ATTORNEYS AND APPRAISERS MUST COLLABORATE TO PROTECT THE RIGHT TO JUST COMPENSATION

JOSHUA E. BAKER is a Partner at Waldo & Lyle, P.C. in Norfolk, Virginia. Mr. Baker limits his law practice to representing property owners in eminent domain and inverse condemnation proceedings, defending their private property rights. Mr. Baker is a frequent author and speaker on eminent domain issues. Mr. Baker is the Virginia Member of Owners' Counsel of America, a nationwide network of eminent domain attorneys. Prior to joining the practice of law, Mr. Baker obtained a B.A. in Political Science from Hillsdale College in Hillsdale, MI, and a J.D. from the Marshall-Wythe School of Law at the College of William and Mary in Williamsburg, VA. Mr. Baker is licensed to practice in Virginia and North Carolina.

ROBERT D. (BOB) GRACE MAI, SRA, CRE is a Senior Appraiser with Grace and Sons Appraisal, where he serves as head of the firm's real property valuation and consulting practice. He has over twenty five years of experience providing business and financial advice to clients operating in a broad range of industries including, among others: lending, energy, chemical, financial service, commercial and residential real estate, and utilities. Mr. Grace's experience includes advising clients in connection with class action claims, eminent domain proceedings, environmental damages to real estate, real estate consulting, highest and best use analysis, and development of expert opinions for federal and state court. Bob has substantial trial and valuation experience across numerous states in the Midwest.

BLAKE A. WILLIS is an Associate Attorney at Waldo & Lyle, P.C. in Norfolk, Virginia. Mr. Willis limits his law practice to representing property owners in eminent domain and inverse condemnation proceedings, defending their private property rights. Prior to joining the practice of law, Mr. Willis obtained a B.S. in Diplomacy and International Relations from Seton Hall University in South Orange, NJ, and a J.D. from the Marshall-Wythe School of Law at the College of William and Mary in Williamsburg, VA. Mr. Willis is licensed to practice in Virginia and before the United States Court of Federal Claims.[1]

"'… [W]hen the court adopts the standards of the market place in making valuations there is no reason why it should close its eyes to how the market place arrives at and applies the standards. …', 'It is difficult to perceive why testimony, which experience has taught is generally found to be safely relied upon by men in their important business affairs outside, should be rejected inside the courthouse.'"[2]

APPRAISING JUST COMPENSATION—REPLICATING THE MARKET

When private property must be taken for public use an owner is to be made whole[3]—they must be paid just compensation. "One of the principal purposes of the Takings Clause is 'to bar Government from forcing some people alone to bear public burdens, which in all fairness and justice, should be borne by the public as a whole.'"[4] To aid in this process, both the condemnor and the property owner engage real estate appraisers to analyze how actors in the free market would have valued the very same transaction that the government forced to occur.

Accordingly, just compensation cases represent a cross section of legal and practical real-estate concerns. They often see the convergence of constitutional law, property law, business law, home ownership, real-world development concerns, real estate principles, accounting principles, unique business concerns, rules of evidence, studies in commerce and trade, and other case-specific complicating factors—all of which must be synthesized to form

opinions about the impact the taking has had on the value of a particular piece of property or business.

It is exceedingly rare that an entire property is taken. Often, only a portion of the property is taken. For example, a typical road widening will take some amount of property and impose new utility, drainage, slope, or other easements, including temporary construction easements. An appraiser valuing this scenario must determine the value of the taking, as well as the overall impact, if any, to the remaining property and must do so as of the date of the taking. The appraiser for the government most often reaches their opinion prior to the taking, while the appraiser for the land owner reaches their opinion after the taking. Accordingly, these cases, by their nature, require the parties and experts to engage in a speculative simulation of what market participants in the same transaction would have considered, pretending that the transaction was actually arm's length.

