

CANADIAN APPRAISER ÉVALUATEUR CANADIEN

SPRING/PRINTEMPS 2004

When is
subdivision
the highest and best use?

On the
fast track
to an **AACI**

Lease reviews and implications on
market value

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Institut canadien des évaluateurs**

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Brad Wagar, AACI, P.App
AIC President

Life altering experiences

A friend, with whom I do not speak regularly because we live in different cities, called the other day to see how I was. He asked the usual questions including “how are you” and “how is business,” to which I responded “good” to both. “So ... no life altering events?” was his response and hearing that question got me thinking. OK, life altering is a little dramatic perhaps, but consider what has happened to the Appraisal Institute of Canada (AIC) in the last five years.

In May 2001, the members in attendance at the Annual General Meeting in Halifax voted in favour of a Strategic Plan, which was roughly a year and a half in the making. The planning process that went into the Strategic Plan’s development basically focussed on answering the question, “We’ll know we have succeeded when....?” To refresh your memory, the Strategic Plan offered up the following answers

- members will be professionals recognized as having expertise and integrity;
- members will provide a broad range of services based on the principles of value in real estate;
- members will lead projects, initiatives and organizations related to real property; and
- members will provide strategic advice and decisions related to real estate and real property.

All of these answers naturally begged the question, “How are we, as professionals, going to achieve all those things?” Equally concise, we have to focus on these goals:

- protect the interests of the public;

- maintain high standards of practice and ethics;
- advance the profile of AIC members;
- advance the profile of the AIC as the pre-eminent body of real property professionals; and
- offer advanced education and continuing education in the principles of value in real estate.

I would suggest that by embracing the above vision and goals, the valuation profession has already “altered lives.”

Many of you have heard me speak of the origins of the Appraisal Institute of Canada. How it started in 1936 with an exploratory committee of insightful members from the Manitoba Mortgage Loans Association and the Manitoba Land Inspectors Association. How, two years later, the AIC came into being in 1938 after nearly a decade of adversity in the aftermath of the 1929 Stock Market crash, the Great Depression, the ‘Dirty Thirties’ and over 50,000 properties being foreclosed by taxing authorities and/or lenders. Never was the expression, “when the times get tough, the tough get going” more apt. So, how did this fledgling organization establish itself so quickly? Simply put, the AIC’s members were CREDIBLE because of their education and experience.

During those first years of the AIC, prior to making application for designation, the candidate had to be a member of the AIC and have seven years of practical appraisal experience. Five detailed appraisal reports and three letters of reference were then submitted. Did I mention 26 pages of suggested readings? The designa-

‘New Horizons’ will open doors for AIC members and make their careers more successful and rewarding.

We will ensure that our members and the AIC are recognized as the pre-eminent players in the real property valuation profession in Canada ... and beyond.

tion testing process was held over three days:

- the first day involved completion of an appraisal report of a property selected by the Examining Board in co-operation with the sponsoring university;
- the second day required the writing of four papers on History and Ethics, Theory and Definitions, Practice and Procedures, and Territorial Qualifications based on the candidate's province; and
- on the third day, an oral test was administered re-examining the candidate on all the material covered during the two previous days.

I suspect that, after the third day, life altering might have been one phrase used to describe the process. That said, the emphasis on credibility is just as important today as it was to the AIC members who first directed the course of this organization. Many of the steps taken by the AIC in the last several years have been consistent with the desire to continually increase our credibility. To that end, we have:

- streamlined and outsourced our education program to the Sauder School of Business, University of British Columbia, Real Estate Division, with expansion plans for other universities;
- outsourced our Professional Liability Insurance Program administration to Leonard French & Co. Ltd.;
- relocated the national office to Ottawa to be closer to the decision makers and law makers;
- re-staffed the organization to achieve an enhanced, proactive approach to management;
- reorganized the AIC based upon a corporate governance model;
- created and filled the Counsellor, Professional Practice position to assist members and the public with Professional Practice issues;
- shaped the culture and mind set of the Board of Directors and the vari-

ous committees in favour of greater accountability, clear mandates, annual tasking, transparency and a results oriented approach.

This whole process is weakened unless our current and prospective members equip themselves for the markets and challenges of the future. In order for us to succeed as a profession we must:

- accept the reality that, in North America, we are appraisers ... in the rest of the world we are real property valuers and members of the valuation profession;
- conduct ourselves in a professional manner;
- subscribe to continuous learning;
- embrace, and become proficient, with technology;
- recognize that competency is absolutely essential;
- continue to expand our scope of practice so that, similar to many other parts of the world, report writing is not the dominant component of the valuer's work;
- ensure that our members are multi-disciplinary;
- be viewed as peers by other professionals; and
- BE PREPARED TO CHANGE.

Accordingly, the Board of Directors has commenced a process to define the valuation professional of the future. We are calling this project 'New Horizons' because we expect that it will open doors for AIC members and make their careers more successful and rewarding. The process involves:

- studying what we are currently doing;
- studying what we might do in the future;
- surveying our members on how they see the present, the future and what the key issues are;
- monitoring what other professions and what valuers in other countries are doing;
- validating what we know is real, think is

real and suspect is real, including some 'surprises;'

- formulate what we have to do to prepare our members for the opportunities of the future.

Once this process is completed, the AIC will revisit its Strategic Plan in order to determine what it has to do to support members' professional needs, ensure member competence, protect the public and re-brand the profession. In so doing, we will ensure that our members and the AIC are recognized as the pre-eminent players in the real property valuation profession in Canada ... and beyond.

I started this message with an observation about a friend asking about life altering events. I can honestly tell you that the AIC has changed my life – particularly during this last year as President. In the very near future, I hope that we will all be able to say that affiliation with the AIC has enhanced our lives.

And, just as we as individuals are impacted by the Institute – the AIC similarly benefits from the actions of its members. The AIC continues to evolve and is highly respected by many valuation organizations because its volunteers and members exhibit incredible commitment and contribution to the future growth of the Institute. I have had the privilege of meeting many of you and working with some of you. The same can be said of national and provincial staff. More often than not, whether we recognize it or not, the hard work and dedication of our staff makes a difference to our lives.

Before closing this message, I would like to take this opportunity to thank the AIC membership for the opportunity to serve. I hope that the role I have played will contribute to making a positive difference to the AIC and its members. I know that I have benefited from the experience, if for no other reason than the people I have met, some of whom I consider friends. Talk about life altering!

Thank you. 🍷



Brad Wagar, AACI, P.App
Président de l'ICE

Des expériences qui transforment une vie

Un ami avec qui je ne parle pas régulièrement parce que nous vivons dans des villes différentes, m'a téléphoné l'autre jour pour savoir comment j'allais. Il a posé les questions habituelles, y compris « comment vas-tu » et « comment vont les affaires », auxquelles j'ai répondu « bien ». « Alors... aucun événement qui transforme ta vie? » a-t-il répliqué et entendre cette question m'a fait réfléchir. D'accord, transformer sa vie est peut-être un peu dramatique, mais considérez ce qui s'est passé à l'Institut canadien des évaluateurs au cours des cinq dernières années.

En mai 2001, les membres présents à l'assemblée générale annuelle à Halifax ont voté en faveur d'un plan stratégique, dont la conception a exigé environ un an et demi. Le processus de planification utilisé dans l'élaboration du plan stratégique, était principalement axé sur la réponse à la question « Notre réussite sera manifeste quand... ? » Pour vous rafraîchir la mémoire, le plan stratégique offrait les réponses suivantes :

- les membres seront des professionnels reconnus pour leurs connaissances spécialisées et leur intégrité;
- les membres offriront une grande gamme de services fondés sur les principes de la valeur immobilière;
- les membres dirigeront des projets, des initiatives et des organismes liés à l'immobilier;
- les membres donneront des conseils stratégiques et feront part de décisions relativement à l'immobilier et aux biens immobiliers.

Toutes ces réponses soulevaient naturellement la question « En tant que professionnels, comment allons-nous parvenir à tous ces résultats? ». Pour répondre à cette question tout aussi concise, nous devons nous concentrer sur les buts suivants :

- protéger les intérêts du public;
- maintenir des normes élevées de pratique et de déontologie;
- mieux faire connaître les membres de l'ICE;
- mettre davantage en vue l'ICE comme organisme prééminent de professionnels de l'immobiliers;
- offrir une formation avancée et continue sur les principes de la valeur dans le domaine de l'immobilier.
- J'estime que par l'adoption de la vision et des buts susmentionnés, la profession d'évaluateurs a déjà « transformé des vies »!
- Bon nombre d'entre vous m'ont entendu parlé des origines de l'Institut canadien des évaluateurs, de ses débuts en 1936 avec un comité exploratoire composé de membres perspicaces de la Manitoba Mortgage Loan Association et de la Manitoba Land Inspectors Association. Comment deux ans plus tard, l'Institut canadien des évaluateurs a été fondé en 1938, après presque une décennie d'adversité après le krach boursier et la Crise de 1929, les dures années trente et plus de 50 000 propriétés ayant fait l'objet de forclusion de l'administration fiscale ou de prêteurs. Jamais l'expression

« Nouveaux horizons » ce qu'il présente de nouvelles occasions aux membres de l'ICE et rendent leurs carrières plus prospères et enrichissantes.

“ Nous assurerons que nos membres et l’ICE sont reconnus comme les participants prééminents de la profession de l’évaluation de l’immobilier au Canada... et à l’étranger. ”

« quand les temps sont durs, vient le temps des durs » n’a été plus juste. Alors, comment est-ce que cette jeune organisation a pu s’établir aussi rapidement? Simplement, parce que les membres de l’ICE étaient CRÉDIBLES à cause de leur éducation et de leur expérience.

- Pendant ces premières années de l’ICE, avant de faire une demande de désignation, le candidat devait être membre de l’Institut canadien des évaluateurs et compter sept ans d’expérience pratique de l’évaluation. Cinq rapports détaillés d’évaluation et trois lettres de référence étaient ensuite présentés. Est-ce que j’ai mentionné les 26 pages de lecture suggérée? Le processus d’obtention de la désignation se déroulait sur trois jours :
- le premier jour le candidat faisait un rapport d’évaluation sur une propriété sélectionnée par le conseil d’examen en coopération avec l’université commanditaire;
- le deuxième jour, le candidat devait faire quatre dissertations sur l’histoire et la déontologie, la théorie et les définitions, les pratiques et les procédures ainsi que les qualifications territoriales en fonction de la province du candidat;
- le troisième jour, le candidat subissait un examen oral, pour l’interroger de nouveau à propos de toute la matière traitée pendant les deux jours précédents.

J’imagine qu’après le troisième jour, on aurait pu dire que le processus transformait la vie. Cela étant dit, l’accent mis sur la crédibilité est tout aussi important aujourd’hui qu’il ne l’était pour les membres de l’ICE qui ont été les premiers à déterminer l’orientation de cette organisation. De nombreuses étapes de l’ICE, ces dernières années, ont été conformes au désir de continuellement accroître notre crédibilité. À cette fin, nous avons :

- rationalisé et imparti notre programme d’éducation à la Sauder School of

Business, Université de Colombie-Britannique, Division de l’immobilier, avec des projets d’expansion du programme dans d’autres universités;

- imparti l’administration de notre programme d’assurance responsabilité professionnelle à Leonard French & Co. Ltd.;
- déménagé notre bureau national à Ottawa, afin d’être plus proche des décideurs et des législateurs;
- engagé du nouveau personnel dans l’organisation, afin d’établir une meilleure approche proactive à la gestion;
- réorganisé l’ICE, en fonction d’un modèle de gouvernance d’entreprise;
- crée et pourvu le poste de conseiller en pratique professionnelle, pour aider les membres et le public avec les questions de pratique professionnelle;
- formé la culture et l’esprit du conseil d’administration et des différents Comités en faveur d’une plus grande responsabilité, de mandats plus clairs, d’attributions annuelles des tâches, de transparence et d’une approche axée sur les résultats.

L’ensemble de ce processus est affaibli, à moins que nos membres actuels et éventuels se dotent d’outils pour les marchés et les défis futurs. Pour que nous puissions réussir en tant que profession, nous devons :

- accepter la réalité qu’en Amérique du Nord nous sommes des évaluateurs... dans le reste du monde, nous sommes des experts en immobilier et des membres de la profession de l’évaluation;
- nous conduire de manière professionnelle;
- nous engager envers la formation continue;
- adopter la technologie et devenir très compétents;
- reconnaître que la compétence est absolument essentielle;
- continuer à élargir la portée de notre pratique, afin qu’à l’instar de beaucoup d’autres parties du monde, la rédaction

de rapports ne soit pas la composante dominante de notre travail d’évaluateur;

- nous assurer que nos membres sont multidisciplinaires;
- être vus comme pairs par d’autres professionnels;
- ÊTRE PRÊTS À CHANGER.

Par conséquent, le conseil d’administration a amorcé un processus pour définir la profession d’évaluateur du futur. Nous appelons ce projet « nouveaux horizons », parce que nous nous attendons à ce qu’il présente de nouvelles occasions aux membres de l’ICE et rendent leurs carrières plus prospères et enrichissantes. Ce processus vise à :

- examiner ce que nous faisons actuellement;
- nous pencher sur ce que nous pourrions faire à l’avenir;
- sonder nos membres sur leur opinion de la situation actuelle, de l’avenir et des principales questions;
- surveiller ce que font d’autres professions et évaluateurs d’autres pays;
- valider ce que nous savons être réel, pensons être réel, supposons être réel, y compris quelques « surprises »;
- exprimer ce que nous devons faire pour préparer nos membres aux occasions que réserve l’avenir.

Une fois ce processus terminé, l’Institut canadien des évaluateurs examinera de nouveau son plan stratégique, afin de déterminer ce qu’il doit faire pour répondre aux besoins professionnels de ses membres, assurer la compétence des membres, protéger le public et donner une nouvelle image à la profession. Ainsi, nous assurerons que nos membres et l’ICE sont reconnus comme les participants prééminents de la profession de l’évaluation de l’immobilier au Canada... et à l’étranger.

