"EXTRAORDINARY APPRAISAL ISSUES"

Valuing Complex Properties and Current Texas Law

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Valuing complex and special-use/purpose properties is difficult, and when litigation is involved, the challenge for the appraiser can be daunting. This paper will explore some examples of these kinds of properties, including the extra component of litigation. In addition to some of the special-use properties that our firm has valued, we will also address various, seemingly simple appraisal assignments that can require special attention and more in-depth knowledge of Texas case law when appraised in the context of litigation. Some of the special-use properties that our firm has recently valued are sites upon which gas processing plants are located, naval air bases, convenience stores and retail fueling properties.

Initially we will explore various sites improved with natural gas processing machinery and equipment, with the improvements substantially exceeding the raw land value. In all of the properties, the land value is in dispute as a result of the expiration of a land lease or right of first refusal. These sites are unique in that all include numerous pipelines converging and entering the sites with product to be processed. After processing, the product is then forwarded to markets for retail and commercial distribution.

Enbridge Pipeline v. Avinger Timber

This case involves 23.79 acres of land that was leased to a gas processing company for the purpose of building and operating a gas processing facility. The lease originated in 1973 and provided a base term of 10 years with continuing renewals every 10 years indefinitely. Fifteen or sixteen separate natural gas pipelines were connected to the plant over the years and the site became a processing hub for a large gas producing county. Significant to the valuation issue was the renewal and modification of the lease in 1998, as the term was modified to a short three-year term with one three-year option, ending April 2, 2004. As in the original lease agreement, the 1998 renewal included, at expiration, a provision requiring the operator to remove all improvements, equipment, and machinery and returning the land to its natural state. Enbridge Processing became the owner and operator of the plant in November, 2001, inheriting the renegotiated lease set to expire in 2004.

A few days before the expiration of the lease, Enbridge sent a letter to Avinger offering to purchase the property's fee interest in the amount of $35,685.00. The offer was rejected and the case proceeded to trial on one issue—the fair market value of the land.

Enbridge's valuation of the property was based on a highest and best use as rural residential. They did not take into consideration any pipelines, easements, permits, etc., and only valued the land as vacant. Avinger argued that valuing the land, as if vacant, was valuing the property as it existed in 1973. The Court of Appeals opinion stated, "Unless an appraisal gives a value based on the land's condition at the time of condemnation—taking into account all relevant factors that affect its valuation, including the market for its possible future use—it is not relevant to the issue of market value." *Sharboneau, 48 S.W.3d at 185.*

We valued the land, taking into account the existing use and the most likely use in the foreseeable future. Most important, the property's location was a pipeline hub for the convergence of some fifteen or sixteen pipelines worth hundreds of millions of dollars (location, location, location). Other factors affecting the value of the site included permits in place, off-site infrastructure, and sufficient electrical power. First, we appraised the real estate using the comparable sales approach. Realizing that the subject was unique, we attempted to find comparable sales or leases of sites used for gas processing plants having the same or similar attributes as the subject. We did find industrial sites in the general area; however, none had the physical and economic characteristics as the Avinger site. Adjustments were made for the unique features of the tract including the existence of numerous pipelines entering into this property, the lease, and tenant improvements. We had the advice and input of an industry expert on those adjustment factors that were beyond our expertise.

Next, we used the income approach to analyze what a prudent and knowledgeable investor would pay for the land considering the obligations of the lease, which included upon expiration, the provision that the gas processing plant must be removed and the land restored within a six month period. We estimated the amount of rent that the land could produce, deducted expenses necessary to produce the income, and then capitalized the net income at an appropriate rate to convert to value.

A second income approach considered a discounted cash flow analysis by analyzing a three-year market lease with nominal yearly rents followed by a reversion of the land at the end of the lease. The annual rental amounts were discounted and the present value of the reversion was added for an indication of the present value of the land. The most important factor in this evaluation method was the right of reversion as allowed in the 1998 lease agreement.

