

# USE OF COMPARABLE SALES IN PARTIAL ACQUISITION ANALYSIS

Land Value or Improved Land Value?

Southern California Chapter of the Appraisal Institute

Bradley D. Pierce, Esq.

Bradford Thompson, MAI, AI-GRS, SR/WA

**PIERCE**

**Law Firm**

*A Professional Corporation*



**THOMPSON & THOMPSON**


**REAL ESTATE VALUATION AND CONSULTING**

55 E. HUNTINGTON DRIVE, SUITE 238, ARCADIA, CALIFORNIA 91006

# **PARTIAL ACQUISITIONS OUTLINE**

- 1) Value Larger Parcel As Improved or As Vacant (i.e. Strip Take)????**
- 2) Does the Project create damages or benefits?**
- 3) What is the Highest and Best Use?**
- 4) Does the Consistent Use Theory apply?**
- 5) Is the existing use an Interim or Transitional Use?**
- 6) What is the purpose of the appraisal?**
  - Offer**
  - Deposit**
  - Litigation**

# LEGAL PERSPECTIVE OUTLINE

- ▶ **Code of Civil Procedure**
  - ▶ **Jury Instructions**
  - ▶ **Evidence Code**
  - ▶ **Motions in Limine**
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## **1) VALUE LARGER PARCEL AS IMPROVED OR AS VACANT (I.E. STRIP TAKE)????**

- ▶ **Strip Appraisal – For seemingly innocuous part takes a strip appraisal values the underlying land value in the take, plus any site improvements that may be affected.**
- ▶ **“. . . strip appraisals are most often used in nominal taking cases in which the remainder property is neither damaged nor benefitted by the government’s project . . . Such reports are not generally detailed enough for trial purposes, so it is often necessary for an appraiser to convert a strip appraisal into a complete before and after appraisal prior to trial.”**

***Real Estate Valuation in Litigation***

# CONSISTENT USE THEORY

- ▶ **“Consistent use is the concept that land cannot be valued on the basis of one use while the improvements are valued on the basis of another.”**

***Real Estate Valuation in Litigation***

- ▶ **“... a property in transition from one use to another cannot be valued on the basis of one immediate use for land and another use for improvements because to do so would be inconsistent with elements of valuation. The improvements must enhance the value of the value of the land. A dwelling that may have many years of remaining life for residential use could not possibly enhance the value of the land for which the immediate higher use would be a service station.”**

***Dictionary – 6<sup>th</sup> Edition***

## 5) IS THE EXISTING USE AN INTERIM OR TRANSITIONAL USE?

**“An interim use, also referred to as a transitional use, is that existing and relatively temporary use where the transition to highest and best use is deferred. A building or other improvement may have a number of years of remaining life yet may not enhance the value of the land which has a higher use. . .”**

***Real Estate Valuation in Litigation***

## 6) WHAT IS THE PURPOSE OF THE APPRAISAL?

- **Offer**
  - **Deposit**
  - **Litigation**
  - **Is the client sensitive to timing and/or fee?**
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# UASFLA – YELLOW BOOK


- ▶ **“. . . Valuing only the area subject to the easement (i.e. strip valuation) fails to compare the fair market value of the entire tract affected by the taking before and after the taking . . .”**



# INCORRECT METHODOLOGY

- ▶ **The concept of larger parcel applies to all part takes and includes nonmarketable “strip” takes. Regardless of the nature of the part take, whether it can stand on its own or not, the larger parcel, rather than the taking, is the property interest for which highest and best use must be established.**
- ▶ **Only then is it possible to opine as to the value of the partial taking, which includes the value of the land AND any severance damages. You cannot limit the inquiry to the value of the land.**

# INCORRECT METHODOLOGY - CONT

- ▶ **The value of a particular component is measured in terms of its contribution to the value of the whole property – the larger parcel.**
  - ▶ **Relying solely on land value, even land value that includes the same current zoning as the property to be valued, does not properly measure the value of the subject.**
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# LEGALLY SUBJECT TO CHALLENGE

