

## CHAPTER 13A

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# Illustrative Condemnation Proceeding\*

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\* This chapter was prepared by Edward C. Bassett, Jr., Esq., a partner in the law firm of Mirick, O'Connell, DeMallie & Lougee, located in Worcester, Massachusetts.

## § 13A.01 Introduction

This chapter includes the trial transcript of an eminent domain case involving a fee taking of vacant land in the City of Cambridge, Massachusetts. The date of the taking was May 17, 1984, and the taking consisted of 11,084 square feet of land. Since the taking involved a fee taking of unimproved real estate, the appraisers used the market data or comparable sales approach to calculate the damages. The landowner's appraiser testified that the land was worth \$45,000.00 even though the landowner purchased the land for only \$18,000.00 just fourteen months before the taking.<sup>1</sup> The City's appraiser testified that the land was worth \$22,000 even though the City's tax department had previously assessed the land for \$33,000.<sup>2</sup>

This chapter provides the general practitioner and the new trial attorney an opportunity to study an entire trial transcript and to learn from the methods and styles of two excellent trial attorneys. The testimony flows smoothly and the few objections which were raised at trial were well thought out by both attorneys. Before the opening statements, the parties stipulated to some basic elements of the case such as the date of the taking; the lawfulness of the taking and the identity of the record owners.<sup>3</sup> These stipulations helped to move the case along and the attorneys' willingness to cooperate on these issues reflects their experience, competence and civility.

This case showcases an extremely well qualified and experienced appraiser and the jury's verdict underscores the importance of hiring the most qualified and experienced appraiser available even if your case only involves the taking of a small tract of vacant land.

From the opening statements through the closing arguments, the footnotes in this chapter are designed to point out the attorneys' trial tactics and strategies. Particular attention should be paid to the cross examination of the landowner's appraiser<sup>4</sup> and to the direct examination of the city's appraiser.<sup>5</sup> The cross examination of the landowner's appraiser was devastating to the landowner's case and the direct examination of the City's appraiser provides a classic example of how to qualify an appraiser and then how to deliver an effective, forceful, and persuasive presentation of an appraiser's expert opinion.

In order to persuade a jury, a trial attorney must develop and implement an overall trial strategy. The first ingredient of a successful

<sup>1</sup> See § 13A.03[1] *infra*.

<sup>2</sup> See § 13A.03[9] *infra*.

<sup>3</sup> See § 13A.02 *infra*.

<sup>4</sup> See § 13A.03[2] *infra*.

<sup>5</sup> See § 13A.02[10] *infra*.

trial strategy is to develop an overall theme of the case. The theme should be very simple and it should appeal to the jurors' sense of justice and fairness. Although the jurors may not comprehend all the subtleties of your appraiser's testimony, it is very likely that the jurors will find a way to do what they think is right. Therefore, the theme should embrace the basic concept of fairness.

In this case, the evidence shows that before the taking, the City had assessed the land for \$33,000.00 and the City had collected taxes based on this assessment. After the City took the property, the City determined that the property was worth only \$22,000.00. The landowner argued that there was something unfair about this inconsistency. The basic concept of fairness became the underlying theme of the plaintiff's case.

The City's attorney did an excellent job of developing the theory that the City's appraiser was much more experienced and qualified than the landowner's appraisal. During cross examination the City's attorney hammered away at the basic foundations of the landowner's appraisal.<sup>6</sup> At one point the appraiser admitted that he did not inspect some of his comparable sales and at another point the appraiser admitted that some of his comparable sales were "worlds apart" from the subject property.

The direct examination of the City's appraiser was carefully crafted to present the appraiser as the leading expert appraiser for properties in the City of Cambridge.<sup>7</sup> During his closing argument the City's attorney expressed his theme forcefully and concisely by asking one question.<sup>8</sup> Who would you hire if you wanted your real estate appraised? By asking this question the City's attorney was simply asking the jurors to "appraise the appraisers." Ultimately, the jurors did appraise the appraisers and the jurors sided with the City's appraiser and awarded damages of only \$24,000.00.

<sup>6</sup> See § 13A.03[2] *infra*.

<sup>7</sup> See 13A.03[9] *infra*.

<sup>8</sup> See 13A.04[1] *infra*.

**§ 13A.02 Stipulations and Openings**

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.  
Superior Court  
Civil Session  
No. 87-1822

EDWARD M. WEISBERG  
and JANICE WEISBERG

v.

THE CITY OF CAMBRIDGE

Before Valley, J.  
and a jury

Cambridge, Massachusetts  
July 25, 1989

APPEARANCES:

Robert N. Goldstein, Esq.,<sup>1</sup>  
for the Plaintiffs

Law Offices of Robert N. Goldstein  
27 School Street, Suite 500  
Boston, Massachusetts

George A. McLaughlin III, Esq.,<sup>2</sup>  
for the Defendant

McLaughlin Brothers  
1 Boston Place  
Boston, Massachusetts

<sup>1</sup> Attorney Goldstein maintains a general trial practice in Boston, Massachusetts.

<sup>2</sup> Attorney McLaughlin is a partner in McLaughlin Brothers, a Boston law firm where he concentrates in eminent domain and civil trial work.

## MORNING SESSION

(The Court entered the courtroom at 11:05 a.m.)

THE CLERK: Civil Docket No. 1822 of 1987. The Plaintiff is Edward M. Weisberg and Janice C. Weisberg versus the City of Cambridge.

Mr. Robert N. Goldstein, attorney for the plaintiff; Mr. George A. McLaughlin III, attorney for the defendant.

(After a jury was impaneled and sworn, the following occurred:)

THE COURT: Can we stipulate the date of taking?

MR. McLAUGHLIN: Yes.

MR. GOLDSTEIN: Yes.

THE COURT: What is it?

MR. McLAUGHLIN: May 17, 1984.

THE COURT: May 17, 1984.

You stipulate that it is a lawful taking?

MR. GOLDSTEIN: Yes.

THE COURT: Stipulate that the petitioners are the lawful owners?

MR. McLAUGHLIN: Yes, sir.

THE COURT: Single issue of damages?

MR. McLAUGHLIN: Yes.

THE COURT: Total taking?

MR. McLAUGHLIN: Yes.

THE COURT: Okay.

MR. McLAUGHLIN: I believe we can stipulate as to square footage and as to zoning, also, if that would be helpful.

THE COURT: What is the square footage?

MR. McLAUGHLIN: Bob?

MR. GOLDSTEIN: 11,084, 11,084.

C-1 zoning.

THE COURT: (To jury) Those are not in issue. The taking is lawful. It's stipulated.

The petitioners were the lawful owners at the time of the taking. Stipulated. The date the damages vested, a very important date, incidentally, in this trial, is May 17, 1984.

It is stipulated that the amount of square feet involved in the taking is 11,084, and that the single issue is damages.

MR. McLAUGHLIN: The bus is here.<sup>3</sup>

THE COURT: We will permit the lawyer to talk to the jury about the view, and the general opening will be done later.

MR. GOLDSTEIN: Ladies and gentlemen of the jury, my name is Robert Goldstein and I represent the plaintiffs in this case, Edward and Janice Weisberg. Mrs. Weisberg is here.<sup>4</sup>

<sup>3</sup> In Massachusetts the parties have an absolute right to have the jury take a view of the property. Mass. Gen. L. chs. 79, 22 (1991). In those states which do not have statutes making a view mandatory, the decision of whether to conduct a view is a matter directed to the court's judicial discretion. The decision of the trial judge will not be disturbed except when a clear abuse of discretion can be demonstrated. 5 Nichols on Eminent Domain Ch. 18. The party who requests the view is usually responsible for making the arrangements to have a bus ready to take the jury to the site. Before the view, each lawyer usually presents a "preview" opening in which he will briefly describe what it is that the jury will see when they travel to the site. The jury, the trial attorneys and a court officer will then proceed to the site for an inspection of the property. "The essential features may be pointed out by counsel. No witnesses are heard. The oath to the court official is to the effect that no one shall be suffered to address the jury. There can be no comment or discussion. The jury can simply use their eyes. They can obtain information only through sight. One or two attorneys representing both the Commonwealth and the defendant go on the view, it being permissible to them, in the presence of each other and of the officers of the court, merely to point out to the jury 'marks, matters, and things,' but not otherwise to speak to the jury." *Commonwealth v. Dascalakis*, 246 Mass. 12, 140 N.E. 470 (1923). See 5 Nichols on Eminent Domain Ch. 18 for a detailed description of the conduct of the view.

In most jurisdictions, the view becomes part of the "evidence" to be considered in conjunction with the other evidence presented at trial. 5 Nichols on Eminent Domain Ch. 18. Some jurisdictions take the position that the view is not truly evidence but its purpose is to familiarize the jury with the property and to help them understand the testimony. 5 Nichols on Eminent Domain Ch. 18. See also Ch. 8 *supra*.

Although the view is usually limited to the property which was taken by eminent domain, this author is aware of several cases in which the trial attorneys have agreed to show the jury some or all of the "comparable" properties listed in the appraisers' reports.

<sup>4</sup> In this case, Mrs. Weisberg, one of the owners, did not testify. However, in many land damage cases, the owner will testify as to his or her opinion of value. "At one time it was thought that an owner was presumed to have sufficient familiarity with his property to testify to its value. It now appears that an owner, like any other witness, must be particularly familiar with the land to testify as to its value. Accordingly, an officer of a corporation must show particular familiarity with the land or property owned by the corporation to testify as to its value." See Paul J. Liacos, *Handbook of Massachusetts*

As the judge has requested, I am not making formal opening remarks to you as to what we expect to produce into evidence and what I hope that you will find, but we are at the request of the parties going to take a view of the property.

We will get on a bus — excuse the heat and everything associated with it; but that is the only way we can do this — and drive down to the property which is on Columbia Street in Cambridge, not too far from here, and what you will then see is a vacant lot amongst other buildings, and across the street from a very nice little park.

The land in question in this particular case was vacant at the time of the taking, and I will caution you that it has not been well tended by the City of Cambridge since the date of the taking, and it is overgrown.

Other than that, your Honor, I don't know what else we need to inform the jurors at this time. Do you want to —

MR. McLAUGHLIN: Just briefly.

I am George McLaughlin, and I am an attorney with McLaughlin and Brothers, and I represent the City of Cambridge. As the judge told you, this is an eminent domain procedure in which the City of Cambridge has exercised its constitutional right to take the Weisberg property for a public purpose. The issue is the fair market value — and that is a term you will be hearing a lot about — the fair market value of the property as of the date of the taking, and as the judge told you, that date was May 17, 1984.

Fair market value is defined as the most probable price that a hypothetical willing buyer would pay to a hypothetical willing seller with neither party acting under compulsion or force, with both parties acting knowledgeably and prudently and with both parties acting in a free and open market.<sup>5</sup>

Evidence 119 (Little Brown and Company 1981). "In nearly all jurisdictions, individual landowners are qualified to state their opinion of the value of the property. Some attorneys, however, believe that it is poor trial strategy to allow the condemnee to testify as to the value of the property. These attorneys argue that there may be a tendency on the part of the landowner to overvalue the property. If the jury senses this puffery, they may discredit much of the condemnees testimony." Ch. 8 *supra*.

<sup>5</sup> "The term 'fair market value' means the amount of money which a purchaser willing, but not obliged, to buy the property would pay to an owner willing, but not obliged, to sell it, taking into consideration all uses for which the land was suited and might be applied." 4 Nichols on Eminent Domain Ch. 12.

To help you we will take a view. We will go to the property. At the end of the trial Judge Valley — and perhaps a little bit at the beginning — will tell you what is evidence and what is not evidence.

One of the things that is evidence is the view. I ask you to pay close attention to the subject property itself, to the surrounding properties, to the type of neighborhood it is in, and any other things you might think, would be helpful to you.

Now, procedurally, as Judge Valley will tell you, all that will happen on the view is that Attorney Goldstein and I will be pointing out, drawing your attention to various points of interest. There will be no great speeches, no arguments. We will just be pointing out various things that we think will be helpful to you in determining the fair market value.

You can't talk to us; not allowed by the rules. If you have any questions or if circumstances arise, there is a court officer with us and you should address any questions, or if any problems arise, to the court officer.

Thank you.

**THE COURT:** This view is provided for in the statute that sets up the procedure for people who are involved in a land-taking case, Chapter 79 of the General Laws. That is the chapter that provides among other things, that the jury — that the case shall be tried in the Superior court by a jury, and it has many provisions.

One of the provisions is that if either party to the litigation involved in the land-taking desires a view, that view shall be ordered. In the ordinary case, whether or not a jury will go out on the view is left to the discretion of the trial judge and, depending upon the type of litigation that is involved, the trial judge will make a determination as to whether or not a view would be helpful, and he may order it. If the jury view is requested, he may deny it.

Not so in a land-taking. It is a matter of right, and the parties, in this case have requested it, and so we will do that.

What in effect happens when a jury goes on a view is you transport the court out to the scene of the taking. And all the prescribed protections, the so-called integrity of the trial is preserved on that view. You will be in charge of a court officer.

There are certain things that you can't do. For instance, you can't have any discussion about the case while you are on this view.

And the lawyers are permitted in a restricted way to speak to the jury. They can point out certain things they want you to observe while you are on the view, having in mind that what you observe may be



evidence if you find that it is relevant to the issue, which in this case is what is the fair market value of this property on May 17, 1984.

And market value will be defined.<sup>6</sup> The definition that Mr. McLaughlin gave is close to what market value is. It is a technical state-of-the-art definition the law has applied to these cases.

And when you are out on the view and the lawyers are pointing out certain things they want you to observe, you can't ask them why they want you to see that or look at that with any particularity. The reasons will be developed later when you come back to the courtroom and the case proceeds. During the course of the evidence it probably will be developed why he wanted you to look at a particular place or building or street or monument or whatever. It may be developed. But you can't engage in any conversation. You can't ask any questions on the view any more than you can ask questions here. And of course, as you know, that is not permitted.

But the view is not very far away, and hopefully the bus will be air conditioned. I am told this property is over near Central Square, which isn't too far from here, and it shouldn't take too long.

And when we come back from the view, then the lawyers will begin to address you again on what is called a general opening and outline to you what they hope to prove through witnesses in the course of this trial.

If you listen carefully, the clerk charges the court officer, who will have you — who will be with you on this view on the bus. And if you listen carefully to the charge which the clerk will give to the court officer, you will have a fairly good idea as to how to conduct yourselves while you are on the view.

Okay, Mr. Clerk.

THE CLERK: Do you solemnly swear you will take the jury to the place in question and suffer them to view the same or anything relating to the controversy between the parties; and you will not permit the parties to enter into a debate in the hearing of the jury, and you will allow no person to speak to them unless it be Attorney Goldstein, counsel for the plaintiff, or Attorney McLaughlin, counsel for the defendant, they to point out such things that they may deem expedient; and you will keep the jury together until they return into court unless the court shall otherwise order.

So help you, God.

THE COURT: Recess.

<sup>6</sup> See n.3 *supra*.

(Recess taken at 11:38 a.m.)

(Jury went on a view.)

(Luncheon recess taken.)

AFTERNOON SESSION

(The Court entered the courtroom at 2:06 p.m.)

MR. GOLDSTEIN: May it please the Court, ladies and gentlemen, Mr. Foreman, my name is Robert Goldstein. I represent the plaintiffs, Edward and Janice Weisberg — there is a little bit of echo here — who were the owners of the property on Columbia Street that we had the pleasure of seeing before lunch. I trust you managed to survive the hot weather and the trip. The Weisbergs owned that property from February 1, 1983 until it was taken by the proceeding called eminent domain that his Honor started to describe to us before, on May 17 — is that the date — on May 17, 1984.

The case which we have here is, therefore, one that is not in the usual sense where we have to determine who is at fault, if someone did such and such to somebody else. What we are really talking about here is trying to determine the fair value of this property.

The law, as his Honor will tell you, says that the City has a lawful right to take property in certain circumstances, and it is not disputed here that this is a lawful taking of the property.

Their obligation, once they have done that, is to pay the fair market value to the owners of the property. The fair market value has been defined as the highest price that a willing buyer will pay a willing seller. Kind of speculation.

Not the average or median. We must determine what the highest and best use of this property is, and that is the value which the owner is entitled to.

The reason why we are here is that there is a dispute. The City says the highest and best value for this property is one price, and the owners are not satisfied with that situation.

We will present testimony to you which will tell you what the price was that the owners of the property paid when they had it. We will describe in a little bit more detail, perhaps, what the area was like at the time. There have been some changes since the time, since 1984, and we will introduce to you evidence as to the highest and best use of this property and what the fair value of that property is.

In addition to which the plaintiff will also introduce to you the assessed valuation<sup>7</sup> of the property; that is, for those of you who might be confused, between the appraised values and assessed values.

As the cities and towns determine what properties are worth in order to tax them, in 1982 the City of Cambridge determined that the value of this property was and they — as they had in every

<sup>7</sup> "It is almost everywhere the law that the value placed upon a parcel of land for purposes of taxation by the assessors of the town in which it is situated is no evidence of its value for other than tax purposes. This rule of exclusion has been applied in the determination of value in eminent domain proceedings." 5 Nichols on Eminent Domain Ch. 22. [See Ch. 22 for a comprehensive analysis of the common law and statutory provisions concerning the use of assessed values in eminent domain proceedings].

Massachusetts is one of a few states which has a specific statute authorizing the introduction of assessed values into evidence at the trial of an eminent domain case. The statute is Mass. Gen. L. chs. 79, 35 (1983).

The valuation made by the assessors of a town for the purposes of taxation for the three years next preceding the date of the taking of or injury to real estate by the commonwealth or by a county, city, town or district under authority of law may, in proceedings, brought under section fourteen to recover the damages to such real estate, the whole or part of which is so taken or injured, be introduced as evidence of the fair market value of the real estate by any party to the suit; provided, however, that if the valuation of any one year is so introduced, the valuations of all three years shall be introduced in evidence; and provided, further, that no such valuation shall be so introduced as such evidence unless within the five years preceding such taking or injury there has been a comprehensive revaluation of the real estate of the town and the valuation or valuations sought to be introduced are valuations assessed after such comprehensive revaluation.

Traditionally, the assessed value of real estate in Massachusetts was substantially lower than the fair market value of the property. However, in recent years, municipalities have improved their methods for determining the assessed value because a municipality's total assessed value represents a cap on the municipality's taxing ability. In Massachusetts, the fiscal year runs from July 1 to June 30. Fiscal year 1994 begins on July 1, 1993 and it ends on June 30, 1994. The assessment date for fiscal 1994 is actually January 1, 1993. Accordingly, the assessed value of a property for fiscal 1994 represents the fair market value as of January 1, 1993.

In this case, Attorney Goldstein was successful in introducing the assessed value for fiscal 1985 (\$33,000.00). The assessment date for fiscal 1985 was January 1, 1984, which was only four and a half months before the date of the taking (May 17, 1984). Attorney Goldstein hoped that the assessed value would carry an "aura of officialdom." Attorney Goldstein also hoped that the jury would be offended by the fact that the City's appraiser would testify that the value of the property was \$22,000 even though the City assessor's office had been collecting taxes on an assessed value of \$33,000.00.

previous year, but there was a change made that was made in 1982 as to the method of valuing property and they issued their tax bills through — and the evidence will show to you that the Weisbergs paid the tax bill based on the assessment that the City of Cambridge rendered and that they based on the assessment as of January 1, 1983, and then again on January 1, 1984, previous to the taking of the City once again, valued the property based on its — the same premise, and submitted a tax bill, again, for the following fiscal year, which runs from July 1 to June 30. But the significant date is when it is determined, which is January of each particular year.

Even though what we are talking about here is basically a determination by you of the fair value of this property, what we ask you to do is draw on your own life experiences, the statements of the witnesses, to determine what the fair value of this property is. Sometimes we call this an assessment of damages type of situation.

There is one other issue, and that is, basically, that there is an underlying issue of fundamental fairness. The Government, in this case the City of Cambridge, had determined a certain value via their taxing authority. And you will hear testimony that subsequent to that they determined the different value for the purpose of offering to the Weisbergs, the fair value of this property. And the Weisbergs, through their ownership of the property and the opinions of their experts, will testify to the fair value of the property as of May of 1984.

THE COURT: Do you wish to make a statement at this time, Mr. McLaughlin?

MR. McLAUGHLIN: Yes, your Honor.

THE COURT: You may proceed.

MR. McLAUGHLIN: May it please the court, Mr. Foreman, members of the jury, again, my name is George McLaughlin and I represent the City of Cambridge. I am going to try a safe zone here because there is a little bit of an echo in this courtroom.

As Mr. Goldstein told you, and Judge Valley before, the sole issue in this case is fair market value. You will hear all kinds of testimony about the definition of fair market value. And you may be asking yourself at this time: How am I going to determine fair market value? How am I qualified to determine fair market value?

Well, I want to say to you that it is the same question that has faced generations of jurors before you, and at the end of the trial, I think you will find, as they did, that you will be fully equipped to determine what the fair market value is of this property, or rather was of this property on May 17, 1984, and believe me, we are going to give you plenty of help.

There will be plenty of evidence on the issue of fair market value. The evidence will be in many different forms. There will be documentary evidence in the form of photographs. There will be deeds of other sales and in particular two sales of the subject property which I would like you to pay close attention to.

And there will be testimony, and among the testimony, there will be two real estate appraisers. Now, the defendant's real estate appraiser, the City of Cambridge's real estate appraiser, is one named Donald Reenstierna, and he is sitting right there in the front row to my front.

And Mr. Reenstierna is the type of fellow whom large and big businesses have hired, whom governments have hired, whom courts have appointed and whom private land owners like yourselves have hired over the years when they wanted to determine what the fair market value of their property was.<sup>8</sup>

First, Mr. Reenstierna will talk to you about his clients and his general experience in the field of eminent domain and just generally in real estate. And secondly, he will talk to you in detail about the subject property and about the method that he used.

Now, the method that he used is the same method that the Weisbergs' appraisers used, and it is called the "comparable sales method." You may or may not be familiar with that. But all it is is the same thing you or I do when we go out to buy a car.

When you want to buy a new car, you just don't rush out and buy a car. You go into the marketplace; you look around for comparable cars. You find out what they are selling for and then you make an informed purchase.