Another method analyzed was a direct capitalization of one year's NOI derived from the cost savings to be realized by the plant owner for a long-term lease. Those costs included the savings from moving expenses and business disruptions. Land lease rates for industrial properties were abstracted from the market and applied to those costs to obtain an annual net income which was then capitalized into a value conclusion.

The question posed in the Court of Appeals opinion: "Is the value of a bare and undeveloped tract of rural real estate equivalent to the value of rural real estate that (1) has been leased by the owner to several gas companies for over thirty years as a gas processing plant, (2) has more than fifteen pipelines entering the property, (3) has all the proper permits for use as a gas processing plant? The condemnor, Enbridge Pipeline, argues yes. We disagree." The Court of Appeals responded: "We do not believe the bare real estate tract is equivalent to the tract involved here. From that conclusion, we find the appraiser for the landowner was properly allowed to testify, and the appraiser for the gas company was properly excluded. We affirm the judgment of the trial court." *(Enbridge Pipeline v. Avinger Timber, 326 S.W. 3d 390 – Texas Court of Appeals, 6th Dist. 2010)* It should be noted, that the case in now pending (11/26/2011) acceptance before the Texas Supreme Court.

ETC v. Scamardo

This case involves a smaller gas processing plant in Burleson County, Texas. In 1984 Ferguson Crossing Pipeline Company obtained an easement for approximately one-half acre of land plus access rights to the site. The easement was for a term of 10 years with one renewal term of 10 years. The easement provided termination if the property was not used for an eighteen month period, at which time all rights granted in the easement would return to the landowner. Additionally, at expiration, the Grantee had the obligation to remove all pipes and other equipment placed on the property and restore the surface to as near the original condition as possible. The easement was amended again on October 15, 2000 to expire on October 15, 2010, including a new provision that "failure to remove the same (all pipe, equipment, materials or machinery) shall constitute an abandonment of same with ownership reverting to the Grantor."

ETC became the owner and operator of the plant and again, the easement was modified on January 1, 2007 to increase the land area by .204 acre. "All rights and obligations in the Base Easement pertaining to the original site shall be applicable to the new boundaries of the compressor site. Except as amended herein, all terms and conditions in the Base Easement shall remain in effect."

The lease expired on October 15, 2010. On January 14, 2011, the attorney for the landowner informed ETC that the easement had expired including the 90-day period allowed to remove all pipes, equipment, materials, etc. This failure constituted abandonment and the ownership of all material, machinery, etc., reverted to the landowner. ETC was also noticed that they had the requirement to restore the surface. ETC counterclaimed and filed for condemnation on March 30, 2011, after making an offer of $3,232.00.

So, what is the proper appraisal methodology to value the land, and in this case, the improvements?

ETC's Method: "The appraisal focuses only on the underlying land. The legal interests appraised are the fee simple estate and easement interest."

Highest and Best Use: "Whole property is for continued agricultural use. Highest and Best for the part taken is use in conjunction with the whole property."

Valuation: Sales Comparison Approach for 437.79 acre whole property

Part Taken: Same Unit Value for the land as in whole property

Improvements: No mention of any improvement value

Remainder: Same Unit Value for the land as in whole property

ETC's valuation does not address any rights or obligations of the Base Easement Agreement or any of the Amendments to the Easement Agreement. As in the Avinger case, ETC's method is to assume that there are no improvements on the site and no obligations as a result of the easement agreement.

Based on the Easement Agreement/Amendments and the obligations under that agreement, together with the opinion set out in the Avinger case, we believe that the appraisal methodology previously set forth in Avinger is proper, plus the requirement to value the improvements. In valuing the improvements, we believe that it is necessary, and we have relied upon the expertise of an industry expert; one having years of experience in the operations and purchase of gas processing plants.

