

# AMERICAN INSTITUTE OF MINERAL APPRAISERS

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## NEWSLETTER

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### **AIMA Annual Meeting**

Our Annual Meeting was held on Wednesday, February 26, 2003 in Cincinnati, Ohio at the Hyatt Regency. Sam Pickering, Jr., Chairman, called the meeting to order at 4:20 P.M. Donald Warnken, John Gustavson, Trevor Ellis, Edwin Moritz, Robert B. Frahme, John Bower and Sam Pickering, Jr. were members in attendance. Also in attendance were guests; Craig Wood, Fred G. Heivilin and Allen K. Stagg. The meeting was over at 7:00 P.M. Dinner followed along with some good discussions and fellowship.

Sam Pickering, Jr. reported that all existing officers were reelected. They are; President – Sam Pickering, Jr; Vice President – Edwin Mortiz; Treasurer – Lawrence T. Gregg; Secretary – John Gustavson; Editor – Donald Warnken.

#### President's review of AIMA's development and current status.

Sam reported that dues have been increased from \$15 to \$60 per year. The increase was needed to provide adequate funds for soft ware purchases, web site maintenance, mailing supplies and mailing expense.

AIMA bank account balance was \$5,436.02 as of February 16, 2003, an increase of approximately \$1,400 from the previous year. Outstanding expenses of \$1,507.04 were reported. A motion to pay the bills was made that was seconded. The

motion was approved. Twenty-five (25) members had paid their 2003 dues as of the bank balance date.

Sam reported that the Executive Committee has appointed Edwin Moritz to be assistant Treasurer.

He also reported the formation of an Ad Hoc *Standards Committee*. Members of this committee are; John Gustavson (Chairman), Michael Cartwright, Trevor Ellis and Robert Frahme. The purpose of this committee is to study the various appraisal standards now in use with the objective of developing a standard specific to mineral appraisals. Currently, mineral appraisers attempt to conform to the form and techniques of the Uniform Appraisal Standards for Federal Land Acquisitions (UASFLA) and/or the Uniform Standards of Professional Practice (USPAP) in preparation of their appraisals. Those standards have been primarily styled for the appraisal of surface rights.

Our Website directory has been updated. Sam has stated that Members who so desire could have their qualifications added to it.

There is an effort underway to establish a "Court Master" for Federal Courts. The purpose of the "Master" is to assist Judges in the selection of appraisers for the Court. That effort is  
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## AIMA Annual Meeting, *continued from page 1*

reportedly moving forward. More information concerning this will be presented in the Newsletter as it comes available.

The issue “should AIMA become a sponsor of the Appraisal Foundation” was addressed. It was concluded that membership was too costly for our small organization. The application fee is \$2,500 and the annual dues are \$3,000 plus \$3 per member. Also ruled out was our becoming an Associate Sponsor of the Appraisal Foundation since we are not a company.

As an alternative it was proposed that we sign up for TAFAC and thus become a monitor which would grant us access to the Appraisal Foundation Website. This proposal was adopted following a motion made by Trevor Ellis and a second from John Gustavson. There would be no cost to us.

There was much discussion concerning the need for Continuing Education and what to do about it, if anything. Thus, a Committee on Continuing Education was formed which includes Edwin Moritz, Trevor Ellis and Robert Frahme. They will report their findings to the Executive Committee who will make the findings available for the Newsletter.

There was some discussion about examinations. It was pointed out that to become a geologist in training and to become Certified for ASOSBG Membership, an examination is required. No motion was made on this subject.

It was announced that Robert Frahme is the Chairman for the SME 2004 Mineral Valuation Session. That meeting will be held in Denver, CO.

Meeting was adjourned at 7:00 PM.

