PROVING THE VALUE OF UNIQUE OR SCARCE REAL PROPERTY ASSETS

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INTRODUCTION

This article will focus on how lawyers and appraisers can work together to tackle difficult appraisal problems that don't lend themselves easily to a simple comparable sales approach or where such an approach requires larger adjustments than are typical because of a dearth of similar properties.

We will first provide legal and appraisal resources supporting the use of alternative appraisal techniques and then, because these are the kinds of cases that often require litigation to determine value, we will discuss examples of how they have been applied.

GENERAL EMINENT DOMAIN CONCEPTS SUPPORT EXPANSIVE EVIDENTIARY RULES

When dealing with difficult valuation problems, referring to bedrock eminent domain concepts can help guide the process.

A valuation trial seeks to replicate the marketplace, and any competent evidence that would be considered by a prospective buyer or seller is generally admissible. As early as 1879, the United States Supreme Court established that "in determining the value of land appropriated for public purposes, the same considerations are to be regarded as in a sale of property between private parties. The

inquiry … must be what is the property worth in the market."[1]

State courts have recognized these principles as well. In replicating the marketplace, "the fact finder is tasked with determining how much a willing buyer would pay for the property if the owner had voluntarily offered it for sale."[2] The factfinder should consider any competent evidence "which would be considered by a prospective vendor or purchaser or which tend to enhance or depreciate the value of the property taken is admissible."[3]

Thus, recognition should be given to all relevant factors which tend to provide a means for arriving at a fair valuation in eminent domain proceedings.[4]

Difficulty in determining compensation doesn't eliminate the obligation to do so. A condemnee must recover all damages upon the trial of the condemnation suit, no matter how difficult their ascertainment may be.[5]

Supreme Court holdings recognize that market value "is not an absolute standard nor an exclusive method of valuation," and will depart from it when justice requires.[6]

In *United States v. Commodities Trading Corp.*, the Court indicated that it "has never attempted to prescribe a rigid rule for determining what is 'just compensation' under all circumstances and in all cases."[7]

In *United States v. Fuller*, the Supreme Court explained that fair market value "is not an absolute standard nor an exclusive method of valuation. The constitutional requirement of just compensation derives as much content from the basic equitable principles of fairness as it does from technical concepts of property law."[8] When fair market value is "too difficult to find, or when its application would result in manifest injustice to owner or public, courts have fashioned and applied other standards."[9] State courts have recognized similar indemnity principles.[10]

There are no set formulas for determining just compensation. Many state courts have recognized that just compensation is the central question to be decided and have rejected rigid adherence to specific methods or formulas, even when determining market value. "These formulas are all means to this end; there is no artificial formula by which alone such compensation may be determined."[11] Instead, courts have tried "to find working rules and practical standards that will accomplish substantial justice such as, but not limited to, market value."[12]

SPECIFIC APPRAISAL APPROACHES AND TECHNIQUES

Case law has also addressed the use of various appraisal techniques when valuing unique or scarce properties.

The Comparable Sales Approach

The comparable sales approach is the most used approach to determine value in condemnation proceedings, and some courts suggest it is the only method to be considered when adequate sales data is available. The following concepts should be remembered when applying this technique to unique or scarce properties.

Comparable sales are not necessarily identical properties.[13] Property can be similar but "possesses various points of difference."[14]

The admissibility of allegedly comparable sales is typically within the discretion of the court or commission.[15] When a comparable sale is admitted only in support of the appraiser's opinion, it generally does not have to possess the same degree of comparability as when submitted as direct evidence of value.[16]

An even greater degree of difference in comparable sales may be allowable when there is little else available.[17]

Other Techniques and Approaches to Value

Courts and appraisal literature also recognize the use of other traditional and non-traditional approaches to value and alternative valuation techniques when dealing with special and unique properties. Other

techniques may also be applicable when there is a dearth of comparable sales.

In jurisdictions that generally allow only the comparable sales approach, or that favor it over other techniques, the lack of comparable sales may justify using the income or cost approach to value.[18]

Lack of market evidence may also support using less traditional valuation techniques. For example, when a property "is of a kind seldom exchanged, it has no 'market price,' and then recourse must be had to other means of ascertaining value, including even value to the owner."[19] In such cases, parties may have to "resort … to [using the] best available data which, even though speculative, under some circumstances may be sufficient to allow a jury to make an informed estimate of value."[20]

SPECIAL PURPOSE AND LIMITED MARKET PROPERTIES

There is abundant case law and appraisal literature dealing with the valuation of special purpose or unique and scarce properties.