J’ai commencé ce mot par une remarque à propos d’un ami qui s’informe d’événements qui transforment une vie. Je peux honnêtement vous dire que l’Institut canadien des évaluateurs a changé ma vie – en particulier pendant cette dernière année à titre de président. J’espère que

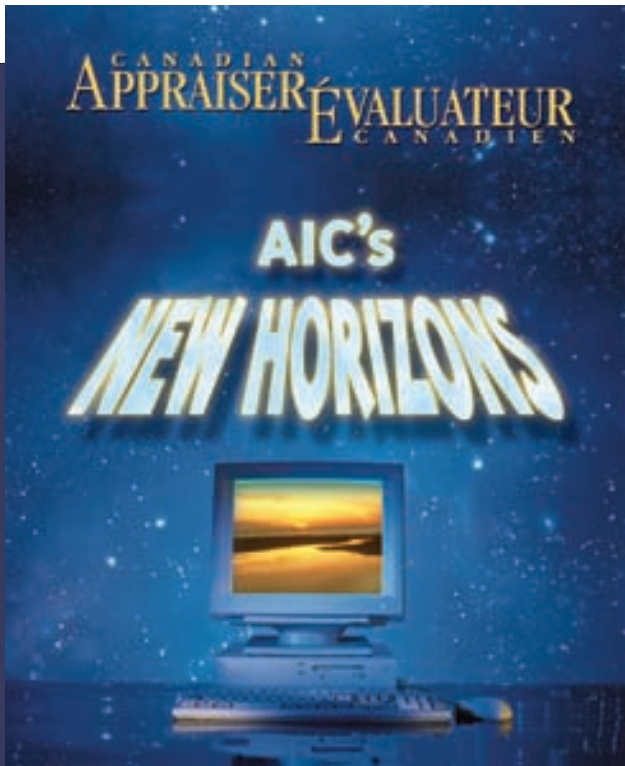
dans un proche avenir nous pourrions tous dire que l'adhésion à l'Institut canadien des évaluateurs a amélioré notre vie.

Et tout comme nous, en tant que personnes, sommes influencés par l'Institut, l'ICE tire également parti des actes de ses membres. L'Institut canadien des évaluateurs continue d'évoluer et jouit d'un grand respect de nombreux organismes d'évaluation, parce que ses bénévoles et ses membres font preuve d'un engagement extraordinaire et contribuent à la

croissance future de l'Institut. J'ai eu le privilège de rencontrer beaucoup d'entre vous et de travailler avec quelques-uns. La même chose s'applique au personnel national et provincial. Plus souvent qu'autrement, que nous le reconnaissons ou non, le travail assidu et le dévouement de notre personnel fait une différence dans nos vies.

Avant de terminer, j'aimerais saisir cette occasion pour remercier les membres de l'Institut canadien des évaluateurs

de l'occasion qui m'a été donnée d'être à leur service. J'espère que le rôle que j'ai joué contribuera à faire une différence positive pour l'ICE et ses membres. Je sais que j'ai profité de cette expérience, si ce n'est pour aucune autre raison que les gens que j'ai rencontrés, certains que je considère des amis. Parlons de transformer sa vie! Merci. 🍷



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As we strive to ensure that the *Canadian Appraiser/Évaluateur Canadien* provides valuable and timely information to enhance your professional development, your ongoing input, contributions and feedback are vital components to making sure we succeed.

Whether you like what you read, take issue with it, have some information or knowledge of your own to contribute, or want to comment on some aspect of the magazine or the profession in general, we want to hear from you. From feature articles or guest columns to emails or letters, please take the time to play an active part in this important communication process.

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Appraisal Institute of Canada
Institut canadien des évaluateurs



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AIC's Privacy Policy incorporates the provisions of the *Personal Information Protection and Electronic Documents Act (PIPEDA)* and its 10 key principles. This policy applies to anyone who provides personal information to AIC, whether directly or through the AIC web site.

The complete text of AIC's Privacy Policy is available on the AIC web site at www.aicanada.ca. If you have a question about the policy or a concern or complaint regarding the privacy practices of AIC, please contact the Privacy Officer by telephone at (613) 234-6533 ext. 222, by e-mail at privacyofficer@aicanada.ca or by regular mail at:

Appraisal Institute of Canada
Suite 203 – 150 Isabella Street
Ottawa, Ontario K1S 1V7
Attention: Privacy Officer

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2. Identify purposes for collecting personal information
3. Obtain informed consent
4. Limit collection
5. Limit use, disclosure and retention
6. Ensure accuracy
7. Safeguard data
8. Explain policies
9. Transparency on how information is used
10. Provide recourse

Effective January 1, 2004, *PIPEDA* – the federal government's *Personal Information Protection and Electronic Documents Act* – regulates the collection, use and disclosure of personal information. The Act applies to all organizations in Canada in provinces that do not have "substantially similar" legislation. The provincial exemptions extend to Quebec, British Columbia and Alberta, as they have adopted provincial legislation.

Tips

- When transferring personal information to third parties ensure that the information is protected.
- Define your purposes for collecting data as clearly and narrowly as possible so the individual or client can understand how the information will be used or disclosed.
- Consent is only meaningful if it is understood how their information will be used.
- Make sure personal information that has no relevance to the transaction is either removed or masked when providing copies of information to others.
- Keep sensitive information files in a secure area or computer system and limit access to individuals on a 'need-to-know' basis only.
- How well your firm handles an individual's complaint may help preserve or restore the individual's confidence in your firm. Record all decisions to ensure consistency in applying the Act.

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Post-Graduate Certificate in Real Property Valuation

On the *fast track* to an **AACI**

BY CHRISTINE HANLON

“Whether you work on the investment or purchase side, in commercial or residential, it really comes down to what a property is worth. My interest in the income approach of commercial valuation drew me to the appraisal program.”

– *Jay Deakin*



When enrolling in the *BUSI 330 Foundations of Real Estate Appraisal* course,

Jay Deakin provided the background information requested and read the postings from other students enrolled in the University of British Columbia's Post-Graduate Certificate in Real Property Valuation (PGCV). The postings originate from participants of all age groups and backgrounds across

Canada. For some, it is a specialization they choose immediately after completing a business or commerce degree. For others, it is the path to a second career. "There is definitely a broad spectrum of people taking the program," remarks Deakin.

For the 25-year-old, the decision to enrol came after an Internet search for institutions offering a Masters in Business Administration (MBA) specializing in real estate. Although he quickly realized there were no such graduate programs in Canada, during his search, he stumbled across the PGCV program on the University of British Columbia (UBC) web site.

Traditionally, obtaining the professional designation of Accredited Appraiser Canadian Institute (AACI) requires candidates to complete 16 UBC courses, along with the designation requirements of the Appraisal Institute of Canada (AIC). However, in 2003, the AIC and its education partner, the Real Estate Division, Sauder School of

Business, UBC, announced that, in recognition of the acquired body of knowledge they bring to valuation studies, graduates of recognized Canadian business/commerce degree programs can earn a post-graduate certificate in real property valuation by completing six courses. Students then need only meet the AIC designation requirements (Standards Seminar, Guided Case Study, Applied Experience program and AACI interview) to obtain an AACI.

Having graduated with his Bachelor of Commerce (B. Comm.) from Concordia in 2001, Deakin was eligible for the PGCV program. Besides taking real estate finance courses at university, he had also worked for years in his parent's Montreal real estate office and had recently obtained his residential real estate licence.

"I won't necessarily be in residential real estate forever," explains Deakin. "I was searching for something that would be more in line with my finance degree. In any part of real estate, valuation is an essential element. Whether you work on the investment or purchase side, in commercial or residential, it really comes down to what a property is worth. My interest in the income approach of commercial valuation drew me to the appraisal program."

Finding the *Commercial Property Analysis* course to be very practical, Deakin appreciated that the textbooks were designed specifically for the course, with a Canadian perspective providing a useful overview of legal, financing and taxation issues. He also appreciates being able to take the distance courses at his own pace. "If you were motivated, you could obtain your certification within two years," he notes.



For **R. James Griesbaum**, this was a distinct advantage. "My idea was that I would complete my AACI as quickly as possible," says the highly motivated 44-year-old, who earned an MBA at McMaster University in 1983, a year after completing his B.B.A. (Hon) from Wilfrid Laurier University.

After graduation, he spent eight years working in leasing and marketing for an Ontario real estate developer who built industrial office buildings and plazas. This was followed by two years with Trizec Properties, Inc., overseeing office leasing in Toronto's downtown core. Then, after two years of managing London Life's national real estate portfolio, Griesbaum moved to Kitchener-Waterloo to take a job as Senior Vice-President and General Manager of a residential land development company. During his tenure, he started investing in a variety of buildings, houses and semi-detached residences. But, after nine years of developing residential subdivisions of approximately 1000 lots per year, Griesbaum felt it was time for a change.

"It was always my dream to have something that would give me a professional edge in real estate," he recalls. "I felt that the AACI would be the only professional designation I could use to enhance the experience I have in real estate. I also knew that it was something that would interest me and that I could do for the long term."

Griesbaum wasted no time. Between 2002 and 2003, he completed nine courses in the regular AACI program through UBC. Then, last September while reading the *Canadian Appraiser* maga-

“It was always my dream to have something that would give me a professional edge in real estate. I felt that the AACI would be the only professional designation I could use to enhance the experience I have in real estate.”
– **James Griesbaum**

zine, he noticed an insert about the PGCV program and realized that he had completed all six courses. Already in the middle of articling with the Kitchener-Waterloo firm M. Michel & Associates Ltd., he is well on his way to joining a handful of local AACIs.

"I think that more people at the university level should be made aware of the new program and the opportunities it presents," notes Griesbaum, whose 17-year-old son will enter university this fall. He is encouraging his son to take courses that will keep the appraisal option open in the future.



Like Griesbaum, **Christian Piché** sees the appraisal profession as one that presents plenty of opportunity. "It is a profession that will allow me to work as long as I want," says Piché, who considered other options such as starting a small business before choosing valuation. "There were a number of things that I could do. This one dovetailed nicely with my background, my capabilities, my profile and

the type of work I like to do."

For more than 25 years, Piché managed hotels and private clubs around the world. Last summer, returning from overseas, he decided to set down roots in Vancouver. "I was back in Vancouver with a lot of skills and nowhere to apply them," says Piché, who has a B.B.A. from Simon Fraser University. "Then, while surfing the UBC web site, I stumbled on this post-graduate valuation program. As I started reading about it, I realized it made sense for me."

Piché enjoys the analysis, research and multidisciplinary aspect of the profession. Appraising appeals to his innate curiosity. "Appraisal is about much more than appraising a house," he notes. Although a sub-section of valuation applies to the hotel industry, whether he specializes in the hospitality side of the profession or on more general commercial valuations is something he has yet to determine.

"Either way, in Vancouver, there are going to be more opportunities in the appraisal industry than in hotel management," adds Piché. At this point, he has completed three of the required courses

I would not have considered the appraisal profession if I had to do a full course load after already completing a business degree.
– **Christian Piché**

for the PGCV, and, as a candidate member, is searching for a place to do his articling.

He found that the two electives he has taken – Commercial Property Analysis and Urban and Real Estate Economics – were very hands-on and practical. Piché looks forward to the Guided Case Study required to qualify for AACI designation. He is eager to go through a full narrative appraisal that combines critical thinking with research, organizing information and writing a convincing report.

As a full-time student, he would have preferred to continue taking courses right into the summer, if they had been available. Nevertheless, he is glad for the fast track program. At one point, he had considered taking an MBA, but decided against investing that amount of time in further education. Adds Piché: "I would not have considered the appraisal profession if I had to do a full course load after already completing a business degree."



Judy Balombin feels the same way. She knew that UBC offered courses in appraisal, but it was only when she saw the PGCV program in the university calendar that she seriously considered a career in valuation. "I already have a commerce degree," she explains. "Doing the full AACI program would have been a repeat of the commerce degree. This way, I only need to take what is essential to valuing real estate."

tial to valuing real estate."

Like Piché, she is pleased that the courses are practical and focused. "I have always been interested in real estate," says Balombin, who recently obtained her real estate licence. "I feel that combining my education and past experience with appraising is a good fit." She obtained a B. Comm. from the University of Alberta in 1991. Her professional life has included communication, marketing and business analysis. During her different careers, interactions with appraisers piqued her curiosity about the profession.