And that is exactly what Mr. Reenstierna did. He relied upon his real estate experience. He has a great deal of experience in the Cambridge area and he went out into the marketplace and found similar sales, five similar sales of property that sold roughly around the same time as the taking, and he will give you testimony about that.

Now, in addition, we are lucky because we have two sales, and I would like you to pay close attention to these sales, because they are

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<sup>8</sup> A common theme to be developed in a land damage case is to emphasize the credentials and experience of your appraiser as compared to your adversary's appraiser. In this case, the City's testifying appraiser was an extremely well qualified and experienced appraiser. If your appraiser outshines your adversary's appraiser, you might consider asking the jury in your closing argument which appraiser they would choose if their property had been taken by eminent domain.

extremely important. We have two sales of the subject property within three years of the date of the taking.

In the first sale the property was purchased in April of 1981 for \$15,800, and then approximately two years later in February of 1983 the property was purchased by the Weisbergs for \$18,000. Approximately 15 months prior to the taking the property was purchased for \$18,000 and I would like you to consider that evidence and listen carefully to those sales.

Now, Mr. Goldstein has made a big deal in his opening about the assessed value of the property, and we will have evidence about the assessed value of the property.

There will be testimony about the assessed value of the property as of January 1, 1983, and that evidence will come from a fellow named Kevin McDevitt, who is one of the assessors in Cambridge. Mr. McDevitt is in the second row there. And Mr. McDevitt will describe to you the fact that Cambridge was in the process of re-valuing its 18,000 parcels and that they didn't do this on an individual basis, because neither time nor costs would allow them to do so.

So what they did is really a massive appraisal process, and in a mass appraisal process they use a computer program, and unfortunately with respect to this property the computer program made an error,<sup>9</sup> and —

MR. GOLDSTEIN: Objection.

THE COURT: I don't think you can affect the assessed value by explaining that it could be a computer error. I don't think it is opened under the statute that you can do that, Mr. McLaughlin.

MR. McLAUGHLIN: Fine, your Honor.

I withdraw that and apologize to the Court.

THE COURT: You don't have to apologize. There was an objection and I sustained the objection. You may proceed.

MR. McLAUGHLIN: Fine.

<sup>9</sup> As explained earlier, Attorney Goldstein wisely introduced the City's assessment records showing an assessed value of \$33,000.00. In an effort to deflate this evidence, Attorney McLaughlin indicated in his opening that he would introduce evidence to show that the high assessed value was really the result of a computer error. Attorney Goldstein astutely objected and the objection was sustained. The trial judge pointed out that the assessed value was admissible as of right by the terms of the statute and there was nothing in the statute which allows opposing counsel to explain away the assessed value.

In the final analysis, ladies and gentlemen, the City of Cambridge is not out to cheat anyone. They want to treat the Weisbergs fairly and they believe they have treated them fairly and in return they would like to be treated fairly.

You will hear a great deal of evidence, and I would ask that you keep an open mind during the trial, that you listen to both sides. And at the end of the trial, you will be asked to weigh the evidence that you hear and to deliberate and to deliver a just and fair verdict, which I am sure you will.

And unfortunately, this is not a murder trial. It is not the most exciting issue in the world, but I assure you that Mr. Goldstein and I will try to do our best to make it an exciting, interesting experience for you.

Thank you.

THE COURT: All right.

MR. GOLDSTEIN: I will call Mr. Simmons.

### § 13A.03 Testimony

#### [1]—Direct Examination of Landowners' Expert Appraiser

JOHN L. SIMMONS, SWORN

DIRECT EXAMINATION BY MR. GOLDSTEIN

Q. What is your name and address?

A. John L. Simmons. I reside at 22 Elmwood Street in Newton, Massachusetts.

Q. Are you employed?

A. Yes, I am.

Q. What is your occupation?

A. I am employed as a real estate appraiser.

Q. For whom do you work?

A. With the firm of J.P. Berquist & Associates, located at 21 Studio Road in Auburndale, Massachusetts.

Q. And how long have you been so engaged?

A. I have been engaged full time for almost three years with J.P. Berquist & Associates, and prior to that, approximately four years on a part-time basis. And during that period, I was with the City of Newton Planning Development Department as the Director of Current Planning, from 1964 through 1986.

Q. Could you describe what the Department of Planning and Development is?

A. It is involved in land use and zoning issues. I was also responsible for the city of Newton Conservation Land Acquisition Program.

Q. And prior to that —

A. Prior to that, I was a student at Boston University and worked full- and part-time for a number of re-valuation, property re-valuation companies evaluating property for tax purposes.

Q. What degrees do you hold?

A. I have a degree in business administration from Boston University. That is from the School of Management.

Q. In connection with your occupation as an appraiser, could you tell us some of the various jobs that you have worked on in the past several years?

A. I have done a number of residential appraisals for divorce purposes, for estate purposes, a few for eminent domain purposes.



Q. Would these be in the Greater Boston area?

A. Yes.

Q. Are you familiar with property values besides Newton, that you mentioned? What other cities and towns have you worked in?

A. In Arlington, Cambridge, Needham, Sudbury, Wayland.

Q. Do you belong to any societies or associations?

A. No, I do not.

Q. In connection with the property in question, let me ask you a question:

Have you testified in court before?

A. Yes.

Q. And when would that have been?

A. Last year right in this courtroom.

MR. GOLDSTEIN: Is there any questions [sic] of the witness' qualifications, or may I proceed?<sup>1</sup>

MR. McLAUGHLIN: No.

MR. GOLDSTEIN: No question.

Q. In connection with the property located at Columbia Street in Cambridge, did you have occasion to value that piece of property?

A. Yes, I did.

Q. And when was that?

A. That was in 1989.

Q. And prior to that —

A. Prior to that, the property was seen in August of '88.

Q. Previous to that?

<sup>1</sup> "Trial counsel must, of course, be able to qualify the expert to testify. This means that the trial judge must be persuaded to determine, in his discretion, that the witness is competent to testify as an expert. The decision of the trial court may be set aside only for an error of law, or if plainly wrong or an abuse of discretion. The court must determine that the witness has the necessary qualifications to testify as an expert, but there is no hard and fast rule as to what constitutes 'necessary qualifications.' The court will at least expect the witness to have knowledge of sales in the town where the property is located, experience in buying, selling or conducting real estate transactions in the vicinity of the property and a systematic approach to formulation of an opinion as distinct from a quick judgment." Weinstein and Keating, *The Use of Expert Witnesses in Valuing Real Estate*, 68 Mass. L. Rev. 141 (Sept. 1983).

A. Previous to that, in June of 1987.

Q. In connection with that piece of property, could you describe it, please?

A. The property itself?

Q. Yes.

A. Contains approximately 11,040 square feet, about 60 feet of frontage on Columbia Street. Generally flat at grade with the abutting streets and at the time of viewing it was in an overgrown state, unkempt.

Q. In connection with determining the market value of that property, can you describe the various methods by which market value can be determined?

A. Market value can be normally determined in the profession in three ways: Use of what is referred to as the "cost approach," the "income approach," and "market date approach," or "comparable sales approach."

Q. Can you describe the first such method in somewhat more detail?

A. In the income approach, income to the property owner that is derived from its use is determined. The expenses of operating that property are determined, and on the basis of that, the net operating income. That income is then capitalized at a given rate, depending upon the financial circumstances in the area, and capitalized and developed a fair market value from that.

Q. This property in question?

A. Is vacant and consequently that method is not applicable to the development of value.

Q. And the second method by which you —

A. The second method is the cost approach, replacement cost approach, where improvements on the property are — the cost to replace those are calculated, and if it was a new improvement, there is no depreciation taken. Old improvement, old depreciation and to that is added the value of the land, land values that have been developed, and fair market value developed from that particular process.

In this case the cost approach was not applicable because it was vacant land.

Q. Which brings us down to the third approach.

A. The third approach is —

Q. Comparative sales?<sup>2</sup>

A. Correct.

Q. Direct market?

A. Direct market. Direct comparable sales approach, market approach, in which the sales occurring around the time that the property is being valued are researched, a determination is being made as to whether these sales are comparable to the property being viewed, and adjustments made to those sales for various reasons.

Q. What would the reasons be?

A. Those reasons would be, beginning with the date and time, sale of the comparables that you are reviewing, location with respect to vacant property, the size and shape of the parcel, as well as its physical characteristics.

Q. In connection with the property on Columbia Street, were you employed to make an appraisal of that?

A. Yes.

Q. And what was the purpose of that appraisal?

A. The purpose of the appraisal was to determine the fair market value of the subject property as of May 17, 1984.

Q. Can you define fair market value?

A. Yes. Fair market value is that highest probable price that would be paid by a willing buyer and a willing seller, fully knowledgeable about the total transaction.

Q. That would be a hypothetical?

<sup>2</sup> "If the expert relies upon the sales of similar properties, he should obtain the following information with regard to those sales: the parties to the sale, the date, the price, the location, the size, recording date, the valuation, any special circumstances or condition of the sale price, similarities and dissimilarities between the property and the subject property, and, if the property is in a different city, differences in municipal services, assessment ratio, and tax rate as compared to the location of the subject property. Trial counsel should review the comparable sales with the expert in considerable detail. The expert should describe each comparable property in some detail, pointing out to the jury the similarities between the comparable property and the subject property, as well as the differences and the manner in which he took those differences into account. If there are sales which the expert did not rely on (and which opposing counsel will rely upon), the expert should point out to the jury why he did not consider the sales comparable." Weinstein and Keating, *The Use of Expert Witnesses in Valuing Real Estate*, 68 Mass. L. Rev. 146 (Sept. 1983).

A. A hypothetical, yes.

Q. What was the first thing that you did when you commenced the appraisal?

A. The first thing was to review the property, to view it physically, determine its characteristics, and then research the market to determine whether any sales had been undertaken, or sales had been completed prior to the date of the — value date that you are working towards.

Q. Can you describe the property, the values of the property, the characteristics — excuse me — characteristics of the property in question other than as you have before?

A. Its location. It is in a multi-family area. On the southerly side, you probably saw, there are two apartment houses.

West, there are a couple of three-families, and to the north a few more. And adjacent to the property is a new two-family, which was undergoing renovation at the time of the last inspection we made of the property.

And directly across the street from the property is a part that was recently developed.

Q. And what would you — following your cursory inspection, would you take a survey of some kind or measurements, something of that sort? Or is that part of the original —

A. That is all part of the original.

Q. The property in question, did it contain any peculiar characteristics that — which would make it diminish its value or increase its value in some regard?

A. Only to the extent that it was a flat piece of land that is no different than the property surrounding it.

Q. There were no problems with the access or any —

A. Not that I could observe.

Q. And then what would — can you describe what your next step would be in the process?

A. The next step in the process would be to research the sales that had occurred and study those sales and find out the characteristics of those sales to make a determination as to whether they would in any way be reasonably comparable to the property being valued.

Q. And did you do so?

A. Yes.

Q. And how many such properties did you examine?

A. I examined four, five, that occurred prior to the taking or the value date of May 17, 1984 and found only one that occurred within the year prior to that date and that sale date — sale was the subject property. And prior to that there were three or four sales that occurred in 1981 and 1980.

Q. Can you tell us what those particular — the locations of those properties were, and the dates on which those transactions —

A. Not without looking at the report.

Q. Can you —

MR. GOLDSTEIN: Your Honor, may —

THE COURT: Do you have the report there?

THE WITNESS: Yes.

THE COURT: Look at it if you want to. You can look at your own report.

(Witness looking at report.)

A. The first property — the first was Sale No. 1 — is located at 12 to 14 Berkshire Street in the City of Cambridge near the subject property.

Q. When was that property transferred?

A. That property was transferred on November 2, 1982.

Q. Can you describe that property?

A. The property consisted of 2,017 square feet of land is now — was vacant at the time and is now currently used for parking.

Q. And what is the zoning in that particular —

A. C-1 is similar to the subject property.

Q. And a 2,000 square foot lot, is that a buildable lot? A. It could be. Depends upon when that lot came into existence.

Q. Would you have an opinion as to its use; its best use?

A. The highest and best use of that property could have been for a single- or two-family use.

Q. And it's considerably less land area than the property in question here?

A. It is significantly smaller, yes.

Q. And what was the next comparable sale?

A. The next comparable sale that we found was at 6 to 10 Valentine Street in Cambridge. That consisted of 6,300 square feet and sold on

August 6, 1982. That land area was less than the subject property and in our judgment, it was in a slightly better area than the subject property and was purchased by the abutters.

As a result of that we made certain judgments as to adjusting the sales price of that property to reflect the location. Since it was considered to be a better location, a decrease was made, and the time of sale an increase was made.

Q. Can you describe what was occurring generally in the real estate market in 1982 and 1983?

A. Generally —

MR. McLAUGHLIN: Objection, your Honor.

THE COURT: May have it. In Cambridge?

MR. GOLDSTEIN: In Cambridge.

A. In Cambridge, similar to what was occurring in the Greater Boston area, real estate values began to show marked increases during the year of 1983, and showing increases ranging in the two to three percent per month —

Q. What was the next comparative sale that you —

A. The next comparative sale was at 64-68 Hampshire Street, and that was sold on February 2, 1982.

Q. And can you describe that property?

A. That sale consisted of 4,214 square feet of land, which is also significantly smaller than the property we are looking at, and it was located in a slightly better neighborhood than the subject property. As a result of that, adjustments were made for those differences.

Q. Were there any other sales?

A. Yes. Other sales that occurred, occurred after the valuation date and it was determined to use those to further indicate the value that the — fair market value of the property by making adjustments to those back to the date, of the fair market value.

Q. That would necessitate some reduction —

A. Yes.

Q. Increase in market value?

A. Market value, yes.

Q. As well as the other adjustments that you would do?

A. Yes.

Q. That you describe for size, location —

A. Location.

Q. —et cetera.

Can you describe what those comparison sales are, starting with the first one in time?

A. The first one occurred on February — I'm sorry — on June 15, 1985. It was located at 127-133 Walden Street in Cambridge.

Q. Can you describe that?

A. Consisted of 18,458 square feet of land, and at the same time of the sale contained one stone masonry building, and the property was purchased for the development of 11 luxury townhouses in new construction on that site. Taken into account in arriving at the indicated fair market value for the subject: Cost of demolition of an existing building was made and other adjustments back down to the year 1984.

Q. And the next such comparative sale?

A. The next such property was at 21 Cogswell Avenue in the City of Cambridge. That sale took place on March 6, 1985. It consisted of 15,119 square feet of land and had a former single-family dwelling and detached garage on it.

And, again, the reason for the purchase was for the development of six town house units on this property and, again, those same characteristics, time of sale, location, size of property, adjustments were made to arrive at the fair market value for May 17, 1984.

Q. And was there was one other comparative sale —

A. Yes.

Q. — that was conducted?

A. The third comparable sale which occurred on March 5, 1985 was located at 12 to 14 Shea Road in the City of Cambridge, and that property consisted of 3,540 square feet of land. And the purpose of that sale was to construct two townhouse units.

The location was considered to be much better than the subject property. Its size was smaller than the subject property and adjustments were made to reflect the comparable market value of May 17, 1984.

Q. Now, Mr. Simmons, based on your studies and valuations and your experience, were you able to form an opinion as to the fair market value of the Columbia Street property in question as of the date of the taking?

A. Yes.

Q. And what is that?

A. That amount was \$45,000.<sup>3</sup>

Q. And can you state your reasons for arriving at that amount of money?

A. Yes. The reasons were studying the comparable sales that were on the view, making judgments with respect to the adjustments being made to the market date, both from the prior to the fair market value date of May 17, 1984 for those comparable and the sales occurring afterward, which were 1985, the early part of.

And as a result of that, we determined that the property had the value of \$45,000 based upon the highest and best use of the property, which was determined to be at that time nine townhouse units.

MR. GOLDSTEIN: Thank you. No further questions.

MR. McLAUGHLIN: Your Honor, I have a plan that I would like to put up.

<sup>3</sup> "As a general rule, once the appraiser has been qualified as an expert, he is entitled to give his opinion of value. After giving his opinion, the appraiser is then asked to give the reasons for his opinion. In stating his reasons for his opinion, the expert should consider all factors which a seller or purchaser would take into account in determining the value of property. Although the expert's failure to consider all factors will not make his opinion inadmissible, it does go to the weight of the evidence. The expert may not state incompetent facts as the reasons for his opinion, although hearsay or other inadmissible sources may form a ground for it. For example, he may state that he relied upon engineering reports, although he may not testify as to their conclusions or contents. The expert's testimony of value will be stricken if it can be shown that the basis of his opinion is not recognized by applicable law." Weinstein and Keating, *The Use of Expert Witnesses in Valuing Real Estate*, 68 Mass. L. Rev. 143-44 (Sept. 1983). In State Court, some judges may require the expert to give the reasons for his opinion before stating the opinion. However, under the Federal Rules of Evidence:

The expert may testify in terms of opinion or inference and give reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross examination. Rule 705.

The Advisory Committee Notes to the Rule point out that the Rule is fair only if the cross examiner has sufficient advance knowledge of the underlying facts which form the basis of the expert's opinion. This Rule underscores the importance of pretrial discovery in an eminent domain case. The trial lawyer should take advantage of any local rules which permit or require the pre-trial exchange of appraisal reports or any other methods which can be used to obtain the underlying facts upon which the adversary bases his opinion. See ch. 7A *supra*.



THE COURT: Have you seen that plan?

MR. McLAUGHLIN: He hasn't yet.

THE COURT: Well, show it to him.

MR. GOLDSTEIN: I would be happy to take a look at it.

(Mr. McLaughlin showed plan to Mr. Goldstein.)

MR. GOLDSTEIN: No objection.

THE COURT: Okay.

Dick, open the doors to the blackboard.

COURT OFFICER: Okay.

(Blackboard doors opened.)

MR. McLAUGHLIN: Would you like to see it, your Honor?

THE COURT: What?

MR. McLAUGHLIN: Would you like to see it?

THE COURT: No.

(Plan put on the blackboard.)

### **[2]—Cross Examination of Landowners' Expert Appraiser**

#### **CROSS-EXAMINATION BY MR. McLAUGHLIN<sup>4</sup>**

Q. Good afternoon, Mr. Simmons. How are you?

Mr. Simmons, you have testified that you worked for the firm of  
*(Text continued on page 13A-27)*

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<sup>4</sup> What follows is a superb example of an effective cross examination. It is obvious from reading this portion of the transcript that Attorney McLaughlin carefully studied each and every aspect of Mr. Simmons appraisal methods before confronting him on cross examination.

Remember one of the golden rules of cross examination is "Do not ask a question that you do not know the answer to." (For an exception to the general rule, see n.12 *infra*.) The only way that you can know what your adversary's answers will be is through careful and exhausting preparation. Ammunition for cross examination can be gathered from a review of the opponent's appraisal; a personal view of your adversary's comparable sales; a review of answers to interrogatories; careful review of all documents produced pursuant to a document request; and, if permitted in your jurisdiction, a pretrial deposition. However, it should be noted that many commentators strongly advise that you should not aggressively "cross examine" your adversary's appraiser at a pretrial deposition because you will "educate" the expert for trial or you may encourage your adversary to go out and hire a better and more qualified expert for trial purposes.

In preparing for cross examination of the appraiser you should consider the following areas for possible questioning: (1) the adequacy of the apprais-

*(Text continued on page 13A-27)*

er's qualifications (education, experience and professional designations); (2) the scope of his investigation (what inspections did he make, what records did he review and who did he talk to concerning the property); (3) correctness of his comparable sales (location of each comparable sale, physical characteristics of each sale, zoning district of each sale and the reasonableness of any adjustments made for each comparable sale); and (4) bias and fairness of the witness (how much is he being paid, how often has he worked for a particular employer, does he always testify for landowners or does he always testify for municipalities). Trial of an Eminent Domain Case (MCLE Inc. 1984) 107-110; Reprinted with permission from Edward M. Cohen, Esq., Examination of an Appraiser, The Use of Expert Witnesses (Minnesota CLE 1984) 115-125.

Before undertaking any cross examination, it is helpful to remember Irving Youngers "Ten Commandments of Cross Examination" which are quoted as follows:

- (1) **Be Brief** - The first step to persuasion is having the jury remember. If you are brief, the jury will remember.
- (2) **Short Questions, Plain Words** - Use plain English and the simplest words possible. Otherwise, you run the risk of the jury not understanding the question.
- (3) **Never Ask Anything But a Leading Question** - You should put words in the witness's mouth on cross examination to make the witness say what you want him to say, not what he wants to say. The hallmark of an effective cross examination is when a witness never says anything beyond yes or no.
- (4) **Ask Only Questions to Which You Already Know the Answers.** (For an exception to the general rule, *see* n.12.)
- (5) **Listen to the Answer** - Every so often you will get a spectacularly favorable answer which contradicts the rest of the testimony in the case, including the testimony of this witness.
- (6) **Do Not Quarrel with the Witness.**
- (7) **Do Not Permit a Witness on Cross Examination to Simply Repeat What the Witness Said on Direct Examination.**
- (8) **Never Permit the Witness to Explain Anything.**
- (9) **Avoid One Question Too Many** - The difficulty is recognizing the one question too many. As soon as you ask the question you will recognize it. Know when you have obtained everything helpful from a witness and then stop.
- (10) **Save It for Summation** - The jury may not understand what you are driving at during the cross examination because the argument is so clever and the cross is so subtle. But the jury does not have to understand the argument at that time. In fact, it is best to leave the jury in a state of unsatisfied curiosity. Nothing will make a jury more

Cole, Layer and Trumble in 1957 and 1958?

A. Yes.

Q. And were you a high school student at that time?

A. No, I was not.

Q. You weren't a high school student?

A. No.

Q. This was prior to college, though?

A. Yes.

Q. And was it a full-time job?

A. Part-time and full-time.

Q. Part-time and full-time. That is, you measured space, did you?

A. Yes.

Q. Okay. And from 1959 to 1962 you worked for Atlantic Appraisal Associates?

A. Yes.

Q. And that was a summer job, was it?

A. And full-time and part-time.

Q. And again you were measuring space during that job? You weren't doing any appraisals, were you?

A. No specifically, no.

Q. And then from 1962 to 1966 you attended college at BU; is that correct?

A. Yes.

Q. Now, from 1964 to 1986 you were with the City of Newton Planning Department?

A. Yes.

Q. And I imagine from '64 to '66 that was a part-time job because you were attending Boston University at that time.

A. Full-time. I was at BU part-time during that period.

Q. Okay. And were you full time with the City from 1966 to 1986?

attentive than curiosity. If the jury is left unsatisfied but you satisfy them on summation, they will be grateful to you and may manifest their gratefulness by a favorable verdict.

