

51st ANNUAL SCCAI LITIGATION
SEMINAR

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Easement Valuation

An Oxymoron?

Can Easements Actually Be Valued?

**-- Or Are We A Bunch Of Monkeys
Throwing Darts?**

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CUSHMAN &
WAKEFIELD

INTRODUCTIONS

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CAPTAIN PUMPKIN

THE
OCR

It really is the Great Pumpkin, Charlie Brown



A crew straps up a 689-pound pumpkin grown by [Kevin Donahue of Mission Viejo](#). Donahue won the "Prettiest Pumpkin" award during The Great Pumpkin Weigh Off which is held each year as part of the Irvine Park Railroad's annual pumpkin patch activities. (Photo by Bill Alkofer, Contributing Photographer)

CAPTAIN PUMPKIN



What we are Going to Cover.

1. General easement concepts and issues.
 - a. Basic principles.
 - b. Scope/language of the easement.
 - c. Existence of "comps?" How would one find them?
2. Valuing easements that are being acquired.
3. Valuing properties already subject to easements.

What is an Easement?

- “An easement is an interest in real property that transfers use, but not ownership, of a portion of an owner’s property.” The Appraisal of Real Estate, 13th Edition
- Fancy way of saying: “the legal right to use another’s property for a specific, limited purpose.”

Common Types of Easements

- Utilities (overhead and underground)
- Access
- Streets / Highways
- Aerial
- Others
- Temporary

General Issues and Rules in Valuing Easements

- a. Fair market value/just compensation.
- b. What part of the bundle of rights is being acquired?
Scope of the easement and the easement language.
- c. Existence of "comps?" How would one find them
Typically, there is a lack of market data.

Valuing Easements That are Being Acquired

- a. Scope/language of the easement being acquired.
- b. *Bressi* “most injurious use.”
- c. Impact of an existing easement on developability of a property, e.g., setbacks, FAR, etc. (e.g., the City of Del Mar excludes some easement areas when calculating FAR.
- d. Severance damages vs. easement value.

Consider the Easement Terms

- The appraiser needs to review the easement deed prior to commencing the appraisal process.
- USPAP Std. Rule 1-2(e) requires a definition of the rights being appraised.
- What does the appraiser do when the easement language is not available?

An Example of an Extreme Easement Provision: Hold Harmless

11. HOLD HARMLESS: GRANTOR shall hold harmless, indemnify, and defend GRANTEE and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, assigns of each of them, and the Department (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgment, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any Easement Area, resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Area, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties.

EASEMENT VALUATION MATRIX

Percentage of Fee	Comments	Potential Types of Easements
90% - 100%	Severe impact on surface use Conveyance of future uses	Overhead electric Flowage easements Railroad ROW Irrigation canals Access roads
75% - 89%	Major impact on surface use Conveyance of future uses	Pipelines Drainage easements Flowage easements
51% - 74%	Some impact on surface use Conveyance of ingress/egress rights	Pipelines Scenic easements
50%	Balanced use by both owner and easement holder	Water or sewer lines Cable line Telecommunications
26% - 49%	Location along a property line, location across non usable land area	Water or sewer line Cable lines
11% - 25%	Subsurface or air rights that have minimal effect on use and utility Location with a setback	Air rights Water or sewer line
0% to 10%	Nominal effect on use and utility	Small subsurface easement

