

IRWA – Chapter 13

May 11, 2021

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LITIGATION SUPPORT REVIEW CASE

- Subject's Basic Factors:
 - Community: Vital, growing suburban community in the mid west
 - Subject: 50.57 acres of vacant development land
 - Corner site
 - Zoning: ID-2 - Research Flex District

APPRAISER'S OPINIONS OF VALUE

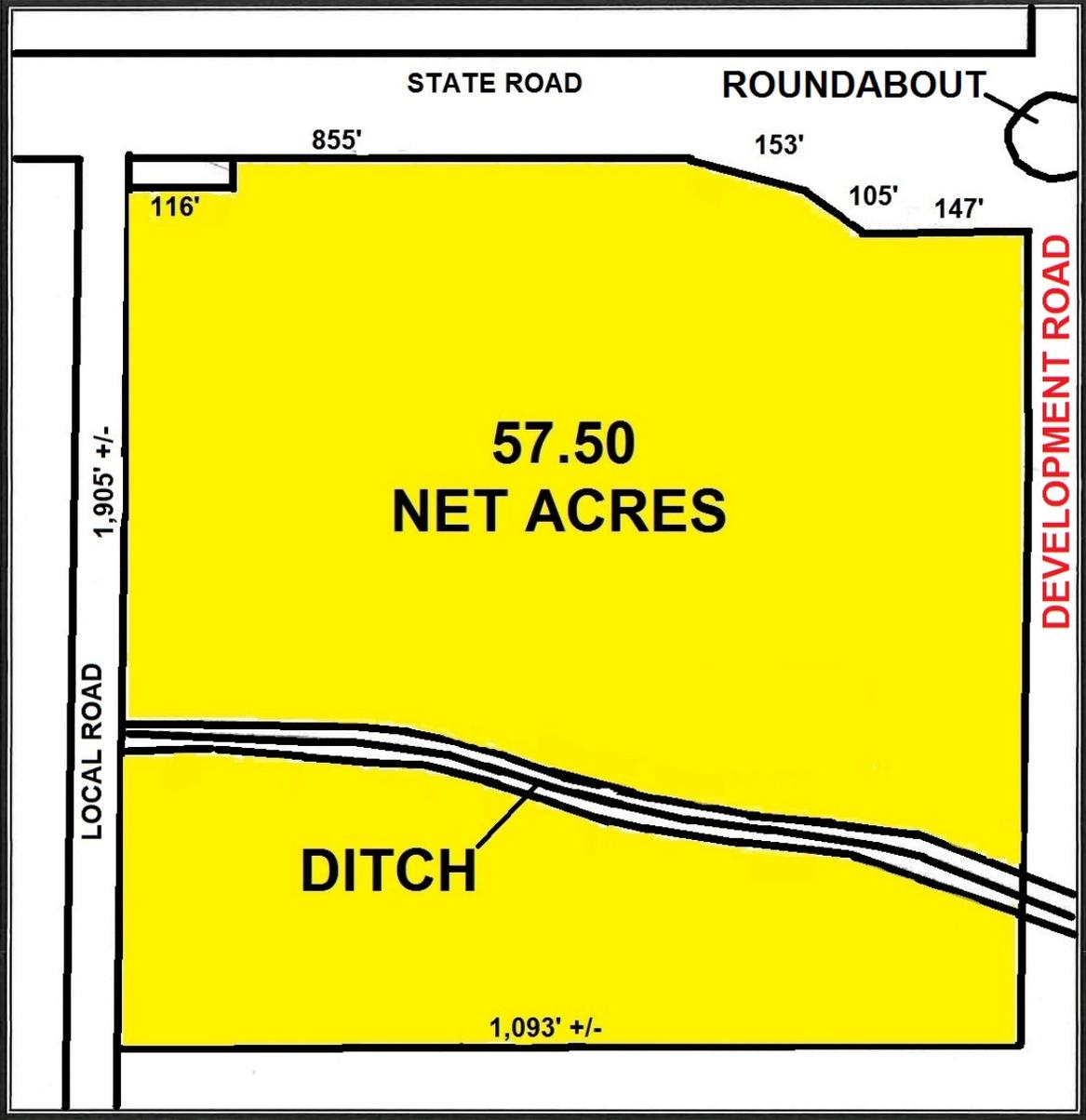
VALUATION BEFORE THE TAKING: \$20,125,000

