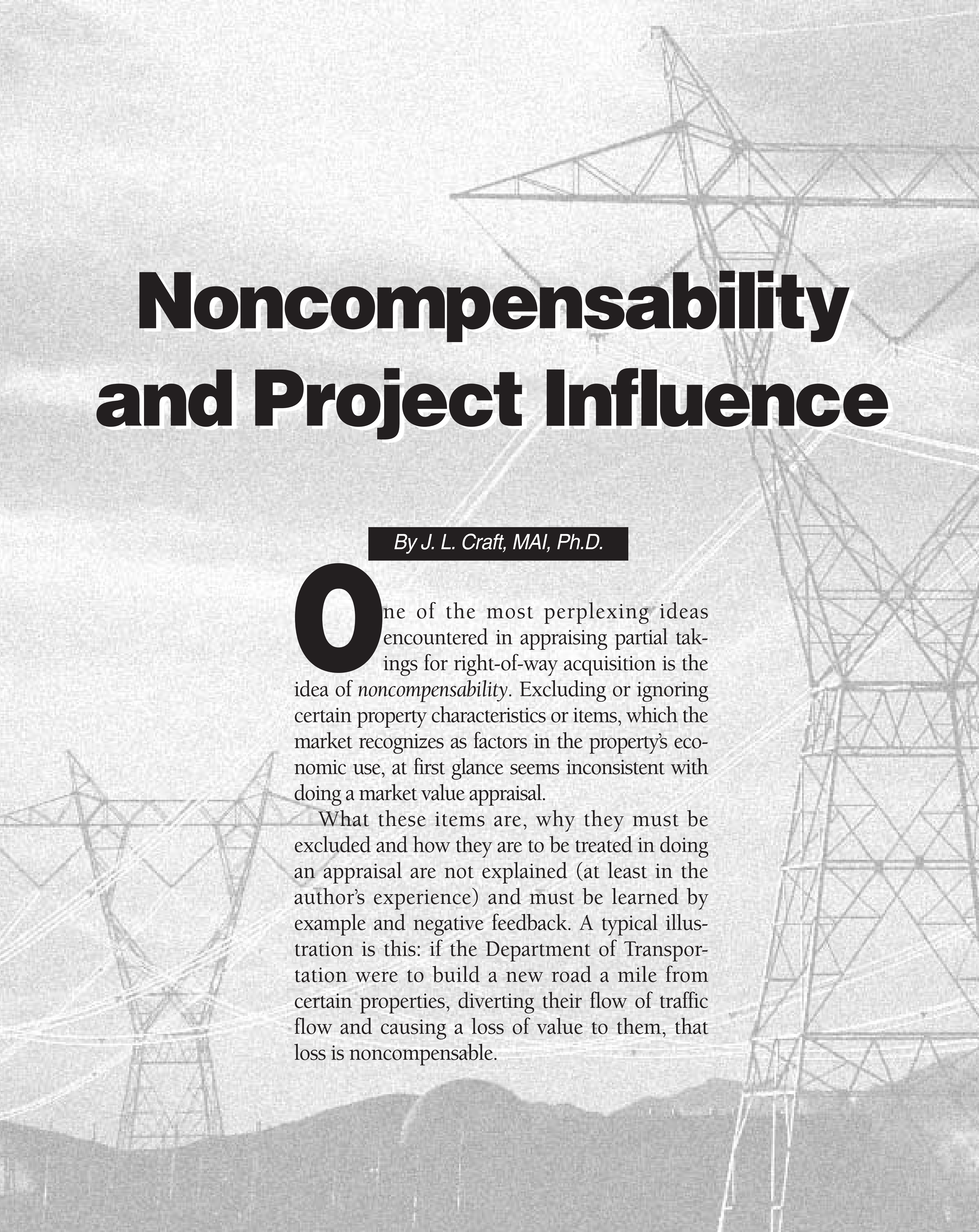

Noncompensability and Project Influence

By J. L. Craft, MAI, Ph.D.

One of the most perplexing ideas encountered in appraising partial takings for right-of-way acquisition is the idea of *noncompensability*. Excluding or ignoring certain property characteristics or items, which the market recognizes as factors in the property's economic use, at first glance seems inconsistent with doing a market value appraisal.

What these items are, why they must be excluded and how they are to be treated in doing an appraisal are not explained (at least in the author's experience) and must be learned by example and negative feedback. A typical illustration is this: if the Department of Transportation were to build a new road a mile from certain properties, diverting their flow of traffic flow and causing a loss of value to them, that loss is noncompensable.

This example is then applied to properties with partial takings whose "after" property values are diminished because the new road is, for example, a controlled access freeway which separates the traffic by frontage roads and main lanes, decreasing the traffic count at the property.

From this and other examples it may be concluded that, in general, any loss of value to the "after" property, which is not related to its internal properties, such as severe reduction in size or change of shape or loss of a driveway, is noncompensable. This article will present the reasoning leading to that conclusion.

Market value involves a complex interplay of both public and private interests. A zoning change, for example, which may be a major factor in increasing the market value of a property, involves both public and private interests. Public hearings and input from neighboring property owners may be critical in the planning process, while the owners' economic interests turn on the zoning change. Public roads and public utilities are also major factors of market value, as they provide improvements that contribute to the economic use of property. In highest and best use analyses, the presence or absence, the kind and condition, the future plans of public roads and public utilities are of paramount importance. (See below)

It is generally accepted that the market value of the "before" property is estimated without considering the project or by ignoring project influence, that is, the "before" property is appraised as participating in the market before the project. Compensation for a taking is not based on an increase in value caused by the project. By understanding that the issue of noncompensability can arise when the "before" property or taking increases in value, a way to understand the issue of noncompensability, when there is a diminution in value of the "after" property, is provided.