- ▶ **CCP § 1263.410. (a) provides: Where the property acquired is part of a larger parcel, in addition to the compensation awarded pursuant to Article 4 (commencing with Section 1263.310) for the part taken, compensation shall be awarded for the injury, if any, to the remainder.**
- ▶ **You cannot do this without first valuing the larger improved property. Land value may be an element of this analysis; however, it cannot provide the exclusive basis for an opinion when the larger parcel is improved.**
- ▶ **Similarly, the way we evaluate severance and benefits is value in the before condition and value in the after condition; not value of the land before and after, but value of the actual property involved in the acquisition.**

# CACI 3511

- ▶ **That instruction includes a 3-step process:**
- ▶ **1. Determine the fair market value of the remaining property on [date of valuation] by subtracting the fair market value of the part taken from the fair market value of the entire property;**
- ▶ **2. Determine the fair market value of the remaining property after the [name of condemnor]'s proposed project is completed; and**
- ▶ **3. Subtract the fair market value of the remaining property after the [name of condemnor]'s proposed project is completed from the fair market value of the remaining property on [date of valuation].**

# CACI 3506

- ▶ **You cannot do this without valuing the entire improved property. The relevant jury instructions also require consideration of improvements. CACI 3506 provides:**
  - ▶ **In determining the fair market value of the property you must consider both the value of the land and whether any buildings, machinery, or other equipment attached to the property increase or decrease the value of the property.**

# OFFER OR DEPOSIT?

- ▶ **This dovetails with the scope of the assignment and purpose of the work. Even if it is just an appraisal for a 7267.2 offer or a deposit, my position is that it must include consideration of the value of the improvements. It cannot be limited to land value.**

# USPAP

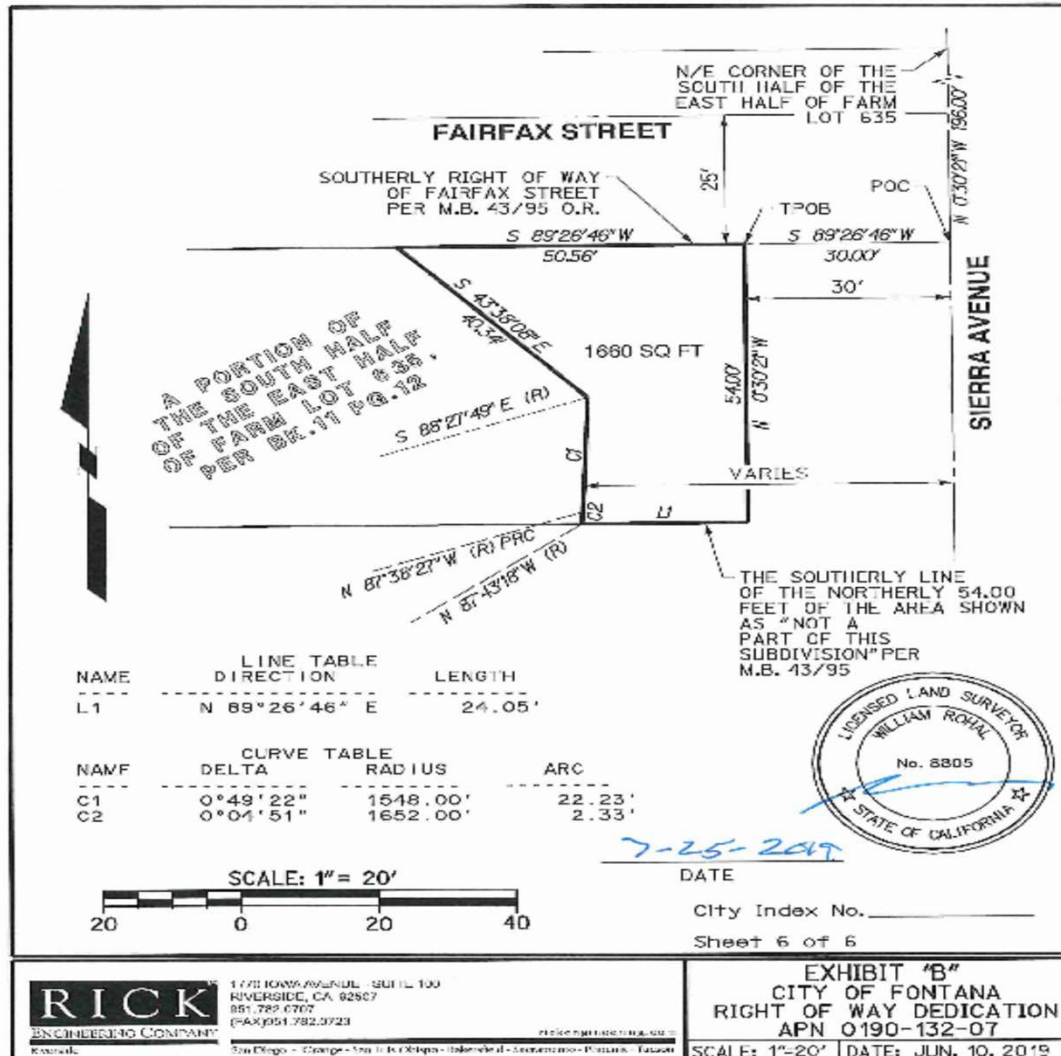
- ▶ **Scope of Work**
  - ▶ **Identify the problem to be solved**
  - ▶ **Determine and perform the scope of work necessary to develop credible results**
  - ▶ **Disclose the scope of work in the report**