VALUATION AFTER THE TAKING: \$18,568,388

DIFFERENCE: \$ 1,556,612

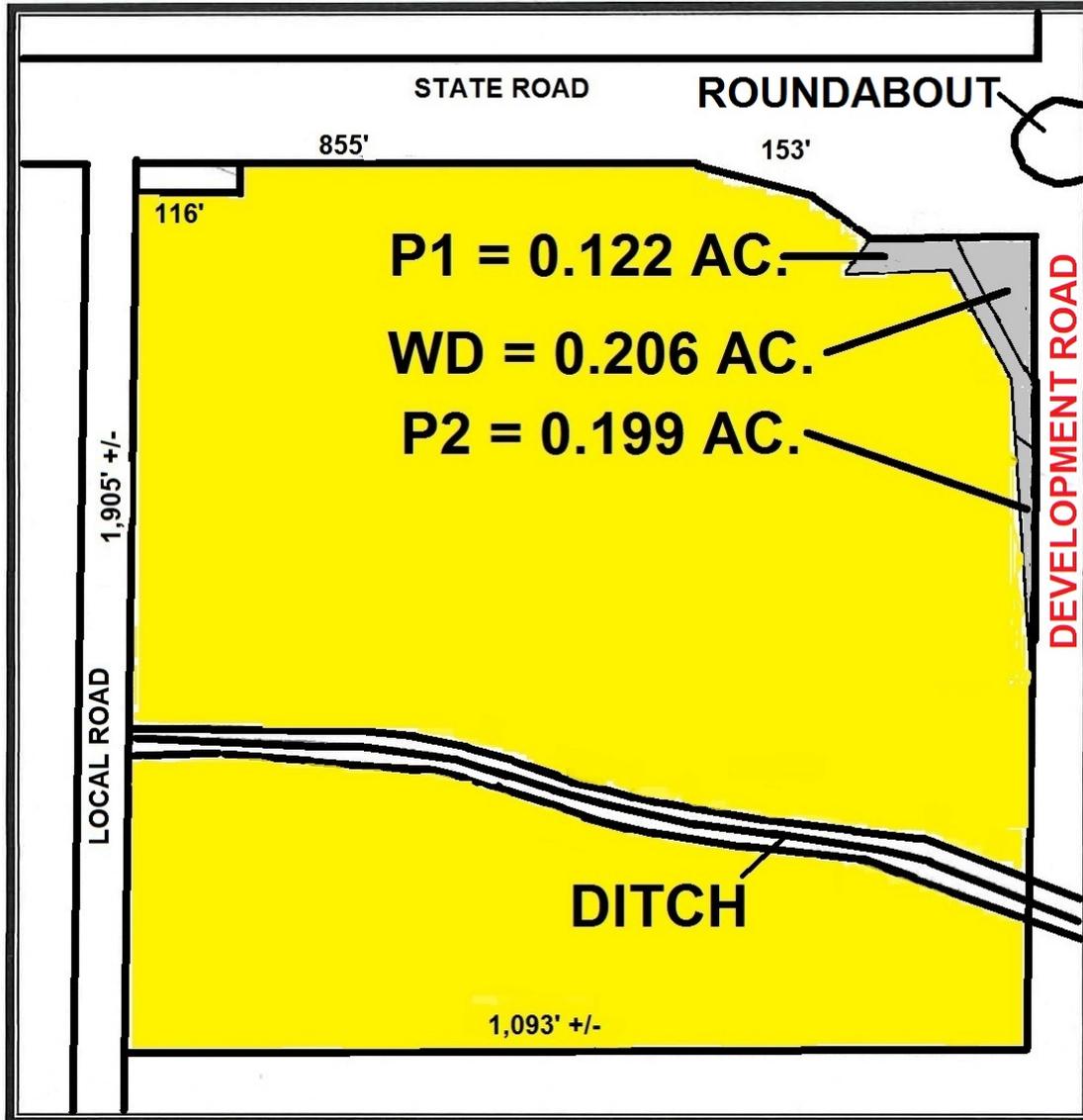
The Subject Property

SITE PLAN - BEFORE THE TAKING



THE TAKINGS

SITE PLAN - TAKING



- WD = Fee simple acquisition.
- P = Permanent easements for utilities, grading and drainage.

APPRAISER'S OPINION OF IMPACT FROM THE TAKINGS

They will prohibit access on the “Development Road,” thereby causing a change in the Highest and Best Use of the property:

“...the highest and best use of the residue, After the Taking, is lower- intensity commercial development land.”

VALUATION BEFORE THE TAKING

"Before"
Land Sale Summary

Sale	Location	Sale Date	Sale Price	Acres	\$/Acre
1	Redacted	6/24/2011	\$668,100	1.572	\$425,000
2	Redacted	6/29/2011	\$2,764,300	8.975	\$308,000
3	Redacted	8/25/2017	\$980,000	1.556	\$629,820
4	Redacted	10/18/2011	\$750,000	1.551	\$483,559
5	Redacted	20/16/2011	\$1,190,000	4.000	\$297,500
6	Redacted	5/31/2012	\$4,352,000	10.240	\$425,000
7	Redacted	10/22/2012	\$810,858	3.332	\$243,355
8	Redacted	3/1/2013	\$990,000	4.053	\$244,264
9	Redacted	6/5/2013	\$1,000,000	2.930	\$341,297
10	Redacted	6/27/2013	\$4,000,000	13.282	\$301,159
11	Redacted	6/28/2013	\$750,000	2.979	\$251,762
12	Redacted	9/17/2013	\$1,000,000	6.256	\$159,847
13	Redacted	3/11/2014	\$910,000	2.849	\$319,410
14	Redacted	9/30/2014	\$2,000,000	2.580	\$775,194
15	Redacted	4/1/2015	\$1,700,000	5.223	\$325,483
16	Redacted	4/13/2015	\$3,450,000	16.935	\$203,720
Sub	Local / State Roads			57.500	