Definitions

The terminology and definitions used for such properties varies, but some common examples are provided below.

A special purpose property is defined by the Appraisal Institute as "[a] property with a unique physical design, special construction materials, or a layout that particularly adapts its utility to the use for which it was built."[21] Such properties are "rarely if ever sold in the market, except by way of a sale of the business or entity of which it is a part, due to uniqueness arising from its specialized nature and design, its configuration, size, location, or otherwise."

The unique characteristics of these properties often create a limited demand which "may result in unique pricing."[22] Special purpose buildings generally cannot be converted to other uses without "extra expense and design expertise. This conversion process may not be economically feasible or practical in many situations depending on a building's design and special construction features."[23]

Special-purpose structures include:

- Historic residences;
- Houses of worship;
- Refineries and power stations;
- Museums;
- Properties located in a particular geographic location for operational reasons;
- Theatres;
- Greenhouses;
- Schools;
- Medical office buildings;
- Rail and transportation facilities;
- Specialized or high-tech manufacturing plants;
- Sports arenas; or
- Other specially designed and constructed buildings.[24]

When a market does "not have ready substitutes for special-purpose properties … the appraiser may have to research substitute properties in a broader market or employ analytical techniques appropriate for limited-market properties."[25]

In Real Estate Valuation in Litigation, J.D. Eaton devotes an entire chapter to the valuation of special purpose properties. Eaton states that the identifying features of a special-purpose property are: (i) "The property has physical design features particular to a specific use"; (ii) "The property has no apparent market other than to an owner-user"; and (iii) "The property has no feasible economic alternate use."[26]

The terminology used for such properties may vary, but the central concepts remain the same, and all recognize that certain properties have specially designed buildings and other improvements that may have great value to the owner or user, but because there is little or no market for such

properties beyond similar users, there are very few market transactions to determine value.

Case law recognizes these concepts as well.[27]

Special purpose properties tend to have certain defining characteristics: (i) they are unique and specially built for their use; (ii) there is a lack of a market or comparable sales; (iii) the improvements typically cannot be converted to other uses without substantial economic expenditure; and (iv) the improvements would likely be replaced or reproduced if destroyed.[28]

VALUATION TECHNIQUES AND STANDARDS FOR SPECIAL PURPOSE PROPERTIES

The Cost Approach

The valuation of these unique properties usually employs the cost approach. This method calculates the value of a property by adding the estimated value of the land to the current cost of constructing a reproduction or replacement for the improvements, then subtracting the amount of depreciation in the structures from all causes. Richard Duvall and David Black describe the use of the cost approach to value in detail.[29] They also cite instances where the reproduction cost was admissible as opposed to replacement cost. In an old building, the difference can be significant. Note that in federal takings, it may be necessary to demonstrate that applying the cost approach to a specific type of property would be relevant to market participants before allowing its admission.[30]

The Income Approach

The income capitalization method is also sometimes used for income-producing properties.[31] The examples where this technique has been admitted include a sand and gravel lease, a commercial space leased to a bar, a restaurant, a barber shop, a garage, a historic home that could be developed as premium office space, a commercial dump, and cemeteries. But this approach may not be applicable when the property is not used as part of a profit-making venture, such as a nonprofit corporation.[32]

Other Value Standards

Courts generally try to adhere to some semblance of market value concepts in the valuation of special-purpose properties but have relaxed the rules regarding relevant evidence and comparability to evaluate the properties and determine just compensation.[33]

Some appraisal literature advocates for different standards than market value or different approaches to determining compensation. This is because fair market value is value in exchange. It assumes a hypothetical sale. An alternative would be value in use. Value in use is: "[t]he value of a property assuming a specific use, which may or may not be the property's highest and best use on the effective date of the appraisal. Value in use may or may not be equal to market value but is different conceptually."[34]

John Murphy and Emily Madueno have argued that this concept is more likely to make the property owner whole when the property at issue is a special purpose or special use property.[35] Market value may not be sufficient to satisfy the standard that puts an owner "in as good a position pecuniarily as before the taking if the owner is compensated so as to allow the owner to replace the property and continue the owner's use elsewhere."[36] The authors are attorneys practicing in California where compensation under such standards may be allowed. They also cite Florida, New York, Illinois, and New Jersey as jurisdictions where the compensation rules allow for awards of full replacement costs without deductions for depreciation. The authors also advocate for a tort standard for determining compensation if any of the following criteria are present:

- Little market data exists;
- The market is not relevant to the property sought to be condemned because the sellers are experiencing financial distress, the sellers are motivated by charitable or nonmonetary impulses, or the sellers have no personal stake in the sales prices; and
- Even if market data does exist, the data is difficult to compare.[37]

Others have focused on the issue of the highest and best use of a special purpose property.[38] The discussion focuses on whether a special use property could be modified and repurposed for a higher use. Naturally all the conversion costs would have to be deducted, but in the end another financially feasible use could be achieved. However, this does not necessarily mean the converted use would be the maximally productive use. It is hard to imagine many examples where a conversion would provide a better outcome for the property owner.

LAND RESIDUAL TECHNIQUE

Sometimes even vacant land can have peculiar or unique characteristics making them difficult to value, such as regulatory permits or approvals allowing for special uses or physical characteristics making them uniquely adaptable for certain uses. Several courts have approved the use of a "land residual technique" to determine the value of vacant land in such circumstances.[39]

The land residual technique is "[a] method of estimating land value in which the net operating income attributable to the land is capitalized to produce an indication of the land's contribution to the total property."[40] The technique essentially determines the value of vacant land by considering the value of an actual or hypothetical improvement, deducts for the time and cost of constructing it and other impermissible elements of value (such as business profits), and then determines the underlying land value based upon the possibility of realizing such improved values.[41]

CASE STUDIES AND EXAMPLES OF TECHNIQUES

Sheridan City Hall Case—Cost Approach

This eminent domain case took place in Colorado in the mid-1990s.[42] The condemnor in this matter was the City of Sheridan, Colorado. The property was a relatively new building that included under one roof the Sheridan city offices, city hall, the police station, and the fire station. Sheridan had earlier issued bonds to pay for the development. Technically the bondholders' group was the property owner. If ever there was a special purpose property, this was it. Due to a poor forecast for future municipal revenues, the city found itself having a hard time repaying the bondholders. Instead, the city filed a condemnation action for the property. It was to be a total take.

The city's appraiser considered the property to be of little value because a buyer would have to substantially redesign and reconstruct the facility if it were to be marketable as an alternative use. The appraiser did not consider it to be a special purpose property. The city's appraiser used the sales comparison approach and concluded the market value to be about $600,000, due to all the costs that would need to be incurred. The bondholders' appraiser concluded it was a special purpose property and used the cost approach, arguing that were no market sales of a property so uniquely designed. Replacement cost less minor depreciation was about $2,500,000. The court accepted the cost approach as appropriate and found in favor of the bondholders.

Heartland Biogas Plant Case—Cost Approach

This was a regulatory takings case in Weld County, Colorado.[43] The property to be appraised was the largest biogas plant ever built in North America. The specialized plant was designed to take cow manure and other organic waste products and then convert the material to natural gas and liquid soil amendments (fertilizer). The cost to design and build the plant was over $100 million. After the plant was up and running, the county received a number of complaints regarding the smell coming from the plant and the county commissioners suspended the permit.

At trial the property owner relied solely on the cost approach after demonstrating there were no market sales of such large, specialized properties anywhere in North America. This approach was admitted into evidence at trial.

Denver Waste Transfer Case—Land Residual Technique

This case involved a vacant property that had received necessary permits and approvals to construct and operate a waste transfer station

immediately prior to the condemnation case being filed. The evidence demonstrated that such permits and approvals were very difficult to obtain, and that the use of properties as a waste transfer station was very profitable.

Because it was virtually impossible to find sales of vacant land with similar characteristics, the owner's appraiser utilized a version of the land residual technique described above to determine the income that could be generated if the property was used as a waste transfer station and used an income multiplier to determine value. He then backed out the costs associated with constructing the facilities, as well as accounting for and deducting for time, risk, profit, business value and similar factors, to develop a value opinion for the land as benefitted by the permits and approvals. This technique was approved by the Colorado Court of Appeals.[44]

RDHI Case—Sales Comparison Approach

This case involved one of the last remaining large tracts of development land near a major highway interchange in the Denver metro area.[45] The property was unique because it was still zoned in an Open District zoning category and being used for agricultural purposes but had long been designated under the relevant land use codes as the last remaining opportunity for high-density mixed-use development and was surrounded by development infrastructure and other intensive development.