"I am more interested in the commercial side, particularly investments," notes Balombin, who presently lives in Edmonton. "I am hoping this training might help me start my own business down the line." If the opportunities for self-employment are attractive, so is the prospect of being able to set her own pace. Balombin points out that the profession allows its members to make a living while working as much or as little as they want. Presently, she is looking

I feel that combining my education and past experience with appraising is a good fit.
– **Judy Balombin**

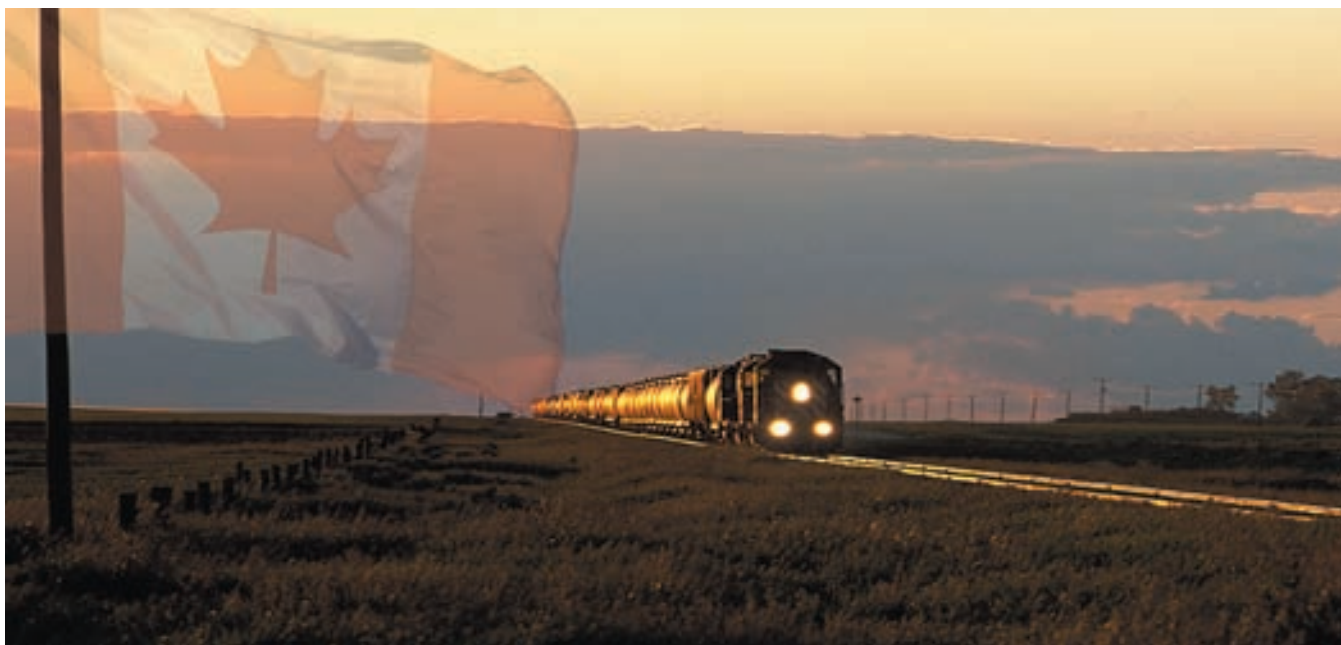
for a mentor with whom she can increase her confidence and ability while still maintaining some balance in her life.

Despite their varied ages and backgrounds Deakin, Griesbaum, Piché and Balombin all see appraising as a profession that allows for a large degree of self-determination. The post-graduate valuation program is ideal for those who want to incorporate their prior education and background into their new career. With the focused, fast track format of the PGCV, they are well on their way.

For further information regarding the PGCV, please refer to either of these web sites:

- UBC/AIC Post-Graduate Certificate in Real Property Valuation (PGVC) http://www.sauder.ubc.ca/realestate/programs/aic/index_pgcvcfm
- Appraisal Institute of Canada (AIC) Distance Education Program <http://www.sauder.ubc.ca/realestate/programs/aic/index.cfm>

Filogex Ad #7



Best practices for valuation of specialized federal real property

“The five best practices that will result from this study will state the principles and methodologies to guide the valuation of each category of specialized federal real property.”

Every year, the federal government pays in excess of \$400 million to municipalities across Canada under the authority of the *Payments in Lieu of Taxes Act 2000*. While the federal government is exempt from local taxation, it voluntarily makes these payments to help pay the cost of local government in the municipalities where it owns property.

Federal payments in lieu to taxes (PILT) are similar to real property taxes paid by private property owners, with the amount of the payment based on an assessment of property value. Property valuation for PILT purposes is expected to be based on established valuation principles, and should be consistent with local valuation practices used for other similar properties. However, this is complicated by the fact that many government special purpose properties have no true equivalent elsewhere in terms of their essential characteristics. This makes

valuation difficult and contentious, and has resulted in numerous disputes over property valuation.

To help reduce the number of valuation disputes, and to improve the predictability of the payments made under the PILT Program, the Appraisal Institute of Canada (AIC) and the Ordre des Évaluateurs Agréés du Québec (OEAQ) are jointly developing ‘best practices’ for the valuation of specialized federal real property for assessment purposes. Funded by Public Works and Government Services Canada (PWGSC), this initiative focuses on five categories of specialized federal real property, including ports, historic sites, national park wilderness areas, military bases and penitentiaries. The five best practices that will result from this study will state the principles and methodologies to guide the valuation of each category of specialized federal real property.

An impressive amount of work has

“The rigour of this process has contributed to the success in developing best practices that embody ‘world class standards’ in the field of property valuation.”

been accomplished to date on this initiative. The first step in the process was a background study, undertaken by Professor James McKellar of the York University School of Business. This study examined provincial assessment legislation and related jurisprudence with respect to the identified specialized properties, and served as a key reference document for the development of the best practices.

Following the completion of the background study, the Altus Group, a consulting firm specializing in real property appraisals, was selected by the Steering Committee, through an open tendering process, to develop draft best practices for each of the five categories of specialized real property. The first three draft best practices, for ports, historic sites and national park wilderness areas, were completed in May 2003, and were subsequently distributed to industry stakeholders for review and comment. The last two draft best practices, for military bases and penitentiaries, were completed in March 2004, and will be released for stakeholder consultation in the spring of 2004.

The stakeholder consultation process has been a particularly important part of developing the best practice documents. The consultations have involved seeking the input and hearing the concerns of all stakeholder groups equally. Extensive, open and fair consultations are critical if the best practices are to enjoy the support of the diverse stakeholder communities. To date, the response from stakeholders has been outstanding in terms of the value and perceptiveness of the comments that have been received. This input has raised the quality of the best practices, and will better position the best practices to serve as an authoritative standard for the valuation of special purpose properties.

The final stage in the process is to test the best practices through the development of case studies, and to incorporate the lessons learned through the case studies into the final best practice documents. The case studies are intended to apply the best practice guidelines in a representative situation for each of the categories of specialized real property. They demonstrate how effective the best practice guidelines are in providing useful direction to practitioners in the assessment of special purpose properties. The case studies evaluate the best practices against criteria such as effectiveness, performance, ease of use and consistency of results, and will point out any final adjustments or improvements that are required to the best practices. As of April 2004, case studies are complete, or are nearing completion, for ports, historic sites and national park wilderness areas. It is expected that case studies for military bases and penitentiaries will be completed by the fall of 2004.

Following the completion of the case studies, and the final revision to the best practices to reflect lessons learned, the development process will be finished, and the best practice documents will be submitted to the AIC and OEAQ for their final approval and acceptance. This will mark the completion of this project, and is expected for late 2004 or early 2005.

The development of the five best practices has been an important and challenging initiative for the AIC, the OEAQ, and for the Steering Committee that has been directing the process since its initiation. The Steering Committee, assisted by project manager Goss Gilroy Incorporated, has worked with all stakeholder groups, respected all points of view, and been driven to produce the highest quality product possible. The process of developing the best practices

has emphasized solid research, the application of valid appraisal approaches, and extensive consultation with all stakeholders.

The Steering Committee and the Project Management Team would like to sincerely thank all of the individuals and organizations that have contributed time and effort towards the success of this project. While it has been clear that there is a wide range of opinions concerning property valuation, the Steering Committee has consistently sought a balanced perspective that is fair and equitable to all parties, and is based on good appraisal practices. The Steering Committee is strongly of the view that the rigour of this process has contributed to the success in developing best practices that embody ‘world class standards’ in the field of property valuation. 🍷

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Why standards?

While the vast majority of Appraisal Institute of Canada (AIC) members understand and appreciate why we have a set of standards, there are some appraisers and users of appraisers' services who question the motivation behind a structured set of 'rules.' Some individuals are of the opinion that these rules only infringe on their ability to conduct their business.

Some of the reasons for having standards in the first place are to ensure:

- common understanding in such things as language and practices;
- a consistently high quality of services provided;
- high levels of competence; and
- that an association's member can be held accountable for their professional actions.

These aims are laudable and the development of the *Canadian Uniform Standards of Professional Appraisal Practice* has undoubtedly helped in the areas of real property valuation and consulting. First, AIC members have a base set of guidelines to follow. This is evident, to some extent, by the generally consistent formats of written appraisal reports. Second, users of members' services see and expect consistency, not only in reports, but also in methodology and valuation techniques undertaken in an assignment. Anyone who has been appraising for even a short period of time will know that employers and/or clients can become confused when confronted with an 'out of the ordinary' appraisal or consulting report.

In this and subsequent columns, we will address the *Standards* that AIC has in place and attempt to provide guidance to members on how they can effectively conduct their business while still adhering to the minimum principles that exist. The Standards Committee has long held the opinion that the *Standards* are there for the benefit of members and users of members' services and not to hinder good business practices.

Let us first look at the *Ethics Standard*. Perusal of the 11 rules in the 2004 edition of the *Ethics Standard* leads one to the conclusion that most are obvious provisions that should apply to any professional. A foundation of our *Standards* is that our members must at all times act in a manner that is not misleading. The old adage "Say what you see and see what you say" holds true. Rule 2 (line 115) specifically states the "do not mislead" principle. Unquestionably, this rule cannot be cited as being a hindrance to an individual's business practice. Anyone who feels that way will have difficulty upholding the *Code of Ethics* the AIC has recently adopted.

Rule 3 (line 117) introduces the 'reasonable appraiser' concept. This rule does not hamper one's ability to practice a valuation or consulting service. Its intent is to state that a member should not do anything in an assignment that other appraisers could not support. There must be a rational, generally acceptable foundation for an analysis or opinion. If a member is asked to provide a service that does not adhere to this basic principle, then the member should be suspect of the motives of the client.

Rule 8 (line 129) deals with client confidentiality issues. This rule is frequently misunderstood and misapplied. Trust is a foundation of our chosen profession. When dealing with employers or independent clients, there is an expectation from those parties that information provided to an appraiser or consultant will be held in confidence. Is this an unrealistic expectation? Doctors and lawyers have long held steadfastly to the client or patient confidentiality matter. The *Standards* state that information provided to a member for use in an assignment must be kept confidential unless that information is generally available to the public. For example, the sale price of a property can be revealed to others if that price could be obtained by conducting a title search or real estate board query. The specifics of a property rent roll would not generally be available to the public so that data could not be revealed to others,

including other AIC members or business associates. Of course, if the provider of the information provides permission to reveal that information, then there is no further restriction on the member. Frequently, a member will use data received in conjunction with one assignment in the conduct of a subsequent but similar assignment. Care must be taken in this practice but there are ways that this can be achieved. For example, 'de-identifying' the data, but still relying upon it in the formation of analyses and opinions, is possible.

Most of the other rules are, we expect, clear and require no further comment. The last rule concerning contingent payment for assignments has been discussed in prior columns. The *Appraisal Standard* will be discussed in forthcoming columns.

As always, members are invited to share concerns or ask questions of the Standards Committee. Communications should be directed through the national office in Ottawa. 🍷

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Pourquoi des normes?

Bien que la grande majorité des membres de l'ICE comprennent et apprécient pourquoi nous avons des normes, il y en a, ainsi que des utilisateurs de nos services qui demandent pourquoi avoir un ensemble structuré de « règles ». Certains sont d'avis que ces règles ne font que nuire à leur aptitude de mener leurs affaires.

Quelques raisons pour l'application de normes incluent, en premier lieu :

- une compréhension commune, entre autres choses, du libellé et des pratiques;
- la prestation de services de qualité élevée;
- des niveaux élevés de compétence;
- l'assurance que les membres d'une association soient responsables de leurs actes professionnels.

Ces objectifs sont certes louables et l'élaboration des Normes de pratique professionnelle en matière d'évaluation au Canada a sans doute aidé dans les secteurs de l'évaluation et de la consultation immobilière. D'abord, les membres ont un ensemble de lignes directrices de base qu'ils doivent respecter. Dans une certaine mesure, cela est évident par la normalisation générale des rapports d'évaluation. Ensuite, ceux qui utilisent les services des membres constatent et s'attendent à une cohérence non seulement dans les rapports, mais aussi dans les méthodes et techniques d'évaluation appliquées dans le cadre d'un travail. Quiconque œuvre dans le milieu de l'évaluation immobilière, même depuis un court moment seulement, sait que les employeurs et(ou) les clients peuvent être confus devant un rapport d'évaluation ou de consultation qui « sort de l'ordinaire ».

Dans le présent article et ceux à suivre, nous parlerons des normes en place à l'ICE et tenterons d'expliquer aux membres comment ils peuvent effectivement mener leurs affaires tout en les respectant. Depuis longtemps, le Comité des normes est d'avis que ces règles sont en place pour aider les membres et ceux qui utilisent leurs services plutôt que de nuire à de bonnes pratiques d'affaires.

Regardons d'abord les normes d'éthique. L'examen des onze règles dans l'édition 2004 des normes d'éthique porte à la conclusion que la plupart sont

des dispositions qui s'appliquent de toute évidence à tout professionnel. L'une des assises de nos normes est que les membres doivent en tout temps agir d'une façon qui n'induit pas en erreur. Le vieil adage qui dit « Dites ce que vous voyez et voyez ce que vous dites » est vrai. La règle 2 (ligne 115) reflète simplement le principe de ne « pas induire en erreur ». Il ne fait aucun doute que cette règle ne peut être interprétée comme nuisant à la pratique d'une personne. Ceux qui pensent de cette façon auront certes de la difficulté à respecter le Code d'éthique récemment adopté par l'Institut.

La règle 3 (ligne 117) introduit le concept de « l'évaluateur raisonnable ». Cette règle ne nuit aucunement à la prestation de services en matière d'évaluation ou de consultation. Elle dit simplement qu'un membre ne devrait pas faire quelque chose dans le cadre d'une évaluation qui ne pourrait être appuyée par les autres évaluateurs. Une analyse ou une opinion doit prendre appui sur des principes logiques et généralement acceptés. Si un membre est appelé à fournir un service qui ne répond pas à ce principe de base, le membre devrait douter du travail demandé et des motifs du client.

