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A MESSAGE FROM IRWA CHAPTER 57's PRESIDENT

Looking Back and Reflecting!

By Barbara Ford, President

Some challenges cannot be corrected or overcome in a day, a year or a season! Most take years of dedication and perseverance, but when you defeat the dragon and look back to reflect on your accomplishments, you sometimes have to celebrate in silent victory because most people don't even know the road you had to take to stand where you are today!

We always need to look back to why in order to understand who we are today. Just as you see the four new skyscrapers standing at ground zero and marvel at the new view in amazement; if you didn't know about 9/11 and the devastation you wouldn't have half the idea of how difficult it was for the City of New York, the United



States and the entire world to view the aftermath. It took most residents nine months to a year to clean up the dirt, debris and ash that was left in their homes and businesses. The area was left without transportation in or out, no electricity, no gas and no water. The world never gave up, and people came from all over the country to rebuild and show the world that we may be down but don't count us out, not yet!

The City of New York and the World had to be able to look back and reflect; this was accomplished by two of the four new towers. Every year on September 11th, the sun's reflects from the new Tower 2 a beam of light that shines down on the Tower 2 Fountain (at the exact time that the plane crashed into Tower 2). Tower 1 is also designed so that the sun shines down on the Tower 1 Fountain. The City set a date of ten years from the date of the attack that on September 11, 2011, Tower 1 would be rebuilt and stand the original one thousand (1000) feet to mark the ten year anniversary.

sary. What makes that Tower amazing is that a seven hundred and seventy-six foot antenna was placed on the top to make the new Tower 1 seven hundred and seventy-six feet high (1776). Did they have difficulties, did they have setbacks, did it snow and stop construction completely and all the time building around the subway train that passed in between the construction of the two Towers and underground station, the entire time. "That would be YES in capital letters." This took teamwork, camaraderie, a bonding and fusing of all people from all walks of life to complete one common goal.

We have seen the demise of Redevelopment as we know it. There are many facets of Redevelopment that sponsored, supported, and sustained projects and development that was a part of Right of Way all across California. This will change the face of parts of our businesses for months and years to come but this door maybe closing but another door will surely swing open. We as Right of Way Agents have seen and been a part of our own ups and downs and to look at us now would not reveal the past. Whether you are working for an agency or the private sector we are all one force as members of IRWA. Our network of members consists of the greatest professionals, the newly developed advanced career paths, educational tools, and conferences that allow Right of Way Agents the opportunity to continue to focus on what is really important...the pride of our profession!

In 2012, we will have to go that extra mile, work those long hours, sacrifice some weekends away from our families and friends but we are working to strengthen the next generation of IRWA members in the Right of Way Profession, so when they look back and reflect on this industry all of our lights will shine one brilliant light back to International Right of Way. The next generation will look with amazement at our confidence, pride and self-assurance and know that IRWA is behind them as it was behind us; they too can reach for the stars!

-Nothing is far, when one wants to get there...
Queen Marie of Rumania-



MEETING DATES:

LUNCHEON:

(First Wednesday)

- Dec. 6-Tri-Chapter Grammy Museum
- Feb. 1, 2012
- Mar. 7, 2012
- Apr.4, 2012
- May 2, 2012

BOARD:

(Third Thursday)

- Feb. 16, 2012
- Mar. 15, 2012
- Apr.19, 2012
- May 17, 2012

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Canyon Crest Country Club, 975 Country Club Drive, Riverside, California
 951-274-7900, 11:30 am to 1:00 pm (First Wednesday of the month)
 Cost for Lunch and Meeting/Presentation—\$20.00 (RSVP) or \$24 at the door

SPEAKER: JOHN ELLIS

INLAND EMPIRE MARKET CONDITIONS By John Ellis, MAI, CRE, FRICS



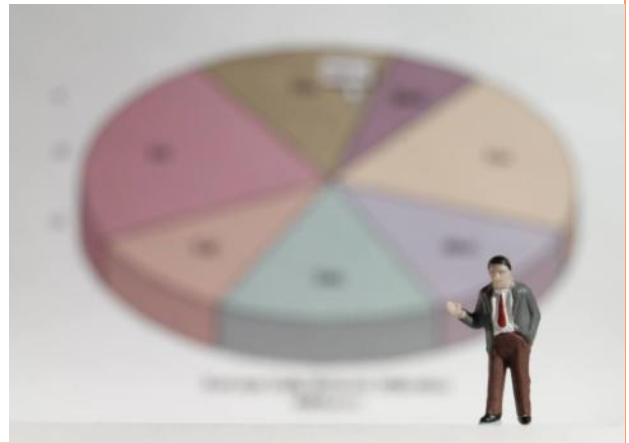
John Ellis is the Managing Director of the Los Angeles office of Integra Realty Resources.

