPRAISAL REPORT.

EXPLANATORY COMMENTS

The client of an appraiser has a legitimate interest in controlling the disclosure and use of a real estate appraisal report commissioned by him. This interest results from the fact that he is obligated to pay the appraiser a fee for his professional services and is therefore entitled to the work product produced for this fee. If the Members of the Institute do not carefully observe the confidential nature of the appraiser-client relationship, the public may not only lose confidence in the Members of the Institute but it may also lose confidence in the appraisal profession generally.

To preserve and protect the confidential nature of the appraiser-client relationship, the Institute has established certain rules relating to any disclosure by a Member of the Institute of the contents of an appraisal report prepared by him. The general rule is that a Member of the Institute may not disclose an appraisal report in its entirety, nor may he disclose those portions of an appraisal report that contain his analyses, opinions or conclusions concerning the tract or parcel of real estate which is the subject of the report, to anyone other than:

- (i) Those persons specifically authorized by the client to receive such information.
- (ii) Third parties, when and to the extent that he is legally required to do so by statute, ordinance or order of court.
- (iii) The duly constituted committees of the Institute or individual members thereof when such committees or members are acting within the scope of the authority conferred upon them by the By-Laws and Regulations of the Institute.

Although an appraisal report, considered in its entirety, is properly deemed to be a confidential document, it should be noted that the general rules of the Institute set forth above do not prohibit the disclosure or use of those portions of the appraisal report that are not confidential. The non-confidential portions of an appraisal report that may be disclosed or used by the appraiser who prepared the report include, among other things, factual and statistical data secured by the appraiser from his own sources, general conclusions concerning the community in which the appraised parcel or tract is located, and general charts, maps and graphs that relate to more than the subject matter of the appraisal.

A corollary to the general rule set forth above is that if a client furnishes a Member of the Institute confidential factual data in connection with an appraisal assignment and such confidential factual data is used in the appraisal report, the disclosure and use of such confidential factual data is governed by the general rule set forth above. Therefore, in the event that a Member comes into possession of confidential factual data in the course of an appraisal assignment, this specific confidential factual data may not be disclosed to the public or used in connection with subsequent appraisal assignments for other clients unless and until such factual data becomes public. Furthermore, if a Member is subsequently tendered an appraisal assignment that will be substantially and materially affected by the use of, or the failure to use, such confidential factual data in his report, the member must refuse to accept the subsequent assignment.

It should be noted that under the disclosure rules established by the Institute, each Member must, upon request, disclose the contents of an appraisal report to the duly constituted committees of the Institute or individual members thereof when such committees or members are acting within the scope of their authority under the By-Laws and Regulations of the Institute. This requirement was adopted by the Institute to facilitate the Institute's efforts to maintain the high standards

of professional practice and ethical conduct that have been the hallmark of the Institute since its creation. These high standards can be maintained only if the Institute, acting through its duly authorized committees under the limitations imposed by the Institute's By-Laws and Regulations, has access to certain appraisal reports prepared by its Members. Since the committees which are authorized by the By-Laws and Regulations of the Institute to obtain such reports are required to keep confidential all information coming to them in an official capacity, the confidential nature of the appraiser-client relationship is not violated by this requirement.

Although the clients of Members of the Institute usually are aware of the fact that certain appraisal reports prepared by Members of the Institute must be submitted to the duly authorized professional ethics committees and appraisal review committees of the Institute, it is desirable that appropriate steps be taken to avoid any misunderstanding in this regard. Therefore, each Member of the Institute is required to state in each written contract for his appraisal services that his appraisal report will be prepared in conformity with, and will be subject to, the requirements of the Code of Ethics and Standards of Professional Conduct of the Institute. In the event that a Member of the Institute is tendered a contract for appraisal services by a major employer of appraisers, such as a Governmental body, that has a standard form contract that is extremely difficult to change, the Member must use his best efforts to comply with this Canon.

DISCIPLINARY RULES

D.R. 6-1. It is unethical for a Member of the Institute to disclose an appraisal report in its entirety, or those portions of a report that contain his analyses, opinions or conclusions concerning the tract or parcel of real estate which is the subject of the report, to anyone other than (i) those persons specifically authorized by the client to receive such information; (ii) third parties, when and to the extent that he is legally required to do so by statute, ordinance or order of court; and (iii) the duly constituted committees of the Institute or individual members thereof when such committees or members are acting within the scope of their authority under the By-Laws and Regulations of the Institute.

D.R. 6-2. If a Member of the Institute comes into possession of confidential factual data in the course of an appraisal assignment and such confidential factual data is used in the appraisal report, it is unethical for the Member to disclose such confidential factual data to anyone other than (i) those persons specifically authorized by the client to receive such information, (ii) third parties, when and to the extent that he is legally required to do so by statute, ordinance or order of court, and (iii) the duly constituted committees of the Institute or individual members thereof when such committees or members are acting within the scope of their authority under the By-Laws and Regulations of the Institute.

D.R. 6-3. If a Member of the Institute comes into possession of confidential factual data in the course of an appraisal assignment, it is unethical for such Member to accept a subsequent appraisal assignment that will be substantially and materially affected by the use of, or the failure to use, such confidential factual data in his report.

D.R. 6-4. It is unethical for a Member of the Institute to enter into a written contract for real estate appraisal services that does not provide that his appraisal report will be prepared in conformity with, and will be subject to, the requirements of the Code of Professional Ethics and Standards of Professional Conduct of the Institute.

CANON 7: A MEMBER OF THE INSTITUTE MUST REFRAIN FROM UNPROFESSIONAL CONDUCT IN SECURING REAL ESTATE APPRAISAL ASSIGNMENTS AND IN USING ADVERTISING MEDIA IN CONNECTION WITH HIS REAL ESTATE APPRAISAL PRACTICE.

