



APPRAISAL INSTITUTE 2019 ANNUAL LITIGATION SEMINAR

**Delahooke Appraisal
Company**

HILL FARRER



NOSSAMAN LLP

THE APPRAISER'S DILEMMA

Accessibility to Relevant Property and Market Information

- **Brad Kuhn**



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HILL FARRER

- **Scott Delahooke**

Delahooke Appraisal Company

OVERVIEW

- Appraiser Responsibilities
- Disclosures
- Lack of Information / Data
- Potential Solutions



RESPONSIBILITIES OF THE APPRAISER

- Perform services in an objective, unbiased manner (USPAP)
- Communicate analysis and opinions in a clear and concise manner
- Avoid activities that may mislead readers of the report

DISCLOSURES / APPRAISAL DRAFTING ISSUES

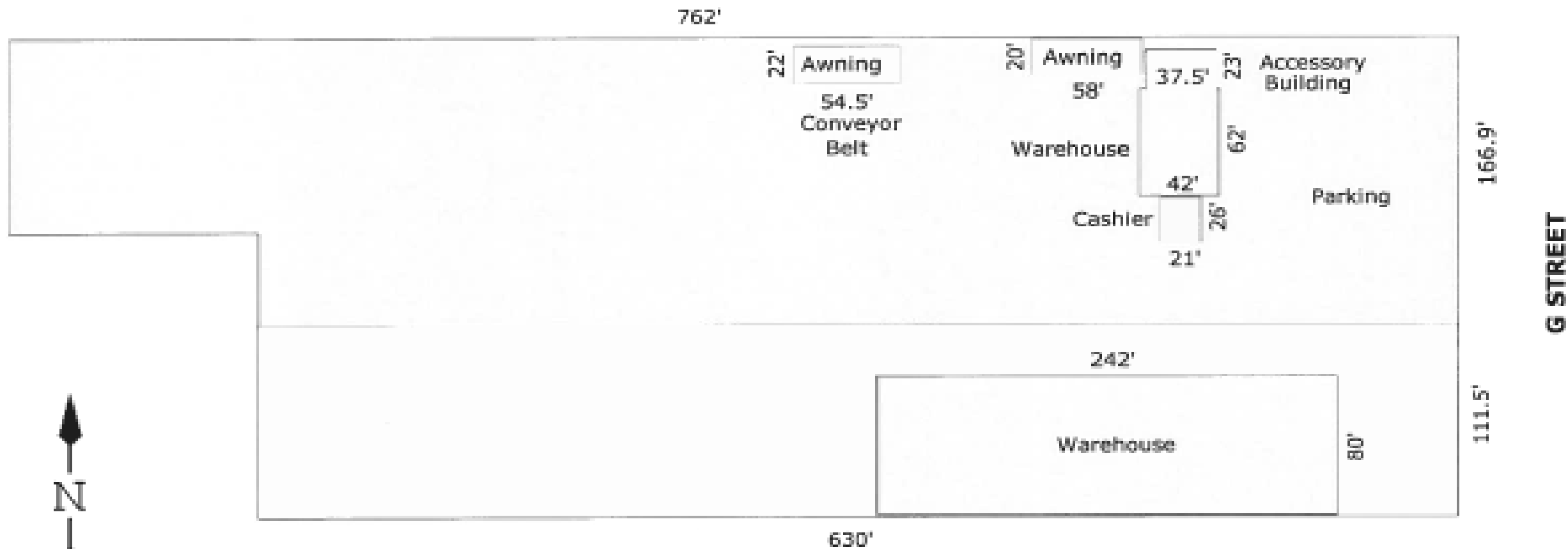
- Disclosures
 - Full disclosure of all that is known?
 - Disclosure of part of what is known?
- Drafting
 - Client pressure to change wording and report clarity?
- Scope
 - Limitations which could result in a change in conclusion?
 - Only appraise land value for improved property?
 - Hypothetical/Extraordinary conditions?
 - Legal instructions which limit research/analysis?
- Intentionally avoiding attempts to find market data which may result in opinions clients don't like?



EMINENT DOMAIN — PRE-LITIGATION ASSIGNMENTS

- Property Inspections
 - What to do when denied access?
 - Perform appraisal anyway (street view)?
 - Risks / Alternatives
 - FF&E valuation?







EMINENT DOMAIN — PRE-LITIGATION ASSIGNMENTS

- Securing Title Report
 - What to do if unavailable?
 - Hypothetical conditions?
 - Extraordinary assumptions?
 - How to handle pre-existing easements?

"AT THE TIME WE BOUGHT IT, I DIDN'T KNOW WHAT AN 'EASEMENT' WAS!"



EMINENT DOMAIN — PRE-LITIGATION ASSIGNMENTS

- Clearly defined acquisitions
 - 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?

EMINENT DOMAIN — PRE-LITIGATION ASSIGNMENTS

- How to appraise design-build projects?
 - Design only partially complete (30%, 60% design)?
 - Rights not fully defined?
 - Construction impacts unknown?



MOST INJURIOUS USE VS. PROJECT AS PROPOSED

- **Most Injurious Use:** the proper consideration in assessing damages is the rights acquired, not what the condemnor intends to do with those rights. (*County of San Diego v. Bressi* (1986) 184 Cal.App.3d 112)
- **Project in the Manner Proposed:** severance damages include damages caused by construction and use of the project for which the property is taken in the manner proposed (CCP 1263.420)
- How to assess “Project in the Manner Proposed” versus “Most Injurious Use”?