La règle 8 (ligne 129) traite des questions de confidentialité touchant la clientèle. Elle est souvent mal comprise et mal appliquée. La confiance est également l'une des assises de notre profession. Au moment de traiter avec des employeurs ou des clients indépendants, ceux-ci s'attendent à ce que l'information transmise à l'évaluateur ou au consultant reste confidentielle. S'agit-il d'une attente irréaliste? Les médecins et les avocats respectent et appliquent depuis longtemps le principe de la confidentialité avec leurs patients ou leurs clients. Les normes stipulent que l'information fournie à un membre à des fins d'utilisation dans le cadre d'un travail doit demeurer confidentielle à moins que ladite information soit généralement disponible au public. Par exemple, le prix de vente d'une propriété peut être révélé à d'autres parties si ce prix est obtenu via une recherche de titres ou une demande présentée à la Chambre immobilière. D'ordre général, les détails concernant le fichier des loyers d'une propriété ne serait pas rendu public de sorte que les renseignements ne puissent

être révélés à d'autres parties, même pas à d'autres membres de l'ICE ou à des associés d'affaires. Bien entendu, si la partie qui fournit l'information accorde sa permission de révéler l'information, le membre devient libre de toute autre restriction. Souvent, un membre utilisera l'information obtenue lors d'une évaluation pour l'aider dans un travail ultérieur similaire. Cette pratique exige un certain soin, mais il existe des façons pour ce faire. Par exemple, il est possible de « dépersonnaliser » les données et l'utiliser ensuite dans des analyses et la formulation d'opinions.

Nous croyons que la plupart des autres règles sont claires et qu'elles ne requièrent aucun autre commentaire. La dernière règle qui concerne le paiement conditionnel pour certains travaux a été traitée dans des articles précédents. Dans les articles à venir, nous parlerons des normes d'évaluation.

Comme toujours, les membres sont invités à adresser leurs préoccupations ou leurs questions au Comité des normes. Leurs demandes devraient être dirigées au bureau national, à Ottawa. 🍁

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Responsibilities and member issues when co-signing reports

AACI	Can sign own reports Can co-sign CRA and Candidate reports
CRA	Can sign own reports for residential appraisals in accordance with the Standards Can co-sign Candidate reports for residential appraisals in accordance with the Standards
Candidate	Requires a co-signature of an AACI or CRA for all reports

Members are sometimes unclear about their individual responsibilities in the role of a co-signer and some members insist that the rules for co-signing need to be tightened.

Members of the Appraisal Institute of Canada (AIC) are permitted to co-sign reports prepared by other AIC members. Rules relating to this activity are provided in the *Canadian Uniform Standards of Professional Appraisal Practice 2004 (The Standards)* and the Professional Liability Insurance Program (PLIP) materials.

Where insurance coverage is provided

Candidate members must have a co-signer for all reports. A CRA can co-sign a Candidate's report that involves the appraisal and valuation of individual, undeveloped residential dwelling sites and dwellings containing not more than four self-contained family housing units. An AACI must co-sign reports of Candidate and CRA members where the nature of the assignment exceeds the scope of a CRA.

The Standards require a report to include a Certification page and it must clearly specify which individuals did and which individuals did not make a personal inspection of the property. The review appraiser ensures that the report meets the requirements of *The Standards*. Furthermore, the co-signing/review appraiser is ultimately held responsible for the entire report.

In the event that the PLIP is required to pay indemnity on a claim involving a co-signed report, the co-signer/review appraiser will be expected to contribute the deductible if there is a dispute between the appraisers/firm.

Occasionally, two or more AIC designated members, acting as joint authors of a report, sign a Certification page. In this situation, each is responsible for the entire report. In the event that the PLIP is required to pay indemnity on a claim involving joint authors of a report, each appraiser will be expected to contribute the deductible if there is a dispute between the appraisers/firm.

Where insurance coverage is not provided

It is important for members to understand where PLIP will deny insurance coverage in a co-signature situation. The two most obvious examples are when:

- a non-fee member co-signs a fee report; and
- one or more of the co-signatories is not a member of the AIC.

PLIP statistics

The Professional Liability Insurance Program statistics indicate that co-signing accounts for approximately 27% of all claims.

Candidate/CRA	6.62%
Candidate/AACI	15.72%
CRA/AACI	4.59%

Candidates represent 33% of the AIC fee category membership. This indicates that co-signing of reports does not present an inordinate amount of claims activity. To ensure that the level of claims activity does not increase, co-signing/review appraisers must continue to provide adequate supervision to those members who are completing assignments.

Letter of Transmittal

Certain institutional and corporate clients maintain a list of 'approved' appraisers. Sometimes, another designated appraiser within the firm takes carriage of the file. Although the 'approved' appraiser has not had any involvement in the assignment, he or she co-signs only the Letter of Transmittal to appease the client.

The Standards state that, if the Certification bears only one signature, then that individual is responsible for the entire file. The 'approved' appraiser might hold a false sense of security about not being drawn into a claim. In an ever-increasing litigious society, it is suffice to say that co-signers of a report, if only on a Letter of Transmittal, will inevitably be named in any claim. *The Standards* do not speak directly to this situation, but, for comparison, the Appraisal Foundation in the United States comments under *USPAP Standards Rule 2-3* that "an appraiser who signs any part of the appraisal report, including a Letter of Transmittal, must also sign the certification."

Remote co-signatories

The requirement for a co-signature sometimes necessitates the co-signing of a report from a member who does not ordinarily conduct business in that marketplace. A typical example is a Candidate member practicing in a remote location where a designated member is not available or agreeable to be a co-signer/review appraiser. Although nothing in the current program prohibits this activity, members must be particularly cautious in this type of arrangement.

Limiting the number of trainees

Some AIC members have expressed concern about the ratio of Candidates to designated appraisers working within the same firm. Again, it is the professional responsibility of the co-signer/review appraiser to devote sufficient time and training to the Candidate member.

But, the question remains, how many is too many? Our friends to the south have been discussing this issue and, in fact, only a few months ago, the Florida Real Estate Board adopted a resolution that limits to four the number of trainees an appraiser may supervise. This might well serve as a guide to employers who dedicate most of their time to training.

Summary

Co-signing reports carries with it a serious responsibility and high duty of care. Be sure all signatories to every report are members of the Appraisal Institute of Canada and properly registered in the Professional Liability Insurance Program. 🍷

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Marshall & Swift DPS #9

**Marshall & Swift
DPS
#9**

Avoiding the professional practice process

Since becoming the Appraisal Institute of Canada's (AIC's) Counsellor of Professional Practice some 10 months ago, I have reviewed hundreds of actual and potential complaints against our members. As I labour through the files containing alleged infractions of our *Ethics and Canadian Uniform Standards of Professional Appraisal Practice* rules, I cannot help noticing some common themes emerging. The purpose of this and subsequent articles is to offer suggestions that may help you avoid a trip to the Post Office to retrieve that dreaded 'CONFIDENTIAL' letter advising that a complaint has been filed and an investigation is underway.

Communicate with the client

Many of our formal complaints begin with a disagreement between the appraiser and client over the value of the appraised property. Does that sound familiar? While we make it clear at the outset that the AIC does not arbitrate value or provide retribution, the complainant will sometimes press on, arguing that the AIC's Standards surely must have been breached for the "appraisal to be this far off." Many times it is a case of the complainant not understanding the appraisal process and/or



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having a preconceived notion of the value that he or she expects the appraiser to approximate. Usually, the Professional Practice process is activated when the client feels the member will not give proper consideration to his or her concerns.

Most complaints of this nature originate with individuals who rarely use the services of a professional appraiser and I have found that many 'formal complaints' could be avoided if we would only go the extra mile in our dealings with dissatisfied clients. No matter how unreasonable or misinformed their arguments, hear them out and patiently explain the procedures and methodologies that have been used. Above all, when an actual error or over-

sight is brought to your attention, do not be afraid to admit that you have missed something and make the correction. Of course, this is not to suggest that you should let yourself be pressured into changing a report just to make the client happy. However, I find we too often inflexibly adhere to our original conclusion and refuse to make corrections even when we have clearly made an error or omitted an important piece of data.

Co-signing reports

Co-signed reports are still the source of many complaints and file openings. It is critical that we understand that placing our signature on any report places us in a position of responsibility. This means that, when you as an AACI or CRA co-sign a report with another appraiser, you are accepting responsibility for its contents. Our *Canadian Uniform Standards of Professional Appraisal Practice* address this matter in the Appraisal Standard Comments (lines 1768 to 1791). Accordingly, if you ever co-sign reports, please make sure you are thoroughly familiar with the requirements. It is clear from this section that merely signing a report prepared by an assistant is not appropriate. You must be familiar with and accept responsibility

“We too often inflexibly adhere to our original conclusion and refuse to make corrections even when we have clearly made an error or omitted an important piece of data.”

for the report. As the appraiser with the designation, you have an equal degree of responsibility regarding the content and conclusions in the report and an even higher onus with respect to its conformance to the *Canadian Uniform Standards of Professional Appraisal Practice*.

CRA and co-signatures

The matter of what CRA members can and cannot sign is still the basis of far too many cases. It is really very simple. Holders of the CRA designation require an AACI co-signer when completing an appraisal, review, or consulting assignment where the subject is anything except a single-family, duplex, triplex or four-unit residence or a single, undeveloped residential building site (see Ethics Standard Comments – lines 498 to 500). Care must be exercised when the land size is something other than a typical building lot. If you are dealing with a house and a few acres, the determining factor is highest and best use. If the land size is typical of single residential holdings in the area and does not have subdivision, agricultural or other

use potential, then the assignment may be completed by a CRA alone. Remember, if you hold the CRA and are participating in a report that involves a property other than those permitted under the Ethics Standards, two conditions apply

- (1) the report must be co-signed by an AACI
- AND**
- (2) the report must be issued without reference to the CRA designation (see lines 502 to 504).

Co-signing with non-member

While the professional appraisal standards do not preclude CRAs and AACIs from co-signing reports with individuals who are not AIC members, our Professional Liability Insurance Program (PLIP) does not cover assignments that are conducted in this fashion. Our *Canadian Uniform Standards of Professional Appraisal Practice* require that, where an assignment is not covered by our Professional Liability Insurance Program (PLIP), the member must make it clear to all involved that no recourse to the program exists. As well, the covering

letter and report must contain an Extraordinary Limiting Condition to that effect (see Ethics Standards Comments – lines 546 -551).

Conclusion

Due to space limitations, this article has referred only to two general areas in which extra attention would significantly reduce the likelihood of a complaint being filed. It is my goal to add to this list in future issues of this magazine. In the meantime, if you have a question or are not quite sure about a Professional Practice matter, please take the time to find out. It is much better to do so before you submit the assignment rather than after. There is a Frequently Asked Questions (FAQs) section pertaining to Professional Practice on the Members Only, AIC web site: http://www.aicanada.ca/e/members/members_faqs_ppc.cfm Please refer to it as there is a good chance you may find your answer there. Otherwise, email me at counsellor@aicanada.ca or, if it is urgent, call me (toll free) at 866-450-9647. If I do not have the answer, I will get it for you. ☺

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Éviter le processus de pratique professionnelle

Depuis ma nomination comme Conseiller en pratique professionnelle il y a dix mois, j'ai eu l'occasion de me pencher sur des centaines de plaintes réelles et potentielles à l'endroit de nos membres. À mesure que je progresse dans ces dossiers contenant des soi-disantes infractions au Code d'éthique et aux Normes de pratique professionnelle en matière d'évaluation au Canada, je ne peux que constater des thèmes communs. Le but de cet article et de ceux qui suivront est d'offrir quelques suggestions qui pourraient éviter une sortie au comptoir postal où vous attend une lettre CONFIDENTIELLE tant redoutée à l'effet qu'une plainte a été logée et qu'une enquête a été amorcée.

Communiquer avec le client

Un grand nombre de plaintes officielles commencent par un désaccord entre l'évaluateur et le client au sujet de la valeur de la propriété évaluée. Cela vous dit quelque chose? Bien qu'il soit clair dès le début que l'ICE ne juge pas la valeur ou qu'il n'offre aucune rétribution, la partie demanderesse poursuit en soutenant qu'une infraction aux normes de l'Institut a certainement été commise pour que « l'évaluation soit si fautive ». Souvent, il



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s'agit d'un cas où la partie demanderesse ne comprend pas le processus et(ou) possède une notion préconçue de la valeur que l'évaluateur devrait déterminer. Habituellement, le processus de pratique professionnelle est lancé lorsqu'un membre ne considère pas adéquatement les préoccupations du client.

La plupart des plaintes de cette nature sont logées par des gens qui utilisent rarement les services d'un évaluateur professionnel. J'ai découvert que bon nombre de « plaintes officielles » pourraient être évitées si l'on s'efforçait de mieux traiter avec les clients insatisfaits. Peu importe la mesure dans laquelle leurs arguments sont déraisonnables ou mal informés, vous devriez

les écouter et leur expliquer patiemment les procédures et méthodes qui ont été utilisées. Avant tout, lorsqu'une erreur ou une omission est portée à votre attention, n'hésitez pas à admettre que vous avez oublié quelque chose et apportez la correction qui s'impose sans tarder. Bien entendu, cela ne signifie pas de modifier le rapport simplement pour que le client soit satisfait. Malheureusement, je suis d'avis que trop souvent, nous maintenons nos conclusions originales et refusons d'apporter des corrections, même lorsqu'il est clair que nous avons commis une erreur ou omis une importante pièce d'information.

Cosignature des rapports

Les rapports cosignés sont encore une source de nombreuses plaintes et d'ouverture de dossiers. Il est important de bien comprendre que la signature d'un rapport indique que nous en sommes responsables. Cela signifie que lorsque vous signez un rapport avec un autre évaluateur à titre d'AACI ou de CRA, vous acceptez la responsabilité de son contenu. Les Normes de pratique professionnelle en matière d'évaluation au Canada traitent ce point dans les commentaires sur les normes (lignes 1768 à 1791). Ainsi, si vous devez cosigner un rapport, assurez-

Trop souvent, nous maintenons nos conclusions originales et refusons d'apporter des corrections, même lorsqu'il est clair que nous avons commis une erreur ou omis une importante pièce d'information.