## NEW MEMBERS

Our most recent members are;

Robert Frahme  
Hunsperger, Weston Ltd  
5889 South Greenwood Plaza Blvd., Suite 404  
Greenwood Village, CO 80111  
Member since September 2002

James Roy Evans  
Bureau of Land Management  
5912 Shadow Oak Drive  
Citrus Heights, CA 9621  
Member since December 2002

Dr. John C. Brower  
75 Bluebird Lane  
Whitehall, MT 59759  
Member since January 2003

Alan K. Stagg  
Stagg Resource Consultants, Inc.  
5457 Big Tyler Road  
Cross lanes, WV 25313  
Member since April 2003

## INVESTIGATION OF POSSIBLE CONTINUING EDUCATION REQUIREMENTS FOR AIMA MEMBERS

Edwin C. Moritz, AIMA Vice President

As some of you have noticed from the minutes of the annual meeting, a committee was formed to investigate and make recommendations for the possible institution of standards and procedures for continuing education requirements for AIMA membership. The members of the committee consist of Robert Frahme, Trevor Ellis and myself.

I would like to assure the membership that recommendations for these requirements would be made only after a careful review and also after we have received input from the membership. The pros and cons of instituting education requirements are not fully understood but a few main ones are presented below:

### Benefits (Pros)

- **Increases Credibility of Institute** – professional organizations that require continuing education tend to gain more respect than those that do not. In my own experiences, I have been confronted by direct criticism (mainly from opposing attorneys in litigation cases) of the AIMA where the criticism emphasized the lack of educational and testing requirements of our organization.
- **Strengthens Professional Development** – I have personally benefited tremendously from the interface with other AIMA members in getting their perspective and valuable input on a variety of different topics. I think an expansion of this pooling of knowledge and experience can only be beneficial to everyone if it is focused in the direction of a continuing education effort.

### Difficulties (Cons)

- **Regulatory Burden on Institute** – the implementation of educational requirements will require that rules and regulations be promulgated and enforced by the AIMA. Such activities are not considered particularly onerous but are an additional burden on a small organization.
  - **Assuring Fairness** – this issue relates to striking a balance that the proposed educational requirements have enough substance to be beneficial and gain credibility, while at the same time making sure that
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## **Investigation of Possible Continuing Education Requirements For AIMA Members, *Continued from page 2***

they are not arbitrary or unrealistic and that members have reasonable access to educational resources and classes.

A good first step will be to investigate the continuing education requirements of other professional organizations in order to learn from their experiences. Another idea that is gaining steam is that we should conceive and prepare the courses amongst ourselves given the lack of mineral appraisal courses available. **I welcome all of you to send your comments and ideas to the committee.** On behalf of Trevor, Bob and myself, I look forward to working with you on this important issue for the AIMA.

## **TWO MINERALS APPRAISAL SESSIONS AT SME ANNUAL MEETING IN '04**

The annual meeting of SME; scheduled for February 23-24, 2004 in Denver, will feature two minerals appraisal sessions. The morning session, entitled "*Updates on Global Valuation Issues*", is chaired by Trevor Ellis and Douglas Silver. This new session is designed to provide updates on developments pertaining to international and national appraisal/valuation standards. Competent Person issues and financial reporting requirements for SEC-governed markets and other securities markets. It will feature national and international speakers. The afternoon session, chaired by Bob Frahme, will focus on a broad range of mineral appraisal issues and case histories. Titles and authors for the afternoon session appear below:

- Reserves-The Cornerstone of Any Mineral Appraisal by Alan K. Stagg, RPG; Stagg Resource Consultants, Inc.; Cross Lanes WV.
- Evaluation and Appraisal of Minerals with Reliance Upon Reports Prepared by Others, Stuart Limb, FRICS, AIMA; CMC, Inc; Scottsdale, AZ
- Case Histories Dealing with Fair Market Values of Severed Undeveloped Mineral Rights by Edwin Moritz, AIMA; Gustavson Associates, Inc.; Boulder, CO.
- How to Work with a Real Estate Appraiser Under USPAP (Who's On Top?) by Robert B. Frahme, CPG, MAI, AIMA; Hunsperger & Weston, Ltd.; Denver, CO.