Robert E. Oliphant, *Trial Techniques* with Irving Younger (National Practice Institute 1978) 50-53. *See also* Ch. 8 *supra*.

A. Yes.

Q. And that was working about what: 40 hours a week, 50 weeks a year, roughly?

A. Roughly.

Q. Okay. And you never worked as an assessor for the City of Newton during that time, did you?

A. No, I did not.

Q. And did you begin working part-time for J.P. Berquist & Associates in 1981?

A. In 1981 on a sustained basis part-time, but —

Q. It was on a part-time basis because you were working 40 hours a week for the City of Newton at that time?

A. Yes.

Q. And I imagine you were gathering information for J.P. Berquist & Associates at that time for their appraisals.

A. After work hours, of course.

Q. Right. After work hours.

As far as your formal training in real estate, you have had one appraisal course towards a professional real estate designation is that correct?

A. Yes.

Q. And that is Course 1?

A. Course 101 with the Society of Real Estate Appraisers.

Q. And that is basics; that is fundamentals of real estate appraisal; is that correct?

A. Correct.

Q. Have you used your report to refresh your recollection before testifying here today?

A. Yes, I have.

Q. You don't have any professional designation, do you?

A. No.

Q. You don't have an SRA, do you?

A. No.

Q. So you did take SRA?

A. Yes.

Q. What is SRA?

A. Senior Residential Appraiser.

Q. And that is the highest designation of the Society of —

A. Of the Society of Real Estate Appraisers; that's correct.

Q. That is the highest designation?

A. Yes.

Q. As far as Cambridge is concerned, sir, for the five years prior to the taking, can you name one person one land owner who hired you to appraise vacant C-1 land?

A. No.

Q. How about for the 10 years prior to the taking?

A. No.

Q. How about any residential property in Cambridge, someone who hired you; not J.P. Berquist & Associates?

A. No.

Q. For the five years prior to the taking?

A. No.

Q. Well, how about any residential real estate in Cambridge for the 10 years prior to the taking; someone who hired you, now, not J.P. Berquist & Associates?

A. No.

Q. Can you name one bank that hired you to appraise vacant C-1 land for the five years prior to the taking?

A. No.

Q. How about for the 10 years prior to the taking?

A. No.

Q. Can you name a bank that hired you to appraise any residential real estate for the five years prior to the taking?

A. In Cambridge?

Q. In the city of Cambridge?

A. No.

Q. How about for the 10 years prior to that?

A. No.

Q. How about the name of any insurance company — any insurance companies that hired you to appraise C-1 land in the City of Cambridge five years prior to the taking?

A. No.

Q. Ten years prior to the taking?

A. No.

Q. Did any insurance company hire you to appraise vacant residential property of any kind in the City of Cambridge for the five years prior to the taking?

A. No.

Q. And how about for the 10 years prior to the taking?

A. No.

Q. Have you owned any residential property in Cambridge, sir?

A. No.

Q. Have you ever rented any residential property in the City of Cambridge?

A. My family has, yes.

Q. I am not talking about your family. I am talking about you, Mr. Simmons.

A. No.

Q. Have you ever leased any residential property in the City of Cambridge?

A. No.

THE COURT: You have got to wait until the lawyer asks the question. When the question is finished, then you answer; okay?

THE WITNESS: Yes, sir.

Q. Have you ever sold any residential —

A. No.

Q. Please.

A. I'm sorry.

Q. If I may be allowed to finish. That's okay. Take your time.

Have you ever sold any residential real estate in the City of Cambridge?

A. No.

Q. Now, as far as your testifying experience is concerned, you know that the records of all cases are kept in the Clerk's Office; is that correct?

A. If you say so.

Q. Do you understand that?

A. Yes.

Q. Have you ever been qualified as an expert in Middlesex Superior Court to testify about fair market value of Cambridge residential property?

A. No.

Q. For five years prior to the taking?

A. No.

Q. Ten years prior to the taking?

A. No.

Q. Have you ever been qualified as an expert to testify about residential, fair market value of residential real estate in Cambridge?

A. No.

Q. In Middlesex Superior Court?

A. No.

Q. Now, you have told us about your studies of the subject property; is that correct?

A. Yes.

Q. And I suppose that your studies have been memorialized in your property; is that correct?

A. Yes.

Q. And I assume that your report contains everything of importance regarding the subject property is that correct —

MR. GOLDSTEIN: Objection.

Q. — from the standpoint of determining value, in your report.

MR. McLAUGHLIN: Yes, your Honor?

THE COURT: Read that back.

(Record read back.)

Q. Now, in your course of study of your property, did you come across any sales of the subject property prior to the taking?

A. Yes.

Q. And was one of those sales from the City of Cambridge to the Fennell Realty Trust?

A. No.

Q. Was one of those sales from the Fennell Realty Trust to the Weisbergs?

A. It was that particular sale.

Q. That particular sale?

A. Mmm.

Q. And you studied that sale; correct?

A. I acknowledged it. I did not study it in any great detail.

Q. Did you discuss it with the Weisbergs?

A. No.

Q. You didn't discuss it with the Weisbergs?

A. No.

Q. Do you understand what I mean by an arm's length transaction?

A. Yes.

Q. It's true, isn't it, that the sale from the Fennell Realty Trust of the subject property to the Weisbergs was an arm's length transaction, wasn't it?

A. I don't know.

Q. You don't know.

What did you do when you studied about that sale of the very property that we are here about today, 15 months prior to the taking?

A. I reported it as being a sale at that particular time, just to report it.

Q. You didn't bother to talk to the Weisbergs about it; correct?

A. Correct.

Q. Didn't bother talking to the Fennells about it?

A. Correct.

Q. Just reported it in your report?

A. Yes.

Q. Have you seen a copy of that deed, sir?

A. No. I have not.

Q. Well, you have testified that the highest and best use of this property as of the date of the taking on May 17, 1984 is as nine town houses; is that correct?

A. Yes.

Q. Did you check the Building Department record in the City of Cambridge for the Columbia Street area at the time of the taking to determine how many townhouses had been built in that area at that time?



A. No.

Q. You didn't check with the Building Department records?

A. (No response.)

Q. You testified that the highest and best use is the most probable use; is that correct?

A. Correct.

Q. Don't you think it would be helpful in deciding whether or not it was a probable use by looking at the Building Department records to see what people were doing out there in the real world —

MR. GOLDSTEIN: Objection.

THE COURT: May have it.

Do you think that was important?

THE WITNESS: Did I? No, I did not.

Q. You didn't think it would be helpful to look at Building Department records to see what developers and other people were doing in that area at that time?

A. No.

Q. You didn't look at the Building Department records at all; is that your testimony?

A. Yes.

Q. I am a little confused.

Is it your testimony — strike that. Let me rephrase it.

Did you ever look at any of the Building Department records to determine what was going on in the Columbia Street area in and around the time of the taking?

A. No.

Q. You talked about nine townhouses; is that correct?

A. Yes.

Q. Did you do any studies about these townhouses?

A. I don't understand the question.

Q. Well, did you do any studies? Did you have any plans done or did you do anything beyond postulating that nine town houses would be a nice use?

A. Reflections of what the zoning would permit on the property, and also with respect to the uses occurring around it, it would appear that the most highest and probable use of the property would be for

the nine townhouses permitted under the Cambridge zoning ordinance.

Q. You studied zoning?

A. Yes.

Q. And you studied that in detail?

A. Yes.

Q. Well, can you tell the jury what the zoning is, first of all? Let me start there.

Can you give them your explanation of zoning, for someone who might not be familiar with that?

A. Zoning is used to control the use of land. It could range from residential, commercial, industrial. In this particular case it is a residential zone located in a specific residential zoning district which permits certain use of the land under a certain density controls.

Q. You told us that you studied that zoning in detail; is that correct?

A. Yes.

Q. What is the rear yard set-back for a C-1 zone for a townhouse use in effect on May 17, 1984?

A. I don't recollect.

Q. You don't recollect?

A. No.

Q. Did you know you were going to be cross-examined today?

A. Pardon me?

Q. Did you realize that you were going to be cross-examined here today?

A. Yes.

Q. And you knew that I might ask you about zoning; is that correct?

A. Yes.

Q. Did you do anything to prepare yourself about the zoning in preparation for testifying here today?

A. Yes.

Q. Well, what did you do?

A. I reviewed the City of Cambridge zoning ordinance with respect to the development of townhouses, but not with focusing on side yard and set-back distances.

Q. Okay. Fine.

Now, there is a part of every zoning law that is called the "dimensional requirement;" isn't there?

A. Yes.

Q. And rear yard set-back is one of the dimensional requirements, isn't it?

A. Yes.

Q. And rear yard set-back is the distance — usually the distance between the rear plot property line and the line formed by the closest plane of the rear of the building; isn't that correct?

A. Yes.

Q. And there are various zoning laws that say that the rear of that building can only be x amount of feet to the rear boundary line; isn't that correct?

A. Yes.

Q. So in essence what the rear set-back is telling you — that it's telling you how close your townhouse, for example, could be to the rear lot line; isn't that correct?

A. Yes.

Q. And that is a very important dimensional requirement to a developer, isn't it?

A. It could be.

Q. It tells them how far back he can put his building, doesn't it?

A. Yes.

Q. And if a developer wants to push that building back as far as possible, isn't that true, so that he can build a bigger building?

A. Fair enough.

Q. So that is an important set-back?

A. Yes.

Q. You don't know what the rear set-back is, do you?

A. No, I don't.

Q. How about the front yard set-back for a townhouse in a C-1 zone; do you know what that was?

A. No, I do not.

Q. All the front yard set-back is, is the same as the rear yard set-back, only it's in the front yard; isn't that correct?

A. Yes.

Q. Well, how about the side yard set-back for a C-1 zone for a townhouse as of the time of the taking? Can you say what the side yard is?

A. I do not recollect.

Q. And, again, the side yard is the same set-back only it's from the side of the building over to the property line; isn't that correct?

A. Correct.

Q. You don't know what the side yard set-back is?

A. No, I do not.

Q. Well, do you know what the minimum usable open space dimensional requirement was for a townhouse use at the time of the taking?

A. I don't recollect.

Q. Well, didn't you study it in preparing to come and testify today?

A. Yes.

Q. Well, didn't you study it in developing and in determining whether or not you could even build these nine townhouses?

A. Only to the extent of the size of the lot and the density permitted within the district with respect to the building, number of units to the land area and ratio, and determined that 11 units could be build on the site on that particular requirement.

Q. You determined that 11 units — I thought nine units.

A. And then further stated in the report that only a detailed study of the site could determine whether more than nine units could be built.

Q. But you didn't do any such detailed study?

A. No, I did not.

Q. You don't even remember whether nine townhouses could be built, do you?

A. Yes. I would say so, depending upon the bulk of the building, its size, location, on the property, the number of parking spaces required, open space requirement, and such things as that.

Q. Are you telling me that a reasonable person would rely on that ball park guesstimate when you don't even know, are not prepared to state the three set-backs, front, back and side?

A. I don't understand your question.

Q. Well, let me withdraw the question.

Do you know what the minimum width of a driveway was for a C-1 zone for a townhouse use?

A. I don't recollect that.

Q. Let me strike that.

A. Minimum?

Q. The minimum width for a driveway for a C-1 zone, townhouse use, as of the time of the taking; do you know what that was?

A. No.

Q. How many square feet was each one of these townhouses going to be?

A. You mean the floor area of the —

Q. Yes, floor area.

A. No idea.

Q. How many bedrooms?

A. No idea.

Q. Where were you going to park? Where were you going to park your cars, these people?

You realize that there is a parking requirement —

A. Yes.

Q. — for a townhouse use?

A. Yes.

Q. What is the parking requirement for a townhouse use in C-1 zone for townhouse development as of the time of taking?

A. I don't recollect.

Q. You don't recollect that either?

A. No.

Q. Do you know how this townhouse was going to face? How would the front of the townhouse have faced? Would it face the street? Would you have to turn it sideways?

A. It would have to be sideways, I would imagine.

Q. So you would have our townhouse facing those buildings that surround the property on one of the two sides?

A. Either one of the two sides, that's correct, yes.

Q. Did you ever do any studies about how much sunlight you would have gotten into that; sunlight?

A. No.

Q. Well, it's proper to consider that area as it existed at the time of the taking when you are doing your valuation; isn't that correct?

A. Yes.

Q. And the taking date here, as has been stipulated to, is May 17, 1984?

A. Correct.

Q. Can you tell us what was across the street from the subject property on May 17, 1984?

A. No, I cannot, other than —

Q. Please. Either yes or no.

A. No.

Q. Can you tell them?

A. No.

Q. Well, it is true that there was no playground across the street on May 17, 1984; isn't that true?

A. That is what I understand.

Q. No playground there, was there?

A. (No response.)

Q. Now, you testified — strike that.

You considered the playground in your appraisal report, didn't you?

A. I reported its existence, yes.

Q. Well, you reported its existence presumably because you thought that that had a positive effect to the fair market value; isn't that correct?

A. I don't know.

Q. You don't know.

You didn't decide to report it because it was there.

A. It was there.

Q. The fact of the matter is that there was a garage across the street from that property at the time of the taking; isn't that true?

MR. GOLDSTEIN: Objection, your Honor.

THE COURT: May have it.

MR. GOLDSTEIN: I —

THE COURT: Please. Do you know?

THE WITNESS: Do I know personally? No, I do not.

Q. You don't know personally?

A. Other than what I saw in the report, or in a plan by the City of Cambridge.

Q. Did you see in a report that there was a garage across the street on the day of the taking?

A. Yes.

Q. Do you know that name of that garage?

A. No, I do not.

Q. You also mentioned in your report that the sidewalks and street were newly constructed; is that correct?

A. Yes.

Q. Do you know when those sidewalks and streets were newly constructed?

A. No, I do not.

Q. You have no idea?

A. No.

Q. You don't know whether it was before or after the taking?

A. That's correct.

Q. You also have a picture in your report of a piece of property adjacent to the subject property and you say —

If you will, could you do me a favor and open your report, please, to the picture of the two-family next door.

That two-family wasn't renovated at the time of the taking, was it?

A. It was under renovation at the time that I observed the property.

Q. That isn't what I asked you. Please.

A. I don't know.

Q. At the time of the taking, do you know if that property was — let me finish the question.

At the time of the taking, do you know whether that property was renovated or whether it was in disrepair?

A. No, I do not.

Q. Well, when was J. P. Berquist & Associates retained to do their report?

A. In 1986, I believe.

Q. So that was two years after the taking?

A. Yes.

Q. And it took you three years to do your report from 1986 to 1989; is that correct?

A. Yes.

Q. You will agree with me that it's totally improper for an appraiser to consider improvements in the area when those improvements occurred after the time of the taking, when you are trying to determine the fair market value in an eminent domain case; isn't that correct, totally improper?

A. I don't know.

Q. Well, your purpose in appraising a property in an eminent domain proceeding is to establish the fair market value as of the time of the taking; isn't that correct?

A. Yes.

Q. So it would make common sense that anything that happened after the appraisal should not be considered; isn't that correct?

A. Yes.

Q. Mr. Simmons, let's consider your comparable sales for a minute.

Your first comparable sale was located at 12 to 14 Berkshire Street; is that correct?

A. Yes.

Q. Let me back up for a minute. Could you do me a favor?

MR. McLAUGHLIN: Judge, may I approach the witness?

THE COURT: Yes.

Q. Would you do me a favor and could you take that red pen and could you mark the location of the subject property on the chalk over here, please?

THE COURT: You want the witness to step down?

MR. McLAUGHLIN: Please, your Honor.

THE COURT: You may do that, if you are able to. Watch that step there, please.

(Witness went to the blackboard.)

A. Somewhere in here. You want an X there?

Q. If you would, please, Mr. Simmons.



(Witness marked on plan.)

(Witness returned to the witness stand.)

Q. Now, Mr. Simmons, location is probably the single most important element as far as when you are developing a real estate appraisal for a property; isn't that correct?

A. Yes.

Q. Location of your comparable sales.

Now, you will agree with me, won't you, that your Sales Nos. 4, 5 and 6 are over in West Cambridge; isn't that correct?

A. That's correct.

Q. And would you help me out — and you located the subject property right there; is that correct?

A. Yes.

Q. Now, you will agree with me, won't you, sir, that Cambridge is a rather unique city; isn't that correct?

A. Yes.

Q. For a lot of different reasons?

A. Yes.

Q. Now, it is unique in that there are great changes from neighborhood to neighborhood; isn't that correct?

A. Yes.

Q. You have Brattle Street, you have Coolidge Hill, you have Columbia Street — great diversity in and around Cambridge — you have Harvard Square. Great diversity from street to street and neighborhood to neighborhood?

A. (No response.)

Q. Now, sir, your Sales Nos. 4, 5 and 6 are in a totally different world from the subject property, aren't they?

A. Yes.<sup>5</sup>

<sup>5</sup> Attorney McLaughlin has hit a homerun with this question and answer even though it appears as if he violated one of the generally accepted rules of cross examination: "Do not ask a question that you do not know the answer to."

The familiar rule that a trial lawyer should never ask a question without knowing the answer or having access to impeach an erroneous answer is well known. There are occasions when pre-cross-examination tools are not available to exploit. Thus, we may need to create an exception to this general rule by "risk taking." This can be determined after careful analysis

Q. Nothing like Columbia Street?

A. That's correct.

Q. They are in West Cambridge, and that is a highly desirable residential area, isn't it, sir?

A. Yes.

Q. Now, getting back to your Sale No. 1, 12 to 14 Berkshire Street, could you tell me who the buyer of that property was?

A. I don't have that information with me.

Q. You don't have that information with you?

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that regardless of what the witness' answer is, a point will be scored by asking the question and the answer will not truly damage the case. Before asking such a question, one must have a pretty good idea about what the "score" is.

Thus, at given times, consider violating the general rule depending on what the "score" is by "gambling" even though the witness may "score".

Factors to Consider:

- (1) The reason for the "gamble" in cross examination is that it may pay off, particularly with a well seasoned expert. Many times, they prepare only for the expected cross examination; for example, the bounds previously deposed upon. Thus, a well prepared trial attorney often has an advantage in going beyond the scope of discovery with an expert unprepared on certain aspects of the case;
- (2) In evaluating the "gamble," remember that the entire case is familiar to you. You are better prepared in a limited area of cross examination than the expert;
- (3) You have the ability to guide and control the direction of testimony in cross examination;
- (4) You are skilled in the techniques and strategy of cross examination;
- (5) You have established a relationship of credibility with the jurors;
- (6) Assuming that the trial attorney has not tried to "overkill" or unnecessarily attack the expert so that he/she has gained the sympathy of the jurors, the cross examination should permit the jury to identify with the attorney as the underdog who overcomes that and concludes the examination on the road to victory.

This footnote was taken directly from written materials which were presented by Bob Gibbins, Esq. at the Association of Trial Lawyers of America's ATLA's Trial Masters Forum on Dec. 12, 1992, "Art and Science of Cross Examination: Rare Wine in a Vintage Bottle." Bob Gibbins is a partner in the Austin, Texas, firm of Gibbins, Winckler & Harvey and is the immediate past President of ATLA. He is a fellow of the International Academy of Trial Lawyers and International Society of Barristers.

A. No, I do not.

Q. Can you tell me who the seller of the property was?

A. No.

Q. Well, do you have that information someplace else?

A. Yes.

Q. Where do you have that information?

A. At my office.

Q. Did you realize you were going to come here today and testify?

A. Yes, I did.

Q. And that maybe I would be interested in who the buyer and seller were?

A. Yes.

Q. But you didn't bring that with you?

A. No, I did not.

Q. Well, do you have a copy of the deed to that sale?

A. Not with me, no.

Q. Is that back in your office, too?

A. Yes.

Q. Well, have you looked at the deed to that property?

A. Have I looked at the deed to that property?

Q. Yes.

A. No, I did not.

Q. You have it back in your office but you never looked at that deed?

A. No.

Q. Well, do you know whether that sale has the benefit of any easements or not?

A. No, I do not.

Q. You don't know that because you never bothered looking at the deed; is that correct?

A. Yes.

Q. Do you have any photographs of that piece of property?

A. No, I do not.

MR. McLAUGHLIN: May I approach the witness, your Honor?

THE COURT: Yes.

Q. Now, Mr. Simmons, I would like to show you three photographs and I will ask you not to turn those over.

Can you tell the jury whether those are photographs of your Comparable Sale No. 1?

A. (After looking) No.

Q. You can't tell the jury whether those photographs are of your Comparable Sale No. 1?

A. Taken from what perspective?

Q. From any perspective.

A. When?

Q. I'm not asking you when.

Are those photographs of your Comparable Sale No. 1?

A. As far as I can see, no.

Q. Have you ever been to your Comparable Sale No. 1?

A. I drove by it, yes.

Q. You drove by it?

A. Yes.

Q. Did you ever get out of your car?

A. No, just drove by it.

Q. You did a drive-by?

A. Yes.

Q. Do you have any plans of your Comparable Sale No. 1?

A. Not here, no.

Q. Are those back in your Office?

A. Yes.

Q. Well, you have testified on direct that the sales price of your — the sales date of your Comparable Sale No. 1 was November 2, 1982: is that correct?

A. Yes.

Q. How do you know what the sale date was if you never looked at the deed?

A. Information was taken off the assessor's sales report.

Q. When a person buys a piece of property, they are given a deed to that property; isn't that correct?

A. Yes.

Q. And that deed is the same as a certificate of title of a car; isn't that correct; only it has to do with real estate?

A. Yes.

Q. And they take that deed and record it at the Registry of Deeds; isn't that correct?

A. Yes.

Q. And if you want to go look up a sales price or a sales date, the most accurate place to look is the Registry of Deeds; isn't that correct?

A. Yes.

Q. Because those are the only official records of sale; isn't that correct?

A. Yes.

Q. Did you ever go to the Registry of Deeds and look at the deeds?

A. No.

Q. That is the wrong sales date, isn't it, sir? You have the wrong sale date, don't you?

A. I don't understand.

(Document handed to the witness.)