# CASE #1 – STREET WIDENING UNEQUAL LAND & BLDG IN TAKE

- ▶ **Particulars**
- ▶ **Residential 4-Units**
- ▶ **Living Area 2,322**
- ▶ **Land Area 12,636**
- ▶ **Coverage Ratio 0.184**
- ▶ **Value – As Improved \$225,000 per Unit**
- ▶ **Value – As Vacant \$12 per Sq Ft**
- ▶ **Take Area – Land 1,660 Sq Ft**







# LARGER PARCEL

- ▶ **As Improved**

$$4 \text{ Units} \times \$225,000 = \$900,000$$

- ▶ **As Vacant**

$$12,636 \text{ Sq Ft} \times \$12 \text{ per Sq ft} = \$151,632$$

## **Contributory Value of Each Unit**

$$\$900,000 - \$151,632 = \$748,368$$

$$\$748,368 / 4 \text{ Units} = \$187,092$$

# PART TAKE – 2 DWELLINGS REQUIRE DEMO

- ▶ **1,660 x \$12 = \$ 19,920**
- ▶ **2 Units x \$187,092 = \$374,184**  
**\$394,104**

# VALUE OF REMAINDER

- ▶ **Step 1 – Excess Land Calculation**
- ▶ **Before Condition Coverage Ratio**
  - ▶  $2,322 / 12,636 = 0.184$
- ▶ **Living Area in After Condition**
  - ▶  $2,322 \times 50\% = 1,161 \text{ Sq Ft}$
- ▶ **Land Necessary to Support Remaining Bldg**
  - ▶  $1,161 \text{ Sq Ft} / 0.184 = 6,318 \text{ Sq Ft}$
- ▶ **Excess Land in After**
  - ▶  $10,976 - 6,318 = 4,658 \text{ Sq Ft}$