EXPLANATORY COMMENTS

A primary objective of the founders of the Institute was to develop and establish for the Institute exemplary standards of professional and ethical conduct that would lead to a public recognition of Institute members as professionals. The subsequent realization of this objective has been of substantial benefit not only to the members of the Institute but to the public as well.

If the public interest is to be served, it is essential that the professional status accorded to members of the Institute be preserved. The governmental bodies, business institutions and individuals who own, manage, sell, purchase, invest in and lend money on the security of real estate have come to rely upon the professional services rendered by members of the Institute. If the Institute fails to maintain its professional and ethical standards, appraisal reports of its members will no longer command respect in the market place and decisions concerning both the valuation and utilization of real estate will lose the rational basis that is now afforded by appraisal reports of Institute members.

A hallmark of every profession is that the professional man does not secure his professional assignments by means of unrestricted solicitation or the unrestricted use of advertising media; rather, a professional man secures his professional assignments through his individual reputation for competence or through the confidence that the public places in his professional designation. All professions have placed substantial restrictions upon the solicitation of professional assignments and the use of advertising media. The appraisal profession is no exception.

All such restrictions are rooted in the public interest. If professional men were allowed to seek out and solicit professional assignments, or to use advertising media for competitive advertising, it could encourage the making of extravagant, artful and self-laudatory statements for the purpose of obtaining business. This in turn would mislead those who require professional help and inevitably produce unrealistic expectations in their minds, thereby impairing public confidence in the profession.

The Institute prohibits its Members from soliciting real estate appraisal assignments (other than through the limited and restricted use of advertising media permitted below) unless such solicitation is in response to an invitation of a potential client. For example, a Member of the Institute cannot call on businessmen in a community and solicit real estate appraisal business, nor can he hire a sales staff for this purpose. He can, however, respond to an inquiry initiated by a potential client, and this response can acknowledge his willingness and availability to accept an assignment, describe his professional qualifications and quote fees. If the potential client is a public or semi-public body, the "inquiry" may be in the form of an Invitation for Bids published in a newspaper, magazine or other similar publication, rather than in the form of an oral or written communication addressed directly to the Member. In those jurisdictions where, by public policy, it is necessary for an appraiser to place his name upon an approved list or panel of appraisers to secure appraisal assignments, a

Member of the Institute is permitted to initiate the placing of his name on such panel or list.

The Institute also prohibits its Members from entering into competitive bidding for appraisal assignments when the Member has reason to believe that the fee will be the sole criteria that will be considered in awarding the assignment.

The Institute's rules with respect to the securing of real estate appraisal assignments are not confined to direct attempts to procure business, but also relate to the use of fees to secure appraisal assignments.

A Member of the Institute must not charge or collect a professional fee that is clearly inadequate for the services rendered if the purpose of setting the inadequate fee is to improperly compete with other professional appraisers in obtaining appraisal assignments; at the same time, a Member is prohibited from charging or collecting a clearly excessive fee. The factors to be considered in determining the reasonableness of a professional fee include the following: the time and labor required; the unique nature of the assignment and difficulty of the questions involved; the skill required to perform the appraisal assignment properly; the fee customarily charged in the locality for similar appraisal services; the time limitations imposed by the client or by the circumstances; the nature and length of the professional relationship with the client; and the age, experience, education, reputation and ability of the appraiser performing the service.

In quoting a professional fee, a Member of the Institute may quote a maximum fee, a minimum fee, or both, with the amount thereof to be determined at a later date on the basis of the time involved, the data furnished and other circumstances surrounding the assignment.

The Institute also prohibits its Members from soliciting real estate appraisal assignments by offering a commission, fee or emolument of any kind to anyone who refers such an appraisal assignment to the Member. If a Member wishes to refer a real estate appraisal assignment to another appraiser he may do so; however, the referral must be made upon the basis of choosing the appraiser who is best qualified to render the professional service required by the client, and this choice should not be influenced or affected in any way by the self-interest of the referring party. A corollary to this rule is that a Member also is prohibited from claiming any commission, fee or emolument of any kind for referring appraisal work to another appraiser. This rule does not prohibit the sharing of a fee in connection with a joint appraisal assignment, but any such sharing must be based upon the same factors as are required to be considered in setting any professional fee.

When a potential client requests an appraiser to submit a resumé or other statement of his qualifications prior to the awarding of an appraisal assignment, it is imperative that such resumé or statement be factually accurate and not misleading. The Institute therefore requires its Members to use the highest degree of care in preparing any such resumé or statement and prohibits the inclusion therein of any information that is false or would tend to mislead the potential client or the public.

In addition to permitting its Members to respond to inquiries initiated by potential clients, the Institute also permits its Members to solicit real estate appraisal assignments by means of a limited and restricted use of advertising media. The general rules of the Institute relating to the use of advertising media, both for the purpose of soliciting real estate appraisal assignments and for all other purposes, are set forth below. These rules relate to the individual use of advertising media by Members and do not apply to institutional advertising conducted by the Institute or any of the Institute's local chapters.

The rules of the Institute with respect to the individual use of advertising media by Members are similar in many respects

to the limitations that other professions place upon the use of advertising media, however, the economic foundations of each profession differ considerably, and therefore the rules developed by the Institute have been designed to meet the particular requirements of the real estate appraisal profession.

The rules of the Institute with respect to the use of advertising media are divided into three general categories:

First, the rules relating to the solicitation of appraisal assignments when such solicitation is initiated by the Member;

Second, the rules relating to the solicitation of appraisal assignments when the Member is responding to an inquiry of a client or potential client; and

Third, the rules relating to the use of advertising media for general communication purposes that are not directly related to the solicitation of appraisal assignments.

In addition, special rules have been developed to deal with the problems that arise when a Member of the Institute is an owner of, or is employed by, a business organization that renders a variety of services to its customers in addition to performing real estate appraisal work.