Enbridge v. Reagan

This case also involves another natural gas processing plant site, located in Robertson County, Texas, near the community of Marquez. Unlike the expiring lease agreement in Avinger, and unlike the expiring surface easement agreement in Scamardo, the gas company purchased the 20-acre site on which the gas processing plant was constructed. The purchase was made by Delhi Gas Pipeline Corporation by Warranty Deed on May 16, 1996. The Deed contained a reservations as follows: *"Grantors further reserve in this conveyance unto themselves, their heirs and assigns, the right of first refusal as to all of the property covered by this conveyance, the event and only in the event that the Grantee herein or any of the Grantee's subsidiary or affiliate companies desires to sell the land covered by this conveyance to any third person(s)."*

Subsequent to the execution of the Warranty Deed, Delhi Gas Pipeline merged with Koch Midstream Services Company. Koch conveyed the property to Enbridge Pipeline (East Texas), L.P., by Special Warranty Deed on November 30, 2001, which was recorded in the Robertson County Deed Records on August 19, 2002.

So, what is the proper appraisal procedure to value a tract of land, highly improved and being utilized in an industrial capacity?

Enbridge's evaluation acknowledges the existence of a "gas processing facility"; however, "We have appraised only the land". Enbridge's evaluation makes no mention of the right of first refusal restriction in the Special Warranty Deed. Further, the conclusion of highest and best use is "agricultural and recreational use", disregarding the extensive industrial improvements located on the site, together with eight or ten pipelines that enter the property. The bottom line, Enbridge values the property, as if it is vacant and that the highest and best use is for agricultural or recreational use.

...This is beginning to sound like Avinger.

Currently, and subsequent to the transfer from Koch to Enbridge, the property was improved with the Enbridge Marquez Gas Treating Plant, and according to the report issued by WR Energy, LLC, (industry experts retained by the Reagan's), these improvements could have a value of $47,000,000.00, not including any business component.

In our opinion, the existence of these improvements greatly affects the market value of the land component when considering the Right of First Refusal. To better understand the value of the Right of First Refusal and its effects on market value, we engaged WR Energy to analyze the options available to the gas plant operators if the Right of First Refusal is exercised.

One option contemplates removing the gas treating plant and equipment and moving it approximately one mile to a new location while continuing to process the natural gas. After crediting the salvage value against the new plant cost, a net cost to the operator would be $22,000,000.00 (not including time to obtain permits, site preparation, or cost obtaining a new site).

Another option contemplates the shutdown of the plant, disassemble, move and reassemble the within one mile of the current site. This option would shut-in gas production for seven months. Total costs, including loss of natural gas production revenue during shut down, would be $166,000,000.00 (not including time to obtain permits or site preparation or cost of obtaining the new site).

We have analyzed the amount a prudent and knowledgeable investor would pay for the subject property, including the terms of the First Right of Refusal. If the minimum net cost estimated by WR Energy, LLC is $22,000,000.00, an offering price would require a substantial discount to provide an attractive return to the buyer/investor. WR Energy estimates this discount to be approximately 50% of the net cost savings to the natural gas operator. The expected return considers the Right of First Refusal, the risks, anticipated costs and the time value of money associated with the investment.

A Special Commissioner's Hearing was held November 4, 2011 in Robertson County and the Commissioner's awarded the landowner substantially more than the offer to purchase. The matter is now pending in District Court.

Auxiliary Naval Airfield

The former Berclair Naval Air Landing Field was commissioned by the U.S. Navy in 1969 as an auxiliary training base for flight schools near Corpus Christi, Texas. The property contains 1,136 acres of land, two 8,000-foot concrete runways, parallel taxiways, paved apron areas, and minor building improvements, and is located in the southwestern portion Goliad County. The airfield was decommissioned in 1992 and was conveyed to Goliad County in 2000, and renamed the Goliad County Industrial Airpark. The County has had minimal success in attracting industrial tenants and the airpark remains unimproved with the exception of the runways and related facilities. On January 19, 2011, the United States Navy declared the property was required for military purposes and estimated the just compensation as being $2,363,000.00. Goliad County rejected the compensation offer and the issue will be litigated during the latter part of 2012.