## **MINERAL APPRAISAL SEMINAR**

The Center for Advanced Property Economics will host a mineral appraisal seminar in Denver, Colorado October 1, 2, and 3, 2003. Mining and petroleum-related topics will include: current practice, standards, valuation issues, discount rates, Resource/Reserve uncertainty, real opinions, methodology and

more. This exciting forum will be organized for input and discussion. Be sure to put it on your calendar.

The Seminar is Co-Sponsored by American Society of Appraisers (ASA) and American Society of Farm Managers and Rural Appraisers (ASFMRA). A program will be posted soon at [www.propertyeconomics.org](http://www.propertyeconomics.org) and/or [www.appraisalinstitute.org](http://www.appraisalinstitute.org). More information can be obtained from Ellen F. Hodos at [onstream@worldnet.att.net](mailto:onstream@worldnet.att.net).

**Editors note: The Seminar has also been titled "International Mineral Appraisal Meeting". Several AIMA members will be presenting papers. It would be worth your time to access the Centre for Advanced Economics website to learn more about this worthy organization.**

## **SEALS AVAILABLE**

John B. Gustavson, AIMA Secretary

No, not for the supply of animals to your local zoo, nor for the politically incorrect coat for your significant other! Rather, the American Institute of Minerals Appraisers offers for your use, a handsome seal with which to execute your appraisal reports. Like or not, this sign of certification by your peers favorably impresses our modern society.

To those of us who also work internationally can hardly do this without a seal (not to mention ribbons, consular assurances and affidavits) when we commit our estimate of an oil or mineral value in a developing country? Therefore, for use internationally, domestically (or in lieu of politically incorrect fur coat), please order and use our Institute's seal with your personal name and certification year. The seals are available in rubber stamp format for \$35.00 and there is an embossing seal for \$50.00. Please send your order with a check made out to the Headquarters at American Institute of Mineral Appraisers, 5757 Central Avenue, Suite D, Boulder, CO 80301.

## **MINERAL RIGHTS TRUMPED BY ZONING CONTROLS**

By Harris Ominsky

*Harris Ominsky is a partner in the law firm of Blank Rome Comisky & McCauley LLP. He is the author of a new book "Real Estate Practice: Breaking New Ground", published by the Pennsylvania Bar Institute.*

A recent case shows how ownership rights to underground minerals can, if you'll excuse the expression, be "undermined" by zoning laws. In *Southdown Inc. v Jackson Township Zoning Hearing Board*, No. 1656 C.D. (Pa. Cmmwlth Crt.), October 29, 2002), Judge Mary Hannah Leavitt of the Pennsylvania Commonwealth Court upheld Jackson Township zoning hearing board's denial of a special exception to permit underground limestone mining in areas restricted to residential and agricultural use.

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## Mineral Rights Trumped By Zoning Controls,

*Continued from page 3*

The owner had extracted limestone in an underground operation on various parcels over a period of years. As part of its business plan, it had acquired an additional parcel to extend its operations, but ran into a problem. The parcel it had acquired was zoned agricultural, and mining was not permitted as a use in the agricultural zone. It also acquired another parcel, which was partly zoned residential, and the ordinance also prohibited mining in residential areas. When the zoning hearing board turned down the owner's request for a special exception, the owner appealed to the courts.

Among other arguments, the owner maintained that the zoning ordinance does not restrict underground mining since the ordinance regulates "excavations," and therefore only directs how an owner may use the surface of his land, and not underground uses. It also challenged the board's conclusion that it lacked the power to grant a special exception in agricultural or residential zones.

Leavitt cited the relevant section of the Municipalities Planning Code which provided that:

(b) Zoning ordinances except to the extent that those regulations of mineral extraction by local ordinances and enactments have heretofore been superseded and preempted by the..."Surface Mining Conservation and Reclamation Act,"...[and] the "Noncoal Surface Mining Conversation and Reclamation Act,"...may permit, prohibit, regulate, restrict and determine:

- (1) Uses of land watercourses and other bodies of water....
- (5) Protection and preservation of natural and historic resources and prime agricultural land and activities."  
(Emphasis added by the court.)