Si vous devez
cosigner un
rapport, assurez-
vous de bien
connaître les
exigences de
cette pratique.

vous de bien connaître les exigences de cette pratique. Il est clair, selon cette section, que la simple signature d'un rapport préparé par un adjoint est inappropriée. Vous devez connaître son contenu et en accepter la responsabilité. À titre d'évaluateur détenant la désignation, vous avez un niveau égal de responsabilité relativement aux conclusions contenues dans le rapport et même plus de responsabilités en ce qui touche sa conformité aux Normes de pratique professionnelle en matière d'évaluation au Canada.

CRA et cosignatures

La question de savoir ce que peuvent ou non signer les membres CRA est toujours à la base d'un trop grand nombre de cas. La réponse est vraiment très simple. Les titulaires de la désignation CRA doivent obtenir la cosignature d'un AACI lorsqu'ils font une évaluation, un examen ou une consultation en rapport à toute propriété sauf une résidence unifamiliale, un duplexe, triplex ou un site d'habitation de quatre unités d'habitation familiales distinctes ou un site d'habitation résidentielle non aménagée (v. commentaires sur les Normes d'éthique, lignes 498 à 500). Il faut faire preuve de prudence lorsque la taille du lot diffère de celle d'un terrain typique à bâtir. S'il s'agit d'une maison et de quelques acres, le facteur déterminant sera alors l'utilisation optimale. Si la taille du lot est typique d'une résidence unifamiliale dans la région et qu'il n'y a pas de lotissement, d'utilisation agricole ou autre,

le travail peut être effectué par un CRA agissant seul. Rappelez-vous que si vous détenez la désignation CRA et que vous participez à un rapport qui vise une propriété autre que celles autorisées dans les Normes d'éthique, deux conditions doivent être respectées :

- (1) le rapport doit être cosigné par un AACI
- ET**
- (2) le rapport doit être émis sans référence à la désignation CRA (v. lignes 502 à 504).

Cosignature avec des non-membres

Bien que les normes de pratique professionnelle n'empêchent pas les CRA et les AACI de cosigner des rapports avec des gens qui ne sont pas membres de l'ICE, notre programme d'assurance-responsabilité professionnelle (PARP) ne couvre pas les travaux effectués de cette façon. Les Normes de pratique professionnelle en matière d'évaluation au Canada requièrent effectivement que lorsque des travaux ne

sont pas couverts par le PARP, le membre doit préciser clairement à tous les intéressés que le programme ne s'applique pas ET la lettre d'accompagnement et le rapport doivent contenir une clause dérogatoire à cet effet (v. les commentaires sur les Normes d'éthique, lignes 546 à 551).

Conclusion

Compte tenu de l'espace limité dont je dispose, le présent article traite uniquement de deux cas où une attention supplémentaire peut réduire de façon importante la probabilité d'une plainte. Mon objectif est d'ajouter à cette liste dans les prochains numéros de cette revue. Entre-temps, si vous avez des questions ou que vous n'êtes pas certain d'un sujet en matière de pratique professionnelle, veuillez prendre le temps de vous informer. Il vaut mieux le faire avant de compléter un travail que de le faire après. Il y a une Foire aux questions (FAQ) sur la pratique professionnelle dans la section des membres seulement du site web de l'ICE à l'adresse http://www.aicanada.ca/e/members/members_faqs_ppc.cfm

Veuillez consulter cette section puisqu'il y a de bonnes chances que vous y trouverez la réponse à votre question. Sinon, veuillez m'adresser un courriel à l'adresse counsellor@aicanada.ca ou si la situation est urgente, veuillez me joindre par téléphone, sans frais, au 866-450-9647. Si je ne peux répondre directement à votre question, j'obtiendrai la réponse pour vous. 🍷

Les Normes de pratique professionnelle en matière d'évaluation au Canada requièrent effectivement que lorsque des travaux ne sont pas couverts par le PARP, le membre doit préciser clairement à tous les intéressés que le programme ne s'applique pas ET la lettre d'accompagnement et le rapport doivent contenir une clause dérogatoire à cet effet.

CONTINUING PROFESSIONAL DEVELOPMENT

JOHN BRIDAL, MANAGER,
PROGRAM DEVELOPMENT, UBC REAL ESTATE DIVISION

The well-rounded professional

Real property valuation is a diverse field and the successful valuation professional needs broad capabilities combined with a specific focus. Anyone working with real property valuation needs to understand the foundations of economics, urban land theory, finance, statistics, law, and construction. But, to thrive in the increasingly competitive real estate market, the valuer must be open to adapt and change technical skills for newly emerging specializations. Success in providing real property advice requires a well-rounded professional who is adaptable, analytical, capable, and creative.

Stanley Hamilton's paper *The Skill Set Needed to Survive* outlined what he called "meta-skills" necessary for success^[1]. To provide effective advisory services, the valuation professional needs to be able to:

- effectively communicate with clients and project team members;
- think strategically and critically;
- carefully define problems;
- develop and support effective arguments;
- conduct effective research;
- select and apply the most appropriate analytical methodologies to synthesize best conclusions that enhance a client's real estate decision analysis; and
- act as a change agent.

While aspects of valuation require technicians, arguably it is these 'soft skills' that elevate the practitioner into professional status. This article will outline how the UBC/AIC education program focuses on 'meta-skills' and focus on the benefits of this approach for candidates and accredited members alike.

Success in providing real property advice requires a well-rounded professional who is adaptable, analytical, capable, and creative.

The UBC/AIC education program philosophy: a river running broad and deep

At surface level, the UBC/AIC education program focuses on real estate content, teaching the principles of value and their practical application. To develop into a strong technician, one needs solid technical know-how, and our program provides a broad coverage of this diverse area. We start with the basics and lead into the specifics of unique assignments and innovative approaches.

But, there is more to the program than what appears on the surface. Because valuation is so diverse, there is no possibility of a single educational program teaching everything there is to know. This necessitates an alternative strategy: rather than try to cover every possible topic, we focus instead on developing students' capabilities to learn on their own, supporting the continuing professional development principle. While the UBC/AIC program certainly provides technical knowledge, it also aims to develop higher order skills, namely the ability to research and think critically. Specifically, our goal is to help students understand how to pose a problem, find their own data, critically analyze it, make a

decision, and communicate the results.

This approach is challenging for both students and the educator. Content transmission is relatively simple in education, but fostering higher order cognitive abilities is a challenge. Our courses must be creative in their design and we have to sacrifice some content in order to allow students sufficient time to work through problems on their own. We need keen and capable tutors who are willing to work with subject matter that is dynamic, subjective, and open to both discussion and interpretation. Our projects are open-ended and large-scale. We expect students to go out into the 'real world' and see how course concepts relate to actual real estate problems, gaining a deeper understanding than can be gained from simply reading a textbook and writing an exam.

Our students are challenged to take on a large degree of responsibility for their own learning. Students must be mature, focused, resourceful, creative, and, above all, have a positive attitude. The standard is set high: the courses are designed to challenge the ambitious students who are making an investment in a rewarding career. We expect our graduates to remember their time with UBC as intense and exceptionally challenging, but also relevant and very worthwhile in the end. UBC's motto is "Tuum Est" ("It is up to you") and we embrace this whole-heartedly. Students only gain what they are willing to invest.

Concluding thoughts for accredited members


Today's AIC candidate receives an education program that is both technically sound and focused on the 'big picture.' Where does this leave the long-standing accred-

ited member? The AIC's new mandatory Continuing Professional Development (CPD) program provides the impetus for your lifelong learning. Give yourself an honest critique of your own attributes and your professional needs. Do you need more expertise in some specific area of valuation? Do you need technical know-how in order to diversify your practice? Or, perhaps you are a strong technician, but could use some work on 'soft skills?' The CPD program is designed to be flexible, leaving your lifelong learning decisions to your professional judgement. Find courses that will broaden your skill set and enhance your multi-disciplinary opportunities.

The following are two recent developments that offer practitioners focused learning opportunities:

1. UBC's new *Advanced Studies in Real Estate* program offers real estate practitioners an opportunity to return for further study in specialized real estate topics (e.g., property development, appraisal, assessment, or management). The program is primarily aimed at graduates of UBC's Diploma in Urban Land Economics who wish to advance their studies into additional areas of expertise. Graduates of the AIC program who are seeking advanced learning are also ideally suited for this program. For more information, please visit the following web site: <http://www.sauder.ubc.ca/realestate/programs/ule/asre/index.cfm>
2. UBC will soon be offering a series of *Professional Development* short courses aimed at satisfying real estate practitioners' continuing education needs. The courses will be offered through distance education on a self-paced schedule, in 'bite-sized' lessons on specialized topics. Topics include business enterprise valuation, valuation of contaminated properties, hotel valuation, agricultural valuation, and additional topics coming soon. For more information, please visit these web sites: or http://www.aicanada.ca/e/members/members_faqs_cpd.cfm

End note:

^[1] Hamilton, Stan. *The Skill Set Needed to Survive*. Paper presented to World Valuation Congress. July, 2003. p.13. 

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Conveying appraisal's evolution to members, clients and stakeholders

Webster's dictionary partially defines the word communicate as: *to cause to be common to others, to impart as news, to bestow, to reveal, to share with others, to correspond.*

This is the ultimate goal of the Appraisal Institute of Canada (AIC) Communications Committee. Not only do we focus on communication within the organization, but also on communicating externally to the public at large and any stakeholder that would benefit from relying on our members' knowledge, professionalism, expertise and advice.

We are well on our way to improving internal communications with Communiqués, committee reports, and a user-friendly web site that allows us to follow current events and to post our concerns by way of the members' appraisal forum. I consistently utilize the web site to post my Continuing Professional Development (CPD) credits, follow forum topics, pay my dues and update my professional profile.

Our profession, like so many others, is undergoing rapid transformation. The ability to foresee this change, prepare for it, and be involved in its generation rather than merely reacting to it is a challenge that is being met head on. We are charged with conveying the AIC's evolution to our members and to our respective clients and stakeholders.

Our committee is also working on AIC web site postings of testimonials by users of AIC member services to show the advantage of retaining the services of Canada's preeminent valuation professionals. These testimonials will be for any type of real estate valuation or consultation, so, if you have a client that would like to make his or her satisfaction known, do not hesitate to contact one of the committee members.

Following our concentration on internal communication during the past two years,

we now plan to incorporate an element of external communications as well. Development plans are underway to deliver these external initiatives. Our media relations program is providing us with consistent returns. The media now approaches AIC as a resource on numerous matters, including professional opinions on home renovations, best rate of return for home improvements and general real estate valuation issues.

Our media plan for the upcoming joint conference with our American counterparts includes developing and distributing press kits, creating a media relations web page and media alerts, and establishing an on-site pressroom with AIC spokespersons available for media interviews.

Many of our members are facing competition from peers as well as other organizations and automated valuations. We will continue to monitor this situation and form a plan to promote the value-added proposition of utilizing professional designated members – a plan that emphasizes the significant value AIC members bring to the valuation practice.

Did you know that pdf files are not tamper proof? At a recent Board of Directors meeting, CEO Georges Lozano provided information on this subject and advised that he was evaluating alternative methods for electronic transmission of documents. One method is the encryption of a file before sending. The recipient of the document is provided with a password for accessing the file. This process assures the client that he or she is receiving a safe and protected document. The AIC is looking into setting up this service for interested members.

In the winter 2004 issue of *Canadian Appraiser*, my committee associate, Mike Garcelon reflected on the traditionally held belief that "appraisers are real estate's

best kept secret." But, those days are behind us. Professional valuers are taking their place on the stage of the rapidly evolving real estate marketplace and being recognized for the increasing depth and scope of their specialties. Keeping the image of this evolving valuation profession in the forefront of stakeholders' minds is high on our priority list as we continue to work on behalf of the membership.

This organization is made up of many members, coast-to-coast and abroad. We must all contribute something to the AIC to make it stronger and capable of meeting the needs of all. One of our greatest challenges is replacing member ambivalence with enthusiasm. Be proud of our Institute, the profession and your peers. **Please take the time to phone or email a member of this committee with your thoughts, concerns and IDEAS.** We are working for you the member, and we can achieve far more when we add your valuable input to our efforts. 🍷

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Distinguishing ourselves as a profession

The Appraisal Institute of Canada (AIC) must define, monitor and promote the unique body of knowledge that distinguishes our profession from others. We can accomplish this goal through education, experience and examination.

The amount of education, experience and examination required to demonstrate to the public that a group of experts are professional differs from group to group based on the associated risks. It is reasonable given the risks that medical doctors are trained for seven years. The risks associated with appraisal in Canada are similar to that of accountants and valuation organizations in other countries.

The University of British Columbia (UBC) and the Université du Québec à Montréal (UQAM) are our education providers. Primarily, the courses are offered via distance learning. Our education program is similar to that of other valuation organizations and financial professionals. The AIC requires similar prerequisites and a similar number of courses to those required for accounting designations. The content and rigor of our courses places us at an appropriate level when compared with others.

Other than content, the difference between the AIC's education program and the accountants' programs is largely one of availability. We have one provider in each official language. Many institutions offer the accounting programs. However, there are significantly more accountants than there are appraisers.

Education is the first part of a professional designation program; experience is the second. The intent of the

experience portion of the AIC's designation program is to incorporate knowledge through education with real-world know-how. Aldous Huxley said that "experience is not what happens to you; it is what you do with what happens to you."

The AIC's applied experience program offers an opportunity for candidates to gather experience in an enriching environment. The candidate has a relationship with the designated member who co-signs his/her reports. It is to the candidate and the designated member's benefit if the relationship is built on trust and mutual respect. In addition, there are many benefits to the candidate to have a mentor-like relationship with a well-respected real estate professional, other than his/her employer. It is always advisable to seek the counsel and guidance of others.

The AIC's applied experience program is similar to those of other valuation organizations and financial professionals, except that we require less practical experience than the other organizations. However, the majority of our candidates work at least four years prior to being designated. Working and taking courses while achieving a professional designation is common in accounting and other valuation organizations.


How does the AIC, as a group of experts, prove to the public that our members have obtained the knowledge and experience to be competent appraisers? Examinations are a way of showing that we have achieved the required level of education and experience.