Most Injurious Use - *County of San Diego v. Bressi*

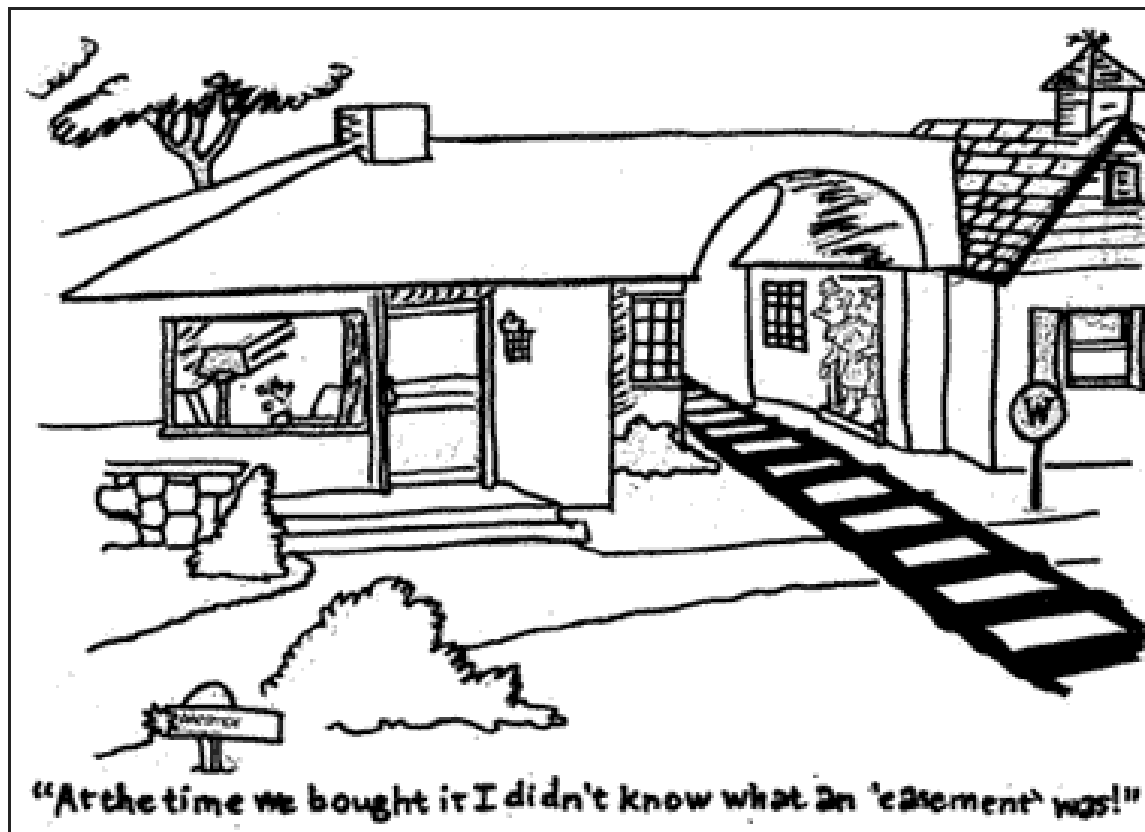
- County developing adjacent airport; RON states it is for every type of aircraft which is now in existence or which may be developed in the future for both commercial and noncommercial flights.
- The jury must "fix the damages, present and prospective, that will accrue reasonably from the construction of the improvement [and] *must consider the most injurious use of the property reasonably possible.*" In determining the most injurious use of the property reasonably possible, the jury must consider the entire range of uses permitted under the resolution of necessity.

Don't Forget to Consider the Project!

- CCP 1263.420: Damage to the remainder is the damage, if any, caused to the remainder by either or both of the following:
 - “The severance of the remainder from the part taken.
 - The construction and use of the project for which the property is taken in the manner proposed by the plaintiff whether or not the damage is caused by a portion of the project located on the part taken.”

Valuing the Impact of Existing Easements in Property Being Acquired

- a. Does the existing easement actually create a burden?
Could it be a benefit?
- b. The “undivided fee” rule and whether an agency should even get to talk about the impact of an existing easement on value.
 - Impact of an owner’s ability to potentially negotiate with an easement holder to relocate or remove an easement.
- c. Impact of an existing easement on developability of a property, e.g., setbacks, FAR, etc. Zones of value?
- d. Existence of “comps?” Again, how would one find them?



Access Easement Example



Access Easement Valuation

- How to value underlying land area?
- What % of value to apply for easement rights?
- Considerations?
 - Area has little contributory value to HOA
 - Minimal interference with existing use (used as walking trail, but that area will remain)
 - Subject to existing conservation easement, open to public

