

INSIDE THIS ISSUE:

President's Message	1
2011-12 Board / Committee Chairs	2
Tri-Chapter luncheon	3
A Word from your Newsletter Editor	3
Mission Statement	9
People in the News: South Africa, Chapter 83	5
IRWA Courses	6
Impact of Future Site Traffic	7
Contact Info	12



**MEETING DATES:**

**LUNCHEON:**

(First Wednesday)

- Dec. 6-Tri-Chapter Grammy Museum
- Jan. 11, 2012 (new date)
- Feb. 1, 2012
- Mar. 7, 2012
- Apr.4, 2012

**BOARD:**

(Third Thursday)

- Jan. 26, 2012
- Feb. 16, 2012
- Mar. 15, 2012
- Apr.19, 2012

## A MESSAGE FROM IRWA CHAPTER 57's PRESIDENT

Well, Black Friday has come and gone; and thank God. That day did not bring out the best in some people nor the spirit of Thanksgiving in others; that day changed the lives of many people in the stores and countless millions viewing by television forever; such as the woman that pepper sprayed her fellow shoppers; one person was shot in the leg by assailants trying to rob shoppers as they left the mall; one person was stabbed and another person lay on a store floor with a heart attack as shoppers walked around and over him ...all of this in the name of a sale! A sale is not what the rest of America was thankful for; no, not in the least. We appreciated being with our families; listening to our wise son speak beyond his years; acknowledging the roof over our heads; the food that was on the table and the jobs we would be able to drive to on Monday.

Those of us that really appreciated our Thanksgiving move into December with the anticipation of spending quality time with family and friends that helped us with their support, love and unrelenting forgiveness. Whether you know it or not, we have all been given a Mulligan once or twice this year.

The Tri-Chapter Lunch is fast approaching and what a way for IRWA members to culminate such a year as 2011; at the LA Grammy Museum no doubt. What a pleasure it is to network and socialize with the absolute best Right of Way Professionals of our Region... the members of Chapter 1, Chapter 57, Chapter 67 and Chapter 11. All I can say is - if you make the decision not to attend, you've made the wrong decision!

With December starts the end of a beautiful and extraordinary, but difficult year. It also marks the renewal of our Membership dues. International President, Randy A. Williams', SR/WA, MAI, FRICS, article in the Right of Way Magazine wraps up what being a member of IRWA means and puts a bow on its benefits in "What's In It For Me?".

If you have paid your dues, are thinking about paying your dues, or decided not to renew your dues YOU MUST read this "President Outlook" on page 5 of our Magazine! Randy went a step further on the membership level by going to China to teach 18 highly-advanced appraisers on the Appraisal of Partial Acquisitions and Ethics and the Right of Way Profession. Fourteen of the registered students signed up to become IRWA members and paid their dues on the spot. IRWA also welcomes the newest chartered chapter which is in South Africa...Chapter 83.

The November / December Magazine is an extremely impressive issue and there are a few more articles that

are well worth mentioning. One was written by non-other than Mark Rieck, IRWA Executive Vice President. The title itself provokes a thought! "Get Connected". Mark alluded to "Have you joined the social networking superhighway" by letting us know how a Facebook or LinkedIn account can give IRWA and its members a greater level of public connectivity!

The second article was written by Nancy Halvorson, SR/WA, R/W-RAC. "Call for Award Nominations. This was particular interesting because HQ has presented a brand new awards category; yes Government Employer of the Year. So you can now nominate your government employer, however, you need to get busy because nominations must be submitted by February 1, 2012.

The third article salutes the "Top 10 Project Winners". This list is in alphabetical order but the number 1 winner is shown as number 10 (the winner's article is on page 20). The projects are: Alameda Corridor East Construction Authority Grade Separation Projects; Dart Green Line Light Rail Expansion; IH-35 Corridor Expansion Project; Interstate 69, Oakland City of Crane, Indiana; Maine Power Reliability Program; Newton Pike Extension Project; Princess Anne Road/Kempsville Road/Witchduck Road Intersection Project; Reconstruction of Monmouth County Bridge, U-12; Texas Drive - West Milham Ave. - 12<sup>th</sup> Street Roundabout Project; AND THE WINNER IS: Voluntary Acquisition and Relocation Services Program, City of Phoenix Sky Harbor International Airport (written by Barbara Billitzer).

