

## We're Moving!

Issue 2-3, June, 2006

Over the July 4<sup>th</sup> weekend, Greenfield Advisors is moving to new offices:

Suite 650  
2601 4<sup>th</sup> Avenue  
Seattle, Washington 98122

**Dr. John Kilpatrick addressed students and faculty at the Technical University of Eindhoven in the Netherlands on June 16. For a copy of his slides, please visit our web site, <http://www.greenfieldadvisors.com/publications/eindhoven.pdf>**

Phone numbers, fax, e-mail, and everything else will remain the same. As soon as we get "settled" in the new space, hopefully right after Labor Day, we'll have an open-house for all of our friends here in the Seattle area. Look for the August "Greenfield Advisor" for more details!

## Contamination and Property Values

Is emotional distress and diminution in property value linked?

Yes, according to the Federal District Court of DC in its ruling this month (*Nnadili v. Chevron*, DDC No. 02-1620, 6/1/06). About 500 current and former property owners sued Chevron over a leaking gas station which operated from 1956 to 1993. Gasoline leaked from the underground tanks and migrated off-site, into the soil and groundwater under the neighbors' properties.

Chevron moved for summary judgment, claiming that the lack of personal injury obviated any emotional distress claim. However, the court disagreed, and held that several prior Court of Appeals rulings "...firmly established that a plaintiff may recover damages for mental suffering unaccompanied by physical injury where the plaintiff sues for an intentional tort." In *Parker v. Stein* (557 A.2<sup>nd</sup> 1198), the D.C. Court of Appeals found that emotional distress damages applied in a personal property matter. In *Nnadili*, the District Court held that it could find no meaningful distinction between real and personal property.

## The Income Approach in Condemnation

Many, if not most, jurisdictions will not award business losses when exercising eminent domain over an owner-occupied commercial property. However, what if the owner's business consists of renting the land?

This case often comes up in airport or mass-transit expansions. Parking lots near the airport are condemned for expansion. However, airport parking lots rarely transact, and the value of the site tends to be a function of proximity to the airport (more convenient sites can charge more). Thus, the use of the income approach is probably more illustrative of the overall value, but condemning authorities usually protest that the income capitalized is business income and thus not applicable.

This was the case facing the courts in North Carolina recently, in *Charlotte v. Hurlahe, et. al.* (2006 N.C. App. LEXIS 1296, 6-20-06). The matter at stake was substantial – the city's sales comparison approach would award \$842,000, while the landowners' income approach totaled \$2 million. In the end, both the trial court and the Court of Appeals sided with the landowner, finding that a well-constructed income approach provided the more accurate indication of land value of an airport parking lot.

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## What is an Appraisal?

The Uniform Standards (USPAP), adopted in all 50 states of the United States and consistent with international valuation standards, provides a stylized definition of an appraisal. However, individual states may have different interpretations, which can be problematic in litigation.

Case in point – in Oregon, the Legislature provides a very broad definition of an “appraisal”, which in the condemnation matter of *Oregon v. Stallcup, et. al. (2006 Ore. LEXIS 590)* caused some difficulty to all concerned. Under Oregon law, if the two sides in a condemnation cannot agree, then copies of all appraisals performed for that condemnation are to be provided to the other side. However, do draft reports and other non-appraisal valuation communications between the landowner and the appraiser constitute an “appraisal” under Oregon law?

That question made it all the way to the Oregon Supreme Court. The trial court said no, the Appeals Court said yes, and the Supreme Court finally said no, although the high court admitted that, at first blush, the Appeals Court logic had merit.

Without belaboring the point, the broad lesson for appraisers and clients is to carefully manage correspondence and drafts, recognizing that such early correspondence may be subject to discovery.

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## Market Value Websites

The usefulness and effectiveness of mass appraisal techniques is frequently criticized on the basis of the alleged inaccuracy of on-line market value websites. Naturally, these are two different subjects – mass appraisal has been used successfully and accurately for many years in many situations, such as tax assessment or litigation. However, the usefulness of the on-line valuation services has yet to receive an appropriate level of empirical study.

The current issue of The Journal of Real Estate Literature has a succinct survey piece by Prof. John McDonald (U. Illinois-Chicago, and also the Editor of this journal). He reviews several of these sites for usefulness and, in an anecdotal sense, for validity.

The popularity of these sites is without question. Prof. McDonald notes that zillow.com came on line with it's beta version at 9:00pm on February 7, 2006. By 6:00am the next morning, it had recorded 300,000 hits and the site crashed. After the site was restored, there were 2 million visits to the site in the next two days. Zillow provides free estimates of value for about 40 million homes in the U.S. and data on 20 million more. *Note: as of this review, Zillow reports having value information on 65 million homes.*

Prof. McDonald then uses the Zillow site to perform some sensitivity analyses with the underlying hedonic model, and he develops some tentative conclusions:

- The basic market value estimate is “pretty accurate, providing that there is no important factor... left out...”
- His sensitivity analysis (using Zillow) has mixed results. Some factors (e.g. – a half bath) appear to be wrong, but the basic per-square-footage values seem to be reasonable
- In one neighborhood, the hedonic model appeared to place a positive value on structure age, which is counter to most studies.

In short, Prof. McDonald finds that these sites can provide a great deal of information very quickly, but there is still considerable work to be done before they can provide a dependable estimate of value.

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