The New Zealand Valuer

MARCH, 1984

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Editorial Comment

COMPUTERS - I.A.A.O. - TIMESHARES

A new dimenion has been added to the valuer's tools of trade in recent years. "Computers" - the technology that has probably driven more fear into the hearts of valuers than any outer in the past few years. Various articles have been published in The Valuer, some of a technical nature and others to acquaint practitioners with this technology. By the time you receive your copy of the Journal "Valpak" should be up and running. No doubt various improvements, extensions of the service and additional facilities will become available from time to time.

Many notable valuation journals have a separate section devoted to computers. "The Valuer" will now have a section on the subject of computers under the control and direction of Mr R. V. (Bob) Hargreaves, Senior Lecturer at Massey University.

This new section of the journal will be known as "Computer-Wise". It is intended as a forum for ideas, a vehicle for publishing interesting articles on computers, a question and answer service, and an opportunity to pass on information and air views on the subject of computers. Computer-wise is what we should be, but this new section of the journal can work effectively only with the co-operation of members.

In this issue of "The Valuer" Bob Hargreaves has written an article, "Does the Computer have a place in your office? ". I commend it to your attention, and I am sure Bob would be pleased to receive comments or suggestions for future issues.

The N.Z. Institute of Valuers has been admitted as an Affiliate Member of the International Association of Assessing Officers, I.A.A.O., based in Chicago, Illinois, U.S.A. Assessing Officers are employed by rating authorities in the U.S.A. and in some respects carry out a similar task to the Government Valuation Department. As such, they have a role, allied to approximately one-third of our members. As an Affiliate Member of the International Association of Assessing Ofifcers, we are cementing our ties with a valuing organisation in another country, and this must be good for the future of the profession.

To mark the occasion, an article from their quarterly Assessor's Journal, "Assessing the Fee Timeshare Property" by Kathleen Conroy is reprinted by their kind permission in this issue. A second article, "Pre-hearing Preparation for Valuation Expert Witness" will be published in the June issue of The Valuer.

The word "Timesharing" is one which we have all heard, though many of us know little about it. From time to time within the past two years there have been requests for information on the subject.

What is "timesharing" and where does it fit, if at all, in the valuer's job specification? Mr Hilary J. MacLeod recently gave an interesting talk on the subject to the Property Management Institute in Auckland. His address is printed in this issue, together with the abovementioned article from the Assessors Journal and a paper presented at the Pan-Pacific Conference of Valuers in Kuala Lumpur.

After reading these articles, the private practising valuer will be very cautious about accepting an instruction to value a timeshare. If a valuer is thinking that the main constituent of a timeshare is land and buildings then Mr MacLeod's statement that only 40% of the product is "bricks and mortar" is certainly food for thought. New Zealand also has no established market for resales, so what protection is the valuer offering a mortgagee or a prospective purchaser?

Perhaps the question should be put: What is the product? Is it a fee-simple title, or a pre-paid right of occupancy a form of licence if you will. There is no like-valuation exercise. Perhaps the closest is Company ownership of a flat development where the purchaser holds shares and not the real estate title. Although the basis may be the valuation of a home unit, this must then be converted into a share value which may well be more or possibly much less than the value of the home unit for various reasons. The test is what the market will pay. There is no established market for secondhand timeshares. To compound the problem, the market has to be broken down into its smallest parts i.e. comparing a timeshare in the depths of winter with a similar sale and not a timeshare for any other period of the year.

New Zealand Institute of Valuers

Professional Examinations

PASSES IN THE PRACTICAL AND ORAL EXAMINATION NOVEMBER 1983

The Institute offers its congratulations to the following candidates who were successful in the November 1983 examinations.

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Auckland	Akuhata, W.; McIntosh, S. R.; Rhodes, J. B.
Hawke's Bay	Neal, D. G.
Wellington	Carmichael, A. L.; Glasgow, P. J.; Malinowski, W. A.; Stallard, P. J; Stigter, F
Canterbury	Puketapu, H. J.; Waller, E. E.; Williams, R. R.
Otago	Chapman, A. G.; Whelan, J. R.

RURAL:

Waikato	Johannsen, M. I.
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Parker, E. C.	Taranaki	„ 14(1).
Parrish, A.	Auckland	„ 14(2).
Porteous, J. K.	Auckland	„ 14(1).
Roper, G. C.	Auckland	„ 14(1).

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"Professional Standards What do the Public Require and Expect?"

by A. M. Morison, L.L.B.

Mr Andrew M. Morrison is a senior partner in the law practice of Sainsbury, Logan and Williams, Napier. Mr Morrison acts for many large companies and property owning concerns. His address was given at a mini-seminar held in Hastings in late 1983, and sponsored by the Hawke's Bay Branch of the Institute.

You are members of a worthy and well qualified profession. You are "experts". Our modern society expects a high performance from its experts. Therefore, you have a very real responsibility. In the medical field our doctors no longer have a licence to amiably practise medicine without fear of the consequences of error-indeed, damages suits for medical negligence are now so common in U.S.A. that insurance premiums often constitute the largest overhead cost which a doctor faces. In the legal, banking and accounting professions, a similar situation exists. Not only is there a duty to exercise a proper degree of professional skill and care, but the field of negligent misstatement has expanded markedly, whilst the range of potential claimants has recently and somewhat dramatically expanded. The most recent example is the Gartside case which is not yet reported. A firm of Auckland solicitors were consulted by some people and asked to see and effect a Will for an elderly lady, who was starting to become poorly. She died the following week. The people who were members of the family, sued the lawyers, arguing that the latter had a duty of care to those who might have expected to benefit from whatever Will the lady made. The lawyers concerned filed an interlocutory application to have the claim dismissed as disclosing no cause of action because they had no direct relationship to the people concerned, so that the claim was speculative. That preliminary question went to the Court of Appeal, which ruled that in fact such a claim could exist and indeed may well exist because lawyers have a professional duty to exercise responsible care in the interests of those who might reasonably be affected. The case has not yet been reported, but nor indeed has the claim been determined, but what has happened is that the scope of potential claimants has been opened. These claims are material to examining what is the level of duty and responsibility that the public expects of valuers. The Medical Profession may have escaped a barrage of personal injury claims by reason of the Accident Compensation Act, but Valuers have no such exemption and it is the findings of the Court in these sort of claims which sets the bottom line whence we must construct a practical conclusion as to just what is expected.