Leavitt concluded from the Code that municipalities have broad authority to regulate land use in general and mineral extraction in particular, except where preempted by the specific statutes referred to in the quoted section of the Code. She rejected the owner's argument that the zoning ordinance did not intend to regulate underground mining and based that conclusion in part on the applicable provision that specifically regulated open "excavations" which it required to be enclosed by fences or walls of a certain height and specifications. Also, it required slopes to the edge of the excavation not to exceed 20%. She held:

"In short, 'excavation' is a term broad enough in scope to cover extraction by underground as well as surface operations. We find that the Ordinance was intended to address the underground excavation of limestone."

She then rejected the owner's contention that the Noncoal Surface Mining Act preempts the Code. On that issue, she

held that since the Act "does not even apply to underground mining, it cannot be construed to preempt a zoning ordinance that regulates underground mining."

Leavitt also rejected the owner's argument that the action of the board would be "a taking" to which it would be entitled to fair compensation from the municipality. She rejected that argument on the basis that it was not ripe for consideration because the owner did not request either a variance or a zoning change. Also, the board had not yet issued a final decision denying the owner "all reasonable beneficial use of its property, which is required before we can consider Southdown's taking claim."

At times, the owner of property who would like to develop that property for residential or other uses finds that someone has reserved subsurface rights to mine minerals in that property. While that may not occur very often in Philadelphia, reservation of these rights are frequently encountered in upstate Pennsylvania. Those reserved rights can easily impair the ability of the owner to design its project and to obtain financing for the proposed construction. The *Southdown* case is an important reminder that the owner of the reserved mineral rights may not be able to inhibit the proposed development, because the applicable zoning ordinance may effectively shut out the ability of subsurface rights to implement them.

*From*

[http://www.blankrome.com/publications/Articles/ominsky\\_065.asp](http://www.blankrome.com/publications/Articles/ominsky_065.asp)

## ISSUE-UNIFORM APPRAISAL STANDARDS FOR FEDERAL LAND ACQUISITIONS

William Jennings, AIMA Member

In the Uniform Appraisal Standards for Federal Land Acquisitions, section A-7 dealing with the income approach, there are these statements:

"In using the capitalization of income approach to value, care should be taken to consider only income which the property itself will produce – not income produced from a business enterprise conducted on the property. When the public requires the land upon which a business is located, the business is not taken and just compensation does not include an award for loss of the business or its profits."

I don't see how this can be true with regard to most mineral deposits. The business and the mineral deposit are inextricably linked; they are one in the same. The reason the business is here is because the mineral deposit is here. This seems to be particularly true for discrete deposits, such as porphyry copper or molybdenum, or deposits of other metals such as gold, silver, lead and zinc. The deposit is HERE and not over the next hill. A mineral deposit has value because it can be mined  
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## **Issue-Uniform Appraisal Standards For Federal Land Acquisitions, *Continued from page 4***

and processed, and to do so, the extractive and processing facilities must be HERE. If the deposit is taken, the extractive and processing facilities are just a bunch of equipment sitting around with nothing to do.

If I own a grocery, and the building I occupy is taken, I can buy a building a couple of blocks down the street and move there. I can't do that with a mine.