I would like to sum up this year with some words of wisdom from Carol L. Brooks, SR/WA. "Did you know that each of us has our own unique box, too? It holds a collection of our personal life experiences. Whether positive or negative, the lessons we've learned from these experiences are paramount for building character, growing confidence and strengthening our backbone". (page 12 of our magazine).

A wish to each IRWA member, your family members and friends a blessed time full of peace and love for this season and for the coming life experiences to come in 2012.

Barbara Ann Ford, President  
Chapter 57



**SPEAKER—PAGE 3**  
**COURSES—PAGE 6**

**ARTICLE: PAGE 7**

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# TRI-CHAPTER LUNCHEON—GRAMMY MUSEUM

**IRWA Chapter 1 cordially invites you to celebrate the holidays with your fellow right-of-way colleagues at the annual Tri-Chapter holiday luncheon on December 6, 2011 at the fabulous Grammy Museum at L.A. Live!**



**In addition to a tour of the interactive Grammy Museum, a delicious lunch catered by Wolfgang Puck, great raffle prizes including a color Kindle and a brand new iPad, and sharing holiday cheer with your fellow right-of-way professionals,**

**we have secured two informative guest speakers to complement and enhance this fabulous annual event!**

**Michael Gillam, Southern California Deputy Program Director with the California High Speed Rail Authority's Program Management Team, is going to speak about the projects being planned by the Authority, the Authority's recently released draft business plan, and right-of-way challenges and opportunities.**

**Martha Bryan, an International Speaker, will speak about the development of human potential and personal excellence. Martha's presentation, tailored for our industry, is titled "Take This Job and Love It!" and outlines her life-long fascination with what makes some individuals strive to be the very best and become peak performers. Martha is a dynamic public speaker who is recognized for her informative and entertaining presentations.**

## A WORD FROM YOUR NEWSLETTER EDITOR

Please plan to join Chapter 67, 11,57 and 1 at the Grammy Museum on December 6, 2011. There will be speakers, good food and networking opportunities galore! It's the last chance of the year to join your colleagues for a fun and enjoyable luncheon. Plus you could win a raffle prize!

Next year will bring in some changes—we are working with the staff at Canyon Crest Country Club to serve more delicious entrées.

We will be also electing new Executive Board members in time to start the new fiscal year in July. Start thinking about whether you would like to serve on the Board, or if you know someone you would like to nominate.

As always, if you have an article you would like to publish in our newsletter or if there are any changes you would like to see on the website, please let me know.

Go to <http://IRWACHapter57.org>

to view the newsletters  
**HAPPY HOLIDAYS EVERYONE!**  
 Jan Spindler, Communications Chair



**THE AWARD-WINNING IRWA CHAPTER 57 NEWSLETTER IS NOW EXCLUSIVELY ONLINE—DOWNLOAD AND READ IT AT YOUR LEISURE AND REMEMBER—YOU ARE SAVING A LOT OF TREES!**

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# IRWA WELCOMES SOUTH AFRICA AS CHAPTER 83

BY BARBARA BILLITZER

With chapters throughout the United States and Canada, IRWA has recently expanded to a new continent. The Association’s 83rd Chapter has been chartered in South Africa.

**ESCALATING NEED FOR EDUCATION**

IRWA has enjoyed an affiliate relationship with the South African Right of Way Association (SARWA) for many years. It was just this past June when SARWA signed a partnership agreement with IRWA to become a region partner. In the months that followed, SARWA recognized that, with the increasing demands for new infrastructure projects in South Africa, their right of way professionals would benefit greatly from some advanced training. A meeting with IRWA’s International Executive Committee led to an obvious conclusion. With some slight modifications to reflect South African law and culture, IRWA’s existing courses would provide the precise level of curriculum they needed.

To facilitate the process of conducting IRWA courses in South Africa, making SARWA an IRWA Chapter was the next logical step. In September, International President Randy Williams, SR/WA, MAI, FRICS announced the chapter’s formation with Ernest Grunewald, President of the South African Right of Way Association (SARWA) serving as Chapter 83 President.