I propose to discuss the question by focusing upon one or two areas that are of interest:-

* What does the law expect of Valuers as professional men?
* What the lawyer expects, in respect of ordinary valuations, but also in respect of the Trustee Act.

In the first place, it seems to me that a Valuer must act with reasonable prudence and care having regard to his professional skill and status. That seems to me to dictate that a Valuer must display professional competence, intellectual perception, and absolute integrity. The following factors may contribute to an attainment of these criteria:-

Be professionally competent - thorough and careful coverage of all known and practical factors which bear upon the property concerned should be stated and the relevance of each factor examined. You should say how you have treated each factor. The Alpha Beta report demonstrates this feature, while the High Court Judgment in the recent decision of Kendal Wilson Securities Limited v C. T. Barraclough, to which I will refer, points graphically to the potential problems. Professional

coverage allows Solicitors or other advisers to focus upon which factor.

* Sustain intellectual honesty in spite of any influence to do otherwise. If the market is booming, or if you have been consulted by a person seeking a valuation to justify a predetermined family or loan arrangement, or if you are consulted by a potential developer anxious to promote his scheme, be careful to pause and see the intellectual truth of the situation confronting you. Your client may be so obsessed with enthusiasm that he cannot do this. You become the person who must put matters right -event if you attract inevitable criticism.
* Above all, be independent. Your valuation should bear scrutiny wherever and whenever in the course of time it is studied.
* Above all, be objective and honest. You should take into account the objective realities, consider the true market, and consider what you would seek if your mother was investing in the security or buying the land. Consider what you would think if you found the valuation produced to 500 interested purchasers - all relying on you. Do not just do a dumb market survey. Perceive the booms and recessions.
* Finally, it is my perception that in the last resort you do not really represent anyone except yourself, because you are a professional Valuer whose opinion must stand scrutiny by anyone, regardless of whom you represent.

In the second place I want to refer to the law of negligence which has developed well beyond the Donoghue v. Stevenson case in 1932 where Lord Atkin first defined the concept of duty of care, so that it now includes liability for negligent professional advice and indeed negligent misstatement. The Hedley Byrne v. Heller in 1963 resulted in Lord Morris concluding in the House of Lords:-

> .. . "If someone possessed of a special skill undertake, quite irrespective of contract, to apply that skill for the assistance of another person who relies on such skill, a duty of care will arise . . . if in a sphere in which a person is so placed that another could reasonably rely on his judgment or his skill or on his ability to make careful enquiry, a person takes it on himself to give information or advice to, or allows his information or advice to be passed on to, another person who, as he knows or should know, will place reliance on it, then a duty of care will arise."

That case involved Bankers who said a potential customer was sound, when he was not. The law developed to the 1968 case of MLC v Evatt where Barwick C J formulated the rule as follows:-

> "Whenever a person gives information or advice to another upon a serious matter in circumstances where the speaker realises, or ought to realise, that he is being trusted to give the best of his information or advice as a basis for action on the part of the other party and it is reasonable in the circumstances for the other party to act on that information or advice, the speaker comes under a duty to exercise reasonable care in the provision of the information or advice he chooses to give."

That law obviously applies to Valuers, and the first major instance was in Gordon v Moen and Captain Dunsford (1971) NZLR where the plaintiffs purchased a launch after some negotiations in which the first defendant vendor had told the purchasers that some six weeks earlier the launch had been surveyed. The survey report had been done by Captain Dunsford, and was produced. Captain Dunsford had no knowledge that his survey report would be produced in this way. The report was read and relied upon, and the purchase of the launch completed. A very amusing incident then occurred, which led to the claim. The plaintiff (a European immigrant) moored the launch (as the report reads) "... inadequately at Westhaven and the bow became trapped under the wharf on the rising tide. The launch was rescued but the damage revealed dry rot." The Court held that the survey report had been negligently prepared, and that Captain Dunsford as a Marine Surveyor was engaged in a calling which required special skill and knowledge, and owed a duty to the first defendant to prepare the survey report with reasonable skill. The Court went on to hold that the Hedley Byrne principle applies where the information is sought by a person on behalf of an identified or indentifiable class of persons.

The law has moved on somewhat, with the potential situation getting worse for professional men, including Valuers, as it has gone. In a recent 1981 case of Shaddock and Associates v Parramatta City Council the High Court of Australia found a local Council liable for negligent advice. The plaintiff had intended to purchase a corner site for commercial redevelopment, and the plaintiff's Solicitor had simply telephoned and asked an unidentified staff member in the Town Planning Department whether the Council had any road widening or realignment proposals relating to the site in question - he was told there were no proposals. A similar enquiry in writing was made by the Solicitor with an application for a Certificate under a Section of the Local Government Act, and while the Council in general practice inserted a note of road widening proposals at the foot of the usual Certificate when sending it back, despite no legal obligation to do so, in fact it did not do so in this case. The plaintiff proceeded and only later discovered a significant proposal had been approved by the Council some two years before, so they were unable to proceed with the redevelopment and sought to recover their loss from the Council for having negligently overlooked the road widening proposal when its servants gave advice to the plaintiff's Solicitor. The Court held that the Plaintiffs were e--titled to rely on the Council's response to the written enquiry, although not on the telephone enquiry, and went on to conclude that there was no real difference between a person who carries on the business of supplying information and a public body which in the exercise of its public functions follows the practice of supplying information. Liability was established. In an English case in 1982 - Yianni v Edwin Evans and Sons, a Mr and Mrs Yianni applied to the Halifax Building Society for a mortgage, and that