Consider a simple example of a project increasing the "before" value. A proposed major state highway will traverse a section of agricultural land. As agricultural land, the property is worth \$500 per acre. The frontage land, because of the new state highway, becomes commercial in usage and worth \$5,000 per acre. Let us say the taking is a one-acre strip, being approximately 10 feet by 436 feet and, accordingly, not an economic unit. Including project influence, the Taking has a value of \$5,000, being part of the commercial land. Excluding project influence it has a value of \$500, being part of the agricultural land. The \$4,500 difference is noncompensable.

The same logic of excluding project influence applies to valuation of the "after" property. This means that any

With changes in population trends, regulative controls and technology comes changes in traffic patterns, which require the expansion of older roads or creation of new roads and the upgrade or extension of utility lines. A right-of-way project to accommodate growth and change may result in a clash of public interest and various private interests, impacting in various ways and to various degrees both the community and the individuals who own property along or near the project.

With all public improvement projects there are three phases:

(1) the community before the public improvement project,
(2) the community during the implementation of the public improvement, and
(3) the community after the project is complete.

Following those three phases, there are three markets:

(1) the market before the public improvement project,
(2) the market during the implementation of the public improvement, and
(3) the market after the project is complete.

Accordingly, with respect to a particular property from which a partial taking is required for a project, there are the following:

(1) its market value before the public improvement project,
(2) its market value during the implementation of the public improvement, and
(3) its market value after the project is complete.

project items that either increase the "before" property value or decrease the "after" property value, such as project influence, are excluded from the right-of-way valuation process.

Consider a simple example of a project decreasing the "after" value of a one-acre remainder. Expansion of a major state highway to a controlled access freeway will require a portion of commercial land. As commercial land, the "before" property is worth $10 per square foot. With the influence of the new freeway, the traffic volume decreases, vehicular travel to the property is more circuitous and passerby visibility is decreased. The "after" property becomes worth $5 per square foot, when all factors are considered. Excluding project influence the one-acre remainder has a value of $10 per square foot or $435,600. Including project influence, it has a value of $217,800. The $217,800 difference is noncompensable.

What particular items with respect to project influence could cause a change in value of property, that is, either increase the "before" value or decrease the "after" value? For road projects there are four basic items:

- **traffic volume or traffic count**
- **passerby visibility**
- **circuity of travel**
- **construction.**

Valuation of both the "before" property and the "after" property must exclude any change in those items caused by the project; they are assumed to be the same as they existed before the influence of the project. The items as they existed before the influence of the project are factual and can be documented. As construction is strictly an influence of the project, it is a noncompensable item.

A point of valuation procedure for right-of-way appraisals can now be developed. Both the "before" property and the "after" property are appraised as if they had the same road items as before any influence of the project. That is,

No private landowner owns property rights inherent in the road project and did not own such rights prior to the project.

both the "before" property and the "after" property are considered to have the same traffic volume, visibility and access as the property had before any influence of the project.

What is the measure of project influence? Is an increase or decrease in property values sufficient to say there is project influence? If the project is the cause, then obviously there is project influence. But a change in values may result from other causes that arise concurrently with the project. Does no change necessarily mean that there is no project influence? If the sales would have decreased in value, but the project has positively influenced the market and stabilized value, then there is project influence.

How does the appraiser exclude project influence in the valuation process? There are two basic procedures: (1) select comparables which are not influenced by the project and (2) select comparables which are influenced by the project, but make an adjustment to exclude project influence. The second is problematic, since project influence may take a variety of forms and the adjustment for project influence should require comparison with comparables not affected by project influence. Hence use of the project-influenced comparables is only for secondary support and basically derivative.

How does the appraiser decide whether a comparable is influenced by the project? Is the procedure to compare the present data with the past data or to ask buyers, sellers, tenants, brokers or to compare data on the project with data off the project? Comparison of present data to past data may indicate a trend that coincides with the project; but other factors, such as a change in market conditions, may also be responsible.

Buyers, sellers, tenants, brokers and other market participants often have widely divergent opinions with various levels of knowledge of the project and are often suspect with respect to their objectivity. It is a truism of any real estate market that any advantage, which can be gained, will be seized with the result that, by and large, owners will claim the project is hurting their businesses, property values and enjoyable use of their property. Whether or not a project will in fact decrease property values, the perception may exist and that may affect the market. There are also cases in which a positive perception may exist.

My suggestion to this problem of "perception" versus "reality" is to use comparables from analogous roads and to use hypothetical descriptions (with respect to items changed by the project) for both the "before" property and the "after" property. What other roads are analogous may be problematic. But this procedure is clearly required when the project has influenced or even possibly influenced the comparables along it.

The result of this inquiry is the following: project influence is the key to understanding the issue of noncompensability. Project influence is to be excluded in all values leading to the estimate of compensation. The basis for this exclusion, as the author understands it, is this. Just as the "before" is appraised without project influence, as if the road factors or project items were unchanged, so the "after" property is appraised without project influence. The traffic volume, visibility and access accorded to the "before" are assumed to exist for the "after" property.

No individual or private group owns the rights to the traffic volume, visibility from the road, or access via the road. This derives from the concept of the public good; namely, roads exist for the public and are paid for by the public. That private property owners benefit with respect to the market value of their property by the existence of public roads is incidental and a matter of risk. Market value involves a relationship between individuals and the community with rights and risks on both sides. The community should not take property without just compensation to the property owner and the compensation should not reflect any influence of the public project for which the property is taken. That is what noncompensability means. ■

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