Describing his country’s unique infrastructure challenges, Ernest explained, “In addition to the 7,000 miles of transmission lines needed in South Africa, there are many major projects on the horizon. We are

currently converting a massive amount of coal to petroleum, so the demand for new pipelines, roadways and railways is significant. And while our right of way professionals are very learned people, it is essential that we identify their existing core competencies so we can establish which IRWA courses will best supplement their knowledge and experience.”

**HOW IT ALL BEGAN**

SARWA’s history dates back to 1996, when staff from Eskom’s Transmission Environmental department first discovered IRWA through an internet search. The right of way specialists in South Africa had determined that a higher standard of professionalism would be beneficial in facilitating property transactions in their country, and they wanted to see what other countries were doing.

Intrigued by what he learned about IRWA online, Bobby Richardson of Eskom Transmission’s Land and Rights section attended IRWA’s 43rd Annual Conference in Anchorage, Alaska to learn more. Bobby was inspired by what he witnessed during the conference, and upon his return, he assembled a group of right of way practitioners to discuss the various disciplines associated with the acquisition of property rights in their county. Delegates representing Rand Water, Sasol, Eskom, SpoorNet (now Transnet) and other companies were all in agreement – there was an essential need for education, training and networking between the many professionals associated with property negotiations.

Read the rest of the article in the Right of Way Magazine, November/December 2011

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# IRWA EDUCATION COURSES


Course #	Subject	Date(s)	Location	Chapter	Contact
	SRWA Review Study Session and Exam	Dec. 5-7, 2011	San Diego, CA	11	Mike Flanagan 858-522-6914
205	Bargaining Negotiations	Dec. 12-13, 2011	Downey, CA	1	William Larsen 818-290-5400
207	Practical Negotiations for U.S. Federal Funded Land Acquisitions	Jan. 12-13, 2012	Downey, CA	1	Konstantin Akhrem 714-379-3376
201	Communications in Real Estate Acquisition	Jan 31—Feb 2, 2012	San Diego, CA	11	Mike Flanagan 858-522-6914
213	Conflict Management	Feb 8, 2012	Downey, CA	1	Natasha LeNic 310-720-9517
203	Alternative Dispute Resolution	Feb 9-10, 2012	Downey, CA	1	Natasha LeNic 310-720-9517



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## THE IMPACT OF FUTURE SITE TRAFFIC

Condemnation case in California uses ratio of rough proportionality to determine just compensation  
BY WAYNE RASMUSSEN

As seen in the IRWA Right of Way Magazine,  
November/December 2011 Issue

Eminent domain is often necessary when acquiring rights of way for roadway extensions and realignments. When the land is undeveloped or partially developed, the process of determining just compensation can become more complicated. In this situation, fairness issues can arise based on the methods used to establish the amount of the compensation.

In determining compensation for the right of way, case law requires that a rough proportionality exist. Rough proportionality does not require that all similarly-situated owners be treated the same. Rather, the focus is on whether the burden placed on a particular owner is roughly proportional to the impact of that owner's highest and best use development scenario. These situations create the need to examine how a local jurisdiction's land dedication requirements would apply if and when the subject property is later developed. However, there is no precise mathematical calculation required for accomplishing this.

### Past Rulings

In California, the resolution of right of way condemnation disputes frequently relies on rulings from three landmark court cases.

In *City of Porterville v. Young* (1987), the California Court of Appeals held that when a public agency conditions the development of property on a dedication of frontage to widen a public street, the portion subject to the dedication should be valued for condemnation purposes based on the existing use of the undeveloped property, not on its highest and best use potential.

In the case of *City of Hollister v. McCullough* (1994), the trial court held that, in order to determine that a dedication is a reasonable probability, it must be found that such a requirement would be legally permissible. Proof that a conditional dedication is a reasonable probability requires showing not only that the local jurisdiction would have likely imposed the dedication condition if the property owner had sought to develop the property, but also that this dedication requirement would have been constitutionally permissible.