Society engaged the defendant Valuers. The Building Society made the loan based on the valuation, the Yiannis proceeded with the purchase -but without having ever seen the valuation- and bought the property, whereupon subsidence occurred and the Yiannis sued the Defendant Valuer. The Court found in favour of the plaintiffs, said the Valuation Report should have disclosed the defects, and said the Defendant Valuer should have known its valuation might be passed on to the Yiannis who might then place reliance on its correctness. The Court concluded there was a sufficent relationship of proximity to facilitate a claim. This decision may rather alarm many lending institutions and valuers in New Zealand, because the Yiannis never even saw the valuation, and all they knew was that the Building Society had agreed to an advance. That decision is reported in the 1982 Queen's Bench Reports page 438, and might well be followed in New Zealand. The most recent case has not yet been reported, but is a Judgment of Jeffries J in the High Court at Auckland delivered on 21 July 1983 in the case of Kendall Wilson Securities Limited v C. T. Barraclough of Auckland, Registered Valuer. In 1974 Mr Barraclough valued certain land in South Auckland and certified that it offered security for Trustee investment up to $150,000. The land was then zoned as "future urban development sequence 3" (permitting farming until urban development was approved) but the valuation emphasised the prospect of a change to "industrial" zoning and treated it as "potential industrial land". A Solicitor read the valuation briefly, and passed it on to another Solicitor. It was a complicated commercial transaction, but the important point is that the Valuer was found negligent in preparing the report and liable. A copy of the Judgment is available for you to peruse because it is most significant. The following extracts are material. At page 17 Mr Justice Jeffries summarised the law pertaining to Valuers:-

> "First, what in law is the standard of care required? In the circumstances of this case negligence is the doing of something which a reasonably prudent Registered Valuer would not do, or the failure to do something which a reasonably prudent Valuer would do, under circumstances similar to those shown by the evidence. It is the failure to use ordinary or reasonable care. The amount of caution required of a Valuer in the exercise of ordinary care depends upon the conditions apparent to him, or that should have been apparent to a reasonably prudent Valuer under circumstances similar to those shown by the evidence."

I am attaching pages 23, 24 and 25 of the Judgment. You will see that on a careful dissection, it is found that Mr Barraclough was somewhat casual in that many of his comments were speculative conclusions or assumptions, and he really did not give precise thought to the present zoning (and the fact that land remains in its present zoning until actually changed), that he assumed it should be treated for value as "potential industrial land" without much qualification or the advantage of certainty, he speculated what might happen if the land were zoned residential and said it could be sold readily but without explaining exactly what he meant, and he really did not focus his attention on the interests of the potential lender as being the paramount consideration. Mr Barraclough was found negligent and a perusal of his report and the Judgment is very material.

I think it is important to read that Mr Barraclough's report was quite comprehensively prepared, and he is probably quite a careful Valuer, but he was not quite careful enough where considerable prudence was necessary. In the result, he was just a little bit intellectually casual, and he paid the penalty by being found negligent some nine years later and consequently liable for damages.

In the third place, may I briefly turn to the practical field of trust fund investment.

You may all be familiar with the requirements of the Trustee Act but the subject is so important that we should always be ready to look at the considerations which affect a Trustee and a Valuer in this context. In New Zealand, the categories of securities authorised by statute are primarily those prescribed in Section 4 of the Trustees Act 1956, but it is important that the particular modes of investment authorised by Section 4 are additional to the modes of investment which may be authorised by the trust instrument (this is apparent from the opening words of Section 4 and it also follows in Subsections (iv) (v) of Section 2 of the Act which provides that the powers given by the Act are in addition to those given by the trust instrument. Within those limits, the trustees have a discretion as to how trust funds are invested, and they must exercise that discretion honestly. The first step for a Trustee is to obey the directions of the trust instrument which may or may not contain directions, or it may specifically forbid some specified class of investment. You should be careful to remember that at times. If the trust instrument merely authorises investment of a class not authorised by the statute, the Trustee is required to exercise a high degree of prudence before making a particular investment - and it is here that a Trustee may in turn rely heavily upon a Valuer. Lindley L. J. stated in Learoyd v Whiteley as long ago as 1886 that:-

> "The duty of the Trustee is not to take such care only as a prudent man would take if he had only himself to consider, but the duty is rather to take such care as an ordinary prudent man would take if he were minded to make an investment for the benefit of other people for whom he felt morally bound to provide."

Where an investment clause in a Trust Deed allows Trustees "absolute discretion" as to investment, that does not mean that they could invest in anything they would like whether authorised by law or not, but would have to exercise their discretion within the limits allowed by law. Furthermore if a trust instrument authorises investment upon the security of personal property then the Trustees may make such investment only with the exercise of very great care - strictly with a view to the benefit of the Trust estate, and not with a view to the accommodation or benefit of the borrower.

You will often be required to act as Valuers (sometimes independently of Solicitors) in cases where Trustees (who are often also beneficiaries) are looking to justify some investment or loan or purchase upon which they have already largely decided, and will tend to have a predetermined view. These are the areas where your professional integrity and your intellectual honesty becomes paramount. I suggest that you must be careful to ensure that you are conscious of what the trust instrument says (or that some Solicitor has told you clearly what it says), who you represent, and just exactly what is required from an objective viewpoint. Your valuation should be sustainable whoever subsequently has occasion to look at it, be it the Court, the Trustee, a disaffected claimant, a beneficiary, or a party whose interests are immediately concerned. Your valuation should always stand as an "independent island" something like Switzerland in Europe - and not as a tool to support the partisan interests of one or other party.

The authorised Trustee Act investments are of course set out in Section 4, and it is Section 4 (i) (b) which authorises investment on "real securities" in New Zealand as that expression is defined in Sub-Sections (b) (3A) and (3AA) - in short, it means a first mortgage of an estate in fee simple (including a stratum estate in freehold under the Unit Title Act 1972); first sub-mortgage of such a first mortgage; and first mortgage of certain leasehold estates. These categories are-

(a) Mortgage of fee simple - the traditional and most common security. I simply note the existence of Sub-Section (3AA) which authorises a first mortgage of a stratum estate as long as the unit proprietor effects a mortgage redemption policy to repay the mortgage, but this does not extend to a case where a unit is occupied by virtue of a holding of shares in the company which owns the block, nor the case where the occupier of the unit is one of several tenants in common in fee simple each of whom holds a lease of his particular unit, i.e. cross lease arrangement. You will also know a second mortgage is a breach of trust unless specially authorised, that a Trustee must not join a contributory mortgage (because by doing so he parts with his exclusive control over the trust property) and that the power to invest in "real securities" does not authorise a Trustee to purchase land (because such purchase is an alienation of trust property - for which an express power is required).

(b) Sub-mortgage S4 (3) authorises a first sub-mortgage of a first mortgage of an estate in fee simple (because a Trustee has the same protection as that afforded a first mortgagee plus the covenant of the sub-mortgagor).