Q. Could you do me a favor, Mr Simmons. and take a look at that deed, please.

(Witness looked at deed.)

Q. Do you recognize that as a deed to your Sale No. 1?

A. Yes.

Q. November 2, 1982 is not the sale date is it, sir?

A. No.

Q. Now, it's generally true that abutters pay more for pieces of property than other people, don't they?

A. They could.

Q. Well, isn't that generally true?

A. Not — I don't ascribe to that.

Q. You don't ascribe to that?

A. No.

Q. Do you know what this property was used for after purchase?

A. For parking.

Q. And purchased by the abutters?

A. Yes.

Q. And don't you think that an abutter who purchased an abutting piece of property for parking would tend to pay a higher price?

A. I don't know.

Q. You don't know.

This is a superior location to the subject property, isn't it, this Sale No. 1?

A. No.

Q. Not a superior location?

A. Considered to be reasonably similar.

Q. Considered by you to be reasonably similar?

A. Yes.

Q. But it has a significantly smaller land area, doesn't it?

A. Yes.

Q. This parcel was 2,040 square feet; at least that is what you testified; is that correct?

A. Yes.

Q. Are you sure that that is the correct square footage?

A. Yes.

Q. Well, you will agree with me, won't you, it's smaller — that smaller parcels such as this generally sell for more per square foot because there are more people out there to pay for smaller parcels than there are for larger parcels; isn't that correct?

A. I don't understand, sir.

Q. Well, do smaller parcels — do 2,000 square foot parcels usually sell for more per square foot than much larger parcels, which are, as you say, considerably larger parcels.

A. If it is the — it was the same price for both, yes.

Q. What same price?

A. That is the only interpretation I can make of your —

Q. So what you are telling the jury, then, is that it's not necessarily true that smaller parcels generally sell for a higher price per square foot; is that what you are telling this jury?

A. What are you comparing it to?

Q. Let me move on, Mr. Simmons.

The shape of this parcel, this is pretty much a square parcel, isn't it?

MR. GOLDSTEIN: Which parcel are you referring to?

MR. McLAUGHLIN: Sale No. 1.

Q. We are still on Sale No. 1. It is a square parcel, isn't it?

A. Yes.

Q. Better shape than the subject property, which is kind of a narrow, rectangular parcel; isn't that correct?

A. It is a rectangular parcel, yes, and —

Q. It is a square parcel. The subject parcel is a rectangular parcel?

A. That's correct.

Q. And this property has more frontage than the subject property because it is a corner lot, isn't it?

A. (No response.)

Q. Well, do you know what the frontage of this property is?

A. No.

Q. You don't know the frontage.

You know that it is a corner lot, don't you?

A. No.

Q. You don't know that this is a corner lot.

Well, sir, this sale took place approximately 19 months prior to the taking; isn't that correct?

A. Yes.

Q. And you did an adjustment for time at 50 percent; isn't that correct?

A. Yes.

Q. So that means that you adjusted the time up by 50 percent between the date of this sale and the taking 19 months later; isn't that correct?

A. Yes.

Q. And if something is appreciating at 50 percent of 19 months, will you agree with me that it is appreciating 32 percent a year?

A. Yes.

Q. And that is just your adjustment; isn't that correct? That is nothing that actually happened; isn't that correct?

A. Yes.

Q. Can you name me one sale on Berkshire Street that appreciated 32 percent a year in this time period to justify that adjustment?

A. No.

Q. Can you name one sale in that neighborhood that appreciated 32 percent this time to justify that adjustment?

A. No.

Q. All right. There are no townhouses on this property, are there, Mr. Simmons?

A. No.

Q. Now, sir, I would like you to turn to your Sale No. 2, 6 to 10 Valentine Street

Can you tell me who the buyer of 6 to 10 Valentine Street was?

A. No.

Q. Can you tell me who the seller of 6 to 10 Valentine Street —

A. I don't have that information with me.

Q. Do you have a copy of the deed?

A. Not with me.

Q. Do you have a copy of any plans of 6 to 10 Valentine Street?

A. Not with me.

Q. Do you have any photographs of 6 to 10 Valentine Street

A. Not with — no.

Q. Now, you testified on direct that the sale date of 6 to 10 Valentine Street was August 6, 1982; is that correct?

A. Yes.

MR. McLAUGHLIN: If I could have a minute, your Honor.

(Checked notes.)

Q. I ask you to take a look at that deed, and in particular the date. Have you had enough time to look at that?

A. Yes.

Q. You have the wrong sale date for that sale, don't you?

A. Yes.

Q. Now, that property was also purchased by abutters, wasn't it?

A. Yes.



Q. And that property was also used for storage; isn't that true — rather for parking, I'm sorry?

A. Yes.

Q. And isn't it true that the buyer was an abutter who was in business, who desperately needed that parking and that storage?

MR. GOLDSTEIN: Objection.

THE COURT: May have it, if he knows.

A. I don't know.

Q. As far as comparability is concerned, Mr. Simmons, this is a better area than the subject property, isn't it?

A. Yes.

Q. And this parcel is approximately half the size of the subject property, isn't it?

A. Yes.

Q. And you didn't make any adjustment due to the fact that it was half the size of the subject property, did you?

A. No.

Q. And as far as zoning is concerned, what — you testified that this property is located in a C-1 zone, the same as the subject property?

A. Yes.

Q. Do you have a copy of the zoning map in effect at the time of the taking, for the City of Cambridge?

A. No.

Q. How did you determine what zone this was in?

A. By referring to that map at City Hall.

Q. Isn't it a fact that this Sale No. 2 is zoned Business A?

A. I don't know.

Q. You don't know what the zone is?

A. No — C-1.

Q. But you don't have a copy of the zoning map to point that out to me?

A. No, I don't.

Q. Well —

MR. GOLDSTEIN: I would object to this without some testimony as to if these were in effect at the time.

THE COURT: I don't know what you are talking about. There is nothing offered.

MR. GOLDSTEIN: He wants to show the witness.

MR. McLAUGHLIN: I would like to show the witness a zoning map, your Honor.

THE COURT: You can show the witness the zoning map, if you want to.

Q. A little big, Mr. Simmons.

Can you locate your Sale No. 2; 6 to 10 Valentine Street on that zoning map?

A. Right here (pointing).

Q. Where is Valentine Street?

A. Where is Brook Street?

Q. Brookline Street?

A. Yes. There is Valentine Street.

Q. Right.

A. This is right, right on the line.

Q. All right. Is it right on the line; is that correct?

A. It looks like it straddles the line.

Q. By straddles the line, you mean that a portion of the property is in C-1 zone and a portion of it is in Business A; isn't that correct?

A. That is what it appears.

Q. Isn't it true that according to the Cambridge zoning by-laws, when that happens, the property is considered to be in the less restrictive use, Business A use?

A. Yes.

Q. So your zoning is incorrect, isn't it?

A. On that basis, yes.

Q. And that property is actually in a Business A and not a C-1 zone; isn't that correct?

A. Yes.

Q. It is true, isn't it? Of the two, it's considered in the less restrictive zone — that a Business A zone is a lot less restrictive zone than a C-1 residential zone; isn't that correct?

A. Yes.

Q. And you can do a lot more things in a Business A zone parcel than you can in a C-1 zone; isn't that true?

A. Yes.

Q. And because of that, Business A parcels go for more money than a C-1 residential zone property; isn't that true?

A. Yes.

Q. And here you did a time adjustment of 70 percent; is that correct?

A. No.

Q. This is your Sale No. 2, isn't it?

A. Yes.

Q. And under Sale No. 2, could you read — isn't it a fact that you say that you make a decrease of 10 percent for superior location and an increase of 70 percent for the time of sale; isn't that true?

A. Yes, you are right.

Q. So, therefore, you did do a 70 percent adjustment as to time; isn't that correct?

A. Yes.

Q. And this sale took place 22 months prior to the taking; isn't that correct?

A. Yes.

Q. And, therefore, you have this property in theory appreciating at 38 percent a year; isn't that correct?

A. In theory.

Q. Can you name one sale on Valentine Street at that time that appreciated at the rate of 38 percent a year to justify that adjustment which you made?

A. No.

Q. I would like you to consider your Sale No. 3, 64 to 66 Hampshire Street.

Do you know who the buyer of that property was?

A. No.

Q. Do you know who the seller of that property was?

A. No.

Q. Do you have a copy of that deed?

A. Not with me.

Q. Do you have a copy of that plan?

A. No.

Q. Do you know whether there were any easements that benefited that property?

A. Not that I can recall.

Q. Well, that is a better location than the subject property, isn't it?

A. Yes.

Q. And that is right outside Technology Square, isn't it?

A. Pretty close to it, yes.

Q. But you didn't do any adjustment due to the better location, did you?

A. That's correct. Considered only slightly better.

Q. In your opinion it was slightly better?

A. Yes.

Q. Now, the size, that property is about a third the size of the subject property; isn't that correct?

A. Yes.

Q. But you didn't do any adjustment for the size difference, did you?

A. No.

Q. And that property is a square piece of property, isn't it; measures 70 by 60, approximately square?

A. Yes.

Q. And it is a corner lot, isn't it?

A. Not — I can't tell you that without having the map here too look at it.

Q. Do you have a copy of the map here?

A. No.

Q. Would you do me a favor and take a look at this map, which is a certified assessor's map, and isn't that the property right there?

A. (After looking) Yes.

Q. And are you refreshed as to whether that is a corner lot or not?

A. Well, there are three lots.

Q. Right. But it is a corner lot?

A. It could be a corner lot.

Q. It is a corner lot?

A. Yes.

Q. And corner lots usually sell for more money, don't they?

A. Yes.

Q. But you didn't make any adjustment due to the fact that this was a corner lot, did you?

A. That's correct.

Q. And this property had 130 feet of frontage didn't it?

A. I don't remember what the plan —

Q. All right. Take a look at the plan and refresh yourself as to that.

THE COURT: Okay. He has looked at the map.

MR. McLAUGHLIN: I'm sorry, your Honor.

A. In total, it could add up to 130.

Q. About 130, as compared to 60 feet of frontage at the subject property; is that correct?

Do you know how many —

A. The subject property has 60 feet.

Q. But you didn't do any adjustment for the amount of frontage, did you?

A. No.

Q. Don't parcels with more frontage — don't they usually sell for more money? Isn't that correct?

A. They could.

Q. Well, don't they generally?

A. Yup, yes.

Q. But you didn't do any adjustment?

A. No.

Q. Now, you did a time adjustment for this property, didn't you? You did a time adjustment of 50 percent; is that correct?

A. Yes.

Q. And, again, by adjustment we mean that you are hypothesizing that the actual appreciation would have been 50 percent between the time of this sale and the time of the taking; isn't that correct?

A. Yes.

Q. So therefore you increased the purchase price by 50 percent; isn't that correct?

A. The adjustment was made to the purchase price.

Q. You increased it by 50 percent; isn't that correct?

A. Yes.

Q. And this sale took place 27 months before the taking; isn't that correct?

A. Yes.

Q. And that figures out to 22 percent appreciation a year; isn't that correct?

A. Yes.

Q. Can you name one sale on Hampshire Street that appreciated at 22 percent at this time to justify that adjustment?

A. No.

Q. As a matter of fact, you have the wrong sale date on this property, don't you, Mr. Simmons? You testified on direct that the sale was February 2, 1982; isn't that correct?

A. Yes.

Q. Can you take a look at this deed, please sir (pointing).

(Witness looking at document.)

Q. Do you recognize that as the deed to your Sale No. 3?

A. Yes.

MR. GOLDSTEIN: May I see that?

MR. McLAUGHLIN: Sure.

(Mr. Goldstein looked at document.)

THE COURT: Let's get going here, will you?

MR. McLAUGHLIN: Sorry, judge. He was looking at the deed.

MR. GOLDSTEIN: Yes.

Q. Now, Mr. Simmons, your Sale No. 4 at 127 to 133 Walden Street is located right there; is that correct, sir (pointing)?

A. That is just below Massachusetts Avenue, yes — Huron Avenue, rather.

Q. Right. Now, there is the subject property; is that correct, where your red mark was?

A. Yes.

Q. Do you know who the buyer of that property was?

A. Yes.

Q. Who was the buyer of that property?

A. Gifford.

Q. Who was the seller of that property?

A. Dame. D-a-m-e.

Q. I would like you to take a look at that deed.

(Witness looking at document.)

Q. Do you have a copy of the deed, by the way, in your file here?

A. No.

THE COURT: What is he looking for now?

MR. McLAUGHLIN: Looking for the — I just asked him to look at the deed.

Q. Have you had enough time to look at that?

A. Yes.

Q. And the buyer wasn't Gifford, was it?

A. Not reported there.

Q. Well, isn't that a copy of the deed?

A. Yes.

Q. And that is the most official record of what took place on that transaction; isn't that correct?

A. Yes.

Q. And you testified that the sale date was June 15, 1985?

A. Yes.

Q. And that is not correct, is it? That is the wrong sale date, isn't it?

A. Right.

Q. Now —

MR. GOLDSTEIN: Could I see that? And you can continue asking questions.

Q. The location here is significantly more desirable than the subject property, isn't it?

A. Yes.

Q. And this is an area that is full of beautiful houses and beautiful two- and three-family, single-family houses?

A. It is a desirable area.

Q. That is in West Cambridge: is that correct?

A. Yes.

Q. And you will agree with me that this is worlds apart from the subject property; isn't that correct?

A. Yes.

Q. This sale took place after the taking; is that correct?

A. Yes.

Q. And it took place about a year after the taking; is that correct?

A. Yes.

Q. And you did a 70 percent adjustment of this sale downward due to the location; isn't that correct?

A. Yes.

Q. And did you do a 20 percent — but you only did a 20 percent downward adjustment for time?

A. Yes.

Q. So you did a total 90 percent adjustment of this property; is that correct?

A. Yes.

Q. Well, isn't a 90 percent adjustment an extreme adjustment?

A. Yes.

Q. And doesn't a 90 percent adjustment pretty much say that this sale isn't anything comparable to the thing you are comparing with, if you have to adjust it 90 percent downward?

A. It would be significant, yes.

Q. And the size of this parcel is about 70 percent larger than the subject property, isn't it?

A. Yes.

Q. And it's — you would say that this would be a much easier parcel to develop than the subject property, wouldn't you, Mr. Simmons?

A. In terms of —

Q. It is a larger parcel. It has more frontage; isn't that correct?

A. Yes.

Q. In a totally different world, you told us, than the subject property; isn't that correct?

A. Yes.

Q. And this would be a much more desirable piece of property to develop, wouldn't it be?



A. Given its location, yes.

Q. And given its size?

A. And its size.

Q. And this is a different zone than the subject property, isn't it? This is a Residential B zone; is that correct?

A. C-1 zone.

Q. This is a Residential C-1 zone?

MR. McLAUGHLIN: I'm sorry, I stand corrected.

Q. There was a building on this property when it was taken, wasn't it?

A. Yes.

Q. And it was a 16,600 square foot masonry building; is that correct?

A. Yes.

Q. And there was no building on the subject property, was there?

But you didn't do any adjustment due to the larger size or due to the better shape or due to the fact there was a building on this property, did you?

A. I did an adjustment on the property, yes.

Q. Well — but not due to size, shape and the fact that there was a building.

A. Due to the fact there was a building, there was an adjustment made.

Q. Well, how about frontage, Mr. Simmons, 100 feet of frontage on this property; is that correct?

A. Yes.

Q. And only 60 at the subject property; is that correct?

A. Yes.

Q. And this sale took place 13 months approximately after the taking?

A. Approximately.

Q. And you adjusted it 20 percent; is that correct, for time?

A. Yes.

Q. And that figures out to about 18 percent a year; is that correct?

So even though when you were dealing with sales, prior to the taking in Sales 1, 2 and 3, where you adjusted the price upward 32 and 38

percent a year, now, after the taking, you only adjusted them down 18 percent a year?

A. Yes.

Q. But finally we have some townhouses that were built on this property, in a desirable area of Cambridge; is that correct?

A. Yes.

Q. Sir, I want to —

(Photographs shown to Mr. Goldstein.)

Q. I would like to show you these three pictures and ask you if those are fair and accurate representations of your Sale No. 4.

(Witness looking at photographs.)

Q. Are those fair and accurate representations of your Sale No. 4, Mr. Simmons?

A. I never saw this property.<sup>6</sup>

Q. I'm sorry.

A. I said I did not drive by this property.

Q. You never even looked at this property?

A. No.

Q. So you can't say either way?

A. No.

Q. So you don't even know if this is the property at Sale No. 4?

A. No.

Q. But you compared it and you considered it and you studied it in your study as a comparable sale to the subject property; is that correct?

A. Yes.

Q. But you never even went to look at it?

A. That's correct.

THE COURT: How much longer are you going to be with him?

MR. McLAUGHLIN: Two more sales? It's 4:00 o'clock now. Do you want to bring him back tomorrow?

<sup>6</sup> Before the trial, the trial attorney and his appraiser should inspect each of the comparable sales listed in the appraisal report. In addition, the attorney and his appraiser should personally inspect all of the comparable sales listed in the opponent's appraisal report. The appraiser can then point out to the attorney any dissimilarities between the subject property and the comparables cited by his opponent.

MR. McLAUGHLIN: I will finish him up. I will take five minutes.

THE COURT: Okay, five minutes.

MR. McLAUGHLIN: Thank you, your Honor.

Q. Quickly, Mr. Simmons, your Sale No. 5, you said that that was at 21 Cogswell Street; is that correct?

A. Correct.

Q. But that is really Cogswell Avenue?

A. Cogswell Avenue, yes.

Q. Do you know who the buyer of that property was?

A. Alfred Dubois and others.

Q. I'm sorry?

A. Alfred Dubois and others.

Q. Do you know who the other were?

A. No.

Q. Do you know who the seller was?

A. Edward J. Sullivan

Q. Do you have a copy of the deed?

A. No.

Q. Do you have a copy of the plan?

A. No.

Q. It is true that you have the wrong sale date of that sale; isn't that correct?

A. (No response.)

Q. Well, I won't take the time.

That location, that is a significantly more desirable location too, isn't it?

A. Yes.

Q. And that is a totally different world than the subject property, isn't it?

A. It is a superior location, yes.

Q. Superior location.

You did a 90 percent adjustment downward, didn't you?

A. Yes.

Q. And again to quote you, a 90 percent downward adjustment is an extreme adjustment downward, isn't it?

A. Yes, it is.

Q. And there was a building on that — there were two buildings on that property, weren't there, a single-family house and a garage?

A. Yes.

Q. Isn't that so?

A. Yes.

Q. No buildings on the subject property, though; right?

A. Correct.

Q. And a 40 percent larger piece of property; isn't that correct?

A. Approximately.

Q. And a much larger property, isn't it — rather it is in much better shape, isn't it?

A. More square.

Q. More square. And it is a different zone, isn't it? That is a Residential B?

A. Correct.

Q. Did you look at this property, Mr. Simmons?

A. No.

Q. Didn't look at this property either?

A. No.

Q. So you wouldn't know if I showed you a picture of this property?

A. That's correct.

Q. Finally, Mr. Simmons, your Sale No. 6. Did you go and look at this property?

A. No.

Q. Didn't look at this property either?

A. No.

Q. Don't you think it's important to at least look at these properties if you are doing the comparable sale approach?

A. It would have helped, yes.

Q. Don't you think, when you are saying that some things are comparable to something else, it helps to look at it?

A. (No response.)

Q. Well, do you know who the buyer of this property was?

A. It was under a trust, 12 to 14 Shea Trust.

Q. Do you have a copy of the deed?

A. No.

Q. No copy of a plan?

A. No.

Q. And, again, this is a significantly better area than the subject property, isn't it?

A. Yes.

Q. Off on West Cambridge, worlds away from the subject property?

A. (No response.)

Q. Now, sir, you did — this is a different zone, too, isn't it, Residential B?

A. Correct.

Q. And, again, you only did a 20 percent time adjustment here, didn't you?

A. That's correct.

MR. McLAUGHLIN: Judge, two more minutes and I will be finished.

Q. You said as part of your study you knew about the sale from J.R. Fennell Trust to the Weisberg family; is that correct?

A. Yes.

Q. I show you a copy of that deed, and I will ask you if you recognize that as a copy of the deed from the Fennell Realty Trust to the Weisbergs.

A. I never saw the deed.

Q. Can you take a look at that and tell me if that is the deed?

A. (After looking) Yes.

Q. That is the deed; is that correct?

A. Yes.

MR. McLAUGHLIN: You Honor, I would offer the deed.

MR. GOLDSTEIN: No objection.

THE COURT: This is the deed to what?

MR. GOLDSTEIN: To the petitioners.

THE COURT: What is the date of it?

MR. McLAUGHLIN: The date of the deed is February 1, 1983 and it is a deed from J.R. Fennell Realty Trust to Edward and Janice C. Weisberg.

THE COURT: Okay, it may be marked.

(Deed marked Exhibit No. 1.)

Q. Now, Mr. Simmons, on February 1, 1983, your clients bought that property for \$18,000; isn't that true?

A. Yes.

Q. And the property was taken in May of '84; isn't that true?

A. Yes.

Q. That is about 15 months after the date of that deed; isn't that true?

A. Yes.

Q. And your clients paid \$18,000, 15 months before, correct?

A. Yes.

Q. And your valuation — your opinion of the fair market value 15 months later is \$45,000; correct?

A. Correct.

Q. What you are telling this jury is that that property; after your clients bought it, appreciated by \$27,000 in 15 months; is that correct?

A. Yes.

Q. And \$27,000 amounts to 150 percent; is that correct?

A. Approximately.

Q. Well, do you have a calculator?

A. No.

THE COURT: Let's say approximately.

MR. McLAUGHLIN: Okay. Yes.

Q. So what you are telling this jury is that the property was appreciating at the rate 10 percent a month after your clients bought it; is that correct?

A. That's a correct assumption to make, that the price increased between that time because of the —

THE COURT: That is a mathematical thing. You know what the price was that was paid. You know what he said it was. And it is for the jury. They can add two and two. If they can't, they can use their hands and toes.

MR. McLAUGHLIN: Thank you. No further questions.

THE COURT: Okay. Have you got anything further?

MR. GOLDSTEIN: In view of the hour, no.

THE COURT: No. If you have anything further, you ask him, because I am going to ask him a question here now.

MR. GOLDSTEIN: No.