Any use of advertising media by a Member of the Institute in connection with his real estate appraisal practice is prohibited unless such use is expressly permitted by the rules hereinafter set forth. The rules of the Institute do not permit any use whatsoever of the following media in connection with a Member's real estate appraisal practice: radio, television and billboards. The use or distribution of novelty items such as calendars, appointment books and pens, is prohibited if they contain any reference to the Institute or to the Member's appraisal practice.

A Member of the Institute may, in connection with his real estate appraisal practice, place an advertisement in a publication of a related trade or profession and use a business card, provided that such advertisement and such business card comply with the following requirements:

(1) It must be limited to a statement of his name (and the company name, if any); his professional designations (including M.A.I. or R.M.); his professional logos (including M.A.I. or R.M.); the types of appraisal service rendered; and his telephone number and address; *provided, however*, that in the event of a change of address, a statement of such fact may also be included.

(2) It must not exceed eight square inches in area and the maximum size of type utilized must not exceed 10 point.

(3) It must be dignified and in good taste, and must not contain photographs or artwork (other than the professional logos).

In addition, a Member of the Institute may, in connection with his real estate appraisal practice, list his name in general directories, such as a telephone directory or a directory listing appraisers, and in directories contained in other publications, such as real estate trade magazines and law journals, provided that such listing complies with the following requirements:

(1) It must be limited to a statement of his name (and the name of the company, if any); his professional designations (including M.A.I. or R.M.); the types of appraisal service rendered; and his telephone number and address.

(2) It must not exceed four square inches in area and the maximum size of the type utilized shall be no larger than that which is typical of the media in which the listing is placed.

(3) It must be dignified and in good taste and the listing must not contain photographs, artwork or professional logos.

A Member of the Institute may, in connection with his real estate appraisal practice, use books, pamphlets and brochures of one or more pages provided that the form, use and dis-

tribution of such books, pamphlets and brochures comply with the following requirements:

(1) The books, pamphlets, or brochures must be factually accurate and not misleading in setting forth the personal qualifications of the Member of the Institute, his associates and his employees. They may contain photographs, artwork and the professional designations and professional logos of the individuals referred to.

(2) The books, pamphlets, or brochures must be dignified, conservative and in keeping with the highest professional standards.

(3) The books, pamphlets and brochures may be distributed only to the following: prospective clients who have made an inquiry concerning the services rendered by the Member or his company; current and former clients of the Member and the other individuals referred to in the published material; and current and former clients or customers of the Member's company.

It should be noted that the foregoing rule permits the distribution of a book, pamphlet or brochure to current and former clients and customers of the Member, his associates and his company even though such current or former client has not made an inquiry concerning the services rendered by the Member, his associates or his company.

A Member of the Institute also is permitted to use advertising media in connection with his real estate appraisal practice for general communication purposes in identifying the location of his office and in announcing the opening of a new office, a change of address or a change of business affiliation.

To identify the location of his office a Member may place a sign at his place of business to identify the location of his office. If any such sign placed at the place of business of a Member refers to his professional designation, such sign must comply with the following requirements:

(1) The sign must contain only the Member's name (and the company name, if any); his professional designations (including M.A.I. or R.M.); his professional logos (including M.A.I. or R.M.); the types of appraisal service rendered, and his address.

(2) The sign shall not exceed 200 square inches in area for each Member of the Institute whose designation appears therein.

(3) The sign shall be dignified and in good taste and shall not contain photographs.

Announcements concerning the opening of a new office, a change of address or a change of business affiliation must comply with the following requirements:

(1) The announcement must be in the form of a card that does not exceed 18 square inches in area or in the form of a letter on regular letter-size stationery. The announcement may contain only the Member's name (and the name of his company, if any), his professional designations (including M.A.I. or R.M.), his professional logos (including M.A.I. or R.M.), the types of appraisal service rendered; and a brief statement setting forth the facts that give rise to the announcement.

(2) The announcement shall be dignified and in good taste and shall not contain photographs or artwork (other than the professional logos).

(3) The announcement may be sent only to current or former clients or personal acquaintances by means of individually addressed cards or correspondence.

Certain professions, such as the medical profession and the legal profession, prohibit their members from conducting their professional activities in corporate form (except for tax purposes) and, if the members of these professions are

involved in business activities in addition to their professional activities, such members are prohibited from referring to their professional activities in any advertising relating to their business. The real estate appraisal profession, however, does not prohibit real estate appraisers from practicing in corporate form and many professional real estate appraisers are employed by corporations and other business enterprises that engage in various types of commercial activity that is only indirectly related to the appraisal of real estate. Since such corporations and other business enterprises are permitted to advertise their other activities without restriction, a serious problem is presented when such advertising includes, among other things, a reference to the appraisal services rendered by such corporation or business enterprise. If this reference to the appraisal services rendered by such corporation or business enterprise does not refer to the Institute or the Institute's professional designations, the Institute's rules are not applicable to such advertising; however, if the reference to the appraisal service rendered by such corporation or business enterprise does refer to the Institute or its professional designations, then the portion of the advertising dealing with the appraisal services rendered by such corporation or business enterprise must comply with all of the rules of the Institute relating to the use of advertising media, *provided, however*, that with respect to the rule of the Institute relating to the distribution of books, pamphlets and brochures, if any such book, pamphlet or brochure mentions only the fact that an employee is a Member of the Institute (either by means of a direct statement or by reference to his professional designation), then such corporation or business enterprise may distribute such book, pamphlet or brochure as it sees fit.

If one or more Members of the Institute control the corporation or other business enterprise that employs the Member or Members, then such Member or Members are in a position to enforce compliance with the Institute's rules concerning the use of advertising media when the corporation or business enterprise advertises its appraisal services. Many Members of the Institute, however, do not control the corporation or business enterprise by whom they are employed, and in such cases the Member may be unable to prevent the advertising of such corporation or business enterprise from referring to the Member of the Institute in a manner which clearly violates the Institute's rules. In such cases, Members of the Institute are required to use their best efforts to convince their employer to comply with both the letter and the spirit of the Institute's rules. If such efforts are repeatedly unsuccessful, however, the Member may be compelled to either resign from the Institute or seek other employment, since it is intolerable to permit one Member of the Institute, by the improper use of advertising media, to compete unfairly with other Members of the Institute who comply with its rules.