He holds the MAI, CRE, and FRICS designations and is a graduate of UCLA, with a degree in Business Economics.

John is a past president of the Southern California Chapter of the

Appraisal Institute, has qualified as an expert witness in real estate litigation matters on more than two dozen occasions, and has handled many significant, multi-parcel acquisition appraisal assignments in the Inland Empire and throughout Southern California.

John's topic is Inland Empire Market Conditions.



A WORD FROM YOUR NEWSLETTER EDITOR

WOW, February already. The weather has been warm, then cold, dry then wet. The political climate has been changeable as well.

January 2012 saw the demise of redevelopment at the hands of the Governor of the State of California. I am sure a number of our members who work for or with cities, agencies, and counties are affected by the decision, as well as all of the people who live in the State. I, for

one, am hoping that our fine Legislators can craft a new law, reinstating some type of new redevelopment laws, because I have seen some wonderful changes completed in the City I work for.

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://IRWChapter57.org> to view the newsletters

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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Course #	Subject	Date(s)	Location	Chapter	Contact
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
100	Principles of Land Acquisition	Feb 13-16, 2012	San Diego, CA	11	Mike Flanagan 858-522-6914
400	Principles of Real Estate Appraisal	March 12-13, 2012	San Diego, CA	11	Lee Ann Lardy 619-956-4824


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For questions regarding recertification, contact your local PDC Chair or Francis Vicente, Credentialing Manager, at Vicente@irwaonline.org or (310) 538-0233 ext 123.



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YEAR IN REVIEW

Eminent Domain and Inverse Condemnation Decisions – 2011

Artin N. Shaverdian, Esq.
California Eminent Domain Law Group, APC

Eminent domain/Inverse condemnation law had its fair share of published decisions handed down by California’s various appellate courts including the high court in 2011, keeping eminent domain and inverse condemnation an ever evolving area of the law.

The courts handed down seven published decisions involving either eminent domain or inverse condemnation issues. Of the seven published decisions, six were inverse condemnation cases. Interestingly, all of the inverse condemnation decisions were handed down by California’s various appellate courts, with California’s Supreme Court handing down the only eminent domain decision.

The one decision handed down by California’s Supreme Court which involved an eminent domain issue, was actually a case the parties settled shortly before oral arguments. Nevertheless, California’s Supreme Court felt “the issue presented is of continuing public importance” and as such elected to retain jurisdiction of the case. While “public importance” may be the reason cited by the Supreme Court, I like to think that the justices of the Supreme Court find eminent domain law as fascinating and enjoyable as the rest of us, and therefore could not forego the opportunity to contribute to this area of the law in 2011.

So what exactly did the courts decide in 2011? To start off, the appellate courts decided the following six issues: (1) the applicability of the statute of limitations on an inverse condemnation matter after dismissal of an eminent domain action; (2) whether the acquisition and demolition of structures in a neighborhood entitles the remaining landowners to compensation; (3) revisiting the *IHOP* case, whether a franchisor is an “owner” of a business, and furthermore whether a loss of business goodwill claim may be assigned by the operator to the franchisor; (4) whether the County’s conduct in installing K-rails to divert rain water from certain properties and prevent their flooding was reasonable; (5) revisiting *Klopping*, whether certain conduct by a government agency constitutes general planning or an announcement of intent to condemn sufficient to justify damages for unreasonable delay in condemnation; and (6) whether a city’s downzoning of an owner’s undeveloped parcel was arbitrary and capricious and constituted improper discriminatory spot zoning and a compensable taking. The Supreme Court, not wanting to be left out, decided whether a lienholders’ withdrawal of a portion of a deposit results in a waiver of the property owner’s right-to-take claims and defenses.