So, what are the proper valuation methods in evaluating a property of this type and what will the courts accept? First, some market analysis of the area is important. Goliad County's population in 2010 was 7,210, constituting only a 4.1% increase in the past ten years. The county's commerce is still primarily agriculture with very little industry and manufacturing output. So obviously, highest and best use, feasibility, marketability, and lack of local market data will be important issues in solving the appraisal problem.

We performed an exhaustive search of closed military bases around the country that had been deeded to governmental entities and then sold to private companies. Knowing that courts generally understand the Sales Comparison Approach to valuation in condemnation cases, we tried to comply. We simply could not find this kind of data. In our literature research, we found an article entitled *"Methods of Valuing Properties Without Compare: Special Use Properties in Condemnation Proceedings"* (*The Appraisal Journal, January 2000).* The article discusses that United States Supreme Court rulings over the years strive to achieve Just compensation as required by the Fifth Amendment and that the concept of market value is usually applied by court to determine this amount. Although the Market Data or Sales Comparison Approach is preferable, "The Court has expressly refused 'to designated market value as the sole measure of just compensation' because there are situations where this standard is inappropriate." *(United States v. 564.54 Acres of Land, More or Less, 441 U.S. 506, 511 (1979).* The Court has stated, "[W]hen market value has been too difficult to find, or when its application would result in manifest injustice to owner or public, courts have fashioned and applied other standards." (United *States v. Commodities Trading Corp., 339 U.S. 121,402 (1949)*. "Recently the Supreme Court indicated that a court *must* use a valuation method other than 'fair market value' when the fair market value standard is either 'impracticable' or would result in an award that substantially diverges from the Fifth Amendment's 'indemnity principle (i.e., that the owner of condemned property 'be placed in as good a position pecuniarily as if his property had not been taken'*)"(United States v. 564.54 Acres of Land, More or Less 441 U.S. 506, 511 (1979)).*

In this instance, we believe that an asset costing as much as $30,000,000.00 to $50,000,000.00 has a substantial value even though an aviation use has not been exploited over the past few years. Consulting with industry experts, we know that the largest users of these types of facilities are governmental entities: military, law enforcement, correctional facilities, immigration, etc. Researching other local airports in central and southeast Texas, we found that "airside spaces" are leased both short and long term to individuals, corporations and government entities. Not all of the land area will command rental income; however, that portion of the airport property having direct access to the active runway(s) will command the highest rental rate. Therefore the income approach can be an appropriate measure of value. Likewise, the cost approach has applicability in the appraisal process when valuing a property of this type. Almost always, a converted military base will be superadequate. "A superadequacy is an 'excess in capacity or quality of a structure'. In the case of a military base, this pertains to just about everything on it. The smallest runways are no shorter than approximately 6,000 feet and some runways are over 2 miles. They're often wide too."(*Military Airport Conversions: When the Ex-Base is Your Place,* www.airportappraisals.com)

Obviously, the difficult portion of utilizing the cost approach is the measurement of the functional obsolescence as a result of super adequacy.

As a departure from the more complex and extraordinary appraisal issues already presented, we now direct our focus to a number of seemingly simple appraisal assignments that, when appraised for condemnation purposes, may be inappropriately valued due to a misinterpretation or misunderstanding of Texas case law.

We will focus primarily on the Supreme Court's decisions in *State of Texas v. Laws (On Petition for Writ of Mandamus – Opinion Delivered August 26, 2011)* and State *of Texas v. Central Expressway Sign Associates, et al, (Opinion Delivered – November 20, 2009)* and how these decisions have impacted some of our recent appraisal assignments. The following examples are some of the appraisal assignments we have been involved in where we believe a proper interpretation of Texas case law, in particular the above cited cases, is critical in assuring that the fee simple market value is properly estimated and just compensation achieved.