# VALUE OF REMAINDER - CONT

- ▶ **Sales Comparison Approach**

- ▶ **2 Units x \$225,000 = \$450,000**

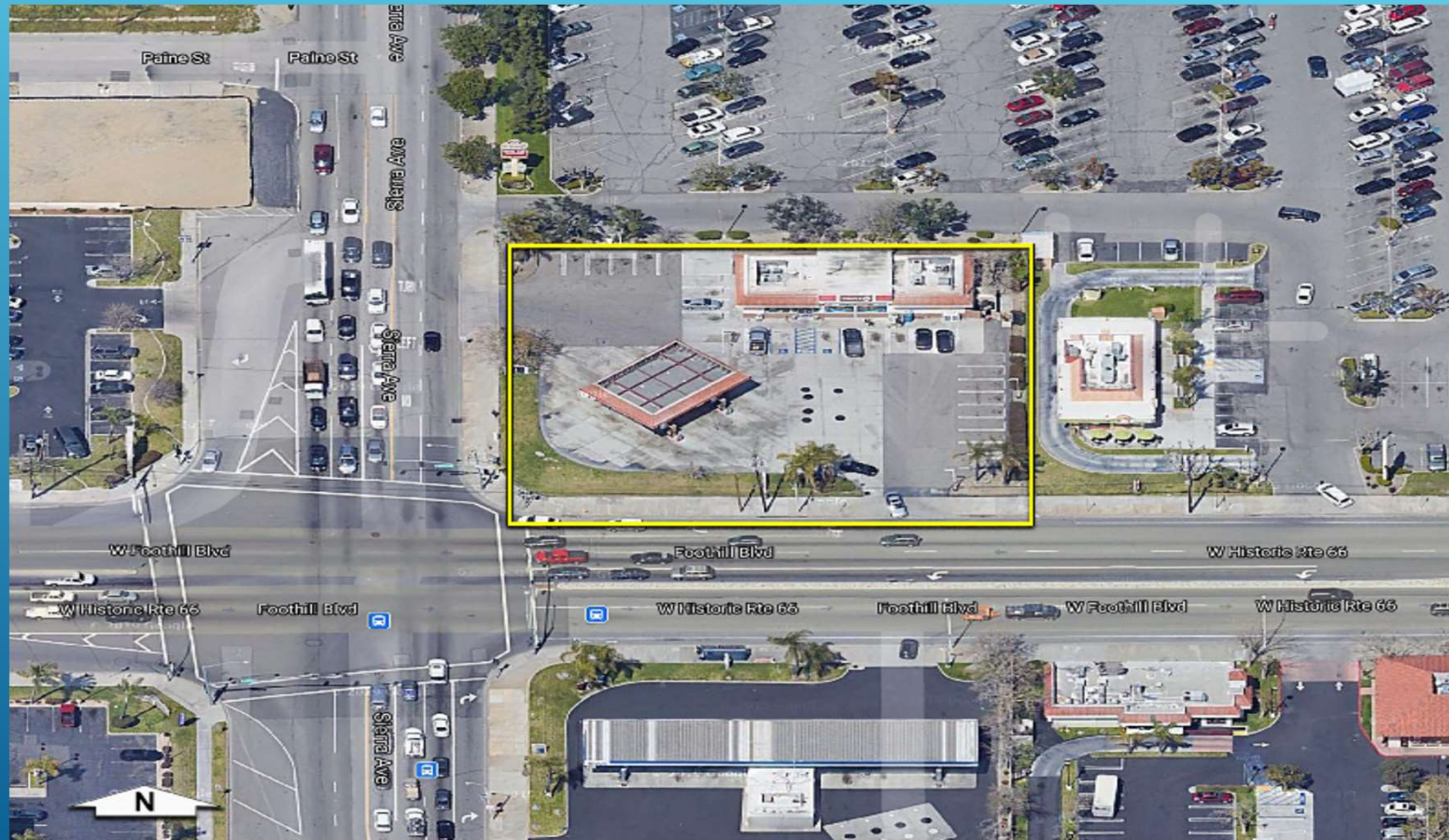
- ▶ **Plus Excess Land**

- ▶ **4,658 Sq Ft x = \$ 55,896**  
**\$505,896**

# CASE #1 - SUMMARY

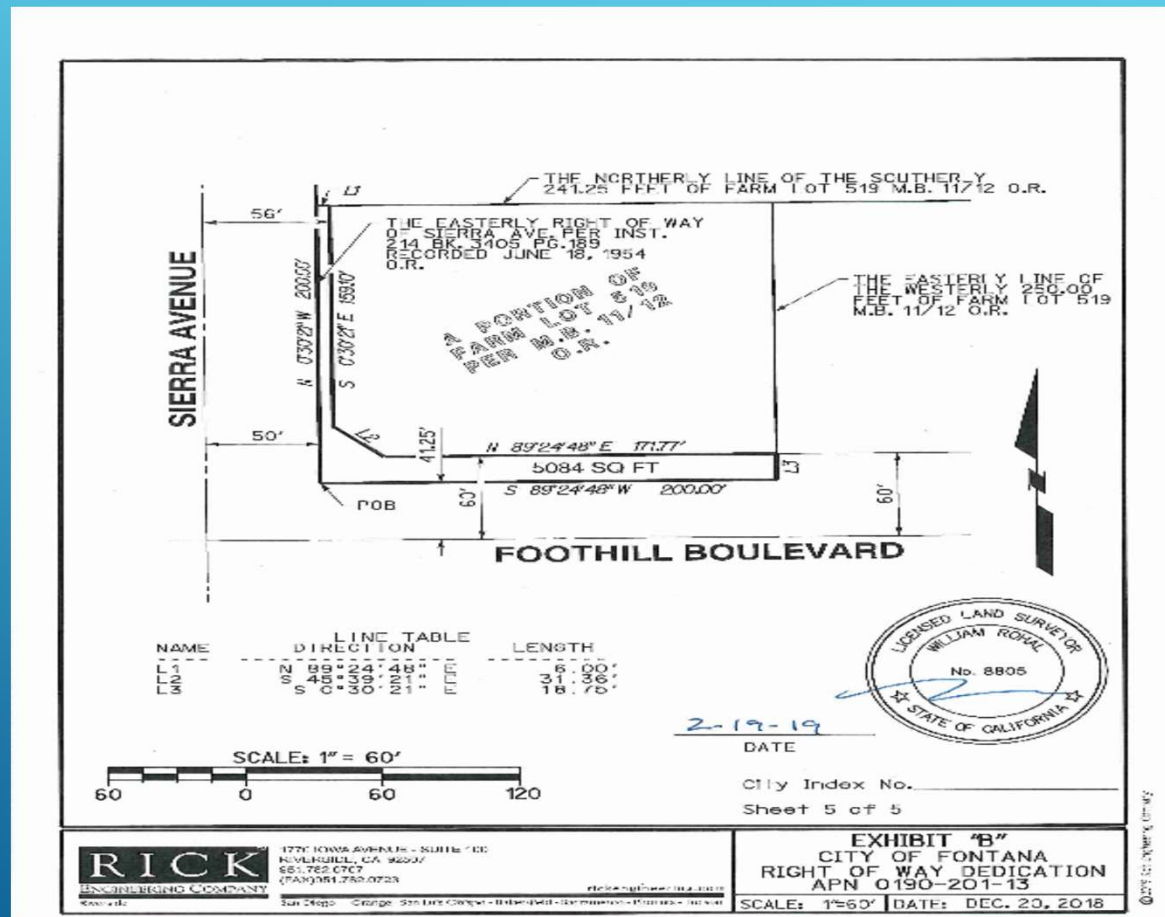
	Correct	Incorrect
▶ Larger Parcel	\$900,000	\$900,000
▶ Part Taken	<u>(\$394,104)</u>	<u>(\$394,104)</u>
▶ Remainder -Part of Whole	\$505,896	\$505,896
▶ Remainder		
▶ SCA	\$450,000	\$450,000
▶ Plus Excess Land	<u>\$ 55,896</u>	<u>\$ 0</u>
▶ Remainder – Total	\$505,896	<b>\$450,000</b>
▶ Severance	\$ 0	<b>\$ 55,896</b>