Smallest

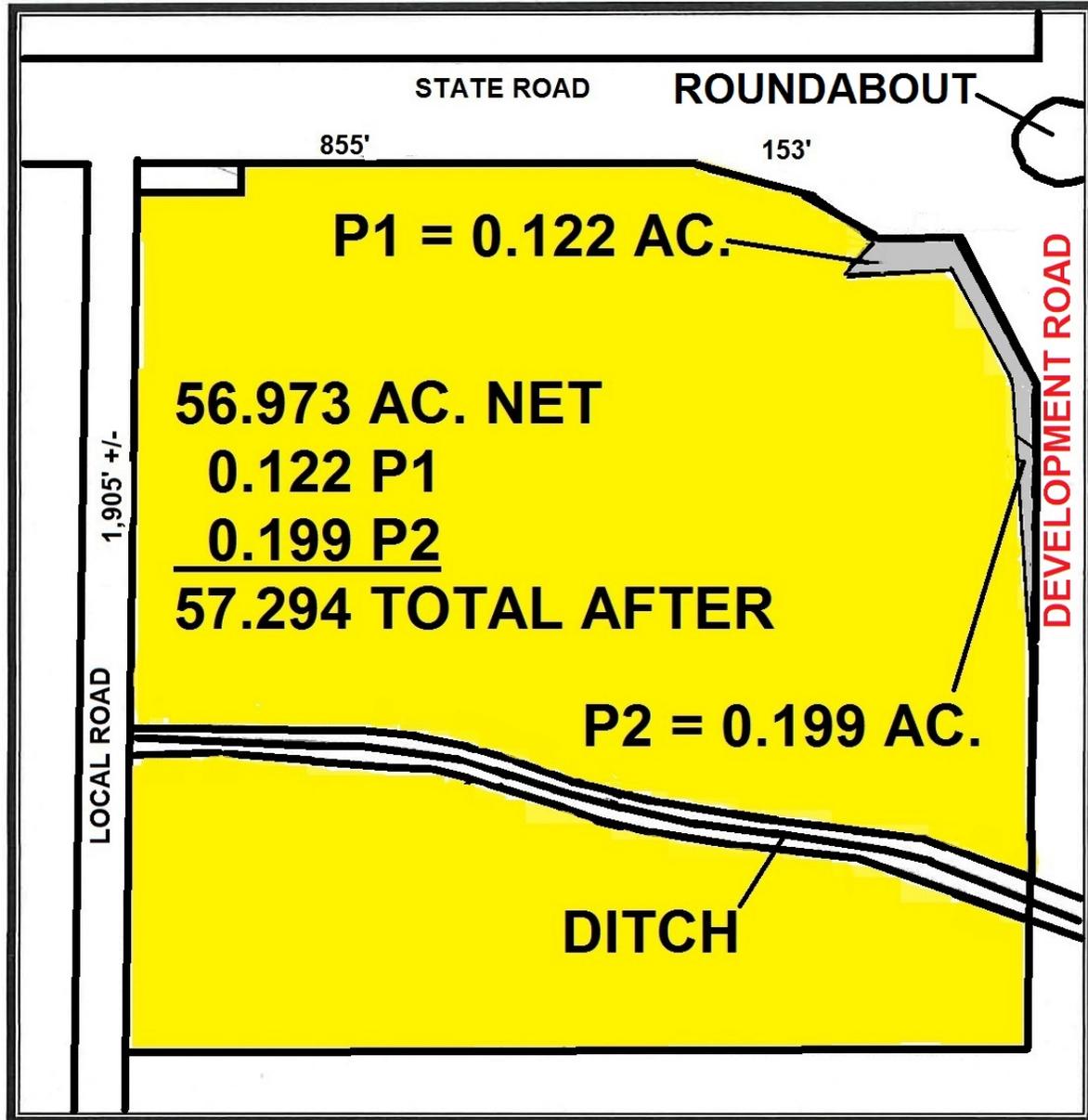
Largest

VALUE CONCLUSION BEFORE THE TAKING

- “...analysis took into account the physical characteristics of the subject, as well as the surrounding development trends, with the **adjusted** unit values providing a reliable range in value.”
- CONCLUSION: \$20,125,000

VALUATION OF THE RESIDUE

SITE PLAN - RESIDUE



"After"
Land Sale Summary

Sale	Location	Sale Date	Sale Price	Acres	\$/Acre
1	Redacted	6/24/2011	\$668,100	1.572	\$425,000
2	Redacted	6/29/2011	\$2,764,300	8.975	\$308,000
3	Redacted	8/25/2017	\$980,000	1.556	\$629,820
4	Redacted	10/18/2011	\$750,000	1.551	\$483,559
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8	Redacted	3/1/2013	\$990,000	4.053	\$244,264
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14	Redacted	9/30/2014	\$2,000,000	2.580	\$775,194
15	Redacted	4/1/2015	\$1,700,000	5.223	\$325,483
16	Redacted	4/13/2015	\$3,450,000	16.935	\$203,720
Sub	Local / State Roads			57.294	

AFTER VALUE ANALYSIS:

- “Although subject is larger than the sales, a variety of uses would be reasonable.....
- ...It is noted that the changes to subject indicate a slightly less intensive commercial use for a portion of the site...
-an overall unit value of \$325,000 per acre has been selected...
- After Value = \$18,568,385

REVIEWER'S ANALYSIS

POINTS OF DISAGREEMENT

- A. Verification of Sales.
- B. Relevance of Sales Comparables.
- C. Lack of application of systematic process in the Sales Comparison approach.
- D. Faulty Highest and Best Use analysis.
- E. Erroneous “Effect of the Taking” analysis.