The property was valued using a sales comparison approach, but because such sales were scarce, the appraisers for both sides used sales with significant differences with respect to location, age, entitlements, development infrastructure, and anticipated uses. The owner's sales were challenged in pretrial motions in limine but were admitted. The case is currently on appeal.[46]

AW Race—Hybrid Approach

This case involved a large industrial facility with a pipe manufacturing and storage yard being taken for one project, but the property was also heavily influenced by multiple other separate public projects and surrounding development that changed its highest and best use.[47] The other projects included a new light rail station, significant roadway expansions and highway improvements, parks and trails, and numerous private redevelopment projects. The owner's appraiser concluded that the highest and best use of the property was for an adaptive reuse of the existing industrial building to convert it to office, retail, restaurants, and similar commercial uses, and to develop the storage yard with multifamily housing. There were numerous examples of industrial properties being converted for similar uses in other nearby areas where light rail stations had already been developed, but the subject property's neighborhood was just beginning to show such signs. Many properties in the area were also being condemned for the various public projects, thus eliminating most market activity.

The property was valued primarily using a sales comparison approach, but also by considering elements of the income and cost approaches to determine the financial viability of converting the building to a mixed-use commercial project.

CONCLUSION

Unique or scarce real property assets pose special challenges to lawyers, appraisers, and courts when attempting to determine just compensation. But difficulty in proving value does not excuse the obligation to do so. Other methods and data must be researched and evaluated to ensure that just compensation is paid.

We hope the legal and appraisal resources provided above give practitioners some guideposts in thinking through unique problems and a place to start when looking for authorities supporting the use of whatever data and techniques are most relevant to determining the issue at hand.

Notes

1 Boom Co. v. Patterson, 98 U.S. 403, 407 (1879).

2 See, e.g., Palizzi v. City of Brighton, 228 P.3d 957, 962 (Colo. 2010) ("In so doing, the fact finder may consider any competent evidence that affects the present market value of the land which a prospective seller or buyer would consider. The admissibility of evidence for property valuation is expansive, rather than restrictive.") (citations omitted); City of Wichita v. Eisenring, 7 P.3d 1248, 1254 (Kan. 2000) ("any competent evidence bearing upon market value generally is admissible including those factors that a hypothetical buyer and seller would consider in setting a purchase price for the property."); State ex rel. Dep't of Transp. v. Lamar Advert. of Oklahoma, Inc., 2014 OK 47, 335 P.3d 771, 774 ("Any competent evidence of matters, not merely speculative, which would be considered by a prospective vendor or purchaser, or which tend to enhance or depreciate the value of the property, is admissible.") (citations omitted); State Highway Comm'n v. Oswalt, 463 P.2d 602, 603-04 (Or. App. 1970) ("The rule in Oregon has long recognized the relevancy of any competent evidence of matters tending to affect market value which would be considered by a prospective vendor or purchaser.").

3 Territory by Sharpless v. Adelmeyer, 363 P.2d 979 (Haw. 1961); see also City of Westminster v. Jefferson Ctr. Associates, 958 P.2d 495, 498 (Colo. App. 1997) ("the rule regarding the admissibility of evidence with respect to the value of property is expansive, not restrictive, and the commission is entitled to consider any competent evidence that may assist it in determining value"); Bly v. Story, 241 P.3d 529, 536 (Colo. 2010) ("The fact finder may consider any competent evidence affecting the present fair market value of the land which a prospective seller or buyer would consider. Some valuation evidence may be entitled to lesser weight but is still admissible and properly presented to the fact finder.") (citations omitted).

4 See Julius L. Sackman et al., Nichols on Eminent Domain § 12.01[1] (3d ed. 2023); County of Clark v. Alper, 685 P.2d 943 (Nev. 1984); Behm v. Div. of Admin., 383 So.2d 216, 218 (Fla. 1980); McCarran Int'l Airport v. Sisolak, 137 P.3d 1110, 1128 (Nev. 2006).