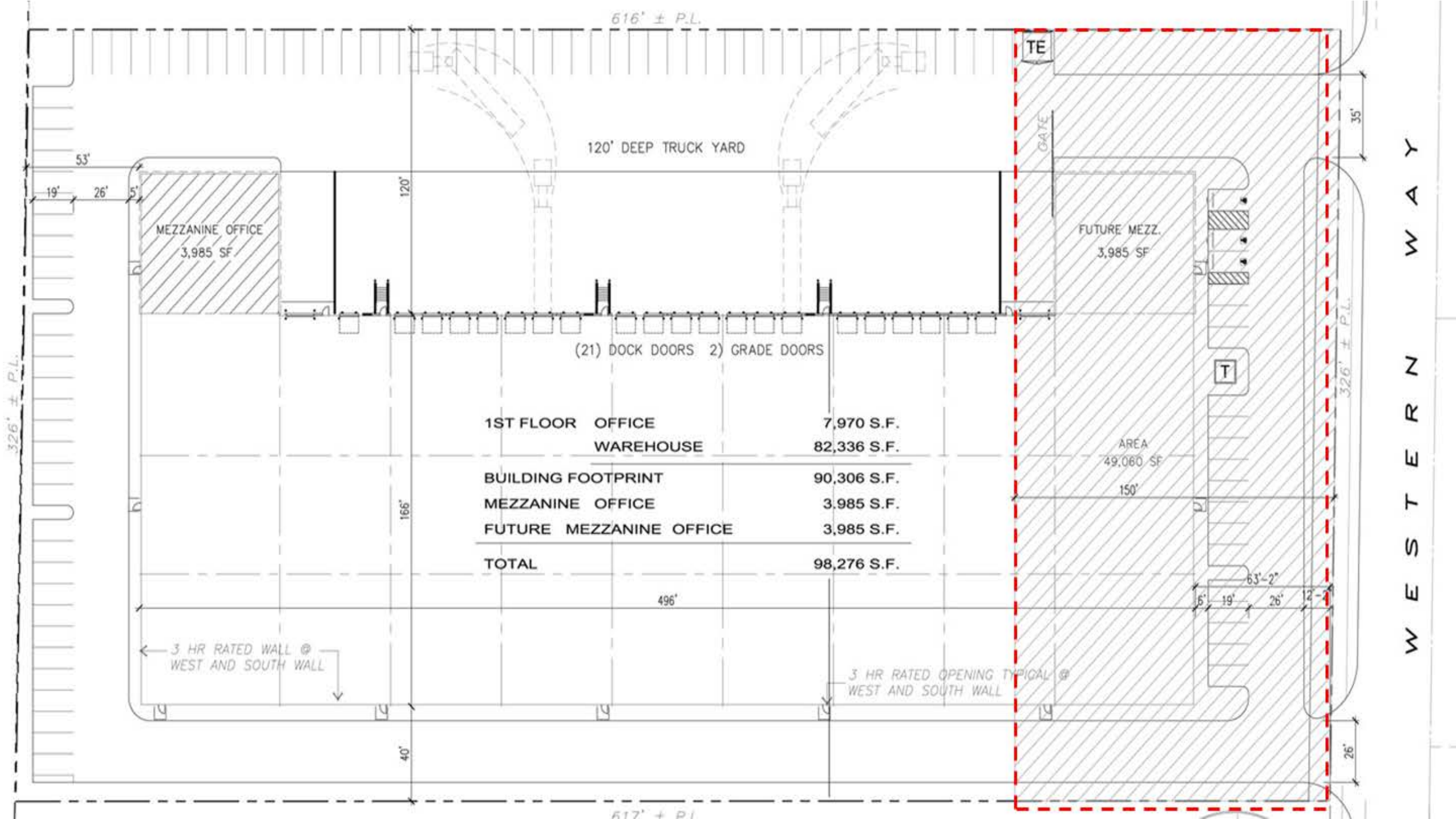


Closing arguments.

EMINENT DOMAIN — PRE-LITIGATION ASSIGNMENTS

- Securing leases, rent rolls, profit & loss statements
- Securing project plans, entitlements
- What if owner does not cooperate?
- What if information is not available?
- What if too much information is available?





APPRAISER'S DILEMMA — OTHER UNKNOWN

- Property contamination issues
 - Phase I / II studies not completed
 - Scope of contamination unknown
 - Responsibility for contamination undecided
 - Level of clean-up required different depending on property's use
 - What should appraisers do?



PROJECT BENEFITS / DAMAGES

- Limited data on potential benefits or damages
- What if project will not be complete for many years?
- When do benefits/damages become too speculative?



"I want a detailed analysis, your best educated guess, and then round it out with some wild speculation."

GENERAL CIVIL LITIGATION ASSIGNMENTS

- Property inspection/condition
- Title documents
- Ability to fully understand:
 - Easement disputes
 - Property boundary disputes
 - Non-permitted improvement disputes
 - Disclosure/non-disclosure disputes
 - Partnership disputes
 - Dissolution of marriage disputes
 - Construction defect/settlement disputes



POTENTIAL SOLUTIONS TO APPRAISER'S DILEMMA

- List desired information in letter of engagement
- Discuss with client why information is important for credible assignment results
- Explain to client that a lack of information will allow for criticism and potentially less supportable / defensible conclusions
- Ask for all discovery items requested and provided (by both parties)
- Ask for all deposition transcripts / exhibits
- Engage experts in other fields (construction, engineering, soils, etc.)

QUESTIONS?

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