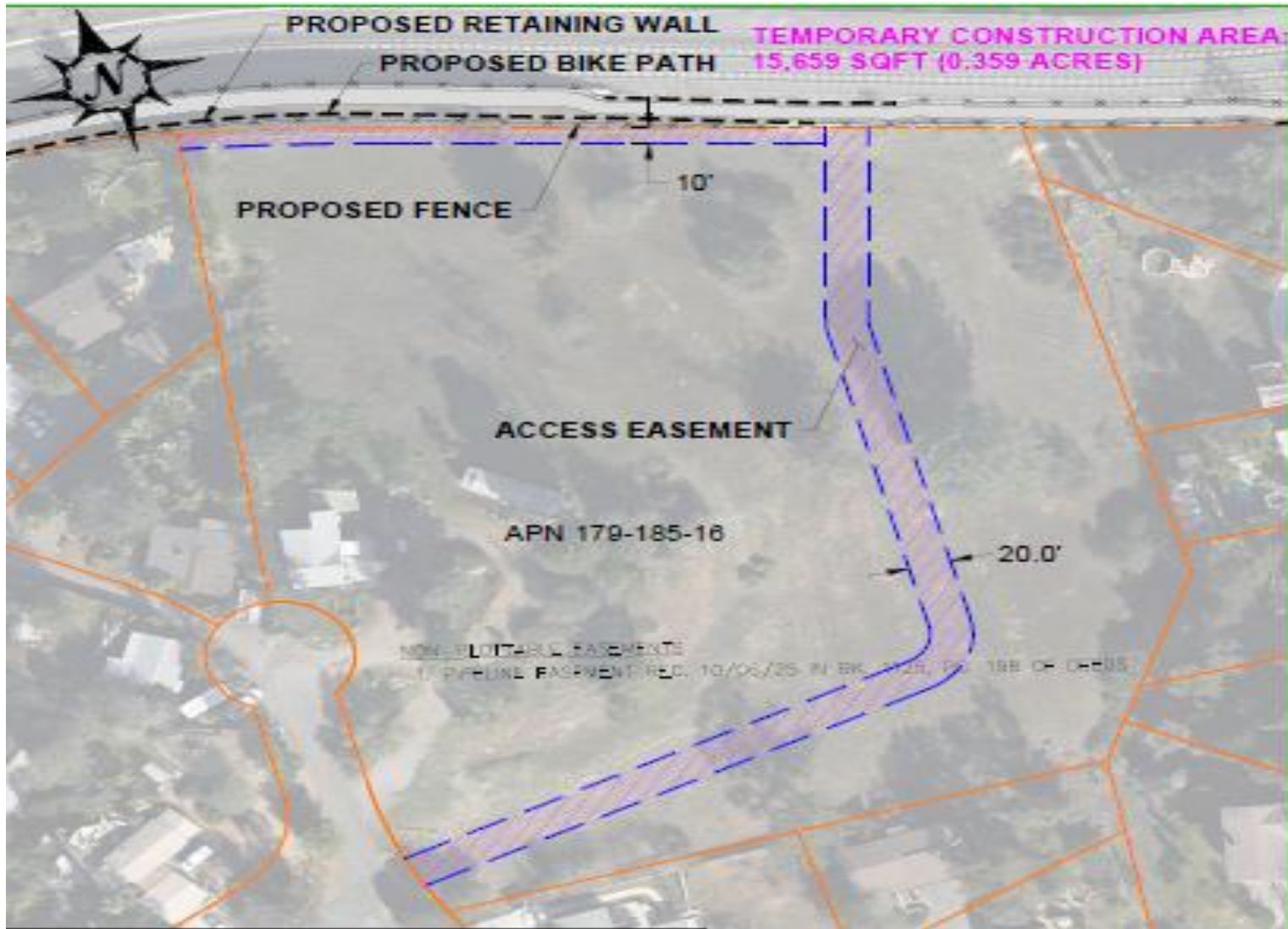
Slope Easement Example



Slope Easement Valuation

- How to value underlying land area?
- What % of value to apply for easement rights?
- Considerations?
 - Area has little contributory value
 - No interference with existing use or HBU

Access Easement Damages



MAKING IT HAPPEN.

TCE Valuation Concepts

- Fair Market Value requires value based on highest and best use
- TCE typically valued based on fair rental value (Sacramento & San Joaquin Drainage Dist. V. Goehring)
- Temporary severance?

Temporary Severance Damages?

- Can a TCE result in compensable temporary severance damages?
- It depends on actual intended use
 - MWD v. Campus Crusade
 - City of Fremont v. Fisher
 - City of Livermore v. Baca

TCE Duration

- Construction commencement date uncertain
- When to start?
 - Upon providing advance written notice?
 - Upon execution of the agreement / OPP?
- When to end?
 - No deadline or upon notice of completion?
 - Defined date?
- Extensions