5 Willcockson v. Colorado River Mun. Water Dist., 436 S.W.2d 203, 208 (Tex. Ct. App. 1968); City of Englewood v. Denver Waste Transfer, L.L.C., 55 P.3d 191, 196 (Colo. App. 2002); City of La Grange v. Pieratt, 142 Tex. 23, 28, 715 S.W.2d 243, 246 (1943); Donaldson v. Liberty Sign Co., 425 S.W.2d 901, 904 (Tex. Civ. App. 1968). See also J.D. Eaton, Real Estate Valuation in Litigation (2nd ed.) at 307-309 (Appraisal Institute 1980) (noting that an appraiser should not presume severance damages or base such claims merely upon experience, but "an appraiser must also use common sense," and should not conclude that there are no damages simply because a comparable sale similar to the after condition cannot be found; "the appraiser must exercise sound judgment in such matters, whether or not strong market evidence exists.").

6 Virginia Electric & Power Co., 365 U.S. at 633; see also United States v. Fuller, 409 U.S. 488, 490 (1973); 564.54 Acres of Land, More or Less, Situated in Monroe & Pike Ctys., Pa., 441 U.S. 506, 512 (1979).

7 339 U.S. 121, 123 (1950).

8 Fuller, 409 U.S. at 490 (citations omitted).

9 Commodities Trading Corp. 339 U.S. at 123. See also United States v. L.E. Cooke Co., Inc., 991 F.2d 336 (6th Cir. 1993); United States v. An Easement & Right-of-Way Over 3.74 Acres of Land, More or Less, in Montgomery Cnty., Tennessee, 415 F. Supp. 3d 812, 819 (M.D. Tenn. 2019) (each recognizing that when an owner's property is condemned, the purpose of compensation is to make the owner "whole"). But see United States v. Miller, 317 U.S. 369, 373-74 (1943) (noting "it is conceivable that an owner's indemnity should be measured in various ways depending upon the circumstances of each case and that no general formula should be used for the purpose. In an effort, however, to find some practical standard, the courts early adopted, and have retained, the concept of market value" as the normal measure for just compensation).

10 See, e.g., Boulis v. Florida Dep't of Transp., 733 So.2d 959, 962 (Fla. 1998) ("Full compensation" must be determined by reference to the state of affairs that would have existed absent any condemnation proceeding whatsoever, i.e. the owners retaining ownership); Jacksonville Expressway Auth. v. Henry G. Du Pree Co., 108 So.2d 289, 291 (Fla. 1958) (Fair market value is not an exclusive standard in Florida for full compensation but serves merely as a tool to assist in the determination of full and fair compensation). See also Joseph M. Jackovich Revocable Tr. v. State, Dep't of Transp., 54 P.3d 294, 298 (Alaska 2002); Homeward Bound, Inc. v. Anchorage Sch. Dist., 791 P.2d 610, 614 (Alaska 1990); Fowler Irrevocable Trust 1992-1 v. City of Boulder, 17 P.3d 797, 806 (Colo. 2001); Williams v. City of Baton Rouge, 731 So. 2d 240, 249 (La. 1999).W. Jefferson Levee Dist. v. Coast Quality Const. Corp., 640 So. 2d 1258 (La. 1994); Roman Catholic Church v. Louisiana Gas Serv. Co., 618 So.2d 874 (La. 1993); State ex. rel. Dep't of Highways v. Bitterwolf, 415 So.2d 196, 199 (La. 1982); Grey Bus Lines Co. v. Greater Bridgeport Transit Dist., 449 A.2d 1036, 1040 (Conn. 1982).

11 See, e.g., Exxon Pipeline Co. v. Hill, 788 So. 2d 1154, 1162 (La. 2001) ("The specific formulas of valuation developed by the courts are all designed to assure that the condemnee is compensated to the 'full extent of his loss.' … Specific formulas of valuation -- such as willing buyer–willing seller, per–acre or per–lot, front–foot or average–value, income-capitalization, replacement-cost, or other -- should be used to effectuate this end, not to defeat it."); State v. Terrace Land Co., 298 So.2d 859, 863 (La. 1974) (same); City of Phoenix v. Wilson, 21 P.3d 388, 394-95 (Ariz. 2001) ("Much of the confusion in eminent domain litigation has arisen from attempting to apply methods of valuation appropriate in one case to another in which the facts are materially different. The only principle applicable

in all cases is that of fair and just compensation for the land taken and to that end each case must be viewed in light of its own facts…. [W]e discourage the use of rigid formulae or arbitrary rules that reject valuation opinions based on a proper foundation -- common sense and market information.") (citations omitted).