The U.S. Supreme Court held in *Dolan v. City of Tigrad* (1994) that the government may not require a person to give up a constitutional right in exchange for a discretionary benefit conferred by the government where the property sought has little or no relationship to the benefit. The court further found that it must be determined whether an "essential nexus" exists between a legitimate state interest and the permit condition. Such determination must be constitutionally sufficient to justify the conditions imposed. The necessary connection required by the Fifth Amendment is rough proportionality. Furthermore, the Court said that, "No precise mathematical calculation is required, but the city must make some sort of 'individualized determination' that the required dedication is related both in nature and extent to the proposed development's impact."

### Lack of Specificity

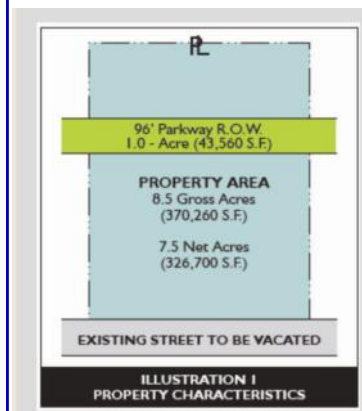
Although the Dolan case calls for the preparation of an individualized determination for certain right of way takes, this is not always done by

the condemning jurisdiction. In other situations, individualized determinations are not completed until after the right of way has already been appraised. This is essentially an after-the-fact exercise that can contradict the jurisdiction's appraisal.

Instead of preparing an individualized determination, it is common for local jurisdictions to rely on their subdivision dedication standards to serve this purpose. However, these standards typically do not provide the level of specificity needed to address the uniqueness of the site-specific acquisition. In a situation where the jurisdiction does not prepare a sufficient individualized determination, the landowner has the opportunity to challenge the legality of the take through the preparation of a nexus study to establish the basis of proportionality.

### The Effect of Future Development

In the San Francisco Bay Area, a related right of way condemnation case requiring an individualized determination was recently settled prior to trial. The dispute was in regards to a right of way take by the City for a parkway extension.



In Illustration 1, the 8.5-gross acre (370,260 sq. ft.) subject property contained a single-family home with the remaining land area consisting of undeveloped open space. Vehicular access was provided by an existing partially-improved public arterial street that fronted the site. The zoning map designated the site for office use. A 96-foot wide right of way for the construction of a public

parkway was called for by the general plan to extend through the center of the site.

Although the planned parkway would provide somewhat more convenient access to the property, it was primarily intended to increase vehicular capacity and substantially improve pedestrian and landscape amenities for city and regional users. The project was further intended to allow for the arterial street that fronted the property to be vacated for transfer of ownership to another public agency for constructing a different public facility.

The City determined that most of the parkway right of way take area would eventually have had to be dedicated to the City when the property was developed. By applying the Porterville ruling, the City valued most of the 96-foot wide right of way take (one acre) as open space instead of the office use for which it was zoned, which reduced the compensation amount. The landowner argued that the City had unfairly valued too much of the right of way take as open space and not enough as office. The City had relied on its subdivision dedication standards for determining what amount of the take would be valued as open space versus office. However, these citywide standards failed to address the specific traffic impact that the developed property would ultimately have on the parkway.

Continued on Page 9



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Continued from Page 7

The City did not prepare either a nexus study or an individualized determination of rough proportionality prior to the taking, nor did it relate the extent of the compensation to the amount of traffic that future development of the site would place on the parkway. For the landowner to clearly demonstrate his contention that he was being unfairly compensated by the City, he was required to obtain his own experts to prepare a nexus study.

**Calculating Rough Proportionality**

The landowner’s nexus study established a ratio of rough proportionality between the amount of traffic that future development of his property would generate compared to the amount of cumulative traffic generated by the combined total of all future parkway users.

$$\frac{\text{Future site traffic}}{\text{Future parkway cumulative traffic}} = \text{Ratio of rough proportionality}$$

This ratio of rough proportionality was then used to create a more site-specific amount of right of way that should be valued as open space versus office use.