*Editors note: members, your response to this issue is invited.*

### **WHAT'S THE MARKET PRICE THE YEAR AFTER NEXT?**

By Dr. John Brower, AIMA Member

I had a bad experience a while ago on a gold mine appraisal. It was a nice enough deposit, lots of drill holes and good records, and roads and power lines close by. But the potential buyer didn't like the appraisal because the gold price that I used was said to be too high, or so I was told through unofficial channels. At that time, gold was trading at the lowest price in many years, which I thought was too low to be sustained for very long, because even gold miners have to eat. The sale didn't go through, so I didn't have to defend my price determination, none-the-less, I was rather annoyed. Well, O.K., offended. But this raises a topic for discussion among AIMA members using present worth of future income, and that is, "*What future market price should be used for valuing the mineral being produced?*" The price determination can range all the way from an un-quantified gut feeling about what is most likely, to highly structured economic models based on decades of historic data on the mineral itself plus data on many areas of related economic activity. Or maybe the price would simply be mandated by a governmental agency. This of course makes the appraiser's job a lot simpler (or does it?). Some of the issues in putting a value on future prices are: Price forecasts vs. price projections. How far back should you reach for old prices, and how far into the future can you reasonably use them? Actual dollar vs. constant dollar. Simple structure or analysis vs. highly structured economic models. Point estimates vs. ranges. Published commodity exchange future market prices? Date certain vs. moving average? Can you add to the list? What do you think constitute reasonable and defensible approaches to use for prices in income-based appraisal? What has best for you out there in the trenches?

*Editor's note: Dr. Brower has raised several interesting questions. Your comments are requested. All replies will be published in our next Newsletter.*

## **REQUEST FOR HELP – AIMA STANDARDS COMMITTEE**

By Jeffrey Kern, ASA, AIMA Member

The AIMA Standards Committee is attempting to complete research concerning mineral appraisal standards. I have been tasked to identify court cases / legal proceedings / legal documentation in which standards and procedures for mineral appraisals and appraisal reports were contested. Issues might include: qualifications, standards of measurement, the "unit rule," application of various approaches to valuation, standards of "Highest and Best Use," issues of probability and speculation, partial and full interest, discounts for time and marketability, and minority interest, etc.

Please forward to me any cases or case references which we might use to prepare a national and international overview. All form of email, PDF's, faxes, and snailmails are warmly accepted.

Thank you. Jeffery R. Kern, Resource Technologies Corporation, P.O. Box 242, State College, PA 16801, V: 814-237-4009, F: 814-237-1769, E: [jkern@resourcetec.com](mailto:jkern@resourcetec.com).

### **AIMA CERTIFICATION PROCEDURE**

26 February 2003

In accordance with the Bylaws of the American Institute of Minerals Appraisers, Section 2.4.2, "Review of Applications" the following Certification Procedure is currently applied to an Application and to the associated documentation received from an Applicant.

1. Upon receipt of an Application at the AIMA Headquarters, the President in consultation with the Secretary will assign an Ad Hoc Committee of three anonymous Members to review this specific Application for Certification
  2. The President in consultation with the Secretary will use the best judgment in selecting Ad Hoc Committee Members who to their knowledge have similar background as the Applicant with regard to minerals appraisal. Likewise, the selection of the Members of the Ad Hoc Committee will be made so as to prevent assignment of Members who may be sponsors of the Applicant and/or in a potential conflict of interest with the Applicant, be that potential introduced by business relations or competition, litigation support, or other professional appraisal activities.
  3. Application material shall be kept confidential and shall be circulated among the three Members of the Ad Hoc Committee. Each Committee Member will be encouraged to request additional information
- Continued on page 6*

about the Applicant's qualifications, as necessary. Such communication with the Applicant shall take place anonymously from a Committee Member through the Secretary of the Institute. Upon Completion of the review process reports and other samples of the Applicant's wok product will be returned to the Applicant upon request.

4. Upon satisfying the Ad Hoc Committee Members in their review process, each Member of the Ad Hoc Committee shall submit his/her recommendation in writing with regard to Certification to the Secretary.

5. In case of unanimous recommendations for Certification, the Secretary shall then inform the Applicant of the successful completion of the Certification process, mail the Applicant a Certificate duly executed by the President and the Secretary, and provide information of the Applicant's Certification to the AIMA Newsletter and to the AIMA Website Directory of Certified Members.