However, an owner's right to just compensation is being increasingly subordinated to evidentiary restraints that keep out of the courtroom considerations that are made routinely in arm's-length real estate transactions.[5] A variety of holdings have made a straight-forward replication of market behavior into an artificial exercise in which certain "real-world" considerations are simply not permitted. Attorneys and appraisers working in this artificial realm of eminent domain valuation must become familiar with which "real world" considerations are permitted and which are forbidden, until the courts return to observing the appropriate rule, recited in Cade,[6] and admit evidence of all considerations that the market would rely upon.

COMMUNICATION DOES NOT NEGATE INDEPENDENCE

To navigate this needlessly uncertain legal terrain, there are many ways in which the attorney and appraiser must interact within a given case. However, there is a prevalent myth that attorneys and appraisers with a common client may only discuss the case in limited detail, and that the attorney should refrain from—and the appraiser should discourage—any substantive discussion of the facts, law, and details that are to be addressed by the appraiser so that the appraiser may remain independent. This myth is perpetuated in deposition questions intending to paint a nefarious picture of an attorney's involvement with the case, trial testimony in which an appraiser disclaims any conversations with the attorney, and even in continuing education presentations to professional groups. But this is a myth without a basis. The myth is not only false, but believing it is true can also lead to dangerous results for the individual professionals, the parties, and our system of determining constitutional just compensation.

It is fundamental to the eminent domain valuation process that an appraiser must not be an advocate for their client, but rather an advocate for their opinions.[7] In this way, appraisers are to remain independent, and must let the facts and the market, to the extent they are permitted by law, direct their conclusions and independently present their opinions and conclusions. The attorney and the appraiser must understand that the appraiser's independence is not compromised simply because the two professionals discuss the case, certain theories, and the applicable law. Legal guidance must be provided by the attorney. Similarly, an appraiser must provide feedback to the attorney regarding proper appraisal methodology and bring the attorney's attention to conflicts or potential conflicts they see between the Uniform Standards of Professional Appraisal Practice (USPAP) requirements—the standard rules governing appraisal practice—and the attorney's legal instruction or case law.

The appraiser's independence is not compromised when there is a working relationship between the appraiser and attorney. Rather, the appraiser's independence is strengthened because the appraiser may reach their opinions of value and just compensation knowing that they have taken the appropriate steps to ensure that they have complied with USPAP, that their opinions are properly formed and, ultimately, will be admissible in court. Moreover, if the eminent domain attorney does not work with

the appraiser throughout the appraisal process, then the attorney is not fulfilling their duty to their client or to the Constitution, and our system will be more prone to deliver injustice.

PRACTICAL REASONS FOR COMMUNICATION BETWEEN APPRAISERS AND ATTORNEYS

Eminent domain cases are grounded in the Constitution,[8] and thus carry a higher duty for all involved. This heightened duty applies whether the attorney represents the landowner or the condemning authority because the goal is ultimately the same—to provide just compensation to an owner who has lost property for a public use. Attorneys have a duty to zealously represent their clients;[9] to fulfill this duty, it is critical that the attorney work with the appraiser to ensure their opinion is "in bounds" with the legal and constitutional requirements of the applicable jurisdiction. Failure by the attorney to ensure that the appraiser's opinions are valid and admissible could constitute a failure to zealously represent the client's interests.

There are nearly countless examples of issues that, when they arise, require legal instruction by counsel before the appraiser forms their opinions. Because of the evidentiary concerns that have come to dominate the application of the Constitution to these matters, the attorney should be prepared to actively advise the appraiser, even if advice is not specifically sought. These issues include examples such as ignoring project influence;[10] determining highest and best use;[11] identifying a unity of lands and the larger parcel;[12] determining enhancement or damages;[13] considering furniture, fixtures, and equipment (FF&E) and other personal property;[14] appraising the full rights acquired and temporary easements;[15] opining on the loss of a median cut;[16] reviewing loss of or changes in access; and mitigation or adjustments to the property.[17] These issues, and many more, appear frequently in eminent domain cases nationwide. Failure of the appraiser and attorney to collaborate during the appraisal process may lead to unfavorable results: the appraiser's opinions may be stricken or excluded; the opinion of just compensation may be insufficient because it fails to adequately consider necessary items; or, the appraiser's opinion of just compensation could be too high because it considers facts, data, or issues which are beyond the scope of what the law allows. Thus, while the appraiser's opinions must be their own, it is imperative that the attorney work with the appraiser to ensure that they reach a properly supported and admissible opinion.