A related problem arises when clients of Members of the Institute refer to Members of the Institute, or to appraisals prepared by Members, in their commercial advertising. To prevent possible embarrassment to any of its Members by reason of such action by a client, the Institute requires that appraisals prepared by a Member of the Institute contain a statement substantially in the following form:

Disclosure of the contents of this report is governed by the By-Laws and Regulations of the American Institute of Real Estate Appraisers of the National Association of Real Estate Boards. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraiser or the firm with which he is connected, or any reference to the American Institute of Real Estate Appraisers or to the M A I or R M designation) shall be disseminated to the public through advertising media, public relations media, news

media, sales media or any other public means of communication, without the prior written consent and approval of the author.

DISCIPLINARY RULES

D.R. 7-1. It is unethical for a Member of the Institute to solicit appraisal assignments (other than through the limited and restricted use of advertising media permitted by this Regulation) unless the solicitation is in response to an invitation of a potential client.

D.R. 7-2. It is unethical for a Member of the Institute to charge or collect a professional fee in connection with an appraisal assignment other than a fair professional fee for the responsibility entailed and the work and expense involved.

D.R. 7-3. It is unethical for a Member of the Institute to claim a commission, fee or emolument for referring a real estate appraisal assignment to another real estate appraiser or to pay a commission, fee or emolument to obtain a real estate appraisal assignment.

D.R. 7-4. It is unethical for a Member of the Institute to submit a resumé or other statement setting forth his qualifications if such resumé or statement contains any false or misleading information.

D.R. 7-5. It is unethical for a Member of the Institute to make any use of advertising media relating to his practice as a real estate appraiser that is not specifically permitted by this Regulation.

D.R. 7-6. It is unethical for a Member of the Institute who is employed by a corporation or other business enterprise to fail to use his best efforts to have such corporation or other business enterprise comply with both the letter and the spirit of the Institute's rules relating to the use of advertising media.

D.R. 7-7. It is unethical for a Member of the Institute to prepare a written appraisal report that does not contain a statement advising the client that neither all nor any part of the contents of the report may be disseminated to the public through advertising media, public relations media, news media, sales media or any other public means of communication, without the prior written consent and approval of the author of the appraisal report.

RESOLUTION ADOPTED NOVEMBER 16, 1970

WHEREAS, the Governing Council is authorized by Chapter 10, Article 2, Section 10 21 of the By-Laws of the Institute to enact or amend Regulations from time to time to further the attainment of the objectives of the Institute as set forth in those By-Laws;

NOW, THEREFORE, BE IT RESOLVED as follows:

RESOLVED, that REGULATION NO. 10—CODE OF PROFESSIONAL ETHICS AND STANDARDS OF PROFESSIONAL CONDUCT (the comprehensive revision of Regulation No. 10 presented to the Governing Council by the Special Committee) be, and the same is, hereby enacted for the purposes set forth therein, to become effective on January 1, 1971, from and after which date this Regulation shall govern the conduct of all members and candidates.

FURTHER RESOLVED, that all members' and candidates' conduct prior to January 1, 1971 shall be governed by the provisions of Regulation No 10 in effect as of the date of such conduct.

FURTHER RESOLVED, that in the event that any question arises concerning the meaning or intent of Regulation No. 10 as it existed prior to the adoption of the comprehensive revision, the comprehensive revision of Regulation No. 10 may be used to explain or interpret the prior Regulation.

AMERICAN INSTITUTE OF REAL ESTATE APPRAISERS

of the National Association of Real Estate Boards

COMPREHENSIVE REVISION ADOPTED BY THE GOVERNING COUNCIL, November 10, 1969, to become effective January 1, 1970, and as amended November 16, 1970.

REGULATION No. 12 - APPRAISAL REVIEW

COMPOSITION, POWERS, DUTIES AND RULES OF PROCEDURE OF THE NATIONAL APPRAISAL REVIEW COMMITTEE AND THE LOCAL CHAPTER APPRAISAL REVIEW COMMITTEES AND RULES GOVERNING THE RIGHTS, DUTIES AND OBLIGATIONS OF MEMBERS AND CANDIDATES WITH RESPECT TO THE REVIEW OF APPRAISALS

ARTICLE I — PURPOSE

The purpose of this Regulation is to:

(i) State, define, and coordinate the powers and duties of the National Appraisal Review Committee and the Local Chapter Appraisal Review Committees; and

(ii) Set forth uniform rules of procedure for reviewing appraisals with a view to developing higher standards of professional performance by the Members and Candidates of the Institute, and

(iii) Set forth the rights, duties and obligations of all Members and Candidates with respect to inquiries and actions of the National Appraisal Review Committee and the Local Chapter Appraisal Review Committees.

ARTICLE II — DEFINITIONS

As used in this Regulation, the following terms shall have the following meanings unless the context clearly indicates that another meaning is intended:

"National Committee" means the National Appraisal Review Committee.

"Local Committee" means a Local Chapter Appraisal Review Committee.

"National Chairman" means the Chairman of the National Appraisal Review Committee.

"Local Chairman" means the Chairman of a Local Chapter Appraisal Review Committee.

"Institute" means the American Institute of Real Estate Appraisers of the National Association of Real Estate Boards.

"Member" means and includes both M.A.I. and R.M. members of the American Institute of Real Estate Appraisers of the National Association of Real Estate Boards.

"Attached Member" means a Member whose place of business is not located within the territorial jurisdiction of any Local Chapter and who therefore has been assigned, for certain administrative purposes, to the Local Chapter whose territorial jurisdiction is closest to the place of business of said Member.

"Candidate" means a candidate for membership in the

American Institute of Real Estate Appraisers of the National Association of Real Estate Boards.