# CASE #2 – STRIP TAKE CANDIDATE





# ACQUISITION EXHIBIT



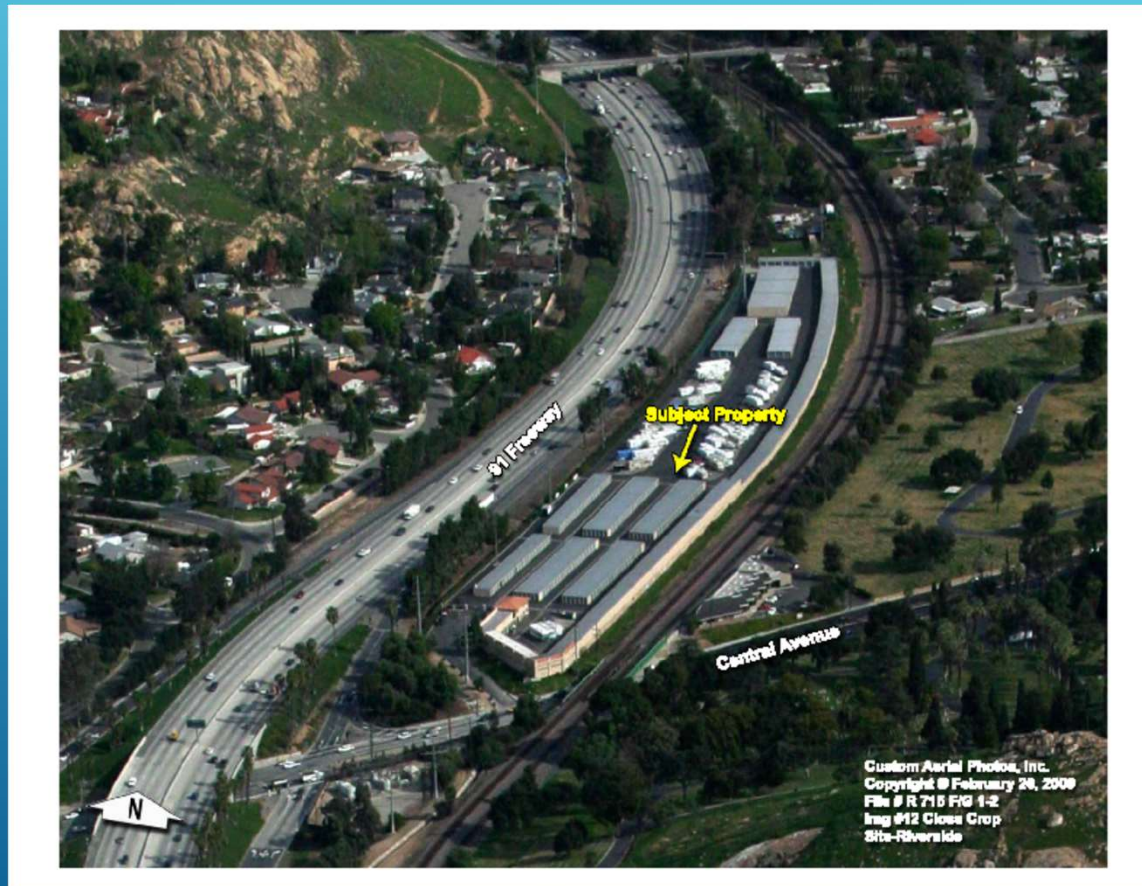
# EVIDENCE CODE 816

**If an improved sale is valued using a land sale, it does not shed light on the value of the subject. Evidence Code § 816 includes the requirement:**

**In order to be considered comparable, the sale or contract must have been made sufficiently near in time to the date of valuation, and the property sold must be located sufficiently near the property being valued, and must be sufficiently alike in respect to character, size, situation, usability, and improvements, to make it clear that the property sold and the property being valued are comparable in value and that the price realized for the property sold may fairly be considered as shedding light on the value of the property being valued.**

**If you are using a land sale for trial you are looking at a motion in limine to exclude the evidence and the opinion based on that evidence.**

# CASE #3 – IMPROVED LAND VALUE



# PARTICULARS

- ▶ **Self Storage Facility**
- ▶ **Building Area 97,561**
- ▶ **Land Area 296,238**
- ▶ **Coverage Ratio 0.329**
- ▶ **Value – \$85 Per Sq Ft Improved Land Area**
- ▶ **Value – As Vacant \$22 per Sq Ft**



# VALUE OF THE PART TAKE

- ▶ **Land Area in the Take 50,005**
- ▶ **Building Area in the Take 16,500**
- ▶ **Coverage Ratio 0.33**
- ▶ **Therefore  $50,005 \times \$85 = \$4,250,425$**
  
- ▶ **\* If the ratio of the take is similar to the larger parcel then the value of the part take can be based on the value per square foot of improved land area i.e. \$85 rather than \$22**

# FINAL THOUGHTS

- ▶ **Principle of Substitution theory; value will tend to be set by the cost of acquiring an equally desirable substitute or one with equal utility. We are not dealing with the same market participants when using land sales as comps for improved properties. They do not involve the same entitlements - utility – scarcity – demand – transferability.**
- ▶ **Also, we must never forget that CCP § 1263.320 defines fair market value as the highest price the willing buyer and willing seller would agree to. There is no way to reconcile that with one side considering land value to purchase improved property.**





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