ATTORNEY-APPRAISER COMMUNICATION IS ENCOURAGED AND PROTECTED BY THE RULES

As previously discussed, attorneys and appraisers often mistakenly bow to the myth that they cannot have substantive discussions during the appraiser's formation of their appraisal opinions and reports, noting fears or concerns that the attorney's thoughts or the appraiser's drafts may be subject to discovery. A careful review of the Federal Rules of Civil Procedure indicates that these concerns are largely unfounded. Indeed, both federal and some state rules recognize the impossibility of litigating cases without working closely with the experts and providing ample protection for collaboration between the attorney and appraiser during the preparation of an appraisal report.

Federal Rule of Civil Procedure 26 governs the discovery of expert opinions in federal court proceedings. Rule 26(b) lays out the scope and limits of expert discovery.[18] The Rule offers a general protection in that "[o]rdinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent.)"[19] But the Rule goes further to protect drafts of expert reports—section (b)(4) states that "Rules 26(b)(3)(A) and (B) protect drafts of any report or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is recorded."[20]

The Rule also gives specific protections to communications between the appraiser and the attorney: "Rules 26(b)(3)(A) and (B) protect communications between the party's attorney and any witness required to provide a report…regardless of the

form of the communications." There are limited exceptions to this protection, which include only communications that: "(i) relate to compensation for the expert's study or testimony; (ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or (iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed."[21]

Federal Rule of Civil Procedure 26 has been amended numerous times and it is important to review why changes have been made. Of particular note is the Advisory Committee's Note to the 2010 Amendment. In amending the Rule, the Committee explained that it was strengthening the protections for attorney-expert conferral because "many courts read the disclosure provision [in Rule 26(a)(2)] to authorize discovery of all communications between counsel and expert witnesses and all draft reports," which led to "routine discovery into attorney-expert communications and draft reports."[22] As the Advisory Committee's Note stated, this practice "has had undesirable effects" including leading attorneys and experts to "adopt a guarded attitude toward their interaction with testifying experts that impedes effective communication."[23] The Committee also found the Rule was increasing the general cost of litigation dramatically, as attorneys developed a work-around for the Rule in which they hired a second set of non-testifying, consulting experts with whom they engaged in a more open and direct discussion of the case.[24]

In amending the Rule to reduce costs to the parties and simplify discovery, the Committee refocused the aim of discovery to the "facts or data" relied upon by the expert to protect draft reports, as well as the theories and mental impression of counsel.[25] This refocusing, along with the addition of Rule 26(b)(4)(C), providing "work-product protection for attorney-expert communications" now ensures that "lawyers may interact with retained experts without fear of exposing those communications to searching discovery."[26]

Critically, the 2010 amendments to Rule 26(a)(2)(B) and 26(b)(4) were "intended to alter the outcome in cases that have relied on the [previous] formulation in requiring disclosure of all attorney-expert communications and draft reports."[27] The amendments to Rule 26 now "make this change explicit by providing work-product protection against discovery regarding draft reports and disclosures or attorney-expert communications" regardless of the form in which the draft or communication is recorded, and regardless of whether the witness is required to provide a report under Rule 26(a)(2).[28]

State law, too, often protects attorney-expert work product and communications from discovery. For example, Virginia Supreme Court Rule 4:1(b)(3) protects documents and tangible things "prepared in anticipation of litigation or for trial" from disclosure by another party or by that party's representative.[29] Like the federal rule, Virginia's work-product doctrine protects from disclosure "otherwise discoverable documents and tangible things prepared in anticipation of litigation or for trial absent a showing of substantial need and the absence of access to other equivalent sources of information without undue hardship, and expressly protects from discovery 'the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation.'"[30] Thus, Virginia law, like federal law, protects communications between the attorney and appraiser from discovery when the communications include the attorney's mental impressions, legal theories, or other thoughts relevant to the case at hand.[31]

Accordingly, there should be little hesitation about attorneys and appraisers working together when preparing an appraisal for eminent domain litigation. Attorneys should help educate appraisers on the state of the Rules and the protections they afford both professionals in the full and appropriate development of the appraiser's opinions and reports. The Rules dispel the myth that the attorney and appraiser must avoid open and direct communication and discussions of the case at hand.