"Attached Candidate" means a Candidate whose place of business is not located within the territorial jurisdiction of any Local Chapter and who therefore has been assigned, for certain administrative purposes, to the Local Chapter whose territorial jurisdiction is closest to the place of business of said Candidate.

ARTICLE III — GENERAL RULES

Section 1. Reports, Documents and Personal Interview.

Whenever two or more Members or Candidates appear (a) at the request of opposing litigants in a judicial proceeding, or (b) at the request of opposing parties in any other public hearing, or (c) at the request of (i) an opposing litigant (or opposing party) and (ii) the court or hearing body, and testify as to the value of, or damages or benefits to, real property, each such Member or Candidate shall mail a completed ARC Form No. 1 to the Secretary of the National Committee at the headquarters of the Institute within ten days following the rendering of the decision of the lower court or hearing body or not more than thirty days following the conclusion of all appraisal testimony in such judicial proceeding or other public hearing, whichever is earlier. For the purposes of this Regulation, any Member or Candidate who appears as an owner in a judicial proceeding or any other public hearing and is qualified as an appraiser in that proceeding, shall be considered to have appeared at the request of a litigant or party. Upon the request of a committee, or an individual member thereof, authorized by this Regulation to make such request, each such Member or Candidate who is required to file ARC Form No. 1, shall also submit, at his own expense, a copy of his original appraisal report (or his complete memorandum setting forth data, reasoning and conclusions) upon which his testimony was based, together with a copy of all subsequent changes or modifications thereof. In addition, upon the request of a committee authorized by this Regulation, each such Member or Candidate shall appear for a personal interview and furnish such additional information concerning his appraisal testimony as may be requested.

Section 2. Failure to Comply. Any Member or Candidate who

(i) Fails to promptly mail ARC Form No. 1 to the Secretary of the National Committee at the headquarters of the Institute as required by Section 1 above; or

(ii) Fails to submit to the designated party, at his own expense, a copy of his original appraisal report (or his complete memorandum setting forth data, reasoning and conclusions) upon which his testimony was based together with a copy of all subsequent changes and modifications thereof, if requested by a committee, or an individual member thereof, authorized by this Regulation to make such request, or

(iii) Fails to appear for a personal interview, if such personal interview is requested by a committee, authorized by this Regulation to make such request; or

(iv) Fails to answer relevant questions concerning his appraisal testimony or report at any such personal interview;

shall be subject to disciplinary proceedings conducted pursuant to Regulation 6.

ARTICLE IV — NATIONAL COMMITTEE

PART A. COMPOSITION.

Section 1. Membership of Committee. The National Committee shall consist of a Chairman and at least one member from each of the Institute's Regions. In addition, the regional Vice Presidents shall be ex officio members with full voting rights. The size and territorial distribution of the membership of this Committee shall be determined by the President of the Institute. During his term of office as a member of the National Committee, no member of the National Committee shall serve on the National Professional Ethics Committee, a Chapter Ethics Committee, a Chapter Appraisal Review Committee, or as a Chapter President.

Section 2. Appointment and Tenure. The Chairman and other members of the National Committee (except ex officio members) shall be M A I Members appointed by the President of the Institute with the approval of the Governing Council. The Chairman of the National Committee shall be appointed for a term of one year. The other appointed members of the National Committee shall be appointed for three-year terms with staggered expiration dates. The initial appointments pursuant to this Regulation shall be as follows:

- 1/3 for a term of one year;
- 1/3 for a term of two years; and
- 1/3 for a term of three years;

with all subsequent appointments being for a term of three years as set forth above. The Chairman and all other members of the National Committee shall be eligible for reappointment.

Section 3 Vacancies. The President of the Institute shall fill each vacancy on the National Committee for the unexpired term relating to such vacancy and the appointment shall become effective immediately, *provided, however*, that if any such appointment is effective for a period extending beyond January 1 following the date of appointment, then such appointment shall be submitted to the Governing Council at its next meeting for ratification and approval. If the Governing Council shall fail to ratify and approve any such interim appointment at its next meeting, such interim appointment shall terminate and be of no further force or effect

Section 4. Attendance at Meetings. In accepting appointment to serve on the National Committee, each member shall agree to attend at least one meeting of the committee during each calendar year. Any member of the National Committee who fails to attend at least one meeting of the committee during each calendar year shall automatically forfeit his membership on the committee.

PART B. POWERS AND DUTIES.

Section 1. Educational Inquiries. The National Committee shall inquire into the causes of divergent testimony of Members and Candidates with respect to the value of, or damages or benefits to, real property in judicial proceedings or other public hearings. The purpose of such inquiry shall be to develop higher standards of professional performance by Members and Candidates.

Section 2. Review of Reports. The National Committee shall provide for the review of all reports submitted under this Regulation, formulate standards for determining which reports shall become files for further review pursuant to this Regulation and formulate rules of procedure to review such files in such manner as it deems necessary.

Section 3. Delegation to Local Chapters for Review. The National Committee may, in its sole discretion, refer to the Chairman of a Local Committee any file wherein it appears such reference is advisable. If the Chairman of the Local Committee is an interested party, the file shall be referred to the Chapter President or to a member of the Local Committee selected by the National Committee.

Section 4. Delegation to Special Committees for Review. The National Committee may, in its sole discretion, refer any file or files to a Special Committee composed of M A I Members designated by the National Chairman. Each such Special Committee shall be composed of not less than three members who shall serve until the file in question has been reviewed and the Special Committee has reported its findings and recommendations to the National Committee. The National Chairman shall designate one of the members of the Special Committee to act as Chairman of the Special Committee. In conducting its investigation and review of any file or files referred to it, each such Special Committee shall exercise the powers and perform the duties hereinafter set forth:

(a) **Review by Member of Special Committee.** The Chairman of a Special Committee may assign the review of any file to himself or to one or more disinterested members of the Special Committee for review. The individual to whom any file is assigned for review shall complete his review of the file with reasonable diligence and promptly report the results of such review to the Special Committee. To facilitate his review of any file, the individual to whom the file has been assigned for review shall have the right to require the Member or Candidate whose report is under review to submit, at his own expense, a copy of his original appraisal report (or his complete memorandum setting forth data, reasoning and conclusions) upon which his testimony was based, together with a copy of all subsequent changes and modifications thereof.