(c) Mortgage of Crown or Maori Leasehold - Section 4 (3) permits investment provided certain specific conditions are satisfied – I do not propose to dwell on these other than to say the words "prudence and caution" should dominate along with the mental note that only certain types of Crown and Maori Leasehold apply, to wit those which comply with the three basic conditions of the Lease within Section 122 of the Land Act or D.P.L. or Lease with Perpetual Right of Renewal, and all conditions as to improvements under the Lease or Licence must have been complied with so there is no liability to forfeiture for default, and the Lessee or Licensee must be entitled under the Lease or Licence to compensation or protection for improvements.

(d) Mortgages of Leaseholds under Public Bodies Leases Act - Sub-Section 3 (a) - check very carefully not only that the Lease was in fact granted under one of the specified statutory provisions, but also that two other sets of conditions are satisfied. I mention these because it is particularly relevant in Napier where there is a lot of such land. First, the Lease must be registered under the Land Transfer Act, it must not contain a right of forfeiture in the event of bankruptcy or winding up, it must not require reviews of rental at intervals of less than seven years, and if granted under Section 7 (1) (f) or (g) of the Public Bodies Leases Act it must confer on the outgoing Lessee a right to compensation, and secondly in making an advance the Trustee must act on a report by a Valuer instructed independently of a Lessor or Lessee, the amount must not exceed one-half of the value of the Lessee's interest, and the Trustee must obtain and consider written advice as to the provision of the Lease which may affect the security for his advance. Ordinarily, the person "qualified" to give the advice would be a Solicitor but there is no precise stipulation to this effect, and a Valuer should be conscious of it.

I stress that the provisions of Section 10 should be carefully considered, because they set the "bottom line" on loans and investments by Trustees which are not eligible as breaches of trust. I remind you that a Trustee lending money on a security is not chargeable with breach of trust if it appears to the Court that in making the loan the Trustee was acting upon a report as to the value of the property made by ... a person whom it reasonably believes to be competent to value the property being a person instructed and employed independently of any owner of the property whether that Valuer resided or carried on business in the locality where the property is situate or elsewhere . . , and that the amount of loan does not exceed 2/3rds of the value, and that the loan was made under the advice of a valuer expressed in the report. It is important to focus upon Section 10 (1) (c) because it does specifically require the advice of the Valuer. In my view, this underlines the elements of professional integrity and intellectual honesty which I stress as the key factors for a Valuer.

Finally, may I simply summarise by saying that the importance of exercising all your resources to display professional skill and care in the production of your Valuation Reports, is more vitally necessary to you professionally than ever before. Although the law technically demands "reasonable skill and care", in fact that really means a high standard. I suggest you must analyse where your objective stance should lie, look to apply the criteria I suggest are appropriate,

and then you will certainly satisfy any reasonable Lawyer. If you display professional competence and thoroughness in preparing your reports, intellectual integrity in perceiving your position and reaching your conclusions, and absolute honesty so that you act without fear or favour, then I believe the Legal Profession will be very well served by whatever reports you produce. If you can act in this way, then you need not fear the creeping amoeba of professional negligence actions.

Pages 23, 24 and 25 of the Judgment.

"Optimism that zoning could change was supported, to an extent by evidence from witnesses, but the so-called structure plan which was under consideration by the Manukau City Council from 1973 onwards finally did not include the subject land when published in 1975. Also on 26 September, 1974 that Council adopted a report of its Town Planning Committee containing a recommendation that the zoning which embraced the subject land should remain in 'force for the time being. That was a fact easily accessible to valuers, solicitors and the public."

In October, 1974, Mr Barraclough was engaged by a firm of solicitors named Messrs Sheffield Young & Ellis practising in Auckland who acted for Mercantile Developments to perform a valuation on the subject land for the purposes of obtaining an advance using it as security. The report itself was dated 21st October, 1974 and the court deems it necessary to reproduce Mr Barraclough's report in its entirety:-

"Re - value of property owned by Mercantile Development Ltd. corner Popes Rd. and Morris Rd. Takanini.

As requested I have inspected this area of 20 acres 1 rood 19 perches for the purpose of assessing its value as security for the advance of first mortgage finance and now report as follows:-

LEGAL DESCRIPTION:

Lot 1 on Deposited Plan 13421 and being part Allotment 20 Parish of Papakura and being all the land in Certificate of Title 14B/1142.

LAND DIMENSIONS:

Frontage to Morris Rd. 843 ft. 3in. Frontage to Popes Rd. 989 ft. Area 20 acres 1 rood 19 perches. Contour level.

ZONING:

(1) This land which is a prominent cornerblock is at present shown on the Manukau City Council town Plan as Sequence 3 land for future urban development. It is however part of a large area of land which is at present being prepared for a scheme change by the Town Planning Department of the Manukau City Council and the Council have stated that they intend changing the zoning to Industrial. (This heavy type and that hereunder, and the numbering in the margin, were not in the original document and have been added for the purpose of identification for use later in the judgment.)
The adjoining land in Morris Rd. on the other side of the Papakura stream, together with other land on the eastern side of Morris Rd. was zoned Residential A by the Town and Country Appeal Board and this is in the process of being subdivided.
A further large area bounded by the northern side of Popes Rd., Hill Rd., Ranfurly Rd. and Redoubt and Hills Rds., is also in the process of a scheme change to Residential by the Manukau City Council, and the Ministry of Works Department have already purchased large areas within this block for housing purposes.

(2) All these changes are of course still open to objection however from my discussions with the Engineers I am satisfied the scheme change will go ahead.
Another major development affecting the subject property is the proposed straightening of the Papakura stream, plans for which are in the process of being prepared by Cocks & LaPish Engineers and it is possible that this work will reduce the potential industrial area of the block from 20 acres 1 rood 19 perches down to 17 acres 2 roods. Some of the land so taken off would become residential as the adjoining land now is zoned however without finished surveyed plans we have at this stage placed no value on the probable residential land.
In recent negotiations with the Ministry of Works for the purchase or exchange of the adjoining designated School site of 29 acres 1 rood 21 perches on which it is proposed to remove the Education Dept. designation the Government Valuation Dept. placed a value of $15,000 per acre as potential industrial assessing a value of $440,000 on the 29 acres 1 rood 21 perches.
Another future proposal is to bring a Railway branch line through the existing Industrial C1 land on to the subject land however this improvement is still in the (sic) planning stages.