THE COURT: Are you all through asking questions?

MR. GOLDSTEIN: Under those circumstances, I will ask the question.

THE COURT: All right. Ask him how he —

MR. GOLDSTEIN: Please?

THE COURT: Ask him how he makes a comparable, how he makes an adjustment of comparable sales, comparability, without seeing the property. That is what I am going to ask him if you don't.<sup>7</sup>

MR. GOLDSTEIN: I will ask him that.

**[3]—Redirect Examination of Landowners' Expert Appraiser**

**REDIRECT EXAMINATION BY MR. GOLDSTEIN**

Q. You have heard his Honor's question. Can you answer that question, Mr. Simmons?

A. In this particular case, I used the plans and related it to the subject with respect to its location, size, and other factors.

Q. Mr. Simmons, on the zoning map that you were shown before, that has a notation on it that it went into effect after the date of taking; isn't that correct?

A. Yes.

Q. So we don't know whether or not A-1 or C-1 is the actual situation?

MR. McLAUGHLIN: Objection.

THE COURT: May have it.

Q. Would that be a fair statement?

A. Yes.

Q. And as to the dates that were used by yourself for the comparable sales, where did you obtain that information?

A. From reports.

<sup>7</sup> By interjecting this question, the Trial Judge has let the jury know that he is a bit skeptical of the appraiser's failure to look at some of the comparable sales. In response to this comment from the Bench, Attorney Goldstein does a good job of trying to restore some of the witness' credibility.

Q. The assessor's records?

A. From other appraisers.

Q. Records of the City of Cambridge?

A. They were checked, yes.

Q. So that if the dates are —

Those dates are off by a day or so; is that correct?

A. Yes.

Q. Nothing of great significance as far as value —

MR. McLAUGHLIN: Objection.

THE COURT: That's hardly redirect examination.

MR. GOLDSTEIN: I understand.

Q. Is there a significance in a two-day period of time —

MR. McLAUGHLIN: Objection.

Q. — as to the value —

THE COURT: May have it. Go ahead.

A. No.

MR. GOLDSTEIN: That's all [sic] the questions I have.

THE COURT: Okay. All right. Thank you. Step down.

(Witness stepped down.)

THE COURT: Normally, Mr. Foreman, ladies and gentlemen of the jury, this session works from 10:00 to 1:00 and from 1:00 to 3:30; but obviously when you are trying to accommodate a witness, the time is extended, but if we are at this place tomorrow at this same time, we can expect that we will stop at 3:30.

Okay. We will stop now until 10:00 o'clock tomorrow morning.

(Recess at 4:13 p.m.)

#### MORNING SESSION

(The Court entered the courtroom at 10:20 a.m.)

(Jury not present.)

THE COURT: State for the record, Mr. McLaughlin, the matter that you spoke to me about in the lobby relative to the assessment.

MR. McLAUGHLIN: Yes.

THE COURT: Go ahead.



MR. McLAUGHLIN: Your Honor, I would like to make an offer of proof<sup>8</sup> regarding the testimony of Kevin McDevitt, who, as you know, is an assessor of the City of Cambridge.

THE COURT: Go back a little bit. I told the jury during the opening that there had been an error made in the computer that was doing the comprehensive re-valuation and there was an objection, and I sustained that objection, and you were not permitted to explain to the jury that there had been a breakdown in the computer in relation to the assessment. Right?

MR. McLAUGHLIN: Yes.

THE COURT: Now the case is on trial and you have a witness who is a City assessor?

MR. McLAUGHLIN: Yes.

THE COURT: And you want to develop through him the matter that you had touched on in your opening that there was a breakdown in the computer and that the assessment that was assigned to this property as of January 1, 1983, —

MR. McLAUGHLIN: Yes.

THE COURT: — was in error?

MR. McLAUGHLIN: Correct.

THE COURT: And you intend to offer Mr. McDevitt to prove that, and upon the matter being called to my attention, my ruling was that that was not admissible. And we will save your rights on that.

MR. McLAUGHLIN: Thank you.

I will make a brief opening, offer of proof about what he would testify to.

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<sup>8</sup> In order to preserve his client's appellate rights, Attorney McLaughlin will make an offer of proof concerning Mr. McDevitt's testimony on the issue of the computer error in the assessment process. As a general rule, where evidence is excluded, the proponent of the evidence must make an offer of proof which sets forth what the witness would have answered if the objection had not been sustained. The purpose of the offer of proof is to show that the client was prejudiced by the judge's ruling. If no such offer is made, there is usually no basis for a reversal since the appellate court does not know whether the answer would have been favorable or unfavorable and does not know whether the party has been harmed by the ruling. Paul J. Liacos, *Handbook of Massachusetts Evidence* 78 (Little Brown and Company 1981). See also Rule 103(a)(2) of the Federal Rules of Evidence:

Offer of Proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

THE COURT: Yes.

MR. McLAUGHLIN: If allowed to testify, Mr. McDevitt would testify that for fiscal 1984 the City of Cambridge was going through a re-valuation; that because of that re-valuation, because of the fact that they had to re-value 18,000 parcels of property, they had to hire an outside firm; that the outside firm dealt with these properties in a so-called mass appraisal, through a mass appraisal process; that the outside firm used a computer program; and that there were a number of problems with this computer program; and that one of the problems was the subject property; and that he did not agree with the fair market value as set by the computer program.

Thank you.

THE COURT: Okay.

Bring the jury in.

MR. McLAUGHLIN: We would like the taking order marked as an exhibit.

MR. GOLDSTEIN: I have no objection.

THE COURT: All right. Mark it. All right.

(Order of taking marked Exhibit No. 2.)

THE COURT: Recess.

(Recess taken at 10:24 a.m.)

(The Court entered the courtroom at 10:27 a.m.)

(Jury present.)

MR. McLAUGHLIN: We have another stipulation.

THE COURT: What are you stipulating to?

MR. GOLDSTEIN: This is a copy of a deed of the subject property dated April 14, 1981, from Cambridge to Fennell, which is the predecessor in title.<sup>9</sup>

<sup>9</sup> "When a parcel of land is taken by eminent domain, the price which the owner paid for it when he acquired it is one of the most important pieces of evidence in determining its present value. This is so only if the sale was recent, and was a voluntary transaction between parties each of whom was capable and desirous of protecting his own interests, and no change in conditions or marked fluctuation in value has occurred since. As one case put it: The general rule is that evidence of the price paid for property which is the subject of appropriation proceedings is admissible, if the following conditions are satisfied:

- (a) The sale must be bona fide;
- (b) The sale must be voluntary, not forced;

THE COURT: Okay. It may be marked.

MR. GOLDSTEIN: I think it will be No. 3.

For the jury, the order of taking from the City of Cambridge, dated April 30, 1984, and recorded on May 17, I believe, is Exhibit No. 2.

THE COURT: Yes. All right. Mark the deed as No. 3.

(Deed marked Exhibit No. 3.)

MR. McLAUGHLIN: May that be passed to the jury?

THE COURT: Yes. What is the date of the deed?

MR. McLAUGHLIN: April 14, 1981.

THE COURT: Okay.

MR. GOLDSTEIN: May we commence, your Honor?

THE COURT: Yes.

MR. GOLDSTEIN: I call as the next witness Kevin McDevitt, City Assessor's office.

**[4]—Direct Examination of City Assessor**

KEVIN McDEVITT, SWORN

DIRECT EXAMINATION BY MR. GOLDSTEIN

Q. State your name and address for the record.

A. Kevin T. McDevitt, 10 Chauncy Street, Cambridge, Massachusetts.

- (c) The sale must have occurred relevantly in point of time; and
- (d) The sale must cover substantially the same property which is the subject of the appropriation action.

A price paid under such conditions is a circumstance which a prospective purchaser would seriously consider in determining what he himself should pay for the property; as evidence before a jury it consumes little time in introduction and raises few collateral issues, so that every argument is in favor of its admissibility." 5 Nichols on Eminent Domain § 21.2.

In Massachusetts, the purchase price of the subject property may be admitted into evidence in the discretion of the trial court if it is not too remote in time and if there has been no substantial change in conditions. *Brush Hill Dev. Inc. v. Commonwealth*, 338 Mass. 359, 367 155 N.E. 170 (1959) (five years before taking); *Ramacorti v. Boston Redev. Auth.*, 341 Mass. 377, 380, 70 N.E. 323 (1961) (two years and seven months before taking); *H.E. Fletcher Co. v. Commonwealth*, 350 Mass. 316, 214 N.E. 421 (1966) (five years and six years before taking); *Keating v. Duxbury Housing Auth.*, 11 Mass. App. 934, 416 N.E. 2d 553 (1981) (five years before the taking).

Q. Are you employed?

A. Yes.

Q. How are you employed?

A. I am employed by the City of Cambridge, the Assessor's Office.

Q. And for how long have you been in the employ of the City of Cambridge?

A. Approximately nine years.

Q. Are you out here under subpoena today? Isn't that correct?

A. I was asked to bring some records. I don't know if that would be under subpoena.

Q. In connection with that, have you brought records concerning the assessment of the parcel in question, of this property in question, during the year of the taking by the City of Cambridge?

A. '84-'85, yes, I have the assessment records.

Q. And are you familiar with the information contained thereon?

A. On the assessment records, yes.

Q. And could you tell us what the assessed valuation of 65 to 69 Columbia Street, Cambridge, Massachusetts, was as of January 1, 1984?

MR. McLAUGHLIN: Objection.

THE COURT: May have it.

MR. McLAUGHLIN: Your Honor, if I may, it was January 1, 1983, fiscal '84.

MR. GOLDSTEIN: Well —

THE COURT: What year did you ask him for?

MR. GOLDSTEIN: Just asked him for the year commencing January 1, what the assessment was as of January 1, 1984.

THE COURT: Okay. May have it.

MR. McLAUGHLIN: Well, if I may, your Honor, I think the statute deals with — I think that is against the statute. Perhaps if we could have a side-bar, it would clarify things. I think that there might be a little confusion.

THE COURT: What is the section? Do you know the section of

MR. McLAUGHLIN: Yes, Section 35, your Honor.

MR. McLAUGHLIN: Fiscal '84.

THE COURT: I have to establish that there was a re-valuation as a preliminary to your question as to what the assessed value was. It is only admissible if there has been a re-valuation within three years prior to the time of the taking.

MR. GOLDSTEIN: Also, under Section 29, your Honor.

THE COURT: Well — I don't care. I don't know what section you are referring to, but I know that evidence of the assessed value can only be introduced if you establish that there has been a re-valuation within the time set out in the statute.

MR. GOLDSTEIN: We can do it that way.

THE COURT: He is an assessor.

MR. GOLDSTEIN: We will do it in that fashion. That is all right.

BY MR. GOLDSTEIN

Q. Mr. McDevitt, was there a re-valuation of this property done within three years of the time of the taking?

A. Yes.

Q. And when was the re-valuation done?

A. Fiscal year '84.

Q. And for what point was that? As of what point in the year did that take effect?

MR. McLAUGHLIN: Objection.

THE COURT: May have it.

A. When was the re-valuation implemented?

Q. Yes.

A. Late December 1983 it went into effect.

Q. And is it not so that that is the valuation as of January 1 of that year?

A. The valuation were pegged as of January 1, 1983.

Q. And what was the assessed valuation as of January 1, 1983?

THE COURT: Of this subject property?

MR. GOLDSTEIN: Subject property.

A. Came out thirty-three five.

THE COURT: How much?

THE WITNESS: \$33,500.

Q. And the assessed valuation as of January 1, 1984?

A. Thirty —

MR. McLAUGHLIN: Objection.

THE COURT: May have it.

MR. McLAUGHLIN: Your Honor, if I may, it is the preceding three years under the statute.

THE COURT: Well —

MR. McLAUGHLIN: The statute is rather strict on that, your Honor. The re-valuation —

THE COURT: Valuation of one year is introduced, the valuation of all three years shall be introduced in evidence. I am reading from the statute.

MR. McLAUGHLIN: I have for the three years next preceding the date of the taking.

THE COURT: Doesn't say that.

MR. McLAUGHLIN: Section 35?

THE COURT: That's right.

MR. McLAUGHLIN: I have the valuation made by the assessors of a town for the purpose of taxation for the three years next preceding the date of taking.

MR. GOLDSTEIN: January 1, 1984 is before the taking.

MR. McLAUGHLIN: Well, my position is that fiscal '84 is admissible, but then the three years prior to that are admissible. He is getting into fiscal '85, January 1, '84.

THE COURT: Valuation made by the assessors of the town for the purpose of taxation for the three years next preceding the date of taking of or injury to real estate by the Commonwealth may, in proceedings brought under Section 14 to recover damage for such real estate, may be introduced as evidence of fair market value of the real estate by any party to the suit, provided, however, that if the valuation of any one year is so introduced, the valuation of all three years shall be introduced in evidence.

Further, that no such valuation shall be so introduced as such evidence unless within the five years preceeding such taking or injury there has been a comprehensive re-valuation of the real estate of the town, and the valuation or valuations sought to be introduced are valuations assessed after such comprehensive re-valuation.

So I have just read the whole of Section 35. So he may have this testimony.

A. Fiscal '85?

Q. For fiscal '85, as of January 1, 1984, what was the assessment on the parcel in question?

A. Thirty-three, five.

Q. And just to round it out, the year previous to the re-valuation as of January 1, 1982, what was the assessed valuation.

A. Fiscal year '83, \$4,700.

Q. Can you tell us when last the parcel was re-valued prior to January 1, 1983?

A. No.

Q. Was it the same the year before that?

A. Yes.

MR. McLAUGHLIN: Objection.

THE COURT: Excluded.

MR. GOLDSTEIN: No further questions.

**[5]—Cross Examination of City Assessor<sup>10</sup>**

**CROSS-EXAMINATION BY MR. McLAUGHLIN**

Q. Mr. McDevitt, you testified that you are employed in the Assessor's Office, Cambridge?

A. Yes.

Q. And you have been so employed for the last nine years?

A. Yes.

Q. Briefly describe your education, background, and training.

A. Okay. Graduate of University of Massachusetts, Amherst, in economics, and I had real estate appraising and courses in finance while I was there. And I am a U.S. Air Force veteran. I got out of the service in 1970.

I took the real estate exam and passed it without taking a course. I started working in real estate and then the assessor's job opened up in Framingham, and I took that job in 1971.

<sup>10</sup> In this case, Attorney Goldstein called the City's assessor as his own witness so that the assessed values could be introduced into evidence pursuant to the provisions of Mass. Gen. L. chs. 79, 35 (1983). However, since Attorney Goldstein called the assessor to the stand, Attorney McLaughlin now has the right to cross examine the assessor and to ask him the ultimate question of value.

And since becoming an assessor, I have taken several real estate appraising and economic analysis and financial analysis on residential and commercial properties.

I have taken numerous courses with the Society of Appraisers, the American Institute of Appraisers. I passed the state-certified Massachusetts Assessor's Exam in 1973, and in 1977 I achieved a Massachusetts Accredited Assessor's designation, which I still hold.

Q. And is it fair to say that you have been working as an assessor since 1971 for approximately the last 28 years?

A. Last 18 years, yes.

Q. I'm sorry, 18 years?

A. Yes.

Q. And during that period did you have time to — did you do residential appraisals?

A. Yes.

Q. And moving up to the time that you were employed by the City of Cambridge during the 1980's, have you done residential appraisals in the City of Cambridge?

A. Yes.

Q. How many residential appraisals have you done in the City of Cambridge during the past nine years?

A. Approximately 200.

Q. And of those 200 appraisals, are they in all parts of the city?

A. Yes.

Q. And are you familiar with the subject property, sir?

A. Yes.

Q. The subject property 65-69 Columbia Street.

A. Yes.

MR. McLAUGHLIN: Your Honor, I ask that the witness be qualified as an expert.

THE COURT: Qualified.<sup>11</sup>

MR. McLAUGHLIN: Thank you.

<sup>11</sup> Some jurisdictions do allow the proponent of an expert witness to have the judge pronounce an expert witness as "qualified." Since the jurors pay close attention to every word which is uttered by the trial judge, it is somewhat impressive to have the judge announce to the jury that he has personally decided that a particular witness is in fact an "EXPERT."



Q. Now, Mr. McDevitt —

MR. McLAUGHLIN: If I could have a minute, your Honor.

(Checked notes.)

Q. Do you have an opinion as to the fair market value of the subject property as of January 1, 1983?

A. Yes.

Q. And is it fair to say that the City assessment as of January 1, 1983 was \$33,500?

A. Yes.

Q. And did you have anything to do with that assessment?

MR. GOLDSTEIN: Objection.

THE COURT: Excluded.

Q. Do you agree with the assessment?

MR. GOLDSTEIN: Objection.

THE COURT: Excluded. You can ask him what his opinion of the value is —

MR. McLAUGHLIN: Fine.

THE COURT: — as of the date, if he is familiar with the property.

Q. What is your opinion based on your education, background and training and experience as to the fair market value of the subject property as of January 1, 1983?

A. Okay. \$18,000, because it sold within a month of —

THE COURT: Please, please. You are not asked for the reasons. You are asked for what is your opinion. We will get to your reasons in a little while; okay?

THE WITNESS: Yes.

THE COURT: We haven't got to the magic date yet, which is May of 1984. We haven't got to that yet.

Q. And your answer was \$18,000 as of January 1, 1983?

A. Yes.

Q. And what do you — what reasons do you base that opinion on?

A. You had a free market sale within a month of the assessment state. February '83 you had a sale, a month after the assessment date of January '83, where all the values were pegged from.

Q. And that was the sale from Fennell to Weisbergs?

A. Yes.

Q. Are you familiar with the Fennell family?

A. Yes.

Q. And do they own any other property in Cambridge?

A. They own several parcels of property.

Q. Do they own more than several parcels or just several parcels — strike that.

It is fair to say — how would you describe them as far as property owners are concerned?

MR. GOLDSTEIN: Objection.

THE COURT: Excluded.

MR. McLAUGHLIN: Fine.

Q. You say fiscal 1984 was a re-valuation year, sir?

A. Yes.

Q. And how many properties do the assessors have to re-value in a re-valuation year?

MR. GOLDSTEIN: Objection.

THE COURT: Excluded.

Q. Are you familiar — you have testified that you are familiar with the area in and around Columbia Street around the date of the taking, May 17, 1984?

A. Yes.

Q. Are you familiar with any construction going on in that area?

A. Yes.

Q. And I would like to draw your attention to No. 75 Columbia Street, right next door to the subject property.

Are you familiar with that property?

A. Yes.

Q. And are you familiar with — how are you familiar with that property?

A. Building permits.

Q. Did you check the building permit at City Hall?

A. Yes.

Q. When was the property renovated, Mr. McDevitt?

A. Took out a permit in March of '87 to Gusta Builders.

THE COURT: '87?

MR. GOLDSTEIN: Move to strike the witness' testimony. He asked about —

MR. McLAUGHLIN: March of '87?

THE WITNESS: '87.

THE COURT: What does '87 have to do with '84?

MR. McLAUGHLIN: Well, Mr. Goldstein has made references to that building. His expert, Mr. Simmons, made references to that building. They have tried to show that that building was a rehab building as of the time of the taking when in fact —

THE COURT: Please, please. Let's get on.

MR. McLAUGHLIN: Fine.

THE COURT: What his opinion of value is as of May of 1984, that is what the \$64 question is.

Q. Do you have an opinion as to the fair market value of the subject property as of May 17, 1984?

A. Yes.

Q. And what is that opinion?

A. Around \$22,000.

Q. What reasons do you base that figure on?

A. Well, I have reviewed comparative sales data in that area and the indication seems to be that the land is worth about two dollars a foot. There is 11,000 square feet of land times two. It comes to around \$22,000.

Q. And you testified — what was the appreciation in that area of Cambridge from '83 about the time of the Weisberg sale until the time of taking in May of '84, if you know?

A. Okay. Well, the average would be around — probably about six percent in '83, but it started to move in '84. So probably one percent a month.

Q. In '84?

A. Yes.

Q. Is that from January of '84 or later in '84?

A. I would say — remember, the city has about 13 districts and some are appreciating better than others. This area is the low-rent district of the city. The lowest property values in the city are in that area between Prospect, Columbia Street, Washington Street.

The city has 13 districts. This is the lowest area in the city for sales, land values, property values, and you may have an average, I think in '84, '85, there was an awful lot — appreciation started moving a lot after that.

Q. After the time of the taking?

A. Well, slightly before and then after. Yes, I would say before and after. '83 moderate and then '84 and then '85 it really took off.

MR. McLAUGHLIN: Thank you. No further questions, your Honor.

**[6]—Redirect Examination of City Assessor**

**REDIRECT EXAMINATION BY MR. GOLDSTEIN**

Q. Mr. McDevitt, can you tell us what some of these other comparative sales were that you were making reference to a moment ago?

A. Berkshire Street.

Q. What address on Berkshire Street?

A. Let's see — if I can recall — I know where the property is on Berkshire Street.

Q. Are you referring to the same address on Berkshire Street that Mr. Simmons referred to yesterday? Is that the property you are referring to?

A. That was a good sale.

Q. And that occurred in 1982; is that correct?

A. '81 or '82. I'm not sure.

Q. And what was the property like on Berkshire Street; can you describe it?

A. Yes. It was a rectangular lot used for parking.

Q. And how many square feet?

A. Range of about 2,000 square feet.

Q. And do you recall what the price per square foot worked out to be on that —

MR. McLAUGHLIN: Objection.

THE COURT: Excluded.

Q. You testified from knowledge of this property or your recollection of the testimony yesterday?

MR. McLAUGHLIN: Objection.

THE COURT: May have it.

A. Both.

Q. Any other pieces of property that you used to make this comparison?

MR. McLAUGHLIN: Objection, your Honor. I don't think —

THE COURT: May have it.

A. Hampshire Street.

Q. Can you tell us any other parcel of property that was not referred to yesterday that you used in making your comparative judgment as to your comparable transfers of property to determine the value of this property as of May of 1984?

A. I believe there was a good land sale on Rindge Avenue.

Q. Where is Rindge Avenue?

A. It is midway between Porter Square and North Cambridge.

Q. And —

MR. GOLDSTEIN: If I may, your Honor.

(Going to the blackboard.)

THE COURT: Yes.