12 Township of Manchester Dept. of Utils. v. Even Ray Co., 716 A.2d 1188, 1195 (N.J. Super. 1998) ("There is no precise and inflexible rule for the assessment of just compensation. The Constitution does not contain any fixed standard of fairness by which it must be measured.).

13 Salt Lake City Corp. v. Utah Wool Pulling Co., 566 P.2d 1240, 1243 (Utah 1977) (similarity does not mean identical, but having a reasonable comparability); City of Evanston v. Piotrowicz, 170 N.E.2d 569, 575 (Ill. 1960) (similarity does not mean identical, but having a resemblance, and no fixed or general rule governing degree of similarity); Cook Cnty. v. Colonial Oil Corp., 153 N.E.2d 844, 848 (Ill. 1958) ("This court recognizes that 'similar' does not mean 'identical,' but means having a resemblance, and that property may be similar in the sense in which the word is here used though each possesses various points of difference."); Dep't of Conservation v. Strassheim, 415 N.E.2d 1346, 1351 (Ill. App. 1981) (same).

14 Chicago v. Vaccaro, 97 N.E.2d 766, 773 (Ill. 1951) ("Where, as in this instance, a reasonable basis for comparison exists between the property sold and that being condemned, evidence of the sale is not incompetent, and the dissimilarities between the properties, which are disclosed to the jury, affect the weight and value of the testimony rather than its competency."); see also Goldstein v. Denver Urban Renewal Authority 560 P.2d 80, 84 (Colo. 1977) ("The root consideration is whether the comparable sale was sufficiently similar in one or more aspects, to be probative of the fair market value of the property under consideration by the commission.") Wassenich v. City and County of Denver, 186 P. 533, 536 (Colo. 1919) ("Similarity does not mean identical, but having a resemblance. No general rule can be laid down regarding the degree of similarity that must exist"). See also 4 Nichols on Eminent Domain § 12B.04 (2023) (recognizing a "test of 'reasonable comparability'" and indicating that there may be considerable differences in "size, shape, situation, and immediate surroundings" in sales that must be accounted for in the appraisal process).

15 See Salt Lake City Corp. v. Utah Wool Pulling Co., 566 P.2d 1240, 1243 (Utah 1977); Redevelopment Agency of Salt Lake City v. Mitsui Inv. Inc., 522 P.2d 1370, 1373 (Utah 1974); Evanston v. Piotrowicz, 170 N.E.2d 569, 575 (Ill. 1960); Donehoo v. Fulton Cnty., 1157 S.E.2d 323, 324 (Ga. App. 1967); State Highway Dep't v. Rutland, 146 S.E.2d 544, 546 (Ga. App. 1965); 7A Nichols on Eminent Domain § G13.02 (2022) ("courts uniformly admit evidence of comparable sales, leaving it to the trier of fact to give whatever weight to such evidence as deemed appropriate.").

16 J.D. Eaton, Real Estate Valuation In Litigation 200 (2nd ed. 1995) (citing West Kentucky Coal Co. v. Commonwealth, 368 S.W.2d 738, 741 (Ky. 1963); Bower v. Fulton County, 176 S.E.2d 219, 222-23 (Ga. 1970)).

17 See, e.g., In re Albany County Airport Auth., 696 N.Y.S.2d 305, 307 (N.Y. App. Div. 1999) (Upholding comparable sales method of valuation though only out-of-area parcels were used, as no similar properties had been sold in the marketing area with similar restrictions resulting from an aviation easement); Board of County Comm'rs v. Vail Associates, Ltd., 468 P.2d 842, 847 (Colo. 1970) (recognizing that use of subdivided sites may be necessitated by lack of comparable sales); City of Westminster v. Jefferson Ctr. Associates, 958 P.2d 495, 498 (Colo. App. 1997) (same).

18 See, e.g., Dep't of Transp. v. M.M. Fowler, Inc., 637 S.E.2d 885, 894 (N.C. 2006) (Allowing capitalization of income method of valuation where no comparable sales data was available); Conti v. R.I. Econ. Dev. Corp., 900 A.2d 1221, 1237 (R.I. 2006) (Stating that methods of valuation other than comparable sales method are permitted where comparable sales do not adequately reflect just compensation because the condemned property is unique or suited for a special purpose).