INDUSTRIAL VALUES IN METROPOLITAN AUCKLAND:

I have been concerned in the (sic) valuation of industrial land in Auckland for the past (sic) 25 years during which I have acted as valuer for three Local Bodies covering large industrial areas.
Land in Penrose has been recently selling at up to $160,000 per acre in 4" acre blocks down to $80,000 and $100,000 per acre in larger areas, and good (sic) level land in Wiri, Avondale and East Tamaki has been realising up to $50,000 per acre in 1 to 5 acre blocks.
I have assessed other land in the Industrial C1 area of Takanini (sic) adjoining the Education Dept. block at $25,000 per acre and

(3) 1 am satisfied that the subject property once the Industrial zoning is confirmed would sell at $25,000 per acre plus corner influence.
We are at present going through a period of severe credit restrictions which have seriously affected the value of residential properties through the lack of mortgage finance. At this stage it does not appear to have affected the value of industrial land near so much although there is not so much being transferred but there is still a demand for manufacturing and warehouse space to rent.
Taking into account the present market conditions and the prominence of this site

(4) I consider that its value as potential industrial land is the sum of $15,000 per acre plus corner influence as follows:

17 acres 2 roods @ $15.000 (sic)	$262,500
plus corner influence 12.5% say	$32,500
	$295,000

My valuation of the propertyis the sum of two hundred and ninety-five thousand dollars ($295,000).

RECOMMENDATIONS

(5) We certify that we have acted independently of the applicant in this valuation and that under Section 10 of the Trustee Act 1956 this property offers sufficient security for the advance of Trust Funds to the amount of one hundred and fifty thousand dollars ($150,000) (sic) for up to five years at current rates of interest.
If private funds however were being lent I consider that an amount of one hundred and eiehty thousand dollars ($180,000) (sic) could be advanced with reasonable safety as even if this land were zoned residential it could be sold readily for this figure."

It is clear from the report itself and from the evidence given by Mr Barraclough that he valued the land on the basis that it was zoned industrial when the truth, outlined above, is that in the previous month the City Council had resolved to retain the Future Urban Development Sequence III zoning. Messrs Sheffield Young & Ellis, who acted for Mercantile, passed Mr Barraclough's valuation to the plaintiff company which in this transaction was represented by Mr Roderick Milton Douglas Sturm, a partner in the firm of solicitors, and

a director of the plaintiff company. He gave evidence that on the basis of that valuation he resolved to advance to Mercantile the sum of $150,000 to be used by Mercantile in circumstances which will be outlined in greater detail hereafter. A mortgage document was prepared and executed by Mercantile and over a period of time the total sum of $150,000 went from the plaintiff to Mercantile.

It is convenient here to mention that Mr Barraclough, for Sheffield Young & Ellis performed a valuation of the self same land on 12th February, 1974.

In England there are cases where solicitors have been called to give evidence: Goody v Baring (1956) 2 All E.R. 11; Sykes v Midland Bank Executor and Trustee Co. Ltd. (1971) 1 Q.B. 113; G. & K. Ladenbau (U.K.) Ltd. v Crawley & De Reya (1978) 1 W.L.R. 266; Midland Bank Trust Co. Ltd. v Hett, Stubbs & Kemp (1979) Ch. 384. See Bradley v Attorney-General (1978) 1 N.Z.L.R. 36 and Sutherland v Public Trustee (1980) 2 N.Z.L.R. 536 for New Zealand authority. In this case the court would have been assisted by evidence of professional standards but has not felt materially affected by the lack of such evidence. However, in a high technology commercial environment a judge can quickly lose touch with current standards and the bias should be to call such evidence.

The court now goes to the hub of the case and it is to assess the valuation report prepared by Mr Barraclough and on which Mr Sturm resolved to make an advance. It has been reproduced in its entirety in the judgment earlier. The first point is that the report itself must be judged as a whole document and not from extracted, or isolated parts such as the recommendation at the end. Secondly, the basic issue in this case of alleged negligence resulting in an incorrect investment recommendation concerns the true status of the subject land under the planning legislation. If that be the issue how was it dealt with in the body of the report? I have underlined the direct references to the zoning. The first underlined paragraph indicates the legal zoning is correctly stated as "Sequence 3 land for future urban development". The second sentence of the paragraph states that the land is part of a large area which the Council intends changing the zoning to industrial. The short point is that there is no representation that in fact the land was zoned industrial. The second underlined extract specifically states the changes are open to objection (with all the implications of uncertainty that should indicate to an ordinarily skilled solicitor) and the third underlined extract specifically makes the valuation subject to a zoning change to industrial. In the fourth underlining immediately above the monetary calculation of value it is referred to as "potential industrial land". Fifthly, the valuation report concludes with the unqualified recommendation for a trustee investment of $150,000. The second (and very last) paragraph recommends an advance of $180,000 if private funds are used "as even if this land were zoned residential it could be sold readily for this figure". On a strict construction of this last sentence it is difficult to know exactly what Mr Barraclough meant. Does that last part, reproduced above, mean that if it was zoned immediately for residential use (which it most certainly was not) it had a value of $180,000 for that is what he says it would fetch in a sale. If that is the true meaning he was offering an alternative valuation on the basis of presently zoned residential land down by $115,000 on industrially zoned land. However, that construction is not entirely satisfactory for in the same sentence he considered $180,000 could be advanced from private funds (presumably as opposed to trustee funds) "with reasonable safety". A recommended advance of $180,000 cannot be reconciled with a value in the same amount for then there is no safety margin for a lender. These inherently difficult issues were not covered in questions to Mr Barraclough when he was in the box. Finally, the central purpose of the valuation was for a prospective mortgage advance, and therefore the potential lender's interests should have been paramount.

It seems to the court in the very last analysis Mr Sturm chose to lend $150,000 in circumstances already outlined, taking as security land which was zoned Future Urban Development Sequence III. Knowledge of that exact zoning came to him in a valuation report buried in an avalanche of unwarranted, speculative, optimism with a recommendation for lending based not upon the actual zoning but upon the possibility of a changed zoning to industrial, or even residential. The simple truth is that a zone is not changed until it is changed.