Q. Would that be up in this area up in here (pointing)?

A. That general area, a little bit —

Q. Where I have my fingers on Rindge Avenue?

A. Yes.

Q. And the subject property is over at this X that we saw yesterday?

A. Yes.

Q. And this is that other world that Mr. McLaughlin was referring to yesterday?

A. Yes.

Q. Yes. And what was the value of that piece of property?

MR. McLAUGHLIN: Objection.

THE COURT: Excluded.

Q. The fact of the matter is, Mr. McDevitt, you really don't know, do you?

MR. McLAUGHLIN: Objection.

THE COURT: Don't know what?

Q. You don't know what the values of these properties are and you didn't make any judgment as of May of '84 as to the values of these

properties, and that you are repeating the information that you heard yesterday to justify the statement that you made this morning; is that correct?

MR. McLAUGHLIN: Objection.

THE COURT: Excluded.

MR. GOLDSTEIN: No further questions.

MR. McLAUGHLIN: Just one — a couple of questions.

**[7]—Recross Examination of City Assessor**

**RECROSS-EXAMINATION BY MR. McLAUGHLIN**

Q. Are you familiar with Rindge Avenue, Mr. McDevitt?

A. Yes.

Q. Is the area of Rindge Avenue that you talked about anything like the area of Sales 4, 5 and 6?

A. No.

Q. And the City of Cambridge changes dramatically from neighborhood to neighborhood; isn't that true?

A. Yes.

Q. And could you briefly describe the area around your Rindge Avenue sale and the surrounding buildings?

A. Okay. Well, it is adjacent to a large public housing complex and

Q. Do you know the name of that complex?

A. Rindge Towers. And the property was a level lot and it was bought for parking.

Q. Who bought the property?

A. Joyce Chen Restaurant.

MR. McLAUGHLIN: I have no further questions, your Honor.

THE COURT: Do you have anything further?

MR. GOLDSTEIN: Yes.

THE COURT: Somebody has got to stop at some point.

MR. GOLDSTEIN: Right. I have one or two questions.

THE COURT: That last word.

MR. GOLDSTEIN: The last word sometimes is the bad one.

THE COURT: The last word sometimes can destroy you, too.

MR. GOLDSTEIN: That's correct, your Honor.

**[8]—Further Redirect Examination of City Assessor**

FURTHER REDIRECT EXAMINATION BY MR. GOLDSTEIN

Q. Do you have an opinion as to the highest and best use of the subject property of this lawsuit?

MR. McLAUGHLIN: Objection.

THE COURT: May have it.

MR. McLAUGHLIN: When?

Q. As of the date of the taking?

A. An opinion — I would say it is best for a parking lot.

MR. GOLDSTEIN: Thank you.

THE COURT: All right. Step down.

THE WITNESS: Thank you.

THE COURT: Watch your step there, please, when you leave the stand.

THE WITNESS: Okay.

(The witness stepped down.)

THE COURT: Have you anything further?

MR. GOLDSTEIN: Oh, sorry. That is all, your Honor. The plaintiff will rest.

THE COURT: Plaintiff rests.

MR. McLAUGHLIN: Thank you, your Honor. I would like to call Mr. Reenstierna to the stand.

**[9]—Direct Examination of City's Expert Appraiser<sup>12</sup>**

DIRECT EXAMINATION BY MR. McLAUGHLIN

*(Text continued on page 13A-81)*

<sup>12</sup> "A. Qualify the Witness as an Expert. The qualification of a witness is one of the most important areas of examining the appraiser. Many times the opposing counsel will stipulate as to qualifications. As a note, an attorney should be very careful to allow the stipulation to hold because if you have what you consider to be an excellent appraiser, it is far better to put in all of his qualifications showing that he is able, qualified, well-versed in knowledge of the field and particular area, well-respected by his peers and contemporaries and utilized throughout the country in the particular area in which you are using him. It is exceedingly important for the triers of fact to be made aware of these qualifications, because they give credence and substance to your witness and to the testimony he gives. Too often, by stipulating

*(Text continued on page 13A-81)*

qualifications, you leave the impression with the trier of fact that this is just another "hired gun" acting as an appraiser who is going to testify to a figure or value that has been pre-established. To qualify the witness as an expert, these steps should be followed:

1. His education.
2. Cover the employment of the appraiser, and specifically who retained him and whether or not he has an interest in the property.
3. Develop his present and previous experience as an appraiser.
4. Develop his efforts for self-improvement within the appraisal area, including his interest, activity, and the esteem in which he is held by his associates.
5. Cover how he is held by the public which specifically would relate to the number and names of firms and the types of appraisals that he has done for others.
6. Give the witness an opportunity to bring forth any information that may have been overlooked.
7. Show what the expert did before forming his opinion.
  - a. Character of the neighborhood.
  - b. The present use of the subject property.
  - c. Its most profitable use.
  - d. Its value indicated by sales.

B. Show What the Expert Considered. In direct examination you should endeavor to put in everything that your appraiser did, including the specific sales utilized for comparables, and why those comparables were utilized, and the differences in those comparables and the actual, and any type of testimony that would be developed on cross examination. The way to mitigate cross examination is to bring forth on direct examination every item that is pertinent even those matters which may not be particularly helpful to your case but which you would reasonably anticipate the attorney cross examining to ask. By having them in front of the trier of fact in advance and in the direct examination, you mitigate the surprise that can be occasioned by good cross examination. The following factors should be gone into when showing what the expert considered:

1. When did he examine the property.
2. How many times did he see the property.
3. Describe the property.
4. Do you have a map of the property.
5. Tell the Court and jury the scope of the examination.
6. Did you ascertain the financial facts.
7. Did you investigate the income and expenses and sales of comparable properties.



Q. Sir, could you please state your name for the record?

A. Donald H. Reenstierna. That's ---

Q. Where do you live, Mr. Reenstierna?

THE WITNESS: Do you need the spelling?

THE COURT: What did you say?

THE WITNESS: I asked if the stenographer needed any help spelling the name.

THE COURT: I don't think so. He can spell your name better than you can.

(Laughter.)

THE COURT: The question is: What is your address?

THE WITNESS: 459 Mystic Street, Arlington, Mass.

Q. And how are you employed, sir?

8. Did you discuss this with other owners, tenants, real estate brokers, bankers and others.
9. Did you make studies of the probable value of the subject property based upon all relevant factors in appraisals such as cost less depreciation, market value and capitalization of rental income.
10. What other things did you do.

Note: You can do this by asking one simple question as to what did you do before forming your opinion of value but that may lead to a disjointed answer that leaves both the court and jury unimpressed.

C. State an Opinion. Said opinion is predicated upon:

1. Qualifications;
  2. Recitation of what he did;
  3. Statement of what he considered.
- D. Give the Reasons for the Opinion.
1. What considerations listed above were utilized.
  2. Which considerations were considered the most important.
  3. Why were the other considerations discarded.
  4. Is there any error in those considerations.
  5. What other reasons could have been considered and why were they omitted."

Trial of an Eminent Domain Case, (MCLE, Inc. 1984), 105-107; Reprinted with permission from Edward M. Cohen, Esq., Examination of an Appraiser, The Use of Expert Witnesses (Minnesota CLE 1984) 115-125. See also Ch. 8 *supra*.

A. I am a real estate appraiser.

Q. And by who are you employed?

A. I am self employed as the head of T. H. Reenstierna & Sons, an appraisal company in Arlington.

Q. How many employees are there in T. H. Reenstierna's employ?

A. Twelve.

Q. Is that 12 appraisers?

A. Twelve appraisers, yes. There are some additional staff.

Q. Can you briefly explain your background, training and experience, keeping in mind that we would like to keep things moving along here, please.

A. I graduated from Williams College in 1954. After two years in the armed services I went into business with my father in the real estate appraisal office in Arlington that he had maintained since the 1930's.

During the winter of 1956-'57 I attended a course in basic real estate appraising at Boston University, and since that time have continued taking courses as offered in various locales sponsored by various appraisal and other organizations interested in land acquisition, eminent domain, and that sort of thing.

MR. GOLDSTEIN: Your Honor, I —

THE COURT: Just a minute.

MR. GOLDSTEIN: — we will stipulate that Mr. Reenstierna is a qualified appraiser.<sup>13</sup>

MR. McLAUGHLIN: I am sure Mr. Goldstein will. Briefly, your Honor, I would like to go through his qualifications.

THE COURT: Go ahead.

A. I took two courses: in particular, one at the University of Connecticut, and a second at the University of Georgia, that were prerequisites to obtaining a designation as a senior member of the Society of Real Estate Appraisers, and I obtained that designation in 1965, a designation that I hold today.

The Society of Real Estate Appraisers is one of two large organizations that sponsor, discipline and organize real estate appraising

<sup>13</sup> Because of Mr. Reenstierna's superb qualifications, Attorney Goldstein graciously advised the Court, in the presence of the jury, that he would stipulate to Mr. Reenstierna's qualifications. However, Attorney McLaughlin wisely proceeded to lay out Mr. Reenstierna's background and qualifications.

nationwide, or internationally. My firm does appraisal work geographically through all of Massachusetts, New Hampshire, Rhode Island and Eastern Vermont.

The bulk of our work is in Eastern Massachusetts, and particularly in Middlesex County, with a great deal of focus in the Cambridge and Boston areas.

The firm became a partnership in 1963 and sole proprietorship in the late '60s after my father's death, and again a partnership when my brother joined the firm in the 1970s.

It has grown, as I said, to 12 appraisers and some additional staff, support staff. The types of properties that we appraise range from —

Q. If I can interrupt you for a minute, Mr. Reenstierna —

THE COURT: Can I interrupt you for a minute, too? Will you take that briefcase down from where you have it?

THE WITNESS: Yes.

(Witness took briefcase down.)

Q. You say you are an SRA?

A. Yes.

Q. What does that stand for?

A. Senior member of the Society of Real Estate Appraisers.

Q. And is that the highest professional designation that you can obtain?

A. No. There are higher designations within the organization.

Q. For residential real estate?

A. For residential, that is the highest, yes.

Q. And briefly, what steps do you have to take to obtain that?

A. It is a requirement that you successfully complete two courses, one a basic course and the other an advanced course in real estate appraising. It is necessary to prepare a demonstration report, a narrative report, that covers all aspects of residential appraising, and it is necessary to qualify with experience credits for the experience that the appraiser has had in his business career.

Q. Now, Mr. Reenstierna, could you name — you say you have appraised properties in Cambridge?

A. Yes, I have.

Q. Could you name a few of the representative properties, maybe some of the more well-known properties that the jury might recognize in Cambridge?

A. In the area of Harvard Square, I appraised the Charles Square Development Site, and the JFK School of Government at Harvard. Both of those sites in connection with their acquisition from the City for development purposes.

I appraised the Hyatt Regency Hotel along the river. I appraised the Marriott Hotel in Kendall Square, and many of the former United Carr Fastener properties in the Kendall Square area now belonging to TRW.

I have appraised for Polaroid Corporation and for Dr. Land and his Rowland Institute, properties including the Rowland Institute itself on Memorial Drive at the Longfellow Bridge, and various Polaroid properties scattered throughout the City of Cambridge.

I have appraised many of the Harvard University properties, MIT properties, and Tufts properties in the Cambridge community over a period of years.

Q. How many properties in Cambridge approximately have you appraised over the years?

A. My best estimate would be about 2,500.

Q. And of those 2,500, how many of those would be residential, what percentage?

A. I would estimate approximately 80 percent, or 2,000 of them.

Q. And have you appraised properties in all of the corners of the City of Cambridge?

A. Yes.

Q. All over the city?

A. Yes.

Q. And just briefly, have you worked for any banks in the City of Cambridge?

A. Yes, for the Cambridge Savings Bank and the Cambridge Trust Company, Cambridgeport Bank, and Bank Five for Savings, which was formerly the Arlington Five Cents Savings Bank. And the Merchants Cooperative Bank.

Q. Now, have you — you have testified in eminent domain proceedings before?

A. Yes. I have.

Q. Have you qualified as an expert before to testify as to fair market value?

A. I have.

Q. Briefly, sir, where have you qualified as an expert to testify as to fair market value?

A. I have qualified in the Appellate Tax Court in Boston and in the State of New Hampshire, in the Federal Court in Boston and in New Hampshire, and in the Superior Courts of most of the counties of Massachusetts with the exception of Berkshire County, and most of the counties of New Hampshire.

Q. Have you testified for both governmental entities and private land owners in eminent domain proceedings?<sup>14</sup>

A. Yes, I have.

Q. And what governmental entities have you testified for in eminent domain proceedings?

A. I have testified for the U.S. Attorney's Office, for the National Parks Service, for the Postal Service, for the State Department of Public Works, for municipal agencies, including the Boston Redevelopment Authority, the Cambridge Redevelopment Authority, the Somerville Redevelopment Authority, community development departments in various cities and towns, for conservation commissions.

Q. And you say you testified for private land owners, too?

A. Yes, I have.

Q. What is the breakdown between governmental and private landowners?

A. It is about an even division of work between governmental agencies and private clients.

Q. About 50-50?

A. Yes.

Q. And why is that, Mr. Reenstierna?

A. It is a policy that I have observed, as my father did, an attempt to balance our work between both sides so that we do not become biased in one direction or from one point of view.

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<sup>14</sup> Many appraisers make their livelihood testifying solely for landowners or solely for taking authorities. If this is the case, the fact will be brought out during cross examination and the jury may then suspect that your witness is not impartial. In this case, Mr. Reenstierna was able to show the jury that he spends half of his time for plaintiffs and half of his time for defendants so that he can maintain his impartiality. In most cases your appraiser will spend a greater proportion of his time working for either plaintiffs or defendants. However, it is still important to ask the appraiser during the direct examination whether he does some work for both plaintiffs and defendants.

Q. And have you owned any property in Cambridge?

A. I have.

Q. Have you developed property in Cambridge?

A. I have owned and developed property and sold property in Cambridge.

Q. And rented property and bought property?

A. Yes.

Q. When were you retained to do this appraisal,<sup>15</sup> Mr. Reenstierna?

A. I was first retained in early 1983.

Q. And what steps did you take in doing your appraisal, briefly?

A. I obtained plans of the property. I sent a letter to the owners of the property, the Weisbergs, asking for them to accompany me in an inspection of the property and offering them an opportunity to express their opinion as to what the property could be used for and so discuss whatever plans they might have had for it.

They did not accompany me to the site, but I did talk on the telephone with Mr. Weisberg and discuss his intentions and the purchase of the property and other matters.

I visited the site, I inspected it, I inspected the neighborhood and I obtained the zoning by-laws of the City of Cambridge and studied them for the relevant regulations that would control the development of this site or the use of this site.

I studied the history of the particular site, its sales history, the fact that it had sold twice in the last three years, and what it had been used for historically.

I found that in the 1970s, up into the 1970s, it had been improved with a two-family dwelling that had been demolished at some time in the '70s by the City of Cambridge.

I decided because of the nature of the property — I found that the property was a vacant parcel of land.

Q. If I can just interrupt you, Mr. Reenstierna. Could you briefly describe the subject property and the surrounding area as it existed on May 17, 1984?

A. The property was a vacant parcel of land fronting approximately 60 feet on Columbia Street and located between Washington Street and Bishop Allen Drive, a long city block from Massachusetts Avenue at the easterly end of Central Square.

<sup>15</sup> See § 13A.05 *infra*.

It contained 11,084 square feet of land; a rectangular-shaped parcel, having approximately a depth of 180 feet on the right side and — on the left side, rather, and approximately 195 feet on the other side. Average depth of about 187 feet.

It had some brush and small hardwood trees, but no growth of any great significance on it. It was located in an area that was mixed residential and industrial or commercial in use.

On the same side of Columbia Street there were mostly residential-type properties, brick or frame buildings, ranging from two-families, three-family, to multi-family buildings.

There was a church property located to the north of the subject, not adjacent to it but not too far north, at the corner of Washington Street.

Across the street was a garage-type property, an older masonry structure. It was brick construction and the front had been finished off more recently with some stucco to repair some damage to the structure.

It was an automobile repair facility. And my recollection is that they dealt primarily in transmissions. On either side of that property and directly across the street from the subject was a paved parking lot.

On the other side of the garage was another paved parking lot. Those lots had been owned by Polaroid for many years and used as parking for employees in that general neighborhood, and they were asphalt paved. The asphalt was beginning to deteriorate. And they were, as of 1984, occupied by abandoned cars and by some cars that were left from the garage operation or that were involved in the garage operation, waiting to be worked on or waiting to be taken away after having been worked on.

To the east of that area was a very large public housing project, one of the older projects in the city. It is the Washington Elms and Newtowne Court Development that extends from Windsor Street to Portland Street and is just a block away from the subject site.

Main Street and, of course, Massachusetts Avenue are commercially developed and they are the nearest commercial areas to this site.

Q. That's fine. Thank you, Mr. Reenstierna. Did you have occasion to check into any construction in that area at that time, new construction?

A. Yes. I was working in this area, generally through the '70s and '80s and well aware of what was going on.

Q. Was there any new construction going on at Columbia Street as of May of 1984?

A. No.

Q. And were there any townhouses being built on Columbia Street as of May of 1984?

MR. GOLDSTEIN: Objection.

THE COURT: May have it.

A. No, there were none.

Q. Okay. Do you know if there was a playground across the street from the subject property in May of 1984?

A. As I say, there was a parking lot.

Q. Do you have any photographs of the subject property as it existed in May of 1984?

A. I have some color photographs that are in my report, one of which shows the subject property.

Q. Well, I have some photographs that — did I leave those with you?

A. Yes. I have two black and white photographs of the subject property.

Q. May I see the photographs, please?

(Witness gave the photographs to Mr. McLaughlin.)

(Mr. McLaughlin showed the photographs to Mr. Goldstein.)

(Mr. Goldstein conferred with Mr. McLaughlin.)

Q. To save time, I would like you to look at all these photographs quickly and I will ask you with respect to all of those photographs if they are fair and accurate representations of the subject property as it existed as of the taking date, May 17, 1984.

A. Only two of the photographs are of the subject property. These are the two smaller black and white. The other photographs are of the general neighborhood.

Q. Fine. If I could have those three photographs, I would offer those, your Honor.

(Photographs shown to Mr. McLaughlin.)

MR. GOLDSTEIN: Your Honor, I am going to object to something that, on the basis that these were not — the question is, were these a representation of how they were in May of '84, and I believe that these were taken substantially before May of '84.



THE COURT: So?

MR. GOLDSTEIN: They may be a fair and accurate representation of the day that they were taken.

THE COURT: Could be a fair and accurate representation of how they looked on May 17, 1984. He was familiar with the property on May 17, 1984 and he has —

You had seen the property prior to May 17, 1984?

THE WITNESS: Yes, your Honor.

THE COURT: May be marked.

MR. McLAUGHLIN: Thank you, your Honor.

(Photographs marked Exhibits Nos. 4, 5 and 6.)

MR. McLAUGHLIN: May I pass them to the jury?

THE COURT: No. I want them to pay attention to the witness.

Q. Mr. Reenstierna, you say you have other photographs of the area of the subject property as of the date of the taking?

A. Yes.

Q. Are those fair and accurate representations of the area of the taking as of May 17, 1984?

A. Yes, they are.

MR. McLAUGHLIN: I offer this, your Honor.

THE COURT: They may be marked.

(Ten large photographs marked Exhibit No. 7.)

Q. Mr. Reenstierna, you heard Mr. Simmons talk about the three ways to value property?

A. Yes.

Q. That was the cost approach, income approach and comparable sales approach; is that correct?

A. Yes.

Q. And did he accurately describe and define those techniques, just for saving time so we don't have to go into that?

A. Yes.

Q. And what approach did you use?

A. The comparable sales approach to value.

Q. Were you able to find any comparable sales?

A. Yes. I found five sales that I felt were useful in arriving at value.

Q. Now, briefly — and I say that because this could be a monotonous procedure — could you describe your first comparable sale, please.

A. Sale 1 was property at 6 to 10 Valentine Street that was mentioned yesterday. It was approximately 6,400 feet of land located a short distance off Brookline Street in the Cambridgeport section. That is about a quarter of a mile from the subject property. It is about the same distance from Massachusetts Ave. as the subject is, but it is to the south rather than the subject, which is to the north.

It was zoned for Business A use. All the property along Brookline Street and extending back through most of this lot was zoned for Business A purposes.

The lot was similar, somewhat similar in configuration to the subject. It had 65 feet of frontage, it had only 100 feet of depth and was smaller. It was vacant land.

It was acquired by abutters in the area. It was surrounded on three sides by primarily residential properties, generally frame, two-, three-, and four-family houses, and it was on the edge of an industrial district which ran to the east from Brookline Street and was along Brookline Street, as well.

Q. Just to interrupt you for a minute, Mr. Reenstierna, and I will apologize. I would like to keep things moving.

Do you have a copy of the deed to that property in your file? If you don't —

A. I don't have it with me today. I believe I gave it to you yesterday.

Q. Okay. Fine.

Do you have a copy of the plan to that property?

A. Yes, I do.

Q. And do you know who the buyer and seller of that property were on the date of your sale?

A. Yes. It was sold by the Henrys Trust to Reginald Moser.

Q. You say the buyer was an abutter?

A. Yes.

Q. And is it fair to say that abutters usually pay a higher price for property than another person would?

A. Yes, that is usually the case, sir.

They are able to make better use of the property through an assemblage with the abutting land that they own, and there is

generally a presumption that it enhances the value of the land that they already own.

Q. And, sir, did you do any adjustment to this sale?

A. Yes. I felt that this property was in a superior location.

Q. Briefly, what are adjustments? They may be confusing to the jury.

A. In analyzing real estate sales, there are no two parcels of real estate that really are identical and, therefore, it is necessary to make some kind of change or recognition of the difference between the sold property and the property being appraised.

In very simple terms, the sale is usually either better or worse than the subject property for a variety of reasons and generally the most important reason is location. And location has to do with accessibility and the surrounding properties and all the things that go into that unique spot that these pieces of property occupied.

Other elements of adjustment might be for the time of the sale. If the sale — generally in our lifetime real estate has always gone up in value. It goes at different rates, but through my lifetime, at least, it always has been on an upward trend — so if a sale occurs prior to a date of taking, it ought to be adjusted upward to bring that sale price to the current date, to the date of appraisal, and if it occurs after the date of appraisal, then it is adjusted downward to reflect that change.