A brief discussion of each of the decisions listed in the order referenced above is provided below:

Cobb v. City of Stockton, 192 Cal.App.4th 65

The first of the published decisions was filed by California’s Third District Court of Appeal on January 26, 2011. In *Cobb v. City of Stockton*, 192 Cal.App.4th 65, the court ruled on the application of the statute of limitations in an inverse condemnation action after the governmental agency had filed an eminent domain action, which action was dismissed nine years later for lack of prosecution, prompting the owner to file an inverse condemnation claim.

In October of 1998, the City of Stockton (“City”) filed an eminent domain action to acquire the owner’s property. The City then deposited probable compensation and obtained an order for

prejudgment possession before the end of the year. The City thereafter constructed a public roadway across the condemned property. However, in October of 2007, nine years after the eminent domain action was commenced, the trial court dismissed the action for lack of prosecution.

Five months later, in March of 2008, the property owner, Cobb, initiated an inverse condemnation action seeking damages for the taking of the property for the now existing roadway. The City demurred to the owner’s complaint arguing the inverse claim is time barred, inasmuch as the taking occurred more than five years before the complaint was filed. The trial court agreed with the City in sustaining its demurrer, but the appellate court reversed the trial court’s decision.

The appellate court stated, whether the five year statute of limitations has run turns on whether the owner’s cause of action accrued at the time the City took possession of the property, or later, when the City abandoned its eminent domain action. The court went on to hold that since the City was not in wrongful possession of the property during the pendency of the eminent domain action as it had obtained an order for prejudgment possession, a cause of action for inverse condemnation did not accrue until the City no longer had a right to occupy the owner’s property. This did not occur until the eminent domain action was dismissed in October 2007, and as such, only then did the statute of limitations begin to run.

City of Los Angeles v. Superior Court (Plotkin) 194 Cal.App.4th 210

Two and a half months after the Third District filed its decision in the Cobb matter, the appellate courts’ Second District published its own opinion on inverse condemnation on April 12, 2011. In *City of Los Angeles v. Superior Court (Plotkin)*, 194 Cal.App.4th 210, the court ruled on the issue of whether the City of Los Angeles’ (“City”) buying and demolishing structures in neighborhoods near the Los Angeles International Airport entitles the remaining landowners to compensation for inverse condemnation.

In 1997, City began implementing a “Residential Sound Proofing Program” to sound insulate residential dwellings near Los Angeles International Airport (“LAX”). Homeowners were not interested in soundproofing; however, a group of residents requested the City purchase their properties in lieu of soundproofing. The City then developed a Voluntary

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Continued from Page 7

Residential Acquisition and Relocation Program. It was voluntary in that “if an owner did not voluntarily indicate an interest in having his property purchased, the airport would not seek to purchase that owner’s property.” The Program required demolition of acquired properties to mitigate incompatible residential land uses affected by noise from LAX.

In July 2009, real parties Peter Plotkin et al., filed a suit against the City for inverse condemnation and damages due to condemnation blight. The complaint alleged that the City’s acquisition of properties, relocation of tenants, demolition of properties, and the City’s use of some properties for fire department practice and filming of special effects, had resulted in the diminution of values of their properties including loss of rental income. Plotkin also contended that the City had “gained de facto control of their property,” resulting in the City being the only buyer for their properties. On a summary adjudication motion, the trial court ruled in favor of Plotkin finding that real parties had established that the City’s creation of “condemnation blight” resulted in a constitutional duty to pay just compensation. However, the City sought writ review of the trial court’s granting of the real parties’ motion for summary adjudication.

In deciding whether the City’s actions resulted in a viable claim for inverse condemnation, the appellate court examined the Supreme Court’s decision and applied the two prong test outlined in *Klopping v. City of Whittier* (1972) 8 Cal.3d 39 (*Klopping*). As *Klopping* made clear, to assert a claim for inverse condemnation based on unreasonable precondemnation conduct, a plaintiff must establish first that the public entity engaged in unreasonable activity, either by excessively delaying initiation of an eminent domain action or by other oppressive conduct; and second, that the offensive conduct was a precursor to the entity’s condemnation of the plaintiff’s property.