Examinations are an area where we differ from other organizations. The Appraisal Institute US has a two-day comprehensive exam to receive the MAI designation, the CAs sit exams at the

end of each of the seven modules that are required learning. The CGAs sit five exams.

The AIC has added a written examination to the Standards seminar. We have the oral admissions interview before the Board of Examiners. We are investigating additional examinations as a part of the continuing professional development program.

Accounting may be a more black and white world than the one appraisers inhabit. Therefore, a rigorous set of exams alone may not be the most appropriate way for us to demonstrate competence. As members of the AIC, it is important for us to think about appropriate methods to show that we have the education and experience required of professionals.

We are the AIC, and it is up to members to define, monitor and promote our unique body of knowledge. 

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The elements of negligence and negligent misrepresentation



Negligence and negligent misrepresentation are important legal concepts that all professionals should be aware of because they can give rise to liability when all of their constituent elements are present in a particular situation.

Negligence

The purpose of lawsuits based on alleged negligence is to deter careless conduct and encourage responsible behaviour. A successful action in negligence requires the following elements:

- a duty of care between the parties;
- a breach of that duty; and
- damage resulting from that breach.

a) Duty of care

A duty of care is owed to people who might reasonably be injured if that duty was not observed. Appraisers may owe a duty of care to their clients if the clients rely on the skills of the appraiser when determin-

ing whether or not to make a purchase. In that case, it is reasonable for the appraiser to appreciate that, if the duty is breached, the clients may suffer losses.

b) Breach of the duty of care

A Court will decide if the duty of care has been breached by reference to the standard of care to which it chooses to hold the allegedly negligent party. Those norms are set by reference to how a reasonable person would act in the specific, unique circumstances. Negligence is always determined in context and, therefore, there is no absolute definition.

Industry standards/guidelines play an important role in setting the 'reasonable' standard of care. When dealing with a group of people, like appraisers, with specialized skills, the required level of competency will generally be based on what a reasonable person with those skills would have done in the circumstances.

c) Damages

A negligent act from which no damage arises cannot found a successful action. The claimant must prove both that he or she suffered loss, and that such loss was caused by the negligent act. To decide if the negligent act caused the loss the Court will apply the 'but for' test – if the loss would not have occurred 'but for' the negligent act, then the negligent act is the cause of the injury. If the loss would have occurred anyhow, no liability will arise.

Negligent misrepresentation

The following are required elements for a successful action for negligent misrepresentation:

- there must be a duty of care based on a 'special relationship' between the representor (the person making the representation) and the representee (the person

receiving the representation);

- the representation must be untrue, inaccurate or misleading. The failure to divulge needed information is an equally misleading representation;
- the representor must have acted negligently in making the representation. Liability will not attach if the information is accompanied by a relevant verification or a direction to verify the information;
- the representee must have relied, in a reasonable manner, on the negligent misrepresentation; and
- the reliance must have been detrimental to the representee in the sense that damages resulted.

A negligent misrepresentation may occur where an appraiser tells a client that property is in good condition or suitable for a specific purpose, knowing that statement to be untrue or if the appraiser reasonably should have known that the statement was not accurate. If the client then relies on this representation to their detriment the appraiser may be liable.

Two key elements in this action are establishing reliance on the statements, and that such reliance was reasonable. If the statements were made in the course of normal business dealings, it will usually be reasonable for a client to rely on them.

Conclusions

The best way to prevent lawsuits is to practice prudently and in accordance with prescribed guidelines and accepted professional standards. While you may nevertheless find yourself named in a negligence or negligent misrepresentation lawsuit, your likelihood of a successful defence significantly improves if your practice consistently meets the appropriate standards. ♡



Skeletons in the *closet*

Lease reviews and implications on market value

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At the heart of any financial due diligence exercise is lease review. As anyone who does this type of work can attest, lease review is neither sexy nor glamorous, however, at the end of the day, rent rolls, budgets, tenant pre-bills, recovery calculations, cash flow projections, etc. are rendered meaningless without a comprehensive audit of the building's lease documents. Reconciliation of the leases with management's financial information (or that contained in a broker's Confidential Information Memorandum (CIM) in the event of a sale) is a critical exercise. Based on a review of more than 1,000 leases over the past 12 months, here are some of the major lease issues impacting the value of any asset.

In virtually all buildings, there is a cost associated with managing the property. In virtually all leases, there is a provision which allows for the recovery of management expense.

Administration/ management fee treatment

In virtually all buildings, there is a cost associated with managing the property. In virtually all leases, there is a provision, usually within the definition of operating costs, which allows for the recovery of management expense. Two of the most common methods of recovering management fees are:

i. Percentage of operating costs.

Most often, leases will stipulate that a percentage of operating costs (usually 15%) can be re-charged as an 'administration (admin) fee.' In other words, if the building's operating costs are \$8.00 per square foot (PSF), then 15% of this amount, or \$1.20 PSF can be recovered. It is important to note, however, that, if the management expense is lower than \$1.20 PSF, a 'management fee profit' exists. If it is higher than \$1.20 PSF, a shortfall will result.

ii. Percentage of gross revenue.

Typical lease wording will allow for the recovery of an actual management fee, often specified or capped (i.e., 3% of all rental revenue). In these cases, the expense is a direct pass through. In other words, if the property manager charges a management fee of 3% of gross revenue, say \$0.90 PSF, then \$0.90 PSF is recoverable from the tenant. If the lease wording stipulates the recovery of an appropriate or market management fee, this may differ from that actually charged, thereby resulting in a management fee profit as noted above.

◀ **Attention must be paid to provisions such as no-build areas whereby development within a specified area is prohibited.**

In today's quickly changing retail landscape, where retailers are moving into the sale of other products such as groceries, a review must include cross-referencing the use, exclusivity and restrictive covenants of all tenants. ►



In reconciling a property manager's administrative fee re-charge (or that contained in a broker's CIM) to that permitted by the lease, careful attention must be paid to caps and exclusions. Leases will often cap admin fees at amounts (i.e., 10% to 12% of operating costs) that are lower than the standard being charged. Most leases will also exclude certain expenses from the admin calculation (i.e., amortization, insurance, realty tax, capital tax, management office rent, etc., or combinations thereof). All too frequently, these exceptions are not reflected by management or by a broker's listing package. As an example, a government lease stipulated an admin fee recovery of 12% of its specified costs, which equated to \$0.83 PSF. In the broker's marketing package, a standard admin fee recovery of \$1.31 PSF was applied to this tenant, resulting in an over recovery of \$0.48 PSF. When applied to a large tenant, as this was, the impact on net operating income (NOI) and pricing is significant.

An additional example involves a large tenant in a downtown office building (in fact the largest tenant in the building) whose lease stipulated a management fee of 2% of gross revenue. The property manager was charging a 4% management fee, which all of the other leases permitted, in effect double charging the tenant. Even if such a mistake is acknowledged by management, as it was in this case, there is still an issue of liability for previous years.

With regard to admin fee exclusions, leases have traditionally excluded realty tax from admin fee calculations. However, in many leases, admin fees can be applied

to realty taxes. Many property managers are reluctant to actually charge this back to the tenant (since regardless of what the lease says, a realty tax admin fee is still viewed as being a non-standard re-charge). Notwithstanding this valid position, the following should be noted:

- In many municipalities, the management and apportionment of realty taxes has become increasingly complex. The days of owners simply 'cutting a cheque' for realty taxes are long gone and, thus, the argument that an admin fee is not warranted carries much less weight than it used to.
- It is difficult for a tenant to argue too vociferously about a re-charge that the lease clearly permits.

Whether choosing to implement the realty tax admin fee or not, a new owner should at least be aware that the potential exists.

Free rent not reflected on the rent roll

It is surprising how many rent rolls do not reflect the contractual free rent provisions spelled out in the leases. In addition, correspondence file reviews will frequently unearth rental abatement letters that are not always reflected on the rent rolls.

Leases that provide for free parking also need to be reconciled with broker/manager financials as part of any parking revenue audit.

Deviations from the standard recovery

Most buildings will have a standard form lease that provides the basis for a standard tenant recovery. Often, building managers and/or listing brokers will apply standard recoveries to tenants whose leases actually stipulate operating cost exclusions. Some of the most common exclusions from operating expenses are:

- In-suite cleaning
- Management office rent
- Legal, audit, professional fees
- Capital tax

In today's highly competitive investment climate, seamless integration of lease review and cash flow modeling/risk assessment is imperative.

- Expenses associated with the parking facilities
- Amortization of specified items
- Interest on amortization

In addition, many tenant leases include caps on operating costs and/or caps on annual operating expense increases.

While some of the above-noted expense items are admittedly minor in nature (i.e., legal, audit and professional fees, and management office rent), several are not. Capital tax, while varying, can represent \$1.00 PSF.

Make-good provisions

Some leases contain a provision requiring the tenant to remove and repair all leasehold improvements at the expiry of the lease term (often referred to as a 'make-good' clause), while others do not. There can be a material impact on value in cases where a tenant's leasehold improvements are unique or specialized (i.e., a vault, an interior staircase, raised computer flooring, labs, etc.) and the tenant does not have a make-good provision. Removing leaseholds of this nature can be prohibitively expensive, ranging between \$5 and \$20 PSF of rentable area. If the lease does not require the tenant to pay, then a discounted cash flow model may have to include base building costs in addition to standard 'rollover' tenant inducements (TIs).

Termination options

While special provisions such as First Rights of Refusal, Options to Expand/Reduce, Favourable Renewal Options, Exclusivity, Relocation, etc. can all impact value, a purchaser's biggest concern typically pertains to Termination Rights in favour of the tenant. Provisions of this nature are rarely outlined on rent rolls and, even in broker CIMs, it is surprising how often Termination Rights are omitted.

With security of income being of paramount importance in today's investment climate, any disruptions to cash flow can

have significant impacts on value. In determining the likelihood of a tenant exercising the right to terminate, several factors should be considered. These include the termination penalty, the tenant's history at the building, the relationship of the contract rent relative to market rent, the existing space utilization, the capital investment in the premises (particularly relevant for telco-related tenants) and, critically, tenant interview responses.

It should also be noted that, even in cases where it would appear that the termination penalty is sufficient to mitigate against the risk of the tenant exercising their option (a straightforward mathematical exercise), the termination option alone is usually viewed as a negative attribute. This is for the simple reason that it adds uncertainty to the investment. The most notable exception would be a situation where the tenant's existing contractual rent is well below market.

Exclusivity/restrictive covenants/no-build areas

Most commonly found in retail leases, the following provisions are relevant in that they restrict a landlord's flexibility in leasing and/or re-developing a centre:

i. Exclusivity/restrictive covenants.

Any provision which grants a tenant an exclusive use(s), or in which the landlord agrees that it will not allow any space in the centre to be used for a purpose which is the same as another tenant, must be carefully reviewed. It should be emphasized that this review must include cross-referencing the use, exclusivity and restrictive covenants of all the tenants in the centre to ensure that there are no use contraventions. This is particularly important in today's quickly changing retail landscape where retailers and their uses are continually blurring (known in the industry as 'category incursion'). Examples include Shoppers Drug Mart moving into the sale of groceries, Loblaws selling hard

goods, and Wal-Mart moving beyond the sale of staple goods into hard goods and groceries.

A new owner must be aware of any possible use contraventions in order to avoid any potential lawsuits and to guide future leasing activity. Given the subtleties inherent in lease language, additional review by legal counsel is always recommended.

- ii. **No-build areas.** Shopping centres, particularly older community centres, are increasingly being acquired by 'value add' buyers whose strategy often includes re-development. Accordingly, attention must be paid to provisions such as no-build areas whereby development within a specified area (sometimes the entire site) is prohibited. There are several cases where a purchaser's re-development plans (i.e., demolition of a portion of the centre and addition of freestanding pads) have been stymied as a result of no-build provisions.

Conclusions

While certainly not exhaustive, the foregoing list of lease issues are notable in that they are often overlooked when assets are being marketed, but all can have significant NOI and value repercussions. In today's highly competitive investment climate, seamless integration of lease review and cash flow modeling/risk assessment is imperative. 🍷

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When is *subdivision* the highest and best use?

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Subdivision development overview

Subdivision development involves the transformation of raw land into finished lots or blocks made ready for building construction. Planning statutes enforced by local municipalities and regional governments regulate the process of subdividing land. Where population increases are anticipated, and demand for new housing increases, lands on the urban fringe are brought into production as serviced residential subdivisions, provided adequate supporting services and facilities are available or made available by developers.¹ Subdivision is a dynamic and complicated process involving disciplines such as planning, development and marketing that require the coordination of a skillful developer.

When raw acreage is subdivided for residential use, the density that can be achieved depends upon the amount of

developable land, and on the type and mix of housing the finished lots or blocks are intended to accommodate. Parks, buffer strips, conservation land, streets and road widenings that form part of a subdivision are conveyed or dedicated to the appropriate governmental agencies upon physical completion of the subdivision.

Preparing raw land for housing construction requires developers to incur significant up-front capital expenditures to design a concept plan based on detailed engineering studies, grade the land, survey and stake the lots, provide for flood control, arrange for sewer, water and utility services, and install roads, pipes, and other infrastructure. They also may be required to upgrade external roads, and provide external linkages to existing streets and sewer, storm and water lines. These initial on-site and off-site infrastructure improvements are costly, especially for

developers of large projects, and interest charges must be carried before revenue is generated from finished lot sales.

Developers also incur indirect growth-related costs such as lot levies, development charges, impact fees, education charges, payment in lieu of parkland dedications, and may be required to contribute to community facilities and make provision for an affordable housing component within a proposed subdivision. Growth-related costs continue to increase, adding to the financial requirements of the subdivision process. Successful subdivision development is predicated upon:

- strong demand for new housing;
- ability to respond quickly to transform raw land into serviced, permit-ready residential lots;
- containment of development costs (direct and indirect) within budget;
- short development cycle for obtaining

planning and subdivision approvals and permits, and completing infrastructure ground work; and

- selling serviced, permit-ready lots to house builders in a timely fashion.