USPAP ALSO REQUIRES AND ACCOMMODATES ATTORNEY-APPRAISER COMMUNICATION IN PREPARATION OF OPINIONS

Just as the law and Rules recognize the necessity and importance of attorney-appraiser collaboration, so too do the Uniform Standards of Professional Appraisal Practice. USPAP defines an appraiser as "one who is expected to perform valuation services competently and in a manner that is independent, impartial, and objective."[32] USPAP applies when appraisers are working in an appraisal capacity, including in the preparation of an appraisal or appraisal review.[33]

Performing services competently requires an understanding of the issues at hand, or as stated in USPAP, "an appraiser must identify the problem to be solved."[34] A thorough understanding of the problem, and therefore the subsequent solution, requires appraiser and attorney input. These are logical inputs for a complete scope of work, which lead to a credible result.

USPAP imposes numerous requirements that appraisers must follow when completing their appraisal assignments.[35] It is imperative that the eminent domain attorney be familiar with the appropriate USPAP requirements such as: hypothetical conditions, extraordinary assumptions, jurisdictional exceptions, scope of work issues, and reliance on opinions or work of others and other concepts that are fundamental to appraisal practice and methodology.

First, USPAP has rigorous standards with respect to hypothetical conditions, extraordinary assumptions, and jurisdictional exceptions.[36] Because of the jurisdictional-specific laws or principles which govern eminent domain proceedings, attorneys and appraisers must confer with respect to the assumptions to be made, the hypothetical conditions employed, and the jurisdictional exceptions to be invoked. While USPAP certainly allows for this process to occur, it also requires the appraiser to state clearly and conspicuously in the report: what hypothetical conditions are employed, what extraordinary assumptions are being made, and what jurisdictional exceptions are being invoked so that the intended reader of the report can understand the context for the appraiser's opinions.[37] Examples of items to be discussed include:

- The appropriate date of value;
- The appropriate intended use;
- The appropriate interest to be appraised; and
- The appropriate identification of the property (larger parcel)

The scope of work for an appraisal assignment is the responsibility of the appraiser and proper development of that scope of work requires attorney/client communication. USPAP states that "[a]ppraisers have broad flexibility and significant responsibility in determining the appropriate scope of work for an appraisal or appraisal review assignment."[38] A complete, credible scope of work can only be developed by understanding the appraisal problem, which is the result of an open line of communication with the attorney/client.

Finally, USPAP also offers clear guidance and requirements for appraisers considering or relying on the work or opinions of others. Eminent domain cases increasingly require more than just appraisal opinions. The parties may also engage expert engineers, land planners, arborists, hydrologists, real estate brokers, or other "predicate" experts to aid in the analysis of the case or to offer expert opinions, which the appraiser may choose to adopt or otherwise rely upon. It is essential that the attorney coordinate and encourage communications between the appraiser and the other expert witnesses to encourage a well-developed appraisal opinion. USPAP offers clear guidance to appraisers relying on the work or opinions of others.

The 2020-2021 Comment to Standard Rule (SR) 2-3 notes that an appraiser's certification of their appraisal report makes them responsible for their reliance on others' work.[39] When relying on the work or opinions of others, whether other experts or an attorney, appraisers must "have a reasonable basis for believing that those individuals performing the

work are competent. The signing appraiser(s) also must have no reason to doubt that the work of those individuals is credible."[40] Moreover, the appraiser's report must summarize the basis and reasoning for the opinions reached, and must not mislead the reader by, for example, claiming opinions or work that is not the appraiser's own.[41]

Working with an attorney or seeking legal guidance to understand the parameters for what may permissibly be considered does not compromise an appraiser's independence, impartiality, or objectivity. Rather, doing so allows the appraiser to ensure that their independent, impartial, and objective work is thorough, conforms to the law of the jurisdiction, leads to a credible result, and is, ultimately, admissible in court. Moreover, understanding the legal parameters of an assignment aims at fulfilling the appraiser's competency requirements,[42] which is essential to proper completion of the appraisal assignment.