State of Texas v. Main at Hillcrest, LP

This is a recent case involving a 5.7144 acre tract of land located at the corner of Main Street and Hillcrest Road, in the City of Frisco, Collin County, Texas. The Texas Department of Transportation acquired 35,632 square feet of land to facilitate improvements to Main Street (FM 3537) as part of the FM 3537 Project in Collin County. At first glance this assignment seemed similar to many assignments we've worked on over the years where a commercial site is impacted by a partial acquisition. In this case it was clear, based on relevant market data in the immediate area that the highest and best use of the site was for retail use on multiple economic units. In our experience, the use of economic units to value vacant land is a hotly debated topic amongst appraisers and legal counsel in the context of litigation. Most appraisers tend to shy away from expressly valuing independent economic units out of fear of the State's well known opinions delivered in *City of Harlingen v. Sharboneau, 48 S.W.3d 177 (Tex. 2001) and State of Texas v. Willey, 360 S.W.2d 524 (Tex. 1962)*, which would prevent the property owner from seeing a valuation based on the subdivision approach. The implications of these cases have been problematic in that many appraisers, particularly those working for condemning authorities, are instructed by counsel that the subdivision of vacant land, even for commercial uses, is not consistent with Texas Case law. While this may be true in some cases, with adequate market support to estimate economic units, appraisers should not fear this methodology based on a lose interpretation of the above referenced cases, among others.

Whether or not the State's appraiser in this case was of this mindset or was guided by counsel is uncertain; nonetheless, the State's appraiser valued the subject whole property as one commercial tract, failing to consider the established market for retail pad sites in the immediate area. In fact, the State's appraiser used primarily retail pad sites in the area for comparison. Finally, the State's appraiser opined that there was no loss in utility to the remainder and no damages were estimated.

While the legality of our estimated economic units was not a major area of contention at the hearing, the implications of our analysis on the remainder, after the taking, were. Based on the direction of counsel, it is our opinion that the recent decision in *State of Texas v. Laws,* clarifies some of the long held misconceptions surrounding *Sharboneau* and other cases involving the subdividing of land in condemnation cases. We feel that this new ruling gives land owners recourse to estimate hypothetical economic units for commercial properties, where such economic units are "non-speculative." In Laws, "the State believes that the ideal economic unit is the entire condemned tract, the highest and best use of which is to hold as investment for future development. The State is permitted under Windham to offer this testimony. The Lawses'. . . believe that the condemned tract is an inferior economic unit" and the "the Lawses' believe that the tract to be condemned contains several self-sufficient economic units. If they have non-speculative evidence to support this contention, they should be permitted to offer it at trial. Though the State has a right to define the property being taken, it does not have the power to constrain the owners' evidence of competing conceptions of the best economic unit by which the part taken property should be valued."

In short, this case gives landowners the ability to argue the market value of "non-speculative" economic units, without having to resort to subdividing a property into separate ownerships, resulting in "needless duplication of legal services and expert testimony, wasting not only the parties' resources but those of the public at large." Additionally, it is clear based on this ruling that no discount is required for sell-off of the various retail lots, as each should and can be valued as an independent economic unit as of the same effective date of value.

Proceeding on this premise, we opined that the subject property was divisible into five (5) separate economic units which were estimated by a qualified land planner. The economic units had varying sizes and physical characteristics, resulting in varying unit values depending on location (corner v. non-corner) and physical characteristics (size, shape, buildable area, etc.). In performing this analysis, it was discovered that, as a result of the taking, the remainder would suffer from the following issues:

- Loss of the potential for one small building pad,
- Loss of the potential for larger tenant (i.e. CVS or c-store) at corner, due to inadequate depth,
- Inferior ratio of frontage to potential bay depth

All of these issues were considered to have a negative impact on the overall marketability and utility of the remainder after the taking and appropriate damages were estimated.