Prudent developers holding large tracts take a phased approach to subdivision and restrict lot production to meet quantifiable short-term new housing demand. Developers normally subdivide only that portion of a tract they are certain of completing and marketing in a short time. A development phase should be an absorbable entity geared to the market, with consideration given to minimizing the front-end costs of infrastructure and utility extensions.

A considerable amount of developer due diligence and co-ordination is usually involved prior to actually acquiring a tract for potential residential subdivision development. Typically, land available for sale on the urban fringe is brought to the attention of a developer. At this initial stage, the developer performs a preliminary investigation of the tract, the new housing market, how the tract might be developed and at what cost, and the expected time required in obtaining all necessary subdivision approvals and permits.

If the developer's preliminary findings are favourable and an Option Agreement can be negotiated, sharing the development risk with the owner of the tract, for an acceptable period and cost,² the developer will initiate the following important tasks before the date on which the option expires, when the decision to acquire the land must be made:

- Determine the location and capacity of existing services (i.e., water lines, and sanitary and storm trunks), and identify any off-site easement requirements, and 1-foot reserves that would impede access and connection to off-site services.³
- Audit the tract for any evidence of environmental contamination, and potential off-site sources of environmental concern in proximity to the tract, and other potentially detrimental externalities.
- Study the tract to determine the quantity of land physically capable of being developed, and how much of the surface area needs excavating and grading, and at what cost, which is a function of the topography, drainage characteristics, soil condition, and subsurface characteristics. (External



infrastructure costs must also be considered.)

- Study the new housing market, both supply and demand, to ascertain the type and number of finished lots that should be brought into production on the tract within the foreseeable future, and determine whether the tract should be subdivided in its entirety or in phases.
- Obtain tenders from contractors, engineers, planners and landscape architects, based on the anticipated concept plan (subdivision). The concept plan may undergo several iterations to meet market demand, and before public agency approvals can be obtained (school board, city departments, planning commission, municipal council, regional government, etc.).
- Arrange loan commitments to acquire the tract and fund construction of the potential subdivision, which are likely to be contingent on subdivision approval, fixed-price contracts from sub-contractors protecting against cost overruns, and a satisfactory appraisal, which should include a market study of the new housing market.
- Compare projected lot revenues from sell-out to the total cost of development (direct and indirect) to ascertain the financial feasibility of subdivision, and decide whether the tract can be profitably developed at the option price, and provide the expected level or rate of developer's profit.

The decision to close on the tract will ultimately depend on the developer's perception of the new housing market and whether current lot prices can sustain the total cost of development, including provision for developer's profit, over the anticipated absorption period (sell-out).

Depending on the size and cost of the tract, and the prevailing market conditions, financial backer(s) may require builder commitments for an adequate number of conditional presales of finished lots before funding on the purchase of the tract and/or providing construction financing. However, conditional presales of finished lots are not a substitute for an independent market study of the new housing market, which a prudent lender will request.

Typically, under an agreement to purchase lots in a proposed plan of subdivision, upon execution of the agreement, the purchaser (builder) only pays a deposit to the vendor (developer), with further deposits required upon completion of various stages within the subdivision process. The deposits are credited or applied to the purchase price of the lots on closing or completion of the agreement. The vendor (developer) holds the deposits pending completion of the agreement, which is usually subject to one or more of the following conditions:

- (i) registration of a plan of subdivision satisfying the *Planning Act* or other appropriate legislative authority before a specified date;
- (ii) zoning of lots for the construction of single-family dwellings;
- (iii) completion of permit servicing requirements before a specified date;
- (iv) lots will not be materially changed in size and/or location by the vendor (developer), unless the purchaser (builder) accepts the changes.

The lot sale agreement usually provides that if certain of the aforementioned conditions are not satisfied, then the agreement is null and void and the vendor (developer) is required to return to the purchaser (builder) all deposit monies paid under the agreement. Conditional lot sales may not materialize as consummated deals for a host of unforeseen reasons.⁴

A developer's failure to act prudently in acquiring land for use as a potential residential subdivision can have devastating consequences, as illustrated by the following example:

An experienced developer entered into an Agreement of Purchase and Sale on December 21, 1988 for 93 acres in the Town of Whitby, a suburban area of Durham Region within the Toronto Region, which he intended to develop with residential uses. The agreed upon price of \$5.5 million (\$1,590,000 cash and a 5-year VTB mortgage for the balance), equivalent to \$59,140 per acre, was negotiated in an overheated market. The agreement was conditional until February 28, 1989 upon the purchaser conducting soil tests to ensure the land was free of hazardous materials and in acceptable condition for development. No environmental soil tests were ever undertaken by the purchaser, who waived the condition on February 28, 1989, and subsequently closed the deal on April 27, 1989.

By the summer of 1990, the developer began to realize there were problems with the land and the adjoining property, a wrecking yard that was being used as a waste dumpsite. Through the media, the developer learned of the environmental controversy surrounding the adjoining property. Over 200,000 tires were stored there, and because of a disaster experienced elsewhere in Ontario with a major tire fire, the Ministry of Environment became alarmed and insisted steps be taken to comply with new and more stringent legislation to prevent a similar occurrence. Ministry documents relating to the wrecking yard from 1990 on, showed there were fire code violations, reports on the storage of large numbers of tires, and an application to transfer PCBs to be stored on the land.

In the spring of 1991, as the purchased tract was being readied for development by clearing trees, it became evident that bush had been cleared and fill placed on the property. Car parts, batteries and tires were found along the property line. Planning consultants hired to assist with the redesignation and rezoning of the property concluded that the Town of Whitby would not look favourably on a residential use as long as the problems with the adjacent property existed. During these investigations, it also came to light that some of the subject lands were considered environmentally sensitive as part of a ground water recharge area, which would require preparation of an environmental impact study at the owner's expense. By September 1991, the developer was having difficulty meeting

the financial obligations under the terms of the mortgage, and new payment terms were negotiated with the former property owners.

The new Durham Region Official Plan designated the area as 'Employment Area,' which permitted only commercial or industrial use. Use of the subject property for residential purposes (or even industrial purposes) would be dependent on a full cleanup of the adjacent wrecking yard and waste disposal dump. In 1997, a consultant was retained to review the new Town of Whitby Official Plan, which had been approved in 1995. He concluded that a full environmental investigation would have to be undertaken on both the 93 acres and the adjacent property to determine the impact of pollutants on the soil, the extent of contamination, and the type of 'cleanup' to be undertaken.

After an onerous eight-year struggle, overcoming the obstacles of achieving a residential subdivision proved insurmountable. The developer abandoned the project and defaulted on the existing mortgage. At trial, judgement was granted in favour of the mortgagee, and the developer was ordered to pay \$3.91 million, the balance due on the mortgage, plus interest as set out in the mortgage.⁵

This case is illustrative of the potential delays and risks involved in the subdivision process, and why prudent developers simply refuse to purchase land unconditionally, preferring to have all of the necessary planning and development approvals and permits in place to permit residential subdivision.

That hurdles and delays occasioned by the subdivision approvals process should be expected was noted by the court in *British Columbia v. Granite Developments Ltd.*,⁶ by way of reference to *Briarfield Acres Development Ltd. et al. v. Ministry of Transportation and Communications* (1981), 22 L.C.R. 215:

...[T]he main thrust of the claimant's argument for compensation is based on the alleged delay in being able to process their subdivision lands. There is no doubt that the claimants were in the business, that they had the know-how, and that they purchased the lands for the purpose of subdivision.

The Board has to agree with the respondent's contention, however, that there is no inherent right in a landowner to subdivide his lands at will or in his own

time or on his own conditions. There are so many independent agencies that have a hand in the planning process that, under the most ideal circumstances, the subdivision process is a complicated one. There is no reason to recite the potential problems here as they are well known.

Highest and best use analysis

When appraising improved property, the highest and best use is often self-evident. However, unimproved land presents unique challenges, especially land on the urban fringe in a greenfield environment. Land that is being assessed for residential subdivision potential involves costly and time-consuming research. Physical and legal constraints are often not readily apparent, and can impact the timing and cost of development, two critical components of financial feasibility. An understanding of the subdivision process and planning requirements in the jurisdiction in which the land is located, and an awareness of the community's attitude toward development are also important components of highest and best use analysis.

A developer's pre-acquisition due diligence as to the subdivision potential of a tract can be likened to the investigations that an appraiser must undertake to ascertain the utility and market value of land,⁷ the value of which is directly related to its highest and best use. Highest and best use may be defined as follows:

*The reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, and financially feasible and that results in the highest value.*⁸

Often, the four criteria of highest and best use are considered sequentially. However, it makes no difference to the outcome of the assessment of the land whether legal permissibility or physical possibility is addressed first, provided these two tests are applied before the remaining tests of financial feasibility and maximum productivity. A use may be financially feasible, but irrelevant if the contemplated use is legally prohibited or physically impossible. Highest and best use selection is a process of elimination, starting from the widest range of possible uses and concluding with a short list of most probable uses.

Physically possible – Physical limitations, natural and manmade, have

an impact on legally permissible uses, including the scale or density of development that can be accommodated on the land. Characteristics such as parcel size, configuration, topography and soil conditions, in combination with the availability of, and access to, services such as water, sewerage, storm water drainage, hydro, gas, telephone, cable television and roads determine which legal uses can be accommodated on the land. Capacity, as opposed to availability, of services might not be adequate to support some of the legally permissible uses.⁹ The expected timing and nature of future services should be ascertained from the capital budgets of local and regional governments.

Legally permissible – This involves a review of permitted and designated uses under the prevailing land use controls (i.e., zoning code, Official Plan/Master Plan, Secondary Plan, etc.). Other planning and development controls of governmental agencies may have to be investigated if there is a presence of wetlands, conservation lands, watercourses, tree stands, endangered habitat, etc., on or near the land. A use that is not legally permissible may be considered where there is sufficient precedent to support a change in use through rezoning, and if further analysis concludes that such a use represents the highest and best use of the land.¹⁰ Any provincial or state and federal legislative acts pertaining to temporary and permanent development freezes, regulatory compliance with environmental laws, preservation of agricultural and open space lands, etc., that supersede local land use controls must be considered. Also, the presence of soil contamination, both on and off the land, may effectively eliminate some legally permissible uses.

Some uses permissible under the prevailing land use controls may be precluded or postponed by restrictive covenants, easements (i.e., gas pipelines, and hydro transmission lines), and leases registered against title to the land. Other uses may be delayed by the amount of time required to achieve compliance with environmental legislation. Connections to, or extension of, off-site infrastructure might require entering into time-consuming and costly private easement and cost-sharing agreements with neighbouring property owners. Where the land in question has draft or preliminary plan approval, a subdivision agreement must be executed within a specified time-



frame, which varies from municipality to municipality. Failure of the property owner to carry out the conditions of draft plan approval within the specified timeframe will invalidate draft plan approval.

Financially feasible – The short list of uses found to be legally permissible and physically possible are then assessed as to their contributory value to the land, and only those that generate a positive land value are considered financially feasible. Development costs (direct and indirect) and revenue projections are time sensitive, with the former preceding the latter in any project, and must be accounted for in determining the financial feasibility of a particular use by way of present value calculations (i.e., the time-value of money). Uses that require regulatory compliance and governmental oversight under acts such as the *Environmental Protection Act* tend to delay development thus adding to direct development costs to meet regulatory requirements and indirect costs to the extent that longer development times increase holding costs.

Maximally productive – From the list of legally permissible and physically possible uses expected to generate a positive residual land value, the most probable and practical use or uses that are shown to likely generate the greatest net return to the land (highest present land value), supported by appropriate linkages and externalities, are deemed to represent the highest and best use of the land. If a use is not immediately achievable, then an interim

use is indicated, which may or may not be a continuation of the existing use.

Ascertaining which uses are likely to generate a positive land value is dependent upon market analysis (market study) of market support (demand), timing (absorption rates), and market participants (probable users and buyers) for each use. Market analysis makes it possible to identify the effective demand for and competitive supply of a particular use in a specific location at a specific time in recognition of the fixed locational attributes of the property and its spatial linkages.¹¹ When residential use is legally permissible, accommodation of such a use depends upon the availability of transportation, fire and police protection, schools, libraries, places of worship, parks, community and cultural centres, etc. Large tracts suitable for residential subdivision may require developers to include provision for some services, or pay growth-related charges to have the services provided by the municipality or region. Legally permissible residential use may not be practical if a tract is in proximity to potential sources of excessive noise pollution such as airports, railroads and expressways, to environmental hazards such as toxic waste sites and nuclear plants, and to other non-complementary land uses such as abattoirs, smelters, gravel pits, garbage dumps, correctional institutions, sewage treatment plants, etc.

While planning history and ownership and purchaser profiling are part of highest and best use analysis, because of their importance in assessing the subdivision potential of lands on the urban fringe, a separate overview has been provided.

Planning history – As the potential of land on the urban fringe in a natural state is not readily discernable from its general appearance, discussions should be held with the appropriate planning authorities to determine:

- What, if any, planning reports and land use studies of the area encompassing the subject property have been undertaken or are proposed. (If the subject property is under review as a subdivision application, all property-specific planning reports and potential land use restrictions must be considered.)
- How often the Official Plan/Master Plan is reviewed and updated by the municipality to keep pace with changing community needs and desires. (Many

municipalities review their long-term land use plans every five or 10 years.)

- Whether over the past few years there have been any applications (inactive or pending) for rezoning, Official Plan/Master Plan amendment, etc., pertaining to the subject property and the encompassing lands.
- The development and growth management policies of the municipality are the merits of subdivision judged on a property by property basis (i.e., spot development, leapfrogging) or is a comprehensive approach applied so that development occurs in an orderly, efficient and sequential pattern in concert with adjoining lands (i.e., Block Development Concept).
- Whether the municipality and regional government provide off-site servicing or if infrastructure improvements are by way of private cost-sharing servicing agreements and the sole responsibility and expense of the affected property owners (i.e., consensus of all affected property owners may be necessary for subdivision development to proceed).

