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In support of appraisers and their effectiveness in handling increasing-complicated valuation issues - by Peter Flynn and Jason Scopa

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As a real estate attorney specializing in eminent domain litigation for 40 years or so, I have seen changes in many aspects of the real estate business, both inside and outside of the courtroom. I have worked with and against countless real estate appraisers on all levels. Given how the business and the educational requirements have evolved since the 1980s, I remain thoroughly impressed by most appraisers, generally speaking, and also with their specific effectiveness in handling increasingly-complicated valuation issues.

Educational and other requirements have become more onerous with each passing year. Professional associations continuously refine methodology. The Appraisal Institute, Society of Real Estate Appraisers, and local organizations such as the Mass. Board have embraced the academic side of appraising. At the same time, federal and state courts continue to make rulings with which testifying expert appraisers must comply. In eminent domain cases, it is quite common for an appraiser to take the stand and quickly be put in a difficult position because the appraisal assignment is so unique and evidentiary standards are so strict. How do you put a specific value on elusive property rights, partial takings, easements, leaseholds, complicated income properties, and even [gulp] time-shares? A distinguished superior court judge took a long look at time-shares and was not able to state what exactly they represent in the bundle of rights.

In the “old days” an appraiser could take the stand in an eminent domain case and opine as to value simply on the basis of his experience. Sure, there has always been cross-examination, and the

appraiser would need to outline components of value such as direct damages, consequential damages, severance damage, compensable damages, etc., but, nowadays, that appraiser might not be allowed to utter a word in the courtroom without extensive data and a verified methodology. Is that progress? Some think so, and maybe it is, but what is the appraiser to do if, as is often the case, there is simply no comparable property affected by a comparable eminent domain taking, i.e. no data support for severance damages. This conundrum is often seen when partial takings are made in order to, for instance, widen a highway. The taking may cause a residential landowner to lose one-third of his real estate on one side of the property but not touching the residence. The home that formerly sat on a quiet street with access to the secondary roadway is now part of a primary feeder road and all of its noise and traffic. An appraiser can value the land taken with data support in the form of comparable, vacant, developable residential land and assign a per-square-foot value that is defensible. Much more problematic, however, is determining – with data – how much the remaining parcel suffered a reduction in market value. Common sense tells us there is such a reduction due to configuration, noise, construction, traffic, dust, lights, etc., but it may be impossible for the appraiser to identify a property duplicating the situation in order for him or her to show what it sold for before the taking vs. after the taking. In the past, most appraisers could survive the liberal scrutiny employed by the court. Now they are subject to various standards and court decisions restricting any “speculation” by even the most experienced, knowledgeable appraisers in the industry. Nevertheless, the vast majority of you continue to adjust and rise to the occasion. Bravo!

As for the good ole days, I leave you with a true story involving four Harvard University guys involved in a jury-waived eminent domain/severance damage case being heard by a superior court judge. The case centered around the value of a residential property along Rte. 1, just north of Boston. The residence was set back from Rte. 1 by approximately 150 ft., that is, until the widening of the roadway brought the highway to within 15 ft. of the owner’s front door. All of these polished, experienced Harvard gents - one of whom was my father – informed the judge [another Harvard guy] that they could not identify specific data in the market supporting the claim that damage was caused to the remainder by bringing the highway closer to the home. [Well, no kidding] The judge - with a priceless, incredulous look on his face – said to the Harvard-educated appraisers and attorneys, “What colleges did you gentlemen go to?” He then entered a $75,000 verdict for the landowner [$25,000 for the land taken and $50,000 for damages to the remainder]. That was a lot of money back then.

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