The court indicated that first, real parties had failed to present evidence to establish the most basic component of a *Klopping* claim – that the City had condemned their properties, had intent to condemn, or had plans for future use of their properties that would someday require condemnation. To the contrary, the evidence presented indicated that (1) for roughly a decade, the City had entered into voluntary agreements with owners to purchase, and (2) City had no plans for the properties it had acquired. Moreover, real parties failed to establish that the land was being acquired for a public purpose. According to the undisputed evidence presented, once the properties were acquired, they were demolished and left empty and the only purpose of the program was to assist residents affected by noise.

Finally, with respect to “unreasonableness” of the City’s conduct, real parties’ suggested that the City could have prevented blight by restoring the neighborhoods, and renting buildings it had acquired or developing other uses for properties rather than leaving them vacant. The court disagreed, indicating that the real parties’ suggestions would defeat the program’s purpose which was to protect individuals from living in proximity to the airport noise.

In short, the court held that real parties fell short on both accounts for finding *Klopping* style inverse condemnation liability based on unreasonable precondemnation conduct.

Galardi Group Franchise & Leasing, LLC, v. City of El Cajon, 196 Cal.App.4th 280

Both the Second and Third District courts of appeal having filed opinions with respect to inverse condemnation issues, the Fourth District filed its own published opinion on June 7, 2011. In *Galardi Group Franchise & Leasing, LLC, v. City of El Cajon*, 196 Cal.App.4th 280, the Fourth District Court of Appeal revisited the concept of entitlement to loss of business goodwill by the “owner” of a business conducted on property taken by eminent domain (CCP §1263.510) and entitlement to goodwill compensation as an assignee of a lost goodwill claim.

Galardi, as franchisor of Wienerschnitzel restaurants, subleased a location including all fixtures and equipment for the operation of the restaurant to Mark Bingham (the “Operator”). The Operator operated the restaurant at its location in El Cajon for approximately 20 years under a written operating agreement which contained a provision stating that the Operator “waived” its right to any condemnation award. In 2007, the property was acquired by eminent domain and the restaurant closed. Although Galardi and the Operator tried preserving the goodwill by relocating, they were unsuccessful.

In October of 2008, Galardi and the Operator executed an assignment whereby the Operator assigned any claim it had for lost goodwill compensation to Galardi. Galardi then filed an inverse condemnation suit against the City alleging entitlement to lost goodwill compensation as owner of the restaurant, and alternatively as an assignee of the claim for loss of business goodwill to the extent the Operator was held to be the “owner”. The matter proceeded to trial with the City relying on *Redevelopment Agency v. International House of Pancakes, Inc.* (1992) 9 Cal.App.4th 1343 (IHOP), to argue that as a non-owner franchisor, Galardi was not entitled to compensation for lost goodwill. The City further argued that based on the executed operating agreement whereby the Operator waived its right to any condemnation award, the City was not obligated to pay lost goodwill as the Operator had nothing to assign to Galardi when it executed the assignment assigning its claims.

The trial court agreed concluding that Galardi was not the “owner” of the business and further concluded that the Operator had no interest to assign and entered Judgment in favor of the City. Galardi timely appealed. The Court of Appeal, relying on *IHOP* concluded that there was no indication of ownership by Galardi. Like the claimant in *IHOP*, the court states that Galardi “established a method of operation intend[ing] to immunize or insulate itself from the risks and liabilities inherent in the ownership of a business...”

The appellate court also agreed with the trial court and concluded that Galardi was not the owner of the business under CCP §1263.510. However, with respect to Galardi as an assignee of the lost goodwill claim, the appellate court concluded that the parties intended the waiver clause in the operating agreement to define their respective rights to goodwill damages vis-à-vis one another, rather than benefiting a third party - or in this case the City. The court went on to say that this is further supported by the fact that in anticipation that Galardi might not be considered the owner of the business,

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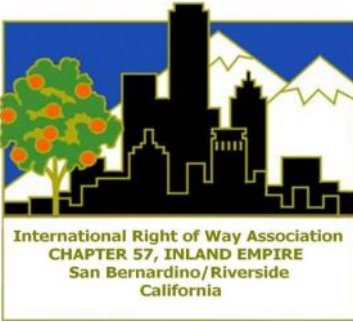
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