Ownership and purchaser profiling

– A title search of the subject property and the encompassing lands is an important and useful investigative exercise, which can reveal the following:

- The level of sales activity, the frequency with which properties are traded, individually and collectively, and the established price patterns over time (also critical for valuation purposes).
- The motivations behind the transactions can often be discerned from mortgage documents registered against the properties searched (Acquisitions intended for future development will usually include provision for discharging the mortgage, partially or fully, depending on the anticipated timing of future events such as rezoning, draft plan approval, subdivision approval, etc.)
- The identities of the property owners – whether users, absentee individual owners, absentee corporate entities (Corporate name searches are essential to disclosing the principals behind each corporate veil and linking related corporate entities, and the stated objectives of each corporate charter.)
- The extent of property ownership being either diverse or in the hands of a few controlling interests, and the geographical pattern of ownership being either

random or concentrated in a specific location or locations.

Large tracts on the urban fringe involve unique challenges to the analysis of highest and best use. Often, these lands lack adequate infrastructure servicing and are not zoned to permit urban uses, and they may or may not be actively farmed. When or whether lands on the urban fringe will be brought into production as subdivisions is difficult to ascertain. Trading in these lands is often speculative with prices subject to considerable variability based on the whims of the buyers and sellers.¹²

Speculation is its own highest and best use where the sole purpose of trading in land is for ‘buying and selling,’ for speculation in this sense it is not akin to an analysis of land uses which are considered remote or speculative.¹³ A significant aspect of a speculative market is that, *a given property may pass through the hands of a series of speculators on its journey from farm land to subdivision. Especially when the ‘ripening’ period is a long one, speculators will be tempted to sell and take profits. As long as the land is not ready for development by a final user, the buyer most likely will have to be another speculator.*¹⁴

Speculation interferes with the orderly development of land for productive urban use. In some jurisdictions, where land prices have undergone rapid escalation, governments have been known to temporarily impose punitive tax measures on speculator-purchasers as a means of curbing speculation in land. On occasion, governments have imposed a tax on non-resident purchasers of undeveloped land.

Determining highest and best use of a tract with precision (type, scale and density) may not be possible, but a Master Plan or Official Plan might point to a general land use category such as residential. However, land that is not immediately available for development will have an interim use.¹⁵ A large tract may have an interim use as a farm or pastureland, or simply remain idle as a speculative holding.

Land on the urban fringe with subdivision potential is generally subjected to onerous and comprehensive planning and development controls (subdivision regulations) that are time-consuming and costly to achieve, and go far beyond the typical land use provisions associated with zoning, which regulate uses, densities, bulk and height.

Subdivision regulations are concerned

primarily with the layout and standards for lot-by-lot development, accomplished through plat or subdivision approval. Subdivision regulations are judged against a long-term comprehensive land use document such as an Official Plan or Master Plan that is subject to periodic review and amendment.

A developer is not permitted to make any improvements on the raw land or divide the land until the planning commission and/or municipal council has approved the proposed subdivision and the developer has entered into a subdivision or development agreement with the approving authority, backed by a performance bond or letter of credit to cover the cost of infrastructure improvements.

A developer that concludes a tract is suitable for subdivision will have a concept plan prepared and circulated to numerous governmental agencies for review and comment, and hearings will be held for public reaction and input. Several iterations of the developer’s concept plan may be required to satisfy governmental and citizen concerns, and studies addressing such issues as planning, engineering, noise, traffic, environment, conservation, etc. may be demanded from the developer.

The voices and actions of public interest groups such as ratepayers’ associations, conservationists, environmentalists, etc. have significant influence over the stewardship and use of land. Such groups often gain favour with media and political leaders sometimes to the point of effecting slow-growth or no growth policies in their communities.

Where there are objections to a specific development, development delays and costly hearings are not uncommon. Sometimes, when there are only one or two objectors to a specific development, cash settlement offers may result in the withdrawal of the complaints and avoidance of a costly development delay. Knowledge of the community and an understanding of its history, including attitudes towards population growth and development are essential to the determination of highest and best use.¹⁶

When describing highest and best use, the courts consistently maintain that the contemplated use must not be speculative or too remote in time, and that there be demand for that use. Often, the words immediate or imminent are used in describing highest and best use. *Black’s*

Law Dictionary Centennial Edition (1891-1991) provides the following definitions:

Immediate – Present; at once; without delay; not deferred by any interval of time. In this sense, the word, without any very precise signification, denotes that action is or must be taken either instantly or without any considerable loss of time.

Imminent – Near at hand; mediate rather than immediate; close rather than touching; impending; on the point of happening.

Both immediate and imminent relate to the ripeness and demand of land for potential subdivision. Ripe means that the landowner and the municipality are in a position to execute a subdivision agreement that indicates the maximum number of permitted lots and the obligations, financial and otherwise, of the developer, inferring that construction financing has been arranged and servicing contracts are in place. Signing of a subdivision agreement, which must be backed by a letter of credit or other form of security adequate to cover the cost of infrastructure improvements, is a clear expression that the developer is committed to development of the land as a subdivision. Nonetheless, there must be evidence of sufficient and effective demand for new housing consistent with the type proposed (a proxy for finished lots) before concluding that subdivision is the highest and best use, as aptly noted in *D & D Construction Ltd. v. Consor Builders Ltd.*,¹⁷

[a]ll the 'development' in the world is of little benefit if the [proposed] lots cannot be sold. That comes down to market factors...Market conditions are essentially the economists' twin pets of demand and supply.

Conclusion

A comprehensive highest and best use analysis is critical to the assessment of raw land when considering the economic viability of subdivision development, as the subdivision approvals process is time-consuming, costly, and the outcome unpredictable. While each aspect of highest and best use analysis must be thoroughly addressed, a ready market for new housing units (a proxy for finished lots) driven by anticipated population growth or a shift in population is a prerequisite of subdivision development.

Assessing the potential of raw land on the urban fringe for subdivision develop-



ment requires a comprehensive understanding of the subdivision approvals process, locally and regionally, and knowledge of the community's attitude toward development and population growth. Physical and legal constraints, pertaining to the parcel being appraised and abutting lands, that are likely to delay and impede subdivision development must be investigated, and sources of supply and demand for new housing identified and quantified, with anticipated lot revenue and lot absorption being reasonably certain. Financing costly subdivision development requires that capital (debt and equity) be readily available and affordable.

Highest and best use is an economic concept, and as all market-driven development is time-sensitive, a bona fide developer has no use for land that cannot be immediately subdivided, and "it is extremely rare for buyers to accept more than minimal risk when the contemplated use of a property involves a legal condition (e.g., rezoning) or a physical condition (e.g., availability of adequate sewage disposal)."¹⁸ Land that is found not to be ripe and immediately available for subdivision development will default to an interim use. 🍷

End notes

¹ *Golden v. Planning Bd. of Ramapo*, 285 N.E.2d 291, 334 N.Y.S.2d 138, 30 N.Y.2d 359 (N.Y. 1972), *app. dismissed*, 409 U.S. 1003 (1972). Special permits were required under the zoning ordinance prior to subdivision approval. The purpose of the ordinance was to phase residential

development into the town's ability under its capital budget to provide for sanitary sewers or approved substitutes, drainage facilities, improved public parks or recreation facilities, public schools, state, county and town roads, and firehouses over a period of 18 years. A developer could start earlier by providing the facilities at its own expense. Objecting to the town's denial for a special permit and considering the zoning ordinance unconstitutional, two landowners took the town to court. The appeals court ruled that the town was properly authorized to adopt the zoning ordinance against premature development and that the ordinance was constitutional. In its reasons, the court stated that the town could direct the growth of population and determine the lines along which development should proceed, even though development may be diverted from its natural course. The court also noted that "where it is clear that the existing physical and financial resources of the community are inadequate to furnish the essential services and facilities which a substantial increase in population requires, there is a rational basis for 'phased growth'."

² The option price will typically exceed the market value of the tract in its existing raw state, but, if the prospective developer-purchaser is successful in achieving its land use objective (subdivision), the vendor will reap some of the enhancement in value from the land being put to a higher and better use.

³ Comparable land sales with subdivision potential in the City of Brampton, Ontario were investigated. In one transaction, the developer paid a significant premium of about 65%-70% above market to acquire a 10-acre parcel that separated his 72.89-acre draft plan approved subdivision from access and connection to external services available in the subdivision lying immediately south of the 10-acre parcel. In another instance, the purchaser of a 7.5-acre assembled 'infill' parcel failed to uncover a private 1-foot reserve that precluded access and connection to external services for which \$50,000 had to be set aside to remove the 1-foot reserve.

⁴ In *835039 Ontario Inc. (Country Glen) v. Fram Development Corp.*, [1994] O.J. No. 1725 DRS 94-14276, the developer had to return the house builder's (*Country Glen*) deposit of \$672,000 for the conditional purchase of 113 townhouse lots in the Town of Newcastle, as the developer

was unable to complete servicing by a specified date. Because of a series of unforeseen obstacles, including environmental issues, off-site easement requirements, cost sharing agreements, cost overruns, a rapidly declining real estate market, collapsing house prices, etc., the subdivision never materialized, and the developer lost \$14,938,000 in potential lot sales (conditional on being serviced and permit-ready) negotiated in June and September of 1989, following acquisition of the raw tract in May 1989. As a result of the loss of the conditional presales of lots, the bank cancelled the developer's credit facility.

⁵ 801438 *Ontario Inc. v. Badurina* [2000] O.J. No. 3178 No. 93-CQ-41294.

⁶ *British Columbia v. Granite Developments Ltd.* [1987] B.C.J. No. 1900 (B.C.C.A.).

⁷ In a property acquisition or investment transaction, due diligence is the standard investigation of contractual terms and property and market characteristics prior to closing the transaction. In appraisal, due diligence is the expectation of adequate research into factors that can affect the utility and value of a property. *The Dictionary of Real Estate Appraisal*, 4th ed. (Chicago: Appraisal Institute), 89.

⁸ Appraisal Institute, *The Appraisal of Real Estate*, 12th ed. (Chicago: Appraisal Institute), 305-308.

⁹ *Syvan Developments Ltd. v. 806628 Ontario Inc.* [1991] O.J. No. 1792 (Q.L.) (Gen. Div.) involved the sale between two experienced developers of 46.628 acres proposed for subdivision in the Town of Newcastle. The plaintiffs purchased the land in 1988 and applied for an increase in density above that provided by the Official Plan. When public opposition was met, the plaintiffs decided to sell the lands to *806628 Ontario Inc.* In Jan-89 or Feb-89, the prospective purchaser was advised by the plaintiff that, if application for increased density was abandoned, the purchaser would have no problem getting approval for the proposed plan of subdivision. On 6-Mar-89, the prospective purchaser agreed to conditionally purchase the lands subject to an engineer's report of the soil being satisfactory for residential purposes, verification of the property being adequately zoned and that adequate services be available for the proposed residential development. On 18-Mar-89, the purchaser confirmed that the conditions had been complied with and that the

agreement was then valid and binding on both parties. In Jan-91, the municipality advised the purchaser that there was no sewage capacity to service its proposed plan of subdivision. The sewage allocation process permitted 'leap frogging' ahead of earlier applications still in draft by having a subdivision agreement executed. By delaying its application for subdivision approval because it hoped to obtain a higher density, the defendant chose to run the risk that the capacity would all be allocated to other subdivisions. The defendant defaulted on its mortgage and failed to have the transaction rescinded, claiming "that immediate development was crucial to its decision to buy the lands...[and] [h]ad it known that the land could not be developed immediately it would not have purchased it because it did not plan to have to hold the land for some time until it could be developed." [Appeal dismissed (Ont. C.A.) 1992, O.J. No. 83]

¹⁰ According to the *Canadian Uniform Standards of Professional Appraisal Practice (CUSPAP)*, 2004 Ed., of the Appraisal Institute of Canada (AIC), an estimate of value based on a non-permissible use that would require rezoning to be achieved constitutes a "hypothetical condition" and "extraordinary assumption", which must be disclosed by the appraiser. *Claim Prevention Bulletin CP-18* issued Nov-97 by the AIC states, in part, "[w]hen a valuation is being completed on the assumption of a change in zoning, this factor should be clearly identified throughout the report, particularly at points where a value estimate is being stated, as well as any points where the zoning is being stated or discussed. Further, to ensure adherence to [C]USPAP, any such assumptions are required to be both reasonable and probable."

¹¹ Stephen F. Fanning, Terry V. Grisom, and Thomas D. Pearson, *Market Analysis for Valuation Appraisals* (Chicago: Appraisal Institute, 1994), 7, 351-354.

¹² *Speculator* is "one who speculates, i.e., one who buys a commodity such as real estate expecting to sell it at a higher price." *The Dictionary of Real Estate Appraisal*, 4th ed. (Appraisal Institute, 2002), 272.

¹³ North, Lincoln W., *The Concept of Highest and Best Use* (Winnipeg: Appraisal Institute of Canada, 1980).

¹⁴ Jack E. Adams and Bruce Lindeman, *Speculation in Undeveloped Land*, *The Appraisal Journal* (April 1979): 218-226.

¹⁵ *Interim Use* is "[t]he temporary use

to which a site or improved property is put until it is ready to be put to its future highest and best use." *The Dictionary of Real Estate Appraisal*, 4th ed. (Chicago: Appraisal Institute), 149.

¹⁶ William H. Crouch, A Prospective Look at Highest and Best Use, *The Appraisal Journal* (April 1966): 166-176.

¹⁷ *D & D Construction Ltd. v. Consor Builders Ltd.*, [1985] A.J. No. 151.

¹⁸ David C. Lennhoff and Richard L. Parli, A Higher and Better Definition, *The Appraisal Journal* (Winter 2004): 45-49.

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A La Mode #2

A La Mode

#3

ACI Ad #5