Q. Thank you, Mr. Reenstierna.

And what adjustment, briefly, did you make for Sale No. 1?

A. Sale No. 1 I felt obviously was a superior location to the subject property. It happened prior to the date of appraisal and therefore needed to be adjusted up, but the obvious adjustment was to adjust the sale downward.

Q. And why was that?

A. Because of its location and because of the superior quality of that location.

Q. Did you take into consideration the fact that it was sold to abutters?

A. Yes. That was another element of adjustment.

Q. Briefly, Comparable Sale No. 2, where was that located, the address?

A. The second sale was at 163 Spring Street in Cambridge, and that is located to the northeast of the subject location, not too terribly far

from this courthouse. It is located west of the courthouse, in the — almost out to the railroad tracks at Seventh Street.

163 Spring Street was a small parcel of land, a little less than 2,000 square feet, 1,956 square feet. It was 23 and a half feet wide on Spring Street and it extended 83 and a half feet along Seventh Street. It was level land, corner lot, and it was vacant at the time of the purchase.

It sold in January of 1980 from Candida Lencki, to William Covalucci.

Q. Do you have a copy of the deed? You don't have to produce it, but do you have a copy with you?

A. Yes.

Q. Do you have a copy of the plan to that property?

A. Yes, I do.

Q. Did you make any adjustment to that sale?

A. Yes.

Q. What adjustment did you make?

A. This sale is also located in a superior neighborhood to the subject property. It is a residential neighborhood. It is similarly located not far from a commercial area, but far enough away to be unaffected by the commercial area, except it is convenient to it. There are no housing projects in the immediate area and there are no detrimental influences such as existed on the subject property. Obviously, I felt that this was a superior property to the subject.

It is also, because it was a much smaller lot, there is a tendency for smaller parcels of real estate to sell at higher unit prices than large parcels, and the reason for that is that there are more buyers for small parcels than there are for large parcels. The change becomes much more pronounced as you get into really big pieces of property.

Q. Thank you, sir. What was the address of your third comparable sale?

A. The third sale was at 12 to 14 Berkshire Street.

Q. How far is that from the subject property?

A. This is approximately a quarter mile from the subject property, to the north. It is a neighborhood of residential properties. It is known as the Wellington-Harrington neighborhood. The Harrington School is a modern elementary school located two blocks to the north of this property, and it sort of dominates that neighborhood, both as a school and with a large park behind it.

The area is one that has been increasing in value over the last 15 or 20 years through upgrading of properties and improvement of

properties. There are mostly two- and three-family homes in this area, mostly frame construction, two and three stories in size.

This particular sale was from Theresa Puzinas to Manuel Periera. Mr. Periera was an abutter of this property. He bought the property in November of 1982 and it was to add to the existing property that he had to give some side yard for a garden and for parking for his car, as well.

This is an area close to an older church, an older frame church on Portland Street that at this time was being sold and demolished and being replaced by one of the first new churches in Cambridge in many, many years, a new church being built by the community right here of (sic) Portland and Cambridge Streets.

Q. If I could interrupt for a minute, do you have a copy of the deed to that?

A. Yes, I do.

Q. And do you have a copy of the plan to that sale?

A. Yes.

Q. And did you make any adjustment to that sale, Mr. Reenstierna?

A. Yes. Again, I adjusted the sale considering that it occurred prior to the date of appraisal. I adjusted it upward and I adjusted it downward to reflect the fact that it was a better area, better type of property.

Q. And what was your fourth comparable sale? What was it?

A. The fourth sale was located on Rindge Avenue in Cambridge, a sale by John Worden and Flora Costa to the Joyce Chen Realty Trust in November of 1981. It was a 5,000 square foot lot with 50 feet of frontage on Rindge Avenue, located in North Cambridge off Route 2 and near the Joyce Chen Restaurant.

It was a level site. It was acquired to add parking for the Joyce Chen personnel. It is a neighborhood of mixed residential and industrial uses. On the other side of Rindge Avenue is an area called Gerry's Pit, a water hole, and then the Dewey and Almy Chemical Company, and to the rear and to the east are housing projects, as Mr. McDevitt said, the Rindge Towers and an older veterans' project to the east.

Q. And did you make an adjustment to that sale, sir?

A. Yes. I did. Again, I adjusted it upward because of the date of the sale, and I adjusted it downward to reflect that this particular property had a higher use than simply the residence C-1 use of the subject property; that it had use to an abutter.

THE COURT: We will stop here. Morning recess.

COURT OFFICER: Morning recess.

(Recess taken at 11:30 a.m.)

(The Court entered the courtroom at 12:06 p.m.)

DONALD H. REENSTIERNA, RESUMED

CONTINUED DIRECT EXAMINATION BY MR. McLAUGHLIN

Q. Mr. Reenstierna, if you would briefly turn to your fifth and final sale.

What was the address of that?

A. 52 Brookline Street.

Q. How far was that from the subject property?

A. Also about a quarter of a mile away on the south side of Central Square and Massachusetts Avenue.

Q. Do you have a copy of the deed to that in your file?

A. Yes.

Q. Do you have a copy of the plan?

A. Yes.

Q. Do you know who the buyers and sellers were?

A. Yes. The seller was Eric Powell and the buyer was David Eon.

Q. What was the date of that sale?

A. That was in May of 1981.

Q. And how would you describe that property?

A. It was a rectangular shaped parcel, 5,500 square feet of land with 62 feet of frontage on Brookline Street. It was zoned for Business A-1 use, a higher use than the subject property.

It was a vacant parcel of land. It was level and it was used for parking for an adjacent property, or rather a nearby property.

It was a better location. It was necessary to adjust the sale downward for its location and for the fact that it was zoned for a higher use and more could be done with it than could be done with the subject property, and the sale had to be adjusted upward to reflect the fact that it happened prior to the date of appraisal.

Q. Did you make any other observation or adjustment to that property?

A. No. I think that —

Q. Fine. Did you consider any other sales, Mr. Reenstierna?

A. Yes. Those were five sales of property similar to the subject, but the subject itself had sold and had a sales history that I considered, and the only property that can be found that is identical, of course, is the subject.

It had been acquired in February of 1983 by the Weisbergs, and I inquired of Mr. Weisberg as to the terms of that sale and why he had purchased it, what his intentions had been, and satisfied myself that it was an arm's length sale; that is, that neither he nor the seller had acted under any compulsion or any special reason for selling other than a desire to sell and a desire to buy.

That sale, as I said, had occurred just a little over a year prior to the date of this taking and was the most significant transaction that had occurred.

The validity of the fact that the price was at a market value or close to a market value at the time was substantiated by an earlier sale of the same property, when the Fennell Realty Trust bought it in 1981. They acquired it from the City of Cambridge at that time and again in an arm's length transaction, and I talked with Mr. Fennell to determine why he had bought it and what his intentions had been, and also to talk about why he had later sold it.

Q. Why did Mr. Fennell buy the property?

MR. GOLDSTEIN: Objection.

THE COURT: Excluded.

Q. Now, Mr. Reenstierna, based upon your education, background, training and experience, and based upon the comparable sales you just testified to, do you have an opinion for the fair market value of the subject property as of May 17, 1984?

A. Yes.

Q. What is that opinion?

A. \$22,000.

MR. McLAUGHLIN: No further questions, your Honor.

**[10]—Cross-Examination of City's Expert Appraiser**

**CROSS-EXAMINATION BY MR. GOLDSTEIN**

Q. Mr. Reenstierna, did you form an opinion as to the highest and best use of this property?

A. Yes.

Q. The subject property?

A. Yes, I did.

Q. And what was your opinion as to the highest and best use of that property?

A. As a site for potential development in accordance with the zoning by-laws for residential purposes.

Q. And would that have been for the development of nine townhouses?

A. No, I did not form an opinion as to how many units could be built on the site. Only that it be built in accordance with the zoning by-laws.

Q. You did not form such an opinion as to the number of units?

A. I correct myself. I did conclude that it was suitable for development with as many as nine units, yes.

Q. And that would put you in accord with what Mr. Simmons had testified to yesterday?

A. I —

MR. McLAUGHLIN: Objection.

THE COURT: Excluded.

Q. Mr. Reenstierna, is it not so that you conducted your appraisals approximately nine or ten months before the taking of this piece of property?

MR. McLAUGHLIN: I'm sorry, I don't follow that.

THE COURT: What?

MR. McLAUGHLIN: I object. I really didn't follow the question.

MR. GOLDSTEIN: I asked if —

THE COURT: That is a proper question.

MR. McLAUGHLIN: All right.

A. I began my appraisal in 1983 in the late summer, and completed an appraisal in September of '83, and updated the appraisal in November of 1984.

Q. So that it was your — let me ask you: Your opinion as to the value of this property in November of '84 was the same as it had been in September of '83?

MR. McLAUGHLIN: Objection.

THE COURT: May have it.

MR. McLAUGHLIN: Well —

THE COURT: Please. May have it.



MR. McLAUGHLIN: I don't think that is what he testified to, your Honor.

A. I didn't value the property as of November, November, '84. I valued it as of the date of the taking. But I didn't complete it until November of '84.

Q. So it would be fair to state that your opinion in November of '84 was that there had been no change in the fair market value of this piece of real estate from September of 1983 until May of 1984?

A. That's correct, yes.

Q. Mr. Reenstierna, the comparative sales that you have just gone through, these five sales — the earliest of which would be in 1980; is that correct?

A. I believe that's correct. yes.

Q. And the latest of which is in 1982?

A. Yes.

And all the parcels — I'm sorry. The latest was February of 1983, the subject property.

Q. I am asking about the five comparative sales.

A. Of the five other properties, that's correct.

Q. And all those parcels are in relatively similar locations, maybe slightly superior; is that correct?

A. They are reasonably similar, yes.

Q. And they are smaller in size?

A. Yes, they are.

Q. Does the fact that the property in question is 11,000 square feet substantially put it out of the small size parcel of land?

A. No.

Q. It would be in the same category; is that correct?

A. It is certainly comparable, yes.

Q. So that an adjustment for the size is really minimal?

A. That's correct, yes.

Q. During the period 1980 to 1984, the time of this taking, do you have an opinion as to the value of real estate in general in Cambridge. as to whether it went up or down?

A. On a city-wide basis?

Q. Yes.

A. On a city-wide basis I would say that real estate was rising in value during the early '80s.

Q. So if I understand you in a general way, the size of the parcels on the comparative sales are relatively minimal; the properties themselves are in relatively similar locations, and the property values were generally increasing; is that correct?

A. Throughout the city the values were increasing; that's correct. The neighborhoods were similar, but the other neighborhoods, I believe, were all superior to the subject. The lot size required consideration for lower price for the subject because of size, but it was not a major adjustment.

Q. You didn't feel that it was necessary to make any upward changes from September of 1983 to May of 1984 as a result of increases in market value?

A. I didn't feel that the market value of this site had changed in that time.

Q. And some of the parcels in a general way — some of the parcels that you referred to, these comparative parcels, were too small to have any other use than as parking; is that correct?

A. No. They were all large enough to be developed. The smallest of them was, in fact, developed with a home after the purchase. That was the parcel on Spring Street.

Q. And would it be fair to say that a parcel which could be developed into one home would have the same value as one which could be developed into nine town homes?

A. It would have a value that could be compared on a per-unit basis. It would not be dollar for dollar equal in value, but the sales are considered on a price-per-square-foot basis typically for this type of property, and they can be compared on that basis to per-square-foot of the subject property.

Q. The photographs which have been admitted into evidence — I forgot what the particular number is — but as to all of them, were they taken before or after the May 17, 1984 date?

MR. McLAUGHLIN: Objection.

THE COURT: May have it.

A. They — I would estimate that they were taken sometime close to but prior to May of 1984. But they are fair representations of what appeared there at that time, as of May of 1984.

Q. Mr. Reenstierna, I don't believe that we have heard your definition of what fair market value is, and I would like you to state it, please.

A. Fair market value, as defined by the courts, is the highest price which a willing buyer will pay and which a willing seller will accept, neither party acting under any compulsion to buy or sell, both parties being fully aware of all the uses to which the property may be put and the property having been exposed to the market for a reasonable period of time.

Q. Now, that definition implies a speculation of some kind; is that not correct?

A. It is a hypothetical willing buyer and a hypothetical willing seller and the speculation is in that regard.

Q. So is it largely irrelevant whether or not somebody else built a similar situation at any particular point in time before this, the taking of this parcel of property?

MR. McLAUGHLIN: Objection.

THE COURT: Well, he has given the legal definition of what fair market value is.

MR. GOLDSTEIN: All right. I will withdraw it.

No further questions.

**[11]—Redirect Examination of City's Expert Appraiser**

**REDIRECT EXAMINATION BY MR. McLAUGHLIN**

MR. McLAUGHLIN: Just a few, your Honor.

Q. Mr. Reenstierna, do you have an opinion about whether or not it is likely or reasonably foreseeable that this particular parcel would be developed for townhouse use?

MR. GOLDSTEIN: Objection.

THE COURT: Excluded.

Q. Mr. Reenstierna, were you aware of any construction activity in this area at the time of the taking?

MR. GOLDSTEIN: Objection.

THE COURT: Any kind of what?

MR. McLAUGHLIN: Construction, your Honor.

THE COURT: May have it.

A. No, I was not.

Q. Was there any construction activity in this area at the time of the taking?

A. Not to the best of my knowledge, no.

Q. Was anyone building townhouses in this area at the time of the taking?

MR. GOLDSTEIN: Objection.

THE COURT: Excluded. He said there was no construction —

MR. McLAUGHLIN: All right.

THE COURT: — going on.

MR. McLAUGHLIN: No further questions, your Honor.

THE COURT: All right. You may step down, Mr. Reenstierna. Watch that step will you please?

THE WITNESS: Yes, sir. Thank you.

(The witness stepped down.)

MR. McLAUGHLIN: Your Honor, may it please the Court, members of the jury, I —

THE COURT: Have you rested?

MR. McLAUGHLIN: I have, your Honor. I'm sorry.

THE COURT: Defendant rests.

Has the plaintiff any further evidence?

MR. GOLDSTEIN: I believe, your Honor, that there is one additional piece of evidence that we need to introduce, which is the records of the assessor as to the three years of the assessment, which my brother and I have discussed before, but I haven't seen them.

MR. McLAUGHLIN: Your Honor, I —

MR. GOLDSTEIN: I believe they should be introduced.

THE COURT: Have you got some kind of a document?

MR. GOLDSTEIN: They are here somewhere.

MR. McLAUGHLIN: Well, could we have a side-bar on that, your Honor, briefly?

THE COURT: Yes.

## § 13A.04 Closings

### [1]—Final Argument by the City's Attorney

#### FINAL ARGUMENT, DEFENDANT

MR. McLAUGHLIN: May it please the Court. Mr. Foreman, members of the jury, first of all, I want to thank you for your time. I told you at the beginning of this case that it was not an ordinary case nor the most exciting case in the world, and I am sure you haven't been disappointed at least in respect to that aspect of the case.

I also asked you at the beginning to — well, I pointed out to you that the City of Cambridge and the People of Cambridge are not out to cheat anyone. They want to be treated fairly and they want to treat the Weisbergs fairly, and we feel that we have treated the Weisbergs fairly.

What the Weisberg are entitled to is the fair market value of this property as of May 17, 1984, the valuation date. So it is important during your deliberations to project yourself back to remember the testimony and to think about what that property was like as of May 17, 1984.<sup>16</sup>

And I would like you to think about the fact that the property is a rather small lot, sandwiched in between three buildings. I would like you to think about the state of those buildings. I would like you to think about the fact that there was testimony that there was a garage across the street, not a playground, and that there was a City parking lot with abandoned cars in it at that time.

I would also like you to think about the fact that on the view what you saw, what the nature of the surrounding buildings was like and the fact that there was testimony that there were no townhouses being built on Columbia Street on the date of the taking.

And really what you have before you is a simple question. It is a question of fair market value, which has been explained to you and defined to you a number of times, and I think you have a great deal of help in deciding that.

<sup>16</sup> If you represent the taking authority and if your case is being tried at a time when real estate prices are skyrocketing, it is probably a good idea to remind the jurors that they must go back in time to determine damages as of the date of the taking, not the date of the trial. You want the jury to understand that they must travel back in a time machine to the date of the taking and they should not consider what happened to the real estate market after the date of taking. As a practical matter, it is generally more difficult to represent a municipality in a time of escalating prices because the jurors cannot ignore their personal knowledge of existing real estate prices and trends.

You have two appraisers, first of all, and I think that — I think that firstly, you should appraise the appraisers. Look at those appraisers and think about the knowledge that those appraisers have. And perhaps the better question is: Who would you hire if you wanted your valuable real estate, wherever it is, appraised?<sup>17</sup>

And I think first, I would like to consider Mr. Simmons. Now, his background and training is, he has one course in real estate. He started in the real estate world as an appraiser part time in 1981 while he was working full time for the City of Newton — working for the City of Newton 40 hours a week, he testified.

So I would suggest to you that there was not a great deal of experience between '81 and '86. And for the last two years he has been working full time.

I would also like you to recall the fact that he testified that not one person, not one person, ever hired him to testify or to appraise residential real estate in the City of Cambridge, and I would like you to think about how the marketplace views his knowledge and experience in the City of Cambridge.

I would also like you to consider the fact of his preparation for the testimony. When I asked him about his comparable sales, that he didn't have any deed, didn't have any plans, didn't have any photographs, didn't know who the buyers or sellers of those properties were; he had the wrong sale dates, he had the wrong zone, and to get to his townhouse use he said that he studied the zoning, but yet when I asked him in detail, when I asked him what the various set-backs are — and I won't go into detail now — he didn't know anything.

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<sup>17</sup> The trial of an eminent domain case is truly a battle of the experts and it is likely that jurors will decide the case on the basis of the appraisers' credentials, content of presentation and courtroom presence. Accordingly, this author believes that the single most important factor in any land damage case is the selection of the expert. Whether you represent a landowner or a taking authority, it is critical to be involved in the selection of an appraiser. In the usual case, the landowner does contact his attorney before selecting an appraiser. However, in the usual case, the municipality retains an appraiser and obtains a written report long before trial counsel gets involved in the case. Oftentimes, a municipality will select their appraiser solely on the basis of cost. In this author's opinion, this course of action is penny wise and pound foolish. A municipality needs to understand that the least expensive appraisal may be the easiest to attack. A municipality needs to understand that, in some cases, a more expensive appraisal, prepared by an extremely well qualified appraiser, may save the municipality thousands of dollars. In this case, the City of Cambridge retained an extremely well qualified appraiser and a talented attorney. The end result was that the City did end up saving thousands of dollars.

And I suggest to you that those townhouses in that area are not a very realistic use.

Lastly, I would like you to consider his comparable sales. Sales 1, 2 and 3, that are around the area of the subject property — they are sales prior to the taking — he adjusted them 32 and 38 percent a year. He is telling you that the appreciation during that time was 32 and 38 percent.

Yet when I asked him, "Can you name one sale on those specific streets that justify those adjustments, name one sale on that street that appreciated 32 or 38 percent," he didn't know any sale.

And the other thing I draw your attention to is Sales 4, 5 and 6. He testified that he made a 90 percent adjustment to those sales, 90 percent. He also testified that 4, 5, and 6 were in another world. And most unbelievably, he was testifying to the comparable sales method, and he testified in cross-examination that he never even looked at Sales 4, 5, and 6, never even drove by them as he did 1, 2, and 3.

On the other hand, we have Mr. Reenstierna. Mr. Reenstierna has a great deal of experience. He has been an appraiser for 35 years. Ever since he graduated from Williams College he has been appraising real estate. And I would like you to think about the fact that he has 2,500, approximately, appraisals in the Cambridge area, 80 percent of those being residential sales.

I would also like you to consider heavily the type of people who have hired him: MIT, Harvard, Polaroid, Texaco, TRW, Dr. Land, who founded Polaroid. These are the type of people who have hired Donald Reenstierna.

And what are the properties he has valued over the years? Just a handful. He has valued a great deal of Harvard property, a great deal of MIT property, Charles Square, the Kennedy School of Government, the Hyatt, the Marriott.

And I would like you to think about what the marketplace thinks of Donald Reenstierna and thinks about his experience, and I would like to suggest to you that he is quite an expert and has quite a great deal of experience.

I would like you to next consider the comps. Mr. Reenstierna's comparable sales are all in and around the subject property.

Now, I think the most powerful evidence we have is the sale of the subject property itself. This same property sold twice within three years of the taking date. First, the City of Cambridge sold it to Mr. Fennell, who was described as a sophisticated, savvy, property owner. \$15,800 is what he paid for it.

And then a short time after that, about two years later, in February of '83, the Weisbergs bought the property, and they paid \$18,000. So that the property, between April of '81 when Fennell bought it, and February of '83, was appreciating at something about six percent a year.

Now, we have Simmons testifying that after his client buys this property, the same property all of a sudden starts appreciating at 150 percent — 120 percent a year. But when I asked him, "What sale can you give me on Columbia Street to justify that adjustment," he couldn't give me one.

So Simmons would have you believe that even though this property was appreciating at six percent prior to his client's buying it — and by April there were two sales — after his client's buying it, in the 15 months up to the time of the taking, the property appreciated 10 percent a month, the same property that, prior to his client's buying it, was appreciating at six percent a year.

Now, you have heard evidence about the assessments and you heard Mr. McDevitt's testimony of the assessments, and I will leave that up to you as to how you can consider the evidence.

Judge Valley will tell you at the end that you can accept or reject evidence, weigh it as you please, and I leave that up to you folks as to how you deal with that.

In the final analysis I think that what happened here is we have Mr. Simmons who tried to capitalize on the assessment, and you can't blame somebody for gilding the lily, but he went too far.

And, ladies and gentlemen, and it just isn't fair. And I suggest to you that the \$22,000 valuation of Mr. Reenstierna represents the fair market value of that property on the date of the taking, and again I thank you for your time again. I realize that it is not the most interesting subject matter in the world, but I hope that you did find it somewhat entertaining and educational.

Thank you.

THE COURT: All right.

**[2]—Final Argument by the Plaintiffs' Attorney**

FINAL ARGUMENT, PLAINTIFFS

MR. GOLDSTEIN: May it please the court, Mr. Foreman, ladies and gentlemen of the jury, my brother touched on something a moment ago that strikes me as being really the underlying — there is an underlying issue here, and he says to you that the City of Cambridge wants to treat the Weisbergs fairly. And how do they go about doing it?