The point of this analysis is to demonstrate that most appraisers, and counsel alike, may automatically excuse damages under this analysis as non-compensable, potentially failing to estimate adequate Just Compensation.

While this analysis only presents our humble opinions in this case, we feel it is important to acknowledge our recent experience relating to a historically foggy area of valuation for litigation in condemnation.

Convenience Stores and Retail Fueling Properties: Appraisal Issues In Litigation

Convenience stores and retail fuel properties are a largely misunderstood special-use property type, with numerous factors impacting the proper valuation of this asset class. Our firm has appraised numerous convenience stores, and many have involved condemnation and litigation matters. In almost every case, the valuation methodologies used, namely the Income Capitalization Approach, has been a hotly debated topic. In convenience store appraisals we typically try to employ the three (3) traditional approaches to value: the Cost Approach, Sales Comparison Approach, and the Income Capitalization Approach. The Cost and Sales comparison approaches are generally straightforward and their treatment by appraisers is generally similar; however, it is our experience that appraiser's vary widely in their treatment of the Income Capitalization Approach.

When evaluating convenience stores in a litigation setting, it is our experience that many appraisers will rely primarily upon the Cost Approach and Sales Comparison Approach, and if the Income Approach is used at all, it is based on a traditional Income Approach model, where a "market" rental rate, expenses, and net operating income are estimated to arrive at a capitalized value. Later in this section, we hope to demonstrate why this approach is inadequate.

In our valuation of convenience stores, we have held closely to the Appraisal Institute's text and course on the subject, entitled *Convenience Stores and Retail Fuel Properties: Essential Appraisal Issues* – written by Robert E. Bainbridge, MAI, SRA. We have had the pleasure of taking Mr. Bainbridge's AI course and we have also consulted with him on several convenience store cases. In his text book Mr. Bainbridge states, "when appraising an existing convenience store that has been in business for a few years, the cost approach will be <u>least useful</u>; the sales comparison approach will be <u>moderately useful</u>; and the income capitalization approach will be <u>most useful</u>. In preparing a convenience store appraisal, the appraiser should take the time to develop a sound income capitalization approach."

When appraising convenience stores, in the context of litigation the overriding concern with the Income Capitalization Approach is whether or not the stores "going-concern" is a component of value. This has become a legitimate concern after the Supreme Court's ruling in *State of Texas v. Central Expressway Sign Associates, et al, (Opinion Delivered – November 20, 2009).* Although this case deals specifically with business value in the context of a billboard ground lease, some feel and will argue adamantly that this ruling is applicable to a variety of property types, including convenience stores where business value is a concern. We hope to address these concerns by looking at what business value, if any, exists for convenience stores and how this issue is dealt with in the appraisal process.

As previously discussed, many appraisers will settle for the use of a traditional Income Approach when appraising convenience stores. This approach typically starts by estimating a "market" rental rate, vacancy loss, and expenses to arrive at a net operating income suitable for capitalization. While this approach will not usually raise concerns over business value and is sometimes more easily understood by the courts due its simplicity and familiarity, it is our experience that it fails to adequately address the subject's true income producing potential. According to Mr. Bainbridge, "when stores are leased, the lease agreement is often a <u>financing tool</u>, not a market driven agreement. Seldom will the appraiser find an adequate number of truly leased properties on which to base the income capitalization approach. Further, convenience stores are rarely, if ever, sold based on their real estate rental potential. This does not mean, however, that the income capitalization approach cannot be applied to convenience stores. The framework of the income capitalization approach in the appraisal of convenience stores parallels the way industry participants view the real estate. The real estate, like all other assets, <u>is considered in the context of its contribution to earnings</u>.[1] (underline emphasis added)" Therefore, the use of rent comparables will almost always result in something other than market value.