CONCLUSION

Every property is unique, and every eminent domain case presents both attorneys and appraisers with new fact patterns and issues to address in the pursuit of just compensation. Because the Courts have made the evidentiary constraints for these cases so fact and law specific, there is an even more pronounced need for attorney-appraiser collaboration to ensure that the owner's constitutional right to just compensation is fulfilled and that that they are restored to a position, monetarily, as if the taking never occurred.[43] Ineffective or insufficient communication and collaboration between the attorney and appraiser can lead to injustice. While both the appraiser and the attorney have their roles to play, the prudent lawyer and experienced appraiser will engage in a collaborative effort to ensure that the Constitutional standard of "just compensation" is met.

Notes

1 This article is based upon a presentation given on January 28, 2021 during the American Law Institute Continuing Legal Education's Emifnent Domain and Land Valuation Litigation conference. The presentation was given by Joshua Baker, Esq., Robert Grace, MAI, SRA, and Joseph Waldo, Esq.

2 Cade v. United States, 213 F.2d 138, 140-41 (4th Cir. 1954) (internal citations omitted).

3 See United States v. Miller, 317 U.S. 369, 373 (1943) (internal citations omitted).

4 Dolan v. City of Tigard, 512 U.S. 374, 384 (1994) (quoting Armstrong v. United States, 364 U.S. 40, 49 (1960).

5 Cade, supra, 213 F.2d at 140-41 (4th Cir. 1954).

6 Id.

7 See J.D. Eaton, Real Estate Valuation in Litigation (Appraisal Institute, 2d ed. 1995): 535-36.

8 See U.S. Const. Amend. 5 ("… nor shall private property be taken for a public use without just compensation."). See also Va. Const., Art. I, Sec. 11 ("The General Assembly shall pass no law whereby private property, the right to which is fundamental, shall be damaged or taken except for public use… Just compensation shall be no less than the value of the property taken, lost profits and lost access, and damages to the residue caused by the taking.").

9 See Model Rules of Pro. Conduct: Preamble and Scope (Am. Bar Ass'n, 2020); Va. Rules of Pro. Conduct: Preamble; R. 1.3, Comment 1.

10 Uniform Appraisal Standards for Federal Land Acquisitions, § 1.2.7.3.3 (The Appraisal Foundation 2016) (hereinafter "the Yellow Book"). See Uniform Relocation Assistance and Real Property Acquisition Act of 1970, 42 U.S.C. 4651(3); Va. Code § 25.1-230(A). See also Uniform Standards of Professional Appraisal Practice, SR 1-4(f) (The Appraisal Foundation 2020-2021) (hereinafter "USPAP") ("When analyzing anticipated public or private improvements, located on or off the site, an appraiser must analyze the effect on value, if any, of such anticipated improvements to the extent they are reflected in market actions.").

11 See Olson v. United States, 292 U.S. 246 (1934) (fair market value is determined based on property's highest and best use); Cade, supra, 213 F.2d at 140 (property to be valued considering all elements reasonably effecting value, and considering all uses for which it is suitable).

12 See Miller, supra, 317 U.S. at 374-75; Washington Metro Area v. One Parcel of Land, 691 F.2d 702, 704-05 (4th Cir. 1982); United States v. Wateree Power Co., 220 F.2d. 226, 231-32 (4th Cir. 1955); Va. Elec. and Power Co. v. Hylton, 292, Va. 92 (2016); Bogese, Inc. v. State Highway and Transp. Comm'r, 250 Va. 226 (1995).

