

AMERICAN INSTITUTE OF MINERALS APPRAISERS

NEWSLETTER

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TO OUR MEMBERS...

Your Institute has slowly grown and has also started to receive recognition in the field of minerals appraisal. We receive about one call a week from the public inquiring about specific appraisal problems or asking for referral of Certified Minerals Appraisers. We hope this trend will continue, and this can best be accomplished if we all submit at least one name of a potential new member. That way, we can achieve a better national coverage and thus serve the public when they have appraisal cases which need attention on a geographical basis. Whenever possible, we try to refer two or three members to a potential client, so that the public may have a choice in the selection.

The Institute has also been lobbying for the acceptance of qualified minerals appraisers from the federal act that requires a *real estate* appraiser to sign off on *oil and minerals* property appraisals! (see enclosed article for further details).

We have now functioned for a little more than a year with an *Acting* slate of offices. We would like to hold our first official election later this spring, so I cordially invite you to submit names for nominations of candidates for president, vice president, secretary and treasurer for our Institute. Do not be afraid of submitting your own name, because here in the early stages of our Institute's existence we need all the help we can get. Please submit nominations by April 15,

1994. We will then have a slate to you for your vote by the first part of May. We also solicit your interest in participating with a small group of our members in the interactions with other appraisal institutes. Therefore, if you are a member of other societies such as *The American Society of Appraisers*, *The Society of Petroleum Evaluation Engineers*, or *The Appraisal Institute*, or similar groups, please drop me a note so that we may consider making you our Institute's focal point of contact with these related groups.

We look forward to a year of growth of our Institute and of a honing of our skills as applied to the appraisal profession, with emphasis on our specialty of oil and minerals appraisal! Best regards, John Gustavson, Acting President

ACTIVITY IN THE COURTROOM

A fundamental area of activity for professional appraisers is the courtroom, where an appraiser's knowledge and ability to communicate are put to the most demanding tests. Attorneys, bank officers, or others who anticipate litigation of fair market value issues, either in contract litigation or in condemnation proceedings, should develop a method for choosing appraisers.

It is wise to remember that:

"The element that gives every appraisal its value in court, its influence on the judge and jury, is the character of the appraiser....It is this element, more than any other, which a lawyer does, or should, consider as the basic qualification of the appraiser he will select". (Jones, "A Judge Looks At The Expert Witness", *Condemnation Appraisal Practice* 461, 462-463; *American Inst. Real Estate Appraisers*, 1961).

Appraisers should generally enter a case at the earliest possible time. An effective attorney/appraiser team can head off lengthy litigation by determining supportable and verifiable fair market values at the outset of a case. At the point that a decision is made to hire a professional appraiser, two variables regarding the property should be resolved: what is the nature of the property in dispute, and how likely is it that the particular dispute will go to trial. Usually, the more complex the property, the greater the necessity that a professional appraiser be involved from the start of the case. It is imperative to find an appraiser who is qualified to value the type of property involved. Qualifications of the appraiser cannot be overemphasized. Jurors have said that ".....it is their habit to pick one witness who has impressed them and adopt his opinion". (Hadley, "Presentation of the Case", *Condemnation Appraisal Practice* 492, *ibid.*)

Factors to consider in weighing an appraiser's qualifications include: educational achievements, professional affiliations, appraisal experience (especially with property similar to that in issue), and authorship of materials dealing with appraising.

Because appraisers are not licensed in every jurisdiction, those wishing to hire an appraiser may have to turn to sources other than a state registration board to find qualified appraisers. Sources for recommendations of qualified appraisers include: attorneys, especially those active in eminent domain work; institutions that use appraisers frequently such as banks and institutional investment groups, title companies, and government agencies such as the FHA; and recognized appraisal societies that have supervised membership with recognized admission standards.

In making the final decision to hire one appraiser among several candidates, consider: competency (is the appraiser familiar with values in the area of the subject property?), ability to aid the attorneys involved if the matter is headed

for litigation (reports, testimony and general assistance to the attorneys involved form the backbone of an effective appraiser's task in litigation support), effectiveness as a witness (is the appraiser experienced in testifying as to his opinion on values and can he communicate his opinions clearly and convincingly?).

Ultimately, the decision of which appraiser to use will determine the effectiveness of any presentation of disputed fair market value in a courtroom. Choosing an appraiser who can "go the distance" through litigation and convincingly present a reasoned approach to fair market value can be the difference between winning and losing a lawsuit. (Source: "The Appraisal Process in Eminent Domain," Section 401 et seq., *Nichols on Eminent Domain*, vol. 7). □

HIGHEST AND BEST USE

Common to all appraisal is the necessity to first determine the *highest and best use* of a property. The highest and best use refers to the use on the date of the appraisal, or a use which is so reasonably likely in the near future that this potential would affect the property's market price.

With this in mind, it becomes clear that an oil property or a mine will have substantially different "highest and best uses," depending on its stage of development. Clearly, the highest and best use of a producing property is to produce income from the sale of production. Likewise, on the other end of the development spectrum, the highest and best use of "goat pasture" is to generate the bonuses and rentals that the property will bring to the mineral rights owner. Between these two extremes, properties may be non-producing, although the reserves may be proven, or the property may be a prospect defined by geochemistry, seismic, by subsurface control, or by other means.

The highest and best use of a non-producing property can be related to the ability to produce income, since such income may be reasonably near-term in the future.

On the other hand, a *prospect* can rarely be considered to be near income production, partially because there is a very substantial question with regard to actual discovery of reserves, and partially because the timing

of production may be impossible to determine.

Only on the basis of the highest and best use of a property can an appraiser then apply that particular appraisal method which best suits the property. Table 1 shows the four conventional methods which may provide the most reliable estimates of value. □

UNIVERSITY OF TULSA CONTINUES APPRAISAL COURSE

The University of Tulsa is now in its *ninth* year with the offering of the publicly available course, *Appraisal of Oil & Gas Properties*. The course, which over the years has hosted approximately 2,500 attendees, is being presented in Dallas, Texas on 7-8 April, 1994. The venue is the Bristol Suites, and the two-day course is available to the public for \$495 per person. Certified members of the American Institute of Minerals Appraisers have been extended a 20 percent discount by the University, and may attend for \$395. Please call the University of Tulsa at (918) 631-2347 for further information and for registration details.

The general objective of the seminar is to provide methods for determining the fair market value of oil and mineral properties based on the underlying reserve reports from the marketplace and those from various investment criteria, and experience from other types of appraisal such as real estate. Particular emphasis is placed on the need to first determine the Highest and Best Use, then to select the most appropriate appraisal methods, and subsequently to perform the difficult task of reconciliation. Also, more esoteric subjects like apportionment are dealt with. Case histories take up a substantial part of the seminar time, and have always been popular. □

TABLE 1 - PROS & CONS OF APPRAISAL METHODS

| METHOD | ADVANTAGE | DISADVANTAGE |
|------------------|--|--|
| Prior Sales | Excellent Market Data | Rarely Found |
| Comparable Sales | Good Market Data Applicable to all Uses | Research Expensive |
| Income Approach | Reliable for Producing Fields & Mines Applicable to Raw Acreage | Marginally Useful for Undeveloped Properties |
| Cost Approach | Excellent for Downstream Assets Useful for Exploration Projects | Inapplicable for Reserves |

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