6. In cases when two of the Ad Hoc Committee recommend Certification, and when one abstains or recommends against Certification, then the Secretary shall request the three Ad hoc Committee Members to discuss the matter among themselves with a record of the difference of opinion submitted to the Secretary of the Institute for the permanent file on this Applicant. If the lack of certainty of unanimity continues, the Secretary shall bring the Application and the Ad Hoc Committee's comments and problems for review by the Executive Committee at the latter's next regular meeting. The ruling of the Executive Committee shall be final.

7. In cases where a majority of the Ad Hoc Committee cannot recommend the Applicant for Certification, the Applicant shall be advised thereof by letter from the Secretary. The Applicant shall be encouraged to remedy any troublesome matters and/or to pursue additional education and/or experience and otherwise attempt to reach the level required for Certification. When appropriate, the Membership Class of "Associate Member" shall be recommended to allow the Applicant the opportunity to benefit from the experience and capabilities of existing Members and/or from course work offered in the fields of appraisal. Likewise, the Ad Hoc Committee may designate an AIMA mentor to work with the Applicant in preparation of subsequent reapplication for Certification.

8. A reapplication may be submitted solely by letter to the Institute with an addendum relating to improvements in experience and qualifications

beyond his/her original Application. A reapplication may be submitted after one full year from the date of the advise of rejection from the Secretary.

9. Each reapplication shall be reviewed by an Ad Hoc Committee (see Paragraph 1 above) of which at least one of the Members shall have had previous review responsibility with the particular Applicant in the immediately prior Certification review process.

10. There is no limit to the number of reapplications. A nonrefundable Application Fee equal to the amount of the original Application Fee shall be submitted together with each reapplication.

## **PRICING CRUDE OIL**

Donald Warnken, AIMA Member

I have been asked on several occasions about crude oil pricing by persons not involved in appraisal of oil properties. So here are my thoughts.

Posted crude oil prices can be confusing and not readily understood. Crude oil is traded as a commodity on the stock exchange. The price established is called the spot market. Oil refineries purchase crude oil from the spot market but they also contract with producers for their supplies. While the spot market price is greatly influenced by existing supply and demand, the contract price is not. So why are spot prices different for Brent, Arab Light, Arab Heavy, West Texas Intermediate (at Cushing), West Texas Sour, Sunset, Louisiana Sweet (at St. James), Alaska North Slope and etc crude oils?

It is the difference in chemical composition. Some crude oils simply produce a greater variety of product than others. Also, some crude oil is more expensive to refine. Refiners have established that a 40° API Gravity crude will generally provide the best balance in products. A higher or lower gravity oil will result in higher or lower gasoline recovery (and other lighter hydrocarbons) and visa versa for lube oil recovery (and other heavier hydrocarbons). Hence, the price paid for crude oil greater or lower than 40° API Gravity is generally less and is less on a graduated basis. Also, there is the sulfur content factor. Crude oils with high sulfur content are identified as "sour" and are more expensive to refine than sweet crude oil. Hence, the price of sour crude is lower than sweet crude for equivalent API Gravity. Furthermore, refineries are designed to process crude oil types/classifications that best satisfies their crude oil supply source and their markets. Thus, crude oil must be directed and marketed from storage to a refinery that can process and market it. In the US, oil field gathering systems and storage to market pipelines are well established. So there is little concern over having a market. Domestically, crude oil price is linked to the spot market for foreign crude oil.

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**Pricing Crude Oil**, Continued from page 6

For information purposes, API Gravity is determined by this formula;

$$\text{Degrees API} = \frac{141.5}{\text{sp gr @ } 60^\circ \text{ F}} - 131.5$$

Hence, crude oil having a specific gravity of 1.0 (same as water) will have an API Gravity of 10°.

**EXTRACTIVE INDUSTRIES IVSC  
TASK FORCE**

The Extractive Industries International Valuation Standards Committee (IVSC) Task Force will meet with the IVSC Board in London, England on June 20th. The task force is composed of six members, two of which are members of AIMA. Trevor Ellis, member, is the task force leader.

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