Applying the standard of care fixed by the law of ordinary skill and care, assisted by the expert evidence of Mr Mahoney, the court reaches the view Mr Barraclough was negligent in his preparation of the report.

I have said earlier in making the decision on negligence, or not, the whole document must be assessed. If negligence were described as a horizontal line on a graph below which the standard of care was breached it could justly be argued for most of the report the curve began and stayed above the line. Underlinings 1, 2 and 3 were suitably qualified and would not have been a breach. Underlining 4 brought the curve perilously close but 5 took the curve through intersection and below to breach. Although, as stated, the document must be read as a whole nevertheless the entire recommendations section demonstrates a failure of ordinary skill and care.

It follows an enquiry must now be made of the allegation of contributory negligence. Contributory negligence is the negligence of the plaintiff which in combination with that of the defendant contributes as a cause in bringing about the damage. The total amount of damages to which the plaintiff would otherwise be entitled."

"Kiwifruit Experience"

by P. E. Tierney, F.N.Z.I.V.

A paper presented at the Twelfth Pan Pacific Congress of Real Estate Appraisers, Valuers and Counsellors 21st 26th August, 1983.

Peter Tierney is a Past President of the New Zealand Institute of Valuers and a Principal of the valuation firm S. Morris Jones, Tierney & Green, Tauranga. Ill

Peter is well known to members of the institute. He led the New Zealand delegation to the Tenth Pan Pacific Congress at Tokyo. Essentially a "rural" valuer, he also has first hand experience with kiwifruit farming.

Introduction

The kiwi is New Zealand's national symbol and is a flightless bird unique to my country; a kiwifruit is not however the product of its reproductory tracts - which is incidentally abnormally large for the size of the bird. It is a delicious fruit with its own distinctive and delicate flavour.

Kiwifruit - a 1967 coined name that is now used world-wide to identify both the plant and its product is ACTINIDIA CHINENSIS or Chinese Gooseberry. Old timers in the trade still refer to it as a "China", its forebears came from the Yangtse Valley and the most successful commercial strain is an improved Hayward grafted onto standard stock usually Bruno or Monty.

Currently the kiwifruit industry earns NZ$58.2 million (M$1 = NZ$.57) in export currency from some 6 million trays with a potential at current planting level of NZ$875 million by 1992.

How has this come about, what effect has it had on local farm economics, will the bonanza continue and are there any other species of fruit that can be developed along similar lines?

Chinese Gooseberries were introduced into New Zealand in 1906 and trial plantings made in the 1920's. The first commercial plantings were made near my home town in the Bay of Plenty in 1937. The first export consignment of 180 kg in 1953 and a slow but steady increase then until 1967 when the market potential of the Hayward variety became apparent. Plantings and production increased rapidly through the 1970's reaching a peak in 1981/82. Government interference in late 1982 has materially reduced this progress. I sincerely hope that your Governments show far more intelligence than the political opportunists running New Zealand.

It is a vine, is dioecious i.e. separate male and female plants and a mature female vine produces something like 700 fruit.

The vines and fruit are relatively hardy, can withstand moderate frosts in their dormant winter period and require a sub-tropical summer climate to produce to their maximum.

The fruit is ideal for handling and has a long shelf life. When ripe it has a beautiful distinctive taste, is sweet, has no core and can be consumed almost entirely apart from its thin and hairy skin.

Its storage life, 4 - 6 months in coolstore, and its shelf life - 2 weeks have enabled New Zealand, at the bottom end of the Pacific to successfully establish markets in many of the developed western nations of the world. Japan with 25%, West Germany with 34% and the U.S.A. with 10% take the bulk of the New Zealand crop.

The fruit sells readily in these markets at prices that return the New Zealand grower an immensely greater income than he can get for any other form of primary produce.

For example a gross margin of:

Kiwifruit	NZ$29,000 per ha
Apples or Pears	NZ$ 6,000 per ha
Dairying	NZ$ 700 per ha
Sheep and Cattle	NZ$ 350 per ha

Before you all rush away and begin planting perhaps we should examine the physical requirements of this improved strain of Actinidia Chinensis.

New Zealand is by your standards a tiny country and in only very selected areas of New Zealand can kiwifruit be grown commercially. The 1982 New Zealand figures -

Bay of Plenty	5053	ha = 62%
Poverty Bay	612	
Northland	654	
Auckland	471	
Nelson	772	
Other Areas	495	
Total	8057 ha	

demonstrate that the bulk of the successful plantings are on free draining volcanic or alluvial soils, these districts have a mild winter and summer climate and an even spread rainfall of around 1250 - 1600 mm per annum.

Given all these factors, the remaining and perhaps most vital factor for export fruit is shelter from winds.

In the New Zealand scene the high price of raw land in the most favoured area of the Bay of Plenty has caused a marked spillover effect onto other less favoured sites. People are experimenting with wind machines, overhead sprinklers and even hit and miss cropping in attempts to grow the vine. Whether these areas are suitable remains to be seen but there are already indications that kiwifruit grown for example in the Nelson area 411S and only a few degrees south of the Bay of Plenty's 37°50'S ripens earlier but does not have the same shelf life. Based on the New Zealand experience, the ideal climatic range is very narrow.

Those of you in the northern hemisphere will have to reverse the seasons to appreciate the climate of the Bay of Plenty. Sunshine hours around 2000 annually, a few, say up to a dozen

light winter frosts, and a relatively gentle summer climate where temperatures seldom exceed 30°C and then only for short periods during the day.

Flower set is in late October/early November and is very compressed. A frost at this stage is disastrous. Similarly early winter frosts in May before harvest can ruin the crop. Hot and humid conditions predispose to a variety of fungal diseases.

New Zealand lies in the path of the roaring 40's and the west coast lies athwart this belt. The Bay of Plenty faces north and is relatively sheltered from that side but has nevertheless far too much wind to grow kiwifruit without extensive shelter belts. Kiwifruit just love windless conditions. Tropical cyclones can and have caused problems towards the end of the summer.