They go about doing that by assessing the property just as you get your tax bills if you own property or if you rent. You may have a tax on your apartment that you live in, and you pay a tax. The Weisbergs paid the tax on the basis of an assessment that the City of Cambridge, by their experts in evaluating the property, determined what it was worth on January 1st of 1983.

Where was the fair treatment there? Did they say, "No, we are wrong. That is the wrong assessment. We are going to put it down low. Don't pay the taxes on that amount?" They thought it was fair at the time, and now they think it is fair to say that in a year and a half later it was worth half again as much.

The issue as to what the value of this property is one of practicality. It is — we don't have to say what is the average price that one may obtain, or what did happen down the street, did anybody build any townhouses. That really is not the standard by which we have to measure the situation.

It is the best possible world. The law says that the City of Cambridge has to pay the Weisbergs the highest possible price that a reasonable buyer would pay, a reasonable seller.

Both experts agree that the highest and best use of this property is for the construction of nine townhouse units. Beating the issue to death as to whether or not — what the frontage, what the side lots — is really of no consequence, because they are both in agreement that that is the best use.

And I put it to you that as a matter of common sense, all that we can require you to do is to apply your own lives to these circumstances. You hear the evidence, you decide how much of whatever witness you want to believe, or whether all or whether part of it, and apply your own experience and common experience.

Well, common sense would certainly indicate that a property on which you could construct nine townhouse units is going to be more valuable than a piece of property on which you could put two cars to park or that maybe you might build one unit on.

And certainly in our life experience over the last several years we know that the market value of real estate has increased dramatically in some places, and in some places astronomically.

Not to say that this may or may not have happened on this particular piece of property, but certainly we must allow that the value is going to increase consistent with the marketplace, the rest of the world that we have lived in over the last several years.

If we take the figure that the City of Cambridge says that that property was worth on January 1, 1983, namely \$33,500, and apply

this reasonable test based on our own life experience over the next year and a half, you find that we are — you are going to come out with a number that is roughly approximately to what the plaintiffs have indicated through the testimony of Mr. Simmons for the value of this property in May of 1984.

The defendant's expert makes no adjustment for the changes that have occurred. His appraisals were rendered a year earlier and, even though he revisited the situation, cannot say under any circumstances that a market value increase should increase. It doesn't make sense. A long time ago, I remember, as a kid, I did something wrong and tried to cover it up by making some sort of foolish statement that — get caught in it. My father, you know, said to me, "Well, look, the reason they caught you on this is because you said something that didn't make sense."

The truth makes sense. The job that you as jurors have is to render a verdict. We don't have a murder mystery here. We don't have liability to discuss. It is only the question of value. But it is a verdict, and a literal interpretation of the Latin is to speak the truth.

The sense you have to apply is common-sense. The common sense indicates that this property was worth, in May of 1984, \$45,000.

And I on behalf of the plaintiff thank you for your courtesy and patience in this matter, and I hope that you consider well what we have to say and render your verdict in that fashion.

Thank you.

13A-107

Illustrative Condemnation Proceeding

§ 13A.05

**§ 13A.05 City's Real Estate Appraisal**

REAL ESTATE APPRAISAL

65-69 COLUMBIA STREET  
CAMBRIDGE, MASSACHUSETTS

T. ALEX  
D.H. REENSTIERNA  
APPRAISERS

T.H. REENSTIERNA & SONS  
REAL ESTATE APPRAISERS & CONSULTANTS

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**LOCATION**

65-69 Columbia Street, Cambridge, Massachusetts.

**OWNERSHIP**

Edward M. & Janice C. Weisberg, as recorded in Middlesex South Registry of Deeds, Book 14881, Page 585, dated February 1, 1983.

**PURPOSE OF APPRAISAL**

The purpose of this appraisal is to estimate the Market Value of the fee simple title to the subject property as of September 9, 1983.

Market Value is the most probable price in terms of money which a property should bring in a competitive and open market under all conditions requisite to a fair sale, both the buyer and seller acting prudently and knowledgeably and assuming the price is not affected by undue stimulus.

Fee Simple is an absolute fee; a fee without limitations to any particular class of heirs or restrictions, but subject to the limitations of eminent domain, escheat, police power, and taxation.

(The above definitions are from Real Estate Appraisal Terminology, Revised Edition, Cambridge, Massachusetts, 1982.)

**ASSUMPTIONS AND LIMITING CONDITIONS**

1. The appraiser will not be required to give testimony or appear in court because of having made this appraisal, with reference to the property in question, unless arrangements have been previously made therefore.

2. The distribution of the total valuation in this report between land and improvements applies only under the reported highest and best use of the property. The allocations of value for land and improvements must not be used in conjunction with any other appraisal and are invalid if so used.

3. One or more of the signatories of this appraisal report is a member or candidate of the American Institute of Real Estate Appraisers of the National Association of Realtors or of the Society of Real Estate Appraisers. The Bylaws and Regulations of the Institute require each member and candidate to control the use and distribution of each appraisal report signed by such member or candidate. Therefore, except as hereinafter provided, the party for whom this appraisal report was prepared may distribute copies of this appraisal report, in its entirety, to such third parties as may be selected by the party for whom this appraisal report was prepared; however, selected portions of this appraisal report shall not be given to third parties without the prior written consent of the signatories of this appraisal

report. Further, neither all nor any part of this appraisal report shall be disseminated to the general public by the use of advertising media, public relations media, news media, sales media or other media for public communication without the prior written consent of the signatories of this appraisal report.

4. The legal description used in this report is assumed to be correct.

5. No survey of the property has been made by the appraiser and no responsibility is assumed in connection with such matters. Sketches in this report are included only to assist the reader in visualizing the property.

6. No responsibility is assumed for matters of a legal nature affecting title to the property, nor is an opinion of title rendered. The title is assumed to be good and merchantable.

7. Information furnished by others is assumed to be true, correct, and reliable. A reasonable effort has been made to verify such information; however, no responsibility for its accuracy is assumed by the appraiser.

8. All mortgages, liens, encumbrances, leases, and servitudes have been disregarded unless so specified within the report. The property is appraised as though under responsible ownership and competent management.

9. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures which would render it more or less valuable. No responsibility is assumed for such conditions or for engineering which may be required to discover such factors.

10. It is assumed that there is full compliance with all applicable federal, state and local environmental regulations and laws unless non-compliance is stated, defined and considered in the appraisal report.

11. It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless a non-conformity has been stated, defined and considered in the appraisal report.

12. It is assumed that the utilization of the land and improvements is within the boundaries or property lines of the property described and that there is no encroachment or trespass unless noted within the report.

#### ASSESSMENT AND TAXES

The subject property is assessed by the City of Cambridge for the fiscal year 1983 as follows:

Land (11,084 square feet):	\$4,700
----------------------------	---------

Total Assessment: \$4,700  
The Fiscal 1983 Real Estate Taxes are \$930.60.

#### ZONING

The subject property is zoned for Residence C-1 use. Permitted uses are for single- and multi-family dwellings; for institutional and municipal uses; and for other uses by special permit. The minimum lot size is 5,000 square feet and the minimum width 50 feet. 1,200 square feet are required for each dwelling unit. The maximum ratio of floor area to lot size is .75. The maximum building height is 35 feet. For townhouse developments, some dimensional requirements are waived, and a greater floor area ratio is allowed.

#### LEGAL DESCRIPTION

The legal description of the subject property is taken from a deed, as follows:

The land in Cambridge in said County being numbered 69 Columbia Street, Cambridge, MA and said parcel is more fully described in an instrument recorded in Middlesex South District, Book 12760, Page 326.

Being the same premises described in deed from the City of Cambridge dated April 14, 1981 and recorded in said Deeds in Book 14265, Page 039.

A certain parcel of land situated in Cambridge, being now numbered 65 to 69 Columbia Street and being bounded and described as follows:

SOUTHEASTERLY by said Columbia Street, sixty (60) feet;

SOUTHWESTERLY by land now or formerly of Paige, one hundred ninety-five (195) feet, three (3) inches;

NORTHWESTERLY by land now or formerly of Fisk, sixty (60) feet, more or less;

NORTHEASTERLY by land now or formerly of Osborn and of Marvin, one hundred seventy-nine (179) feet, four (4) inches.

Containing 11,084 square feet of land, more or less.

#### NEIGHBORHOOD DESCRIPTION

The subject property is located on the westerly side of Columbia Street in Cambridge, between Washington Street and Bishop Allen Drive. Columbia Street is a well-traveled road running from Central Square through Union Square in Somerville. The neighborhood is predominantly developed with two- and three-story residential dwellings, housing two or more families. Opposite the subject is a one-story

masonry garage building, and a paved parking lot. On either side and behind the subject, the abutting properties are all improved with residential uses. Columbia Street is a two-way paved roadway with curbing and sidewalks.

All utilities are available to the site.

#### PROPERTY DESCRIPTION

The subject property is an inside parcel of land containing 11,084 square feet with 60 feet of frontage along Columbia Street. The property is level at street grade, and is clear with the exception of some outgrowth of weeds. There is a curb cut along Columbia Street.

#### HIGHEST AND BEST USE

Highest and Best Use is defined as "that use, from among reasonably probable and legal alternative uses, found to be physically possible, appropriately supported, financially feasible, and which results in highest land value;" alternatively, it may be defined simply as "most probable use."

The subject is a vacant site zoned for residential use, with surrounding properties developed primarily for residential use. The Highest and Best Use of the subject has been determined to be for development with a multi-family dwelling containing nine dwelling units which is allowed under the current zoning.

#### HISTORY OF SUBJECT

The subject property was acquired by the present owners, Mr. & Mrs. Edward Weisberg, in February of this year for \$18,000 from J.R. Fennell Realty Trust which translates into a unit price of \$1.62 per square foot of land area. From a telephone conversation held between the appraiser and Mr. Weisberg on September 14, 1983, Mr. Weisberg stated that he had purchased the property with the intention of constructing a repair garage on the site. He felt that although the property was not zoned for such use, the fact that the property across the street was used in this manner may help him obtain a variance. Mr. Weisberg stated that although he had recently purchased the property for approximately \$1.50 per square foot, he felt that the value of the property was in the \$6.50 to \$7.00 per square foot range. He also stated that a developer, E.J.B. Enterprises, was interested in the site for construction of elderly housing. The appraiser spoke to Mr. Burns of E.J.B. Enterprises on September 19, 1983, at which time Mr. Burns stated that he was planning the construction of thirty-six congregate housing units for the elderly on three floors, with parking under the building. Mr. Burns emphasized that this project was in the planning stages, and that he has not obtained any permits or variances from the city. J.R. Fennell Realty Trust acquired the



property at auction from the City of Cambridge on April 14, 1981 for \$15,800. The City had acquired a tax title to the property in 1977.

#### APPRAISAL ANALYSIS

The subject property will be valued by the Direct Sales Comparison Approach. The following sales were used in estimating the value of the subject property.

#### COMPARATIVE SALES DATA

Sale No. 1

Location: Valentine Street, Cambridge, Mass.

Grantor: John E. Henry et al, Trustees of Henrys Trust

Grantee: Reginald P. Moser et ux

Registry Reference: Middlesex South Registry Book 14686, Page 69

Date of Deed: July 26, 1982

Date of Recording: August 6, 1982

Sale Price: \$17,000 Excise Stamps: \$38.76

Land Area: 6,500 square feet

Frontage: 65' Valentine Street

Zoning: Business A

Unit Price: \$2.62 per square foot land area

Comments: Level, vacant site which was purchased by abutters.

#### COMPARATIVE SALES DATA

Sale No. 2

Location: 163 Spring Street, Cambridge, Mass.

Grantor: Candida T. Lencki

Grantee: William J. Covalucci

Registry Reference: Middlesex South Registry Book 13879, Page 21

Date of Deed: January 9, 1980

Date of Recording: January 14, 1980

Sale Price: \$5,000 Mass. Excise: \$11.40

Land Area: 1,956 square feet

Frontage: 23.50' Spring Street & 83.58' Seventh St.

Zoning: Residence C-1

Unit Price: \$2.56 per square foot

Comments: Corner site in which a new dwelling was constructed in 1980

COMPARATIVE SALES DATA

Sale No. 3

Location: 12-14 Berkshire Street, Cambridge, Mass.

Grantor: Theresa M. Puzinas

Grantee: Manuel J. Periera et ux

Registry Reference: Middlesex South Registry Book 14781, Page 67

Date of Deed: November 5, 1982

Date of Recording: November 5, 1982

Sale Price: \$5,000 Excise Stamps: \$11.40

Land Area: 2,040 square feet

Frontage: 40' Berkshire Street

Zoning: Residence C-1

Unit Price: \$2.34 per square foot land area

Comments: Small, vacant parcel of land, level at street grade which is used for parking

COMPARATIVE SALES DATA

Sale No. 4

Location: Rindge Avenue, Cambridge, Mass.

Grantor: John L. Worden and Flora Costa

Grantee: Joyce Chen, Trustee

Registry Reference: Middlesex South Registry Book 14479, Page 473-474

Date of Deed: November 21, 1981 & November 24, 1981

Date of Recording: December 21, 1981

Sale Price: \$13,000 Excise Stamps: \$30.78

Land Area: 5,000 square feet

Frontage: 50' Rindge Avenue

Zoning: Residence C-2

Unit Price: \$2.60 per square foot land area

Comments: Site purchased for parking for grantee's restaurant.

## COMPARATIVE SALES DATA

Sale No. 5

Location: 52 Brookline Street, Cambridge, Mass.

Grantor: Eric L. Powell

Grantee: David P. Eon

Registry Reference: Middlesex South Registry Book 14310, Page 26

Date of Deed: May 19, 1981

Date of Recording: June 5, 1981

Sale Price: \$13,500 Excise Stamps: \$30.78

Land Area: 5,539 square feet

Frontage: 62.43' Brookline Street

Zoning: Business A-1

Unit Price: \$2.44 per square foot

Comments: Vacant, level site near corner of Franklin Street, now used for parking.

## APPRAISAL ANALYSIS (cont'd)

Sale No. 1 is the sale of an inside vacant lot containing 6,500 square feet which sold at a unit price of \$2.62 per square foot of land area. This property is clear and level at street grade. This sale was purchased by an abutter and is currently vacant.

Sale No. 2 sold in January 1980 at a unit price of \$2.56 per square foot of land area. The property is located in East Cambridge, a short distance east of the subject. The property was improved with a new dwelling in 1980.

Sale No. 3, located on Berkshire Street between Tech Square and Cambridge Street, is the sale of a small parcel of land containing 2,040 square feet which was purchased by an abutter for use as a parking area for their home. The site is level and clear at street grade and sold in November 1982 at a unit price of \$2.45 per square foot.

Sale No. 4 is located in North Cambridge and consisted of the purchase of 5,000 square feet of land for the expansion of the grantee's restaurant parking area. The sale occurred in November 1981 at a unit price of \$2.60 per square foot, not including any demolition the grantee incurred.

Sale No. 5 is located on Brookline Street in Cambridgeport, and is the sale of a 5,539 square foot parcel of land near the corner of Franklin Street which is vacant, and level at street grade. The unit price of this sale is \$2.44 per square foot. The site is currently vacant.

Sales one through five have sold in a range between \$2.44 to \$2.62 per square foot of land area. All of the sales are smaller than the subject, which would indicate a lower unit price for the subject as there is an inverse relationship between unit sales price and land area. With consideration for time, location, size and other differences, the indicated value of the subject property is estimated to be \$2.00 per square foot of land area. The value of the subject property is as follows:

11,084 square feet @ \$2.00/square foot × \$22,168

Rounded to \$22,000

Based on these considerations, the Market Value of the fee simple title to the subject property as of September 9, 1983 is Twenty-two Thousand Dollars (\$22,000).

#### CERTIFICATE OF VALUE

We certify that we have personally inspected the property located at 65-69 Columbia Street, in the City of Cambridge, in the County of Middlesex, Massachusetts; that to the best of our knowledge and belief, the statements of fact contained in this report, upon which the analyses, opinions, and conclusions expressed herein are based, are true and correct; that we have no present or future contemplated interest in the property; that we have no personal interest or bias with respect to the subject matter of this report or the parties involved; that our fee is not contingent on the amount of the value estimated; that this report sets forth all of the assumptions and limiting conditions affecting the analyses, opinions, and conclusions contained in this report; that the appraisal report has been made in conformity with and is subject to the requirements of the Code of Ethics and Standards of Professional Practice of the Society of Real Estate Appraisers and the American Institute of Real Estate Appraisers of the National Association of Realtors; and that no one other than the undersigned prepared the analyses, conclusions and opinions set forth in this appraisal report.

In our opinion, the Market Value of the fee simple title to the property under consideration as of September 9, 1983 is \$22,000.

(Signed) . . . . . THOMAS ALEX, Appraiser

(Signed) . . . . . DONALD H. REENSTIERNA, SRA

## QUALIFICATIONS OF REAL ESTATE APPRAISER

## NAME

Thomas Alex<sup>1</sup>

## EDUCATION

BENTLEY COLLEGE, WALTHAM, MASSACHUSETTS Bachelor of Science Degree - Concentration in General Business (1981).

## SUPPLEMENTARY STUDY

AMERICAN INSTITUTE OF REAL ESTATE APPRAISERS  
Standards of Professional Practice (1982)

SOCIETY OF REAL ESTATE APPRAISERS

Course 201 - Principals of Income Property Appraising (1980)

Course 101 - An Introduction to Appraising Real Estate Property (1978)

R-2 Workshop and successful completion of R-2 residential case study examination (1979)

BENTLEY COLLEGE, WALTHAM, MASSACHUSETTS

Fundamentals of Real Estate Appraisal I (1978)

Real Estate Law I & II (1979) Real Estate Finance (1981)

## EMPLOYMENT

Present - T.H. REENSTIERNA & SONS Arlington, Massachusetts  
1978-1980 - Meredith & Grew, Incorporated Boston, Massachusetts

1977-1978 - Real Estate Broker in Arlington- Lexington Area.

## EXPERIENCE

Work performed in appraisal field includes market studies, consulting and feasibility assignments in Massachusetts and New Hampshire.

Experience in working on the valuation of various kinds of real estate including all types of unimproved land, single-family dwellings, apartment buildings, condominiums, store blocks, office buildings, warehouses, manufacturing plants, institutional properties, and estates. Property rights appraisals include fee interests, easements, partial takings, rental values and other fractional interests in connection with the sale of real estate, financing, eminent

<sup>1</sup> Thomas Alex, MAI is now President of Alex Appraisal Associates, Inc., a real estate appraisal and consulting firm located in Norwell, Massachusetts.

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domain takings (for both owners and taking authorities), estate valuations and municipal assessments.

Qualified to testify as real estate expert in Superior Court of Merrimack County, N.H.

Licensed Real Estate Broker - Commonwealth of Massachusetts.

Notary Public - Commonwealth of Massachusetts.

**QUALIFICATIONS OF DONALD H. REENSTIERNA**

Bachelor of Arts Degree - Williams College - 1954.

Army Security Agency - 1954-1956.

Certificate of Completion of Real Estate Appraisal Course - Boston University - 1957.

Certificate of Completion of Real Estate Appraisal Course I - University of Connecticut - 1962 (sponsored by the American Institute of Real Estate Appraisers.)

Certificate of Completion of Real Estate Appraisal Course II - University of Georgia - 1964 (sponsored by the American Institute of Real Estate Appraisers.)

Owner and manager of office and residential property.

Member of Society of Real Estate Appraisers - SRA.

Attendance at various appraisal and related workshops and seminars sponsored by AIREA, SRA, Federal Bureau of Roads, American Right of Way Association, New England Law Institute, etc.

Partner - T.H. REENSTIERNA & SONS - Real Estate Appraisers & Consultants.

I have appraised for various clients the following types of property:

1, 2, and 3-family dwellings

Apartment houses (proposed and existing)

Business, commercial and industrial property

Shopping centers

Farms:

Cranberry bogs

Truck garden

Dairy

Piggery

Poultry

Forestry

Nursing homes

Industrial Plants

Airports

Land Golf courses

Special purpose properties and Military installations

Qualified to give appraisal testimony in:

Federal Court, Boston

Superior Courts in Massachusetts -

Suffolk County

Plymouth County

Middlesex County

Barnstable County

Essex County

Norfolk County

Worcester County

Superior Courts In New Hampshire -

Belknap County

Coos County

Hillsborough County

Merrimack County

A partial list of clients:

Governmental -

Attorney General, Massachusetts

Attorney General, New Hampshire

D.P.W. - Mass.

D.P.W. - N.H.

Boston Redevelopment Authority

Cambridge Redevelopment Authority

Woburn Redevelopment Authority

City of Cambridge

City of Somerville

City of Medford

U.S. Postal Service

Town of Arlington

Town of Belmont

Town of Lexington

Town of Winchester

Town of Reading



Acton Maynard  
Waltham  
Wellesley Conservation Commission  
Reading Conservation Commission  
Metropolitan District Commission  
Brockton Housing Authority

## Law Firms -

Hale and Dorr  
Goodwin, Proctor & Hoar  
Racheman, Sawyer & Brewster  
Foley, Hoag & Eliot  
Withington, Cross, Park & Groden  
Palmer & Dodge  
McLaughlin Brothers  
Lyne, Woodworth and Evarts  
Lee, Muldoon, Sullivan, Seegal & Groden  
Cargill, Masterman & Cahill

## Banks -

Arlington 5 Savings  
Cambridge Savings  
Cambridge Trust  
Bay State Federal Savings & Loan Association  
N.E. Merchants National Bank  
Old Colony Bank & Trust  
Reliance Cooperative (now Merchants Coop)  
State Street Bank & Trust  
Tanner National Bank

## Private Clients -

Texaco, Inc.  
Gulf  
Shell Oil  
Mobil Oil  
H.K. Porter  
Eastern Tool & Stamping  
Belmont Country Club

White Fuel Corporation  
Mitre Corporation  
Atlantic Lobster Company  
Norton Company  
Polaroid Corp.  
Hunnecut & Associates  
TRW, Inc. (United Carr  
Fastener)

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Salem Country Club  
Winchester Country Club  
Casual Corner of Boston

A.O. Wilson  
N.H. Electric Cooperative,  
Inc.