(b) **Review by Special Committee.** Upon receipt of a report concerning any file, a Special Committee shall promptly review such report and the related file for the purpose of rendering a formal report thereon to the National Committee. For this purpose the Special Committee shall have the right to require the Member or Candidate whose report is under review to submit, at his own expense, if so requested by the Special Committee, a copy of his original appraisal report (or his complete memorandum setting forth data, reasoning and conclusions) upon which his testimony was based, together

with a copy of all subsequent changes and modifications thereof. In addition, the Special Committee shall have the right to require such person to appear before the committee for a personal interview if the Special Committee deems this necessary to complete its review and report.

(c) Report of Special Committee. Within 30 days after completion of its review, the Special Committee shall prepare and transmit to the National Committee or to such person as the National Committee shall designate, a written report which shall contain the following:

- (i) Statement of all relevant facts;
- (ii) Summary of review procedure;
- (iii) Reasons for the divergency;
- (iv) Findings of the Special Committee;
- (v) Recommendations for action.

(d) Permitted Recommendations of Special Committee. The Special Committee in its report shall make one of the following recommendations:

(i) That no further action be taken, and that the file be closed; or

(ii) That the file be closed after the Member or Candidate whose report is under review has been personally interviewed and orally advised, counseled, cautioned or constructively criticized by a member of the Special Committee, the entire Special Committee, the Chapter President or any combination thereof in accordance with the findings of the Special Committee; or

(iii) That the file be referred to the Chapter Ethics Committee. No Special Committee shall recommend that a file be referred to the Chapter Ethics Committee unless the Special Committee or a member thereof has personally interviewed the Member or Candidate whose appraisal is under review.

(e) Procedure if No Further Action is Recommended. If the recommendation of the Special Committee is that no further action be taken and that the file be closed, the Chairman of the Special Committee shall promptly cause the file and the Report of the Special Committee to be transmitted to the National Committee or to such person as the National Committee may designate.

(f) Action if Personal Interview is Recommended. If the recommendation of the Special Committee is that the file be closed after the Member or Candidate whose report is under review has been personally advised, counseled, cautioned or constructively criticized, the Special Committee (or the party designated by the Special Committee for this purpose) shall orally advise, counsel, caution or constructively criticize the Member or Candidate. The party designated by the Special Committee shall then prepare a written memorandum setting forth the substance of the oral advice, counsel, caution or constructive criticism, and the Chairman of the Special Committee shall cause the file, the written memorandum and the Report of the Special Committee to be transmitted to the Regional Member responsible for the file.

(g) Action if Referral to Chapter Ethics Committee is Recommended. If the recommendation of the Special Committee is that the file be referred to the Chapter Ethics Committee, the Special Committee shall not take this action. In such event the Chairman of the Special Committee shall promptly cause the file and the Report of the Special Committee to be transmitted to such person as the National Committee may designate.

(h) Prompt Action The Special Committee shall promptly and diligently process each file referred to it by the National Committee. Any member of a Special Committee who wil-

fully or negligently fails to discharge his duties in this regard shall be subject to disciplinary proceedings conducted pursuant to Regulation No. 6.

Section 5. Appraisal Reports and Personal Interview. The National Committee shall have the power to require any Member or Candidate to submit appraisal reports and other data for its review and the power to require any Member or Candidate to appear before the National Committee for a personal interview.

Section 6. Advice to Members and Candidates. After review of a file by the National Committee, the National Committee shall have the power to advise, counsel, caution or constructively criticize any Member or Candidate in accordance with its findings. Whenever this is done in writing, such writing shall be transmitted under confidential cover.

Section 7. Referral to Chapter Ethics Committee. The National Committee shall have the power to refer a file directly to the appropriate Chapter Ethics Committee, but only after review of such file by both the National Committee and either a Special or Local Committee.

Section 8. Records and Reports. The National Committee shall maintain complete and accurate records of all files and make periodic reports to the Executive Committee and Governing Council.

ARTICLE V

POWERS AND DUTIES OF LOCAL CHAPTERS AND LOCAL COMMITTEES

Section 1. Duty to Establish Local Committee. Each Local Chapter shall establish and maintain a Local Committee consisting of not less than three M.A.I. Members in good standing who are either Members or Attached Members of the Chapter. If the Local Chapter does not have a sufficient number of qualified M.A.I. Members or Attached M.A.I. Members to serve on the Local Committee, M.A.I. Members who are not members of the Chapter or Attached M.A.I. Members and who are otherwise qualified to serve, may be appointed as members of the Local Committee.

Section 2. Appointment of Local Committee. The Chairman and members of the Local Committee shall be appointed by the President of the Local Chapter and shall serve for a term and in the manner provided in the By-Laws of the Chapter, *provided, however*, that if a file has been referred to the Local Chairman or to any member of a Local Committee for review as provided in Section 4 of this Article V and such review is pending at the expiration of his term of office, the term of any such Local Chairman or member shall be extended until the completion of his review of such file. In such event his report shall be made to the members of the Local Committee holding office at the time of the completion of his review.

Section 3. Restrictions upon Membership of a Local Committee. No member of a Local Committee shall be a member of the National Committee, a member of the National Professional Ethics Committee, a member of the Chapter Ethics Committee, or the President of a Chapter.