When the correct Income Approach methodology is applied, it can yield the most reliable indication of value. Convenience stores are typically transferred based upon their income producing potential. Given that this property type would most likely be considered by

[1] Bainbridge, E, Robert, MAI, SRA, <u>Convenience Stores and Retail Fuel Properties: Essential Appraisal Issues</u>, published by The Appraisal Institute, pages - Page 119

market participants in the context of its contribution to earnings, we believe that the Income Approach is the most reliable method of valuation in most cases when applied correctly.

The following chart gives the Appraisal Institute's framework for appraising convenience stores using the Income Capitalization Approach and is the approach we use in our appraisal assignments:

Total Sales (Fuel, Inside Sales, other)
Less: Shrink
Less: Cost of Sales (Fuel & Inside Sales, other)
Gross profit
Less: Total operating expenses
EBIDTA (Earnings Before Interest, Depreciation, Taxes, and Amortization)
Less: Business profit/excess profits
EBIDTA Allocated to Tangible Assets
Less: EBIDTA allocated to furniture, fixtures and equipment
Net Operating Income to the Real Estate

The strength of this methodology is that it considers the actual performance of the property. In the context of litigation, the only potential downside is the necessary deduction for Business Profit/Excess Profits. Only recently have we seen appraisers working for condemning authorities, namely TxDOT, begin to use the Appraisal Institute's methodology. However, the required deduction for business profit remains an area of contention.

There is no industry standard percentage or amount for this deduction; rather, it is based on the profitability of the specific store, general economic conditions and the competitive conditions in the store's trade area. Some convenience store operations will have no profit. In the highly competitive and saturated market that most stores operate in today, few stores will have "excess" earnings.[2] According to the Appraisal Institute Course 800, the economic profit (business profit) in a perfectly competitive world would be expected to be zero in the long run because of the large number of buyers and sellers, perfectly elastic supply, full information and homogeneous goods. Going concerns compete in imperfect markets; however, in most cases there are no legal constraints, patents, copyrights or other barriers to entry for competitors. Further, due to the continued growth and industry wide standard use of credit card and debit card point of sale service, brand loyalty has been significantly eroded with the majority of customers looking for the lowest gas prices regardless of brand.

While some highly specialized convenience store concepts may have excess business profit (i.e. Buc-ee's), the majority are in balanced and highly competitive markets. Based on this data, the location, and physical characteristics of the subject, we will typically allocate between 0% to 5% of the EBIDTA to the intangible assets and business profit. This is considered

[2] Bainbridge, E, Robert, MAI, SRA, Convenience Stores and Retail Fuel Properties: Essential Appraisal Issues, published by The Appraisal Institute, pages 129-131.

reasonable given the highly competitive market that most convenience stores operate in today. With that said, we have seen some appraiser's estimate the deduction for business profit to be as high as 30% for stores with no apparent extraordinary advantage in the market! In fact, Mr. Bainbridge in his White Paper No. 3 entitled *Intangible Asset Value in Special-Built Business Enterprise (2006)* states that "economists say that the basic feature of perfectly competitive market structures is their impersonality. Of the three market structures[3], convenience store markets more closely resemble perfectly competitive markets."

Therefore, a minimal deduction for business profit is realistic, and in our opinion, satisfies the Texas court's refusal to consider business income in making condemnation awards. Nonetheless, as more appraisers begin to adopt the Appraisal Institute's Income Approach model we anticipate further debate over this topic.

CONCLUSION

In this paper we have covered numerous examples of complex and special-use properties that when appraised for condemnation or litigation purposes can be overwhelming for appraisers and counsel alike. While this paper only addresses a minor part of the complexity of appraising special-use properties for litigation, we hope that some of our recent experience in these areas can serve as a sign post for others engaged in similar assignments.

[3] Mr. Bainbridge discusses three market structures: Perfectly Competitive, Oligopolistic, and Monopolistic Markets.