The Bay of Plenty geographically was formed by successive layers of Andesitic volcanoes overlaying earlier rhyolitic lava flows. Those of you who have visited Rotorua will remember the chains of beautiful clear lakes, all of course the original vents from which most of the successive volcanic showers have emanated. One hopes you are not visiting Rotorua when the next ash shower happens.

These showers with varying degrees of humus content are nearly all free draining and porous and provide ideal growing conditions for the vines providing any mineral deficiencies, usually phosphates and nitrates are made good.

Other soil types varying through free draining alluvial soils, peats and conglomerates are being tried with varying success. The vine will not stand excessive ground moisture conditions or varying water tables.

An Investment in Kiwifruit - New Zealand Style

Let's suppose you and I are going to make a small investment in the industry. As I am going to be a partner it will have to be in the Bay of Plenty.

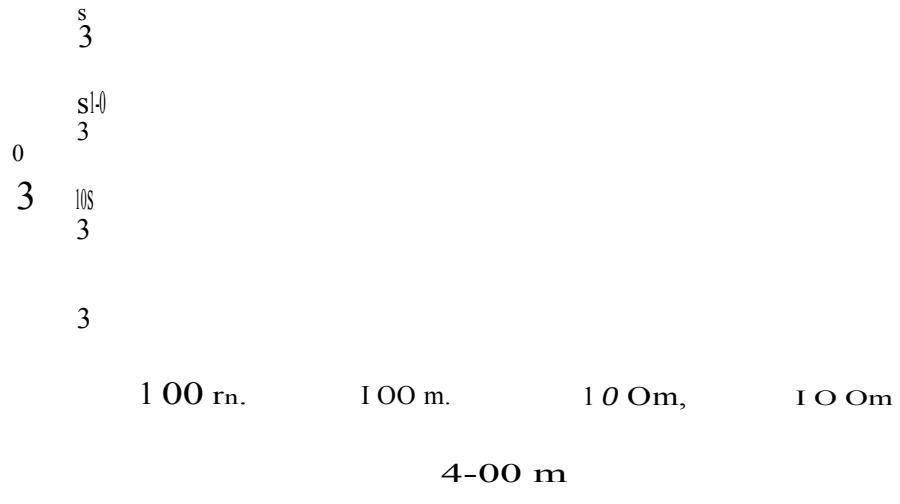
We'll buy an average sized block of bare land, six hectares, that has just been subdivided off a 40 hectare dairy farm. It will cost us 400,000 ringgit.

It is a rectangular shaped block and we'll do two things immediately:

(1) Drill a water bore after obtaining a water right or if we're very lucky hook into a community scheme, and

(2) Establish live shelter belts on a grid pattern to provide the optimum shelter and irrigate the lines.

We'll probably use a double line of cryptomeria japonica and matsudana willow. We'll establish them in this fashion and plant them out in the early spring.



After two years' growth we judge the shelter sufficiently advanced to plant out our seedling kiwifruit. These will be well grown two year old Bruno plants grown with our loving care or purchased at about 10 ringgit each from a commercial nursery. We'll plant them in the compartments and in the following spring graft Hayward cuttings using a two bud cleft grafting technique. We'll use selected grafting wood from the best producing orchard we can find and we'll graft males and females as shown.

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We'll then go down to the local hotel and argue with every other orchardist about this layout because there are about as many variations on it as there are orchardists.

After planting the seedlings, an overhead frame is affixed to ground treated posts which are driven into the ground and training wires strained back to heavy strainers which themselves are tied back to deadman. Alternatively a gate type strainer assembly is used.

Because you and I are knowledgeable people we give our orchard the best treatment, e.g. side prune and root prune the shelter, keep weeds away from the kiwifruit and shelter, manure regularly, irrigate when necessary and spray if required and make sure any hormone type spray used for weed control is kept well away from the growing plants.

We also carefully train the two leaders along the central training wire, endeavouring to make the south growing leader as strong as the north one. From these leaders will come our fruiting laterals, the flowers setting on second year canes.

Two years after grafting we will, weather and other factors permitting have a small crop probably for local processing and the next year our first export crop so we can expect to obtain the following year. Let's talk in tonnes per hectare for our six hectares remembering that each tonne produces approximately 270 export trays and these are currently worth up to M$19 per tray. The figures exclude packing and grading charges.

Vine Age	High Yield	Low Yield	Mean	Mean Sales (M$)
3	2.0		1.0	20,000
4	10,0	2.0	6.0	112,000
5	15.0	5.0	10.0	187,000
6	18.0	8.0	12.0	224,000
7	22.0	12.0	17.0	318,000
8	25.0	15.0	20.0	374,000
9 +	30.0	18.0	24.0	448,000

These figures are based on a 75% yield for export quality fruit. This is a low yield for mature well sheltered vines.

How much have we invested in this venture and when will we get our money back, or at least an economic return. Let's be conservative and budget at M$14 per tray.

Year	Item	Cost M$	Income*	Accumulated + or -
1	Land	410,000		
	Establishment	46,000		- 456,000
2	Running Costs	10,300		
	Capital	96,000		- 562,300
3	Running Costs	9,700		
	Capital Items	88,000		- 660,000
4	Running Costs	27,000		
	Fruit Sales		20,000	- 667,000
5	Running Costs	55,000		
	Capital Items	40,000		
	Fruit Sales		112,000	- 650,000
6	Running Costs	81,000		
	Fruit Sales		187,000	- 544,000
7	Running Costs	95,000		
	Fruit Sales		224,000	- 415,000
8	Running Costs	122,000		
	Fruit Sales		318,000	- 219,000
9	Running Costs	138,000		
	Fruit Sales		374,000	+ 17,000
10	Running Costs	160,000		
	Fruit Sales		448,000	+ 305,000

* Exclusive of packing and grading charges.

It will be noted that the figures do not include interest payments or the effect of taxes. For example, in the New Zealand scene interest rates would be around 17-18%, running costs are tax deductible, but income tax is very high and would materially alter the repayment period.

What is our development now worth in terms of a market realisation? Remembering that we paid M$400,000 for our six hectares we can expect the following increase in value ignoring inflation.

Year	Purchase Price M$	Capital Addition M$	Expected Market M$
1	400,000	46,000	445,000
2		96,500	560,000
3		88,000	725,000
4			900,000
5		40,500	1,085,000
6			1,205,000
7			1,360,000
8			1,550,000
9			1,885,000
10			2,075,000

You will recall from the previous schedule that our greatest point of indebtedness was in year 6 at around $750,000 so the investment appears satisfactory.