ITEM A – Sales Verification

(setting forth a “standard”)

- “...no information in the report or workfile that indicates that the appraiser independently verified the sale transactions with a knowledgeable party to the sale....
- ...Both the Uniform Standards of Federal Land Acquisition and the DOT require the appraiser to speak directly with a party to the transaction....
- ...they set a base level of standards prevalent in eminent domain scope of work situations, to wit:

ITEM A – Sales Verification – (cont.)

(setting forth a “standard”)

- Verification- A primary purpose of verifying a sale of real property is to make sure that the sale occurred under conditions that meet the definition of value used in the appraisal.
- The Uniform Standards of Professional Appraisal Practice require that appraisers “collect, verify and analyze all information necessary to achieve credible assignment results.”
- Page 125, The Appraisal of Real Estate, 14th Edition, c 2013 by The Appraisal Institute

ITEM A – Sales Verification – (cont.)

(setting forth a “standard”)

- These items could significantly impact the comparison process. Lack of independent verification does not allow for their consideration in the analysis. The lack of verification is considered a flaw.

ITEM A – VERIFICATION OF SALES

STEP 3 FACTORS

“COMPLETENESS”

- The comparable sales data were not thoroughly developed.

“ACCURACY”

- The accuracy of the work under review is therefore, highly suspect. It does not conform to typical standards for an eminent domain appraisal.

“ADEQUACY”

- The sales data were not adequately verified.
- Therefore, the scope of work was inadequate.

ITEM B- “Relevance of Sales Comparables”

- The sales data used *are not comparable* to subject, to wit:
 1. Comps range from 1.551 to 16.935 ac.
 2. Mean is 5.520 ac. and median is 3.666 ac.
 3. Subject is 57.50 ac.
 4. Smallest sale was restaurant on 1.551 ac. Implies subject could contain 37+ similar sites.
 5. Largest was 16.935 ac. for apartment use. Implies subject could hold 3.4 X more apartments or 1,426 units.

B. Relevance of Sales (cont.)

- How long would it take to absorb 37 restaurant sites or 1,420 apartment units in this market?
- Subject simply could not be fully used as quickly as a smaller single user site could.
- Therefore, a discount would be required because: development for numerous small site users would require planning, design, infrastructure, holding costs, time and entrepreneurial profit.

B. Relevance of Sales (cont.)

(setting forth a standard)

- Following are three definitions which have applicability to this situation:
- **site.** Improved land or a lot in a finished state so that it is ready to be used for a specific purpose.
- **raw land.** Land that is undeveloped; land in its natural state before grading, draining, subdivision, or the installation of utilities; land with minimal or no appurtenant constructed improvements.
- **commercial land.** Land that can be developed for a non-specific commercial use.

- The Dictionary of Real Estate Appraisal 6th Edition, c-2016 by the Appraisal Institute, pg 40.
- The Dictionary of Real Estate Appraisal 6th Edition, c-2016 by the Appraisal Institute, pg 215.
- The Dictionary of Real Estate Appraisal 6th Edition, c-2016 by the Appraisal Institute, pg 186.

B. Relevance of Sales (cont.)

- RESULTS OF REVIEWER'S INVESTIGATION:

- Only 3 of the 16 sales comparables and possibly 3 others were legally permitted in this zoning district.