**Future Site Traffic**

The traffic volume anticipated for future office development on the subject property was calculated in two steps. The first step involved calculating the amount of floor area that would be allowed by the city for the future office development. The City’s floor area ratio (FAR) standard was applied for this purpose. The FAR establishes the permitted amount of floor area (square footage) as a function of the amount of net property area (square footage). The 326,700 net square foot property area (excluding the right of way take area) was multiplied by the City’s office building FAR of 0.5:1 to determine the future building floor area, as follows:

$$\begin{aligned} &(\text{Net property sq. ft.}) \times (\text{Office FAR}) = \text{Future office building floor area } \textit{or} \\ &(326,700 \text{ net property sq. ft.}) \times (0.5 \text{ office sq. ft./net property sq. ft.}) = 163,350 \text{ sq. ft. of permitted future office building floor area} \end{aligned}$$

Next, the volume of traffic to be generated by the property upon build-out was projected. This was done by multiplying the future building floor area by an accepted engineering rate for daily trips per square feet of office. A rate of 11.58 average daily trips (ADT) per thousand square feet of office floor area was used for this purpose. This was intended to represent the extent of the traffic impact on the parkway created by development of the property, as discussed in the Dolan v. Tigar case. For example:

$$\begin{aligned} &(\text{Future office floor area}) \times (\text{Office daily trip rate}) \\ &= \text{Total ADT created by office development } \textit{or} \\ &(163,350 \text{ sq. ft. of future office floor area}) \times \\ &(11.58 \text{ office ADT /1,000 sq. ft.}) \\ &= 1,892 \text{ total ADT created by office development} \end{aligned}$$

The City’s general plan indicated that at general plan build-out the parkway would accommodate a cumulative total of approximately 11,400 ADT. This represents the sum of trips generated by the

build-out of the subject property, plus all existing and future traffic projected for the parkway at general plan build-out.

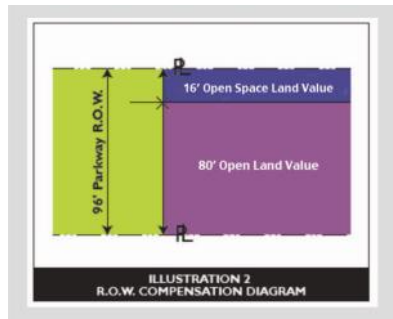
**Ratio of Rough Proportionality**

In order to calculate a sufficient measure of the rough proportionality between the future traffic generated by development of the property versus that of the cumulative traffic using the parkway, a ratio was established. This was done by dividing the property developer’s ADT by the total cumulative ADT generated by all users of the parkway, as follows:

$$\begin{aligned} &\frac{\text{Office ADT using parkway at site build-out}}{\text{Cumulative ADT using parkway at general plan build-out}} \\ &= \text{Ratio of rough proportionality } \textit{or} \\ &\frac{1,892 \text{ office ADT using parkway at site build-out}}{11,400 \text{ cumulative ADT using parkway at G. P. build-out}} \\ &= \frac{17}{100} \text{ ratio of rough proportionality} \end{aligned}$$

Thus, the property was expected to generate approximately 17/100 (or a ratio of 17:100) of the total ADT using the parkway.

**Ratio of Compensation**



The compensation diagram in Illustration 2 highlights the methodology used by the landowner’s traffic engineer and land use planning experts for determining the ratio of rough proportionality.

The property owner’s nexus study further determined an equitable method for determining the specific amount of the 96-foot wide section of

the parkway right of way to be paid at open space value. This was done by multiplying the 17:100 ratio of the property’s contribution of future traffic by the parkway width of 96 feet, as follows:

$$\begin{aligned} &(\text{Ratio of rough proportionality}) \times (\text{Total ROW width}) \\ &= \text{ROW width to be valued as open space } \textit{or} \\ &(0.17 \text{ ratio of rough proportionality}) \times (96\text{-feet total ROW width}) = 16 \text{ feet of ROW width to be valued as open space} \end{aligned}$$

The result was that 16 feet of the 96-foot wide parkway right of way width should have been compensated at open space value. The remaining 80 feet of the right of way width should have been compensated at office land value.

**Conclusion**

Please refer to the IRWA Right of Way Magazine, November / December 2011 issue for the rest of the article.

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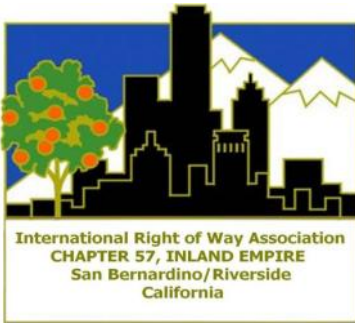
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