Section 4. Review by Member of Local Committee. The Local Chairman (or the President of the Chapter or member of the Local Committee selected by the National Committee to receive a file) may assign the review of a file to himself or to one or more disinterested members of the Local Committee for review. The individual to whom any file is assigned

for review shall complete his review of the file with reasonable diligence and promptly report the results of such review to the Local Committee. To facilitate his review of any file, the individual to whom the file has been assigned for review shall have the right to require the Member or Candidate whose report is under review to submit, at his own expense, a copy of his original appraisal report (or his complete memorandum setting forth data, reasoning and conclusions) upon which his testimony was based, together with a copy of all subsequent changes and modifications thereof

Section 5. Review by Local Committee. Upon receipt of a report concerning any file, the Local Committee shall promptly review such report and the related file for the purpose of rendering a formal report thereon to the National Committee. For this purpose the Local Committee shall have the right to require the Member or Candidate whose report is under review to submit, at his own expense, if so requested by the Local Committee, a copy of his original appraisal report (or his complete memorandum setting forth data, reasoning and conclusions) upon which his testimony was based, together with a copy of all subsequent changes and modifications thereof. In addition, the Local Committee shall have the right to require such person to appear before the Committee for a personal interview if the Local Committee deems this necessary to complete its review and report.

Section 6 Report of Local Committee. Within 30 days after completion of its review, the Local Committee shall prepare and transmit to the National Committee a written report which shall contain the following:

- (a) Statement of all relevant facts;
- (b) Summary of review procedure;
- (c) Reasons for the divergence;
- (d) Findings of the Local Committee;
- (e) Recommendations for action

Section 7 Permitted Recommendations of Local Committee The Local Committee in its report shall make one of the following recommendations

- (a) That no further action be taken, and that the file be closed; *or*
- (b) That the file be closed after the Member or Candidate whose report is under review has been personally interviewed and orally advised, counseled, cautioned or constructively criticized by a member of the Local Committee, the entire Local Committee, the Chapter President or any combination thereof in accordance with the findings of the Local Committee, *or*
- (c) That the file be referred to the Chapter Ethics Committee. No Local Committee shall recommend that a file be referred to the Chapter Ethics Committee unless the

Local Committee or a member thereof has personally interviewed the Member or Candidate whose appraisal is under review.

Section 8. Procedure if No Further Action is Recommended. If the recommendation of the Local Committee is that no further action be taken and that the file be closed, the Local Chairman shall promptly cause the file and the Report of the Local Committee to be transmitted to the National Committee or to such person as the National Committee may designate.

Section 9. Action if Personal Interview is Recommended. If the recommendation of the Local Committee is that the file be closed after the Member or Candidate whose report is under review has been personally advised, counseled, cautioned or constructively criticized, the Local Committee (or the party designated by the Local Committee for this purpose) shall *orally* advise, counsel, caution or constructively criticize the Member or Candidate. The party designated by the Local Committee shall then prepare a written memorandum setting forth the substance of the oral advice, counsel, caution or constructive criticism, and the Local Chairman shall cause the file, the written memorandum and the Report of the Local Committee to be transmitted to the Regional Member responsible for the file.

Section 10. Action if Referral to Chapter Ethics Committee is Recommended. If the recommendation of the Local Committee is that the file be referred to the Chapter Ethics Committee, the Local Committee shall *not* take this action. In such event the Local Chairman shall promptly cause the file and the Report of the Local Committee to be transmitted to the National Committee or to such person as the National Committee may designate.

Section 11. Prompt Action The Local Committee shall promptly and diligently process each file referred to it by the National Committee. Any member of a Local Committee who wilfully or negligently fails to discharge his duties in this regard shall be subject to disciplinary proceedings conducted pursuant to Regulation 6.

ARTICLE VI — FILES TO BE CONFIDENTIAL

Except as permitted or required by this Regulation, the files of the National Committee and all Local and Special Committees shall be confidential, and no document or report of the committees authorized or created hereunder shall be made public or discussed with anyone except the officers of the Institute, the members of the Institute's Executive Committee, legal counsel for the Institute, and the employees and agents of the various committees authorized or created hereunder.

EMINENT DOMAIN POLICY MEMORANDUM

DATED MAY 6, 1969
 ADOPTED BY LOS ANGELES COUNTY,
 CALIFORNIA SUPERIOR COURTS
 SETTING FORTH "CRITERIA FOR
 EXCHANGE APPRAISAL REPORTS"

The parties are ordered to file appraisal reports upon which they intend to rely at the time of trial, if any, with the clerk in Department 70A, on or before five days before the final pretrial. If any party intends to have an owner or any witness, other than the appraisers whose appraisal reports are to be submitted, testify in this case with respect to valuation, such party shall also file with the court on the same date the name of such person, his opinion as to valuation, and all factual data, not otherwise submitted, upon which such opinion is based, including market data, reproduction studies, and capitalization studies, in as much detail as practicable. If the court determines said reports to be comparable, and if it appears just and proper to do so, an exchange will be ordered. If the court does not order an exchange, the court will initial the documents for identification at the time of trial. Except as set forth herein, and except for the purpose of rebuttal, the parties will not be permitted to call any witness to testify on direct examination to an opinion of value, a sale, a reproduction study or capitalization study, unless submitted to the court as set forth above.

In the event a party subsequently discovers any information which should have been submitted as set forth in the preceding paragraph, and desires in good faith to use the information at time of trial, he must immediately notify the other party to this effect, and provide the other party with the said information, and show good cause to the court, either in Department 70A or the trial department, that he should be permitted to use such information at the trial.

In the event a party intends to use an expert other than those who will testify with respect to valuation as set forth above, said party shall disclose, prior to the final pretrial in this case, if possible, or as soon thereafter as such information is available, the name and address of the said person, if known, and the nature of the testimony of said witness to be used at the trial of this case.

The appraisal report shall bear the title and number of the case, the parcel numbers involved, the names of the defendant owners of the parcels involved, and the date of final pretrial, on the outside cover of the appraisal report and shall include, as a minimum, clear and concise statements of the following:

1. A description of the property including, as a minimum, a plot plan (not necessarily to scale) showing the size, shape, dimensions of the property being acquired and its location to street accesses. Additional information relating to terrain, utilities, principal street accesses, location of improvements upon the property, and the relation-

ship of the property to and description of a larger parcel of which it is a part, when appropriate, if necessary for understanding of the appraisal problem.