REVIEWER'S RECONSTRUCTED LAND SALE/USE SUMMARY

Sale	Sale Date	Acres	\$/Ac.	Use in Report	JLS ObservedUse	Permitted in ID-2?
1	6/24/2011	1.572	\$425,000	Hotel	(Fairfield Inn & Suites)	No
6	5/31/2012	10.240	\$425,000	Car Mag	(car dealerships)	No
9	6/5/2013	2.930	\$341,297	Office Building	(retail strip center)	No
10	6/27/2013	13.282	\$301,159	Wal-Mart	(Wal-Mart)	No
14	9/30/2014	2.580	\$775,194	Hotel	Vacant land	No
15	4/1/2015	5.223	\$325,483	Retail Center	Impvmnts. To be razed	No
3	8/25/2011	1.556	\$629,820	Restaurant	(Logan's Roadhouse)	No. Accessory only
4	10/18/2011	1.551	\$483,559	Restaurant	(IHOP)	No. Accessory only
16	4/13/2015	16.935	\$203,720	Apartments-420 Units	Vacant land	No. Live-work only.
7	10/22/2012	3.332	\$243,355	Apartments	(apartments)	No. Live-work only.
5	12/16/2011	4.000	\$297,500	Nursing Home	(Heartland)	Possible
8	3/1/2013	4.053	\$244,264	Senior Living	(Alzheimer's Care)	Possible
13	3/11/2014	2.849	\$319,410	Commercial	(Senior Citizen)	Possible
2	6/29/2011	8.975	\$308,000	Medical	(urgent care facility)	Yes
11	6/28/2013	2.979	\$251,762	Office	Vacant land	Yes
12	9/17/2013	6.256	\$159,847	Office/Commercial	Vacant - 2 pcls.	Yes

B. Relevance of Sales (cont.)

- Report fatally flawed because no analytical process was evident which separated the legally permitted sales from the others or to otherwise account for this difference in the analysis.

ITEM B – RELEVANCE OF SALES COMPARABLES

STEP 3 FACTORS

“Completeness” not met because data was not thoroughly analyzed.

“Accuracy” This data set does not “conform” to the subject. The data are certainly not “correct.”

“Adequacy” – improper data.

“Relevance” – the data are not relevant (applicable).

“Reasonableness” – the legally permitted uses of most sales were not reasonable (fair or proper) under the circumstances.

ITEM C: Lack of application of a systematic analytical process (Sales Comparison Approach):

- On page 37 the report states: “...The specifics of available land sales are researched, compared to the subject site, and adjusted for any differences that may affect the price. These differences include changing market conditions or time, property interest that was transferred, location and other physical characteristics.”
- However, there are no quantitative or qualitative adjustment charts or narrative analyses in the report or analytical notes in the workfile. **The salient differences were not measured and applied to each of the sales as compared to subject.**

ITEM C – LACK OF SYSTEMATIC PROCESS

STEP 3 FACTORS

“Completeness”

The data were not adjusted nor were they compared to subject in a meaningful analytical manner. The analyses are **incomplete**.

“Accuracy, Adequacy, Relevance and Reasonableness”

The very broad brush technique used misrepresents **accuracy** (conformity to a standard) and **adequacy**, as well as **relevance** (connected and applicable to the outcome). Therefore, the results are **not reasonable** (fair or proper).

ITEM D: Highest and Best Use Analyses

Appraiser's Conclusion: "Commercial Development Land"

1. Application of the four tests (legally permissible, physically possible, economically feasible and maximally productive) are vague, incomplete and inconsistent.
2. No delineation of legally permitted uses which leads to using 10 sales which were not legally permitted.
3. Conclusion is too vague in light of "raw land" and "site" definitions.

ITEM D - Highest and Best Use Analyses

Step 3 Factors

“Completeness” – the analyses were not comprehensive and were not developed in a sound and methodical manner.

“Accurate” – the data did not conform to the four tests.

“Adequacy” – the conclusion was too vague.

“Relevance” – the conclusion was not **connected** to the sales data used.

“Reasonableness” – the conclusion was not proper and a reasonable person would disagree. Reasonable care was not used.

ITEM E: Appraiser's Effect of the Taking

Page 60 of the appraisal report:

“After the taking...The property will have access from Local Road and via the right-in/right-out driveway on State Road. The Taking and the easements preclude access to/from Development Road.”