19 Kimball Laundry Co. v. United States, 338 U.S. I, 6 (1949). See also City of Englewood v. Denver Waste Transfer, LLC, 55 P.3d 55 P.3d 191,196 (Colo. App. 2002) (affirming use of alternative valuation techniques when one side contended there were not adequate comparable sales); City of Commerce v. National Starch and Chemical Corp., 173 Cal. Rptr. 176, 184 (Cal. App. 1981) ("When there is no data available from which to determine the actual demand or fair market value of a parcel of real property because there are no sales of similar property for reference, and because of the peculiar use made by the owner of the property, there is in essence no market for the property in its current state").

20 United States v. Sowards, 339 F.2d 401, 402 (10th Cir. 1964). See also City of Wichita v. Unified Sch. Dist. No. 259, 439 P.2d 162, 165 (Kan. 1968) ("When no sales of similar property are available 'resort may be had to other means to determine the compensation due the owner for its loss'").

21 Special-Purpose Property, The Dictionary of Real Estate Appraisal. 6th ed., 217 (Appraisal Institute 2015).. For a slight variation on the same theme see Glossary, International Valuation Standards, 8th ed., International Valuation Standards Committee (London 2007).

22 The Appraisal of Real Estate. 15th ed., 25 (Appraisal Institute 2020).

23 Id. at 241-42.

24 Id. at 25, 241-42; Specialised Property. The Dictionary of Real Estate Appraisal. 5th ed., 256 (Appraisal Institute 2010).

25 The Appraisal of Real Estate, supra note 22, at 25.

26 J.D. Eaton, Real Estate Valuation in Litigation 2d ed., 227 (Appraisal Institute 1995). See also Ron Throupe et al., What's So Special About Special Purpose Property? The Appraisal Journal, vol. 83, no. 3, 226–236 (2015); John C. Murphy and Emily L. Madueno, Square Pegs, Round Holes, Easy Targets: Valuing Special-Use Property in Eminent Domain, The Appraisal Journal, vol. 78, no. 3, 262–269 (2010); Richard O. Duvall and David S. Black, Methods of Valuing Properties Without Compare: Special Use Properties in Condemnation

Proceedings, The Appraisal Journal, vol. 68, no. 1, 1-9 (Jan. 2000); David P. Rothemich, Special Design Properties: Identifying the "Market" in Market Value, The Appraisal Journal, pp. 410-415 (Oct. 1998).

27 See, e.g., United States v. Becktold Co., 129 F.2d 473 (8th Cir. 1942) (allowing cost approach in valuation of book bindery plant with large, heavy machinery bolted in place, where no bindery sales had occurred in 20 years); Sun Valley Camping Co-op., Inc. v. Town of Stafford, 894 A.2d 349, 362 (Conn. 2006) ("No single method of valuation is controlling for the finding of fair market value for a special purpose property, at least in eminent domain cases… This is so because the usual means of ascertaining market value, such as sales of like property, may not be appropriate when land is devoted to a special purpose."); Manhattan Ice & Cold Storage, Inc. v. City of Manhattan, 274 P.3d 609, 619 (Kan. 2012) ("The descriptor 'special use' is intended to convey that there is no comparable market data an appraiser might use to value a property."); Newton Girl Scout Council, Inc. v. Massachusetts Tpk. Auth., 138 N.E.2d 769, 773 (Mass. 1956) ("It is not to be expected that the properties adapted for [a specialized use] will have a very active market or that their market value can be shown by sales of [n]earby comparable property. Once developed, such properties are rarely abandoned or sold. To assist the trier of the fact of value to reach a just result when such a property is taken by eminent domain, it frequently will be necessary to allow much greater flexibility in the presentation of evidence than would be necessary in the case of properties having more conventional uses."); City of Commerce v. National Starch and Chemical Corp., 173 Cal. Rptr. 176, 184 (Cal. Ct. App. 1981) ("[W]here a special use property is involved, the opinions of experts and the data upon which such opinions are based are entitled to greater deference for lack of any other objective standard such as the price which might be obtained were a buyer readily ascertainable.").

28 Matter of Suffolk Cnty., 47 N.Y.2d 507, 512, 392 N.E.2d 1236, 1238 (1979); City of Glen Cove v. Switzer Contracting Co., 47 A.D.2d 917, 918, 367 N.Y.S.2d 43, 44 (1975); In re Lido Boulevard, Town of Hempstead, Lido Beach, Nassau Cnty., 43 A.D.2d 45, 349 N.Y.S.2d 422 (1973), decree aff'd sub nom. Colony Beach Club of Lido, Inc. v. Cnty. of Nassau, 39 N.Y.2d 958, 353 N.E.2d 849 (1976); Eagle Rock Convalescent Ctr. v. Twp. of W. Caldwell, 32 N.J. Tax 122, 143 (2021).