2. Present zoning of property, and if the existing use is inconsistent with the present zoning, the authority for which such use is permitted.

3. A statement of the appraiser's opinion of the highest and best use of the property. If such is inconsistent with the present zoning, a concise statement of factual matter upon which the opinion of probable zone change was predicated. The appraiser's opinion of the market value of the property being acquired and if the property is part of a larger parcel, his opinion of severance damage, if any, and special benefits, if any. If the appraiser is of the opinion that there is no severance damage or special benefit, a statement to this effect should be included.

4. The valuation approaches or methods utilized in the formation of the appraiser's opinion should be set forth in a brief statement. If any approach or method is not specified, it shall be presumed that the appraiser did not consider it in arriving at his opinion.

5. Where market data or sales are utilized the following information as to each sale: legal description and address, if available, or other sufficient designation for identification; size and shape of property; zoning; date of sale or transaction; names of buyer and seller; nature and brief description of improvements, if any, price paid and terms of sale; with whom and when the sale was verified. Which sales are considered indicative of the value of the property. Gross multiplier used, if any.

6. If reproduction cost studies are made, the following information must be submitted: description of improvements; size and area of building; type of construction; age of building; condition of buildings indicating obsolescence and depreciation; remaining economic life of improvements; cost factor or other computation used to establish cost to replace improvements; depreciation allowance used and the basis therefor.

7. If a capitalization or other income study is made, the following minimum information should be included, where relevant: gross income utilized in computations and whether actual income being produced or assumed income is used and the basis therefor; enumeration of expense items expected, the respective amounts thereof and whether said amounts are based upon actual or assumed expenses; method of processing or treating income; capitalization rate or rates or multiplier used; if the recapture of improvements is provided for (land residual method), a statement of the remaining economic life of improvements used and rate of capitalization applied to residual land, if annuity methods used, a statement of the anticipated economic period in which payments are expected and the discount rate used, and the residual value of the land adopted in the study. The valuation indicated by said method or methods

8. Lease information, if applicable, including terms of existing leases and names and addresses of lessors, lessees, and other persons who verified the information.

SUGGESTED CHECKLIST

TO BE USED AS AN AID BY THE REVIEWER IN IDENTIFYING THE REASONS FOR DIVERGENCY IN A PARTICULAR CASE

This checklist is geared to specific sections of Chapter Four of this report, to which the reader is referred for further explanation.

A. Highest and Best Use

1. Difference in highest and best use concept and the reasons therefor.
2. The question of "reasonable probability" of a zone variance or zone change is often the basis for a difference in highest and best use.

B. and C. Severance Damage and Special Benefits

Difference of opinion or lack of understanding of compensability or noncompensability of severance damage and special benefits that may be due to:

1. Lack of understanding of the proposed public improvement and its effect on the remainder lands.
2. Instructions from the attorney as to points of law as to the larger parcel and the legal interpretation of compensable or noncompensable items.
3. Difference in engineering information.
4. Failure to recognize compensable or noncompensable damages or offsetting benefits.
5. Lack of market data to support the "after value" estimate.

D. Conflicting Legal Premise

1. Different legal concept of compensability for the part taken and the elements of severance damages and special benefits.
2. Different legal interpretation as to the legality of existing zoning.
3. Different legal interpretation of the property rights involved, such as the definition of the larger parcel, interpretation of the terms and effects of easements, restrictions, and leases

E. Conflicting Engineering Premise

May be due to a difference of opinion or lack of understanding of engineering data foundational to the appraisal of the proposed public improvement where there is a partial taking.

F. Different Methods of Valuation

Different methods of valuation can be a contributing cause of divergency, as explained more fully under items J, K, and L.

G. Inadequate Factual Data

An inadequate appraisal investigation can be due to inexperience, lack of time, inadequate appraisal fee, failure to understand the scope of the appraisal investigation that is necessary.

H. Misunderstanding of Factual Data

Usually due to inexperience or incompetency.

I. Professional Shortcomings

Pertains to standards of ethical conduct in an emerging profession.

J. The Cost Approach

Improper use of the cost approach may be indicated by inaccurate building area, distorted cost estimate, distorted deduction for accrued depreciation, or distorted land value.

K. The Market Data Approach

Improper use of the market data approach may be indicated by a disregard of the safeguarding limits of comparability.

L. The Capitalization Approach

Improper use of the capitalization approach may be indicated by distortion due to maximizing income and minimizing expenses. Also, an improper use of a capitalization rate and life expectancy will lead to an erroneous answer.

M. Basic Valuation Principles

Misapplication or disregard of one or more basic principles of valuation. An example of this is disregarding the "law of competition" which affirms that "excessive profits breed ruinous competition."

N. Easements, etc.

Different interpretation of the property rights involved, usually having to do with the interpretation of the conditions and the effect of easements, restrictions, and leases.

O. Advocacy

See the "Advocacy" section of Chapter Four.

P. Contigent Fees

An unethical practice difficult to prove.

Q. Instructions from Attorney

See Chapter Six.

Published reports of the

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are available from:

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- * A Critical Review of Literature Treating Methods of Identifying Aggregates Subject to Destructive Volume Change When Frozen in Concrete and a Proposed Program of Research—Intermediate Report (Proj. 4-3(2)), 81 p., \$1.80
- 1 Evaluation of Methods of Replacement of Deteriorated Concrete in Structures (Proj. 6-8), 56 p., \$2.80
 - 2 An Introduction to Guidelines for Satellite Studies of Pavement Performance (Proj. 1-1), 19 p., \$1.80
 - 2A Guidelines for Satellite Studies of Pavement Performance, 85 p.+9 figs., 26 tables, 4 app., \$3.00
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