ITEM E: Effect of the Taking

- This statement is factually incorrect. Reference is made to the legal descriptions for the takings in the addenda of the appraisal report. They clearly enumerate the extent of access rights as follows:
- Parcel 1-WD: “...WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS”
- Parcel 1-P1: “Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, **reserves all existing rights of ingress and egress** to and from any residual area.
- Parcel 1-P2: “Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, **reserves all existing rights of ingress and egress** to and from any residual area.

ITEM E – EFFECT OF THE TAKING (change in HBU)

Step 3 FACTORS

“ACCURACY, ADEQUACY, RELEVANCE AND REASONABLENESS”

No access rights have been acquired and the conclusion (page 60, 2nd paragraph) that: “...the highest and best use of the residue, After the Taking, is lower-intensity commercial development land.” is **not accurate** and is **not adequate** (lacks support).

The conclusion is **not reasonable** (fair or proper).

FINAL CONCLUSIONS OF THE REVIEWER

- A. The analyses are not appropriate.
- B. The opinions and conclusions are not credible.
- C. The report is not appropriate and is considered to be misleading.

PRACTICAL RESULT OF REVIEW

- Appraisal result= \$1,556,612 award to property owner.
 - Settlement result = \$227,000.

(And perhaps some semblance of the Public Trust is maintained/restored.)

THE END

QUESTIONS AND ANSWERS

REVIEW REPORT FUNDAMENTALS

IDENTITY OF THE WORK UNDER REVIEW:

Property Identification: SEC State Road & Local Road
Burgeoning Midwest City, USA

Appraiser/Appraisal Firm: **REDACTED**

Effective Date of Value: August 10, 2015

Appraisal Report Date: October 9, 2015

IDENTITY OF THE APPRAISAL REVIEWER:

Jefferson L. Sherman, MAI, AI-GRS
Sherman-Andrzejczyk Group, Inc.
29017 Chardon Road – Suite 220
Willoughby Hills, Ohio 44092
440-516-1188

DATE OF REVIEW REPORT: March 15, 2016

IDENTITY OF CLIENT AND INTENDED USERS OF THE REVIEW:

Iwanna Wynn, Esq., and Doie, Cheatum & Howe, LLC

INTENDED USE OF THE REVIEWER’S OPINIONS AND CONCLUSIONS:

Litigation preparation and potential settlement analysis.

PURPOSE OF THE REVIEW:

The purpose of the appraisal review is to:

- a. Opine as to the report's consistency with the Uniform Standards of Professional Appraisal Practice (USPAP).
- b. Consider the completeness, accuracy, adequacy, relevance and reasonableness of the appraisal, and;
- c. Opine as to whether the analyses are appropriate within the context of requirements applicable to that work, and;
- d. Opine as to whether the opinions and conclusions are credible within the context of the requirements applicable for that work, and;
- e. Develop an opinion whether the report is appropriate and not misleading within the context of the requirements applicable to that work; and
- f. Develop reasons for any disagreement and;
- g. Not produce the reviewer's own opinions of value

EXTRAORDINARY ASSUMPTIONS OF THE REVIEW: None

HYPOTHETICAL CONDITIONS OF THE APPRAISAL REVIEW: None

SCOPE OF WORK USED TO DEVELOP THIS APPRAISAL REVIEW:

I read the appraisal report.

I examined the contents of the appraiser's "workfile" as provided to me by the Client.

I conducted a drive-by inspection/viewing of the subject and the comparable land sales used in the report. I did not attempt to verify the sales or subject data other than via corroboration with available public record data.

I analyzed the report and workfile for consistency with the Uniform Standards of Professional Appraisal Practice, for the appraisal theory and techniques, proper before and after analysis for an eminent domain matter, mathematical accuracy, reasonableness and consistency, and as to the credibility of the analyses and conclusions.

I did not communicate with the appraiser in any way during the course of this review assignment.

IRWA
Chapter 13

Thank You