



BUNDLE OF WRITES

INTERNATIONAL RIGHT OF WAY ASSOCIATION

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Next Meeting:
Tuesday
November 9, 2010

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Volume 34, Number 9

PRESIDENT'S MESSAGE

By Michele Folk, SR/WA, R/W-RAC

Members:

Hard to believe we're already in November, and it will be the holidays before we know it. We had another outstanding number of members in attendance at our last luncheon. The Chapter's membership has been increasing, and a large number of current members have been declaring candidacies for several different designations and certifications, which is a great sign. Networking, education and professional development are so important to our organization.

We meet again on Tuesday, November 9th. Rick Friess, an attorney and partner at Allen Matkins, will be discussing "**101 Ways to Get Your Agency in Hot Water: Trip-ups and Traps that Can Snag Right-of-Way Agents, Appraisers and Lawyers, Costing Their Agency Clients Time and Money – and How to Avoid Them.**" Mr. Friess is a successful trial attorney with over 19 years of real estate litigation experience representing both landowners and public agencies. He specializes in eminent domain, inverse condemnation and real estate valuation issues. If you want to know what can go wrong in the eminent domain process and how to avoid the pitfalls – this is the talk for you.

In addition to what bodes to be a very educational luncheon, we will be raffling off one ticket to the Tri-Chapter luncheon at the Mission Inn in Riverside on Tuesday, December 7th. Our annual holiday luncheon is being sponsored by Chapter 57 this year, and the guest speaker will be John Standiford, the Deputy Executive Director of the Riverside County Transportation Commission.

If you haven't already purchased a ticket to the holiday luncheon, please get your registration form and payment in as soon as possible since seating is very limited. Registration forms will be available at the registration desk at our Chapter 67 November luncheon on the 9th, or contact Jan Spindler at JSpindler@riversideca.gov, if you want a flyer and registration form before then.

Please join us at 11:30 a.m. on November 9th at the Santa Ana/OC Airport Holiday Inn, located at 2726 South Grand Boulevard, Santa Ana, CA 92705, and please remember to RSVP to Joe Munsey at jmunsey@semprautilities.com. Let's keep the large turn-outs going!

Looking forward to seeing you all on the 9th!



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Case of the Month:

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CHAPTER BUSINESS MEETINGS – SUCCESS IS OUR GOAL

Your Chapter's Executive Board continues its duties and obligations to chart the success of the premier IRWA Chapter. We encourage members to attend and see your Executive Board in action.

The Executive Board meets immediately after the general IRWA 67 luncheons
Next Board Meeting is: November 9, 2010.

November 2010 SPEAKER

Rick Friess, Esq.

101 Ways to Get Your Agency in Hot Water:
Trip-ups and Traps that Can Snag Right-of-Way Agents, Appraisers and Lawyers,
Costing Their Agency Clients Time and Money – and How to Avoid Them



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EDITOR'S CORNER

Katherine Contreras, Esq.

I hope everyone is enjoying the fall. Instead of spring cleaning, we are in the middle of fall cleaning -- the Chapter 67 directory, that is. It is an ongoing process to keep our membership directory up-to-date as people change jobs, leave the chapter and join the chapter. So, please take a few minutes to check out your listing on the website, and make sure your friends' listings are correct too. Know a member that should be there and isn't, let me know! Thanks!

Raffle Sponsors

Thank you to the sponsors of our October raffle:

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Have something from your firm for the raffle? Bring it to the lunch and let Joe Munsey know. Thanks!

Board News

Our new executive board is up and running. Our board meets right after the monthly lunch meeting. All our welcome.

Attendance Raffle

Congratulations to Brent, who had a great lunch last month. Not only was he introduced as a new member, he won the attendance raffle. Brent and everyone else has another chance next week. All you need to do is show up! Good luck.

Hope to see everyone at the lunch on November 9, 2010

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**CASE OF THE MONTH****California Court of Appeal Once Again Addresses Business Goodwill**

by Brad Kuhn

Business goodwill appears to be a hot topic for the California Court of Appeal, as it was the primary issue in the recent *LAUSD v. Casasola* opinion, and is again the focus of an unpublished decision that came down this month, *People Ex Rel. Department of Transportation v. Ahn*.

In *Ahn*, Caltrans condemned a shopping center where Ahn owned and operated a framing store and art gallery. After Caltrans took possession, the owner transferred to a relocation site. At trial, Caltrans' goodwill expert determined the business had \$26,000 of goodwill in the "before condition," and no goodwill in the "after condition." The owner's goodwill appraiser calculated the figures at \$83,000 and \$0; however, he also concluded the owner was entitled to \$323,000 in additional compensation for mitigation expenses, consisting of loss of income, loss of inventory, labor, relocation expenses, cost of capital, and lease payments.

The trial court concluded such expenses were not recoverable apart from lost goodwill, and therefore the \$83,000 "before condition" value placed a cap on the maximum recovery. The Court of Appeal agreed, holding that there was no requirement to calculate two distinct losses (loss of goodwill and the mitigation expense). The Court also relied on the *Casasola* opinion and concluded that the owner's mitigation expenses may be "relocation expenses," and by not demonstrating that such mitigation expenses were moving or relocation expenses, they were properly excluded. This suggests two cautionary principles:

1. **A business owner should take great care before expending money on mitigation efforts, ensuring that the expenses do not exceed the amount of goodwill the business possesses, as expenses that exceed the initial goodwill value may not qualify as reasonable.** Of course, from a business owner's perspective, this "cap" may be impossible to ascertain at the time the mitigation is necessary, especially when the efforts take place early in the litigation and prior to having a full appraisal completed.
2. **A business owner should take care to establish that items for which they seek to recover as lost goodwill do not fall within the scope of the Relocation Act.** Under *Casasola*, it is crucial for owners to take steps to ensure that any mitigation claim can be explained as something that does not fall within the Relocation Act. This is especially problematic for costs to render a site suitable for a business, expenses which qualify as "reestablishment" costs, but which the Relocation Act caps at only \$10,000.

The bottom line for any business being displaced by condemnation is that it should hire a qualified eminent domain lawyer early in the process -- and certainly before spending any significant money on a relocation.



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NEWS AND EVENTS

NEW MEMBERS AND TRANSFERS

NEW MEMBERS

Nothing to Report

TRANSFERS

Nothing To Report

EVENTS

Board Meeting:

The next board meeting November 9, 2010 immediately following the luncheon.

Tri-Chapter Luncheon:

December 7th at the Mission Inn, Hosted by Chapter 57.



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ARTICLES

There are no articles this issue.



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We are also happy to introduce our new \$100 course discount coupon for members of Chapter 67. All you need to do is attend three luncheon meetings within the next year and ask the Treasurer to initial your coupon to receive the discount on Chapter 67 sponsored IRWA courses.

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Expires 12/10