29 Duvall and Black, supra note 26, at 1-9.

30 See Uniform Appraisal Standards for Federal Land Acquisitions § 4.4.3.1. (6th ed. 2016); United States v. 55.22 Acres of Land in Yakima Cty., 411 F.2d 432, 435-36 (9th Cir. 1969); United States v. Certain Interests in Prop. in Cumberland Cty., 296 F.2d 264, 269-70 (4th Cir. 1961) ("It seems plain that a showing . . . that a reasonable investor would reproduce the project for the amount given as reproduction or replacement cost would be required before a willing vendee would consider such a figure relevant in his negotiations with a willing vendor.").

31 Id. (citing the income approach as appropriate when an income-producing property is also a special purpose property).

32 Sahalee Country Club, Inc. v. State Bd. of Tax Appeals, 735 P.2d 1320 (Wash. 1987); In re City of New York, 21 Misc. 3d 1127(A), 875 N.Y.S.2d 819 (Sup. Ct. 2008); Com. v. Massachusetts Tpk. Auth., 352 Mass. 143, 147, 224 N.E.2d 186, 189 (1967); Matter of City of New York, 42 N.Y.2d 948, 949, 367 N.E.2d 641, 643 (1977) ("When the highest and best use is the one the property presently serves and that use is income-producing, then the capitalization of income is a proper method of valuation.")

33 Woodmansee v. State, 609 A.2d 952, 955 (R.I. 1992); Inmar Assocs., Inc. v. Borough of Carlstadt, 112 N.J. 593, 606, 549 A.2d 38, 44 (1988); Newton Girl Scout Council, supra; Trinity Church in City of Bos. v. John Hancock Mut. Life Ins. Co., 399 Mass. 43, 49 502 N.E.2d 532, 536 (1987); Com. v. Massachusetts Tpk. Auth., 352 Mass. At 143.

34 The Dictionary of Real Estate Appraisal. 6th ed., 245 (Appraisal Institute 2015).

35 See Murphy and Madueno, supra note 26, at 262–269.

36 Id.

37 Id.

38 Throupe, et al., supra note 26, at 226-36.

39 See, e.g., Hall County v. Meritt, 504 S.E.2d 754,756 (Ga. App. 1998), (valuing vacant land with a highest and best use for a landfill under a "cash flow analysis"); Waste Management of Wisconsin v. Kenosha County Board of Review, 516 N.W.2d 695, 704 (Wis. 1994) (using income approach to value developed landfill in tax assessment case and then removing business value); City of Englewood v. Denver Waste Transfer, LLC, 55 P.3d 55 P.3d 191,196 (Colo. App. 2002) (affirming use of land residual technique for vacant land permitted for a waste transfer facility). See also United States of America v. 3.0 Acres of Land, 378 F. Supp. 30, 32-34 (W.D. Va. 1974) (upholding use of land residual technique for valuing land that was uniquely suited for a motel).

40 The Dictionary of Real Estate Appraisal, p. 126.

41 See The Appraisal of Real Estate 13th ed. at 368-69 (Appraisal Institute 2008) (explaining land residual technique, its typical use to allocate land value or test highest and best use, and limitations on approach).

42 City of Sheridan, Colorado v. First Trust National Association; Civil Action No. 96-CV-427 (Colo. D.C. Div. 4, Arapahoe Cnty. 1996).

43 Heartland Biogas, LLC v. The Colorado Department of Public Health and Environment, et al., Case No. 2017CV32604 (Colo. D.C. City and Cnty. of Denver 2017).

44 City of Englewood v. Denver Waste Transfer, LLC, 55 P.3d 191 (Colo. App. 2002).

45 City of Westminster v. R. Dean Hawn Interests, Case No. 2020 CV 30231 (Colo. Dist. Ct., Jefferson Cnty. 2020).

46 City of Westminster v. R. Dean Hawn Interests, Colorado Court of Appeals Case No. 2023CA351.

47 City and County of Denver v. AW Race, LLC, CO Case No. 2017 CV 31602 (Colo. Dist. Ct., City and Cnty. of Denver).