13 United States ex rel. Tenn. Valley Auth. v. Powelson, 319 U.S. 266, 275-76 (1943) (in order for a potential use of a tract to be considered, there must be a reasonable probability of such use occurring) (citing Olson, supra, 292 U.S. at 255); United States v. L.E. Cooke Co., Inc., 991 F.2d 336, 341 (6th Cir. 1993) ("The highest and best use of the property can be based upon reasonably future probability; however, 'speculative and remote possibilities cannot

become a guide for the ascertainment of value.'") (citing United States v. 1,291.83 Acres of Land, 411 F.2d 1081, 1083-84 (6th Cir. 1969)); United States v. Mattox, 357 F.2d 461, 464 (4th Cir. 1967). However, where there is a reasonable probability of something occurring, that reasonable probability may be considered, if it impacts market value. See also United States v. 99.66 Acres of Land, 970 F.2d 651 (9th Cir. 1992); United States v. 158.24 Acres of Land, 515 F.2d 230, 233 (5th Cir. 1975) (landowner's evidence of highest and best use was speculative and thus inadmissible); Mattox, supra, 375 F.2d at 463-64 (where there is a "reasonable probability" that a potential use may occur, it may be considered as having an effect on value); Olson, supra, 292 U.S. at 255 (where there is a reasonable probability that some future use or activity may occur, which has an impact on value, the use may be properly considered).

14 Taco Bell of Am., Inc. v. Commonwealth Transp. Com'r, 282 Va. 127, (2011); Teaff v. Hewitt, 1 Ohio St. 511 (1853). See also Appalachian Elec. Power Co. v. Gorman, 191 Va. 344, 356-58 (1950); Va. Model Jury Instr. No. 46.100.

15 See United States v. 2,648.31 Acres of Land, 218 F.2d 518, 523 (4th Cir. 1955); Pamplin v. Norfolk & W. Ry. Co. 98 S.E. 51, 58-59 (Va. 1919); Wagner v. Bristol Belt Line Ry. Co., 108 Va. 594 (1908). See also Arkansas Game & Fish Comm'n v. United States, 568 U.S. 23, 26 (2012); Anderson v. Chesapeake Ferry Co., 186 Va. 481, 492 (1947). See also the Yellow Book, supra, (appraisal guide document also offering guidance on temporary easements). Id., at § 1.9.1 (Temporary construction easements (TCEs) may cause damage if the fair market rental value of the property is decreased during the pendency of the easement); at § 1.9.1 and § 2.3.5.2 (losses or damages caused by TCEs are not separate items of compensation, but should be considered as part of the taking).

16 State Highway and Transp. Comm'r v. Dennison, 231 Va. 239 (1986); State Highway Comm'r v. Howard, 213 Va. 731 (1973).

17 See Comm'r of Highways v. Karverly, Inc., 295 Va. 380, 391, note 14 (2018) ("Mitigation costs have been described as expenses that, 'if made, would diminish the damages' to the value of the remainder of a take, and 'it is ordinarily the duty of owners of property taken … to minimize their damages.'") (quoting Bradshaw v. State Highway Comm'r, 210 Va. 66, 68 (1969)); Dressler v. City of Covington, 208 Va. 520, 522-23 (1968) (adjustments are the expenses made necessary in adjusting the property to the changes imposed by the taking). Adjustments and mitigation are items to be considered in determining just compensation, but cannot be added up as distinct items of damage. See Karverly, supra, 210 Va. at 391, N. 14. Importantly, if the cost of adjustment or mitigation exceeds the value of damages, there can be no recovery in excess of the damages caused. See State Highway and Transp. Comm'r v. Allmond, 220 Va. 235, 241 (1979).

18 Fed. R. Civ. P. 26(b).

19 Fed. R. Civ. P. 26(b)(3).

20 Fed. R. Civ. P. 26(b)(4)(B).

21 Fed. R. Civ. P. 26(b)(4)(C).

22 Fed. R. Civ. P. 26, advisory committee's note to 2010 amendment.

23 Id.

24 Id.

25 Id.

26 Id.

27 Id.

28 Id.

29 See Bergano v. City of Virginia Beach, 296 Va. 403, 409 (2018) ("Work-product is typically material 'prepared in anticipation of litigation or for trial.'").

30 Id. (citing and quoting Hickman v. Taylor, 329 U.S. 495, 510-11 (1947); Va. Sup. Ct. R. 4:1(b)(3)).

31 See Jones v. Ford Motor Co., 263 Va. 237, 258 (2002) (Conversations between manufacturer's expert and attorney regarding the attorney's impressions on issues related to the case were protected by the work-product doctrine); Moyers v. Steinmetz, R.N., 37 Va. Cir. 25, at *1-2 (Winchester Cir. Ct. Feb. 17, 1995) (noting that the rules permitting the discovery of expert witness opinions and the facts relied upon in reaching the opinion do not "limit the rule restricting disclosure of attorney work product.") (citing and quoting Bogosian v. Gulf Oil Corp., 738 F.2d 587 (3rd Cir. 1984) (citing and quoting Hickman, supra, 329 U.S. at 511-12)).

32 USPAP, supra, Definitions.

33 See id., Preamble (Noting compliance with USPAP is required when an appraiser is obligated to do so by law); Uniform Standards of Professional Appraisal Practice, Advisory Opinion 21 (AO-21) (The Appraisal Foundation, 2018-2019) (noting that appraisers acting in their professional appraisal capacity have a duty to comply with USPAP when performing an appraisal or appraisal review). See also Atlantic Coast Pipeline, LLC v. 0.07 Acre in Nelson Cnty., Va., 396 F. Supp. 3d 628, 647 (W.D. Va. 2019) (noting that appraisers are required to comply with USPAP).

34 See USPAP, supra, at 13 (discussing the Scope of Work Rule).

35 See generally, USPAP, supra.

36 A hypothetical condition is a "condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for the purpose of analysis." An extraordinary assumption is "an assignment-specific assumption as of the effective date regarding uncertain information used in an analysis which, if found to be false, could alter the appraiser's opinions or conclusions." Jurisdictional exceptions are assignment conditions established by applicable law or regulation, which preclude the appraiser from complying with part of USPAP. See USPAP, supra, Definitions; Id. at 15 (the appraiser is required to identify the law or regulation precluding USPAP compliance; comply with the law or regulation; clearly and conspicuously disclose the part of USPAP being violated; and cite the law or regulation in the report); USPAP, supra, SR 1-2(f)-(g) (the appraiser is required to identify and disclose any hypothetical conditions or extraordinary assumptions).

37 See USPAP, supra, SR 2-1(a), (c); 2-2(a)(xiii), (b)(xv); and 3-2(e)-(g) (requiring extraordinary assumptions and hypothetical conditions to be clearly and conspicuously stated in the report); Id. at 15 (requiring disclosure of jurisdictional exceptions).

38 See USPAP, supra, at 13 (discussing the Scope of Work Rule).

39 USPAP, supra, SR 2-3, Comment.

40 Id. See also The Appraisal Institute, Guide Note 4: Reliance on Reports Prepared by Others (Appraisal Institute, 2017).

41 USPAP, supra, SR 2-1(a), 4-3. See also id. at SR-2-2(a)(viii) (requiring the appraiser to summarize the appraisal report and information analyzed, methods or technologies employed and reasoning supporting the analysis, opinions, and conclusions).

42 See USPAP, supra, at 11, Competency Rule ("An appraiser must: (1) be competent to perform the assignment; (2) acquire the necessary competency to perform the assignment; or (3) decline or withdraw from the assignment." Competently performing the assignment requires: "1. the ability to properly identify the problem to be addressed; 2. the knowledge and experience to complete the assignment competently; and 3. *recognition of, and compliance with, laws and regulations that apply to the appraiser or to the assignment*.") (emphasis added).

43 See Miller, supra, 317 U.S. at 373 (Just compensation "means the full and perfect equivalent in money of the property taken. The owner is to be put in as good position pecuniarily as he would have occupied if his property had not been taken.") (citing Monogahela Navigation Co v. United States, 148 U.S. 312, 326 (1893)). See also Appalachian Elec. and Power Co. v. Gorman, 191 Va. 344, 354 (1950) (citing Pruner v. State Highway Comm'r, 173 Va. 307 (1939)).