From a Bay of Plenty sales analysis based on a wide spectrum of sales we have worked up the following tables on a per hectare basis - using a $15,000 per acre or $37,000 per hectare module.

These levels of values only apply to good quality plantable land and development in established and proven localities. They exclude buildings plant and equipment.

Year	Value of Land	Shelter	Orchard	Total
1	37,000	2,500	-	39,500
2	37,000	5,000	-	42,000
3	37,000	7,000	12,000	56,000
4	37,000	10,000	25,000	76,000
5	37,000	12,500	37,000	86,000
6	37,000	15,000	45,500	97,000
7	37,000	17,500	58,000	121,500
8	37,000	20,000	74,000	131,000
9	37,000	22,000	103,500	162,500
10	37,000	25,000	118,500	180,500

These levels of values can only be applied to development which is true to age, i.e. shelter and vines which have achieved growth rates or producing vines with yields in keeping with their age.

There is also as expected, a premium paid for smaller sized blocks which based on the 37,000 module produces the following range:

Block Size	Rate Per Hectare
1 ha	$71,000
2 ha	$55,000
3 ha	$47,000
4 ha	$42,000
5 ha	$40,000
6 ha	$37,000

We have so far ignored the effects of inflation although this has had a major influence in persuading people to invest in kiwifruit properties. Until recently development expense could be written off against income earned in other spheres.

Listed below is a table showing the rates per hectare paid over that period for a standard size (six hectare) bare land block in a recognised locality. This rate would vary according to the size of the property and locality.

1976	$10,000 per hectare
1977	$12,000 per hectare
1978	$15,000 per hectare
1979	$17,000 per hectare
1980	$19,000-$25,000 per hectare
1981	$30,000-$37,000 per hectare
1982	$35,000-$40,000, per hectare

It will be noted that the most rapid increase in values has taken place over the last eighteen months to two years. These increases have been reflected throughout all classes of the younger non-producing kiwifruit orchards. The increases in value of mature producing orchards have not been as rapid and dramatic as those of the developing orchard properties.

At the 1981 Congress in Melbourne Roger Hallinan from New Zealand gave a paper entitled "Localities that Win and Lose" and clearly those localities in New Zealand where kiwifruit can be successfully grown have been winners on a grand scale.

Most of these areas were dairying oriented and comprised say 48 hectare farms worth in 1976 $4,000 per hectare and currently in unsubdivided form $20,000 per hectare. All tax free under New Zealand conditions up until late 1982.

In these localities the market for kiwifruit properties has completely dominated trading and is having a spillover effect in neighbouring areas.

How is the Fruit Picked, Processed and Stored

Picking usually begins on 1st May when experience has shown, the Brix (sugar content) Test has reached at least 5.9. It cannot be picked before it reaches this level.

This year which has been particularly dry is exceptional as picking commenced in the middle of April.

Fruit is very carefully hand picked, some growers require their staff to use gloves to avoid any fingernail damage, put into 200 kg bins and transported to a central packhouse. Here it is first carefully culled for defects.

The packhouse is controlled by a certified quality comptroller and the grading and packing subject to regular but unannounced inspections by Ministry of Agriculture officials. They have wide powers including repacking, condemnation and downgrading of the packhouse. They are prepared to use these powers.

The fruit is size graded, usually by weight and packed in single layer wooden or cardboard trays. Each fruit is hand packed individually into appropriate size plastic tray inserts. Polythene case liners are placed under the inserts, folded over the top and tucked down the sides. Corrugated straw boards are placed on top and below to cushion the fruit.

Trays are stacked on pallets and the fruit stored in cool-stores at 0°C.

Are There Any Other Similar Species?

Well nearly every sub-tropical you can think of is being tried - Babaco, Pepino, Cherimoya, Avocado, Persimmons to name a few, but really only Avocado where we are slightly off season with the Australian crop gives any hint of being really successful.

It is a truism in New Zealand that those who propagate the species and then persuade other growers that they are a coming bonanza really make any money. For example babaco cuttings reached $24 each last year.

Currently the answer appears to be in the negative.

Will It Last?

The $64 question.

New Zealand has a Kiwifruit Marketing Authority to control the quality of the product, its promotion and advertisement at an international level and the issue of export licences - only five for New Zealand.

Absolute rigidly high standards are laid down, are enforced and are accepted by growers. No substandard fruit is exported irrespective of demand. It is either processed - freeze dried slices, canned or as wine or used for local markets.

It will not fail from lack of quality. I suggest you all adopt similar standards if you are to venture into this market.

Other countries are growing the fruit and those particularly in the northern hemisphere could be complementary to the New Zealand scene. The southern hemisphere growers may be limited by climatic conditions.

The projected crop from New Zealand in the next decade (in millions of trays) at an 80% export pack out

1983	9.77
1984	14.07
1985	20.73
1986	29.10
1987	39.61
1988	51.08
1989	62.08
1990	71.74

Clearly there is much selling and organising to be done as well as finding the support services in terms of Packhouses and Coolstores where the capital input is estimated to be $276 Million before 1990.

The industry itself and Government are convinced they can sell the fruit and are certainly prepared to try. Yes, we expect it to last - it's been quite an experience!

Capital Requirements For Six Hectare Orchard Development in M$

APPENDIX I

Year	1	2	3	5
Land	400,000			
Dwelling		96,000		
Implement Shed	9,000			
Tractor			9,000	
Tractor (2nd)				17,000
Mower			5,000	
Weed Sprayer			3,000	
Crop Sprayer				14,000
Forklift				5,000
Trailer harvesting				2,000
Bins				2,000
Fuel Tank			500	
Miscellaneous Tools	500			
Water Supply irrigation	26,000		4,500	
Establishment Costs	10,500		66,000	
	446,000	96,000	88,000	40,000

Review

THE NATIONAL MODAL HOUSE

Valuers have long been familiar with the "Modal House" and the monthly Modal House building costs. Building cost multiples and related indices are well established tools used by practising valuers.

The concept was under study during 1946. The following year the Institute approved production of Modal House building costs based on good average construction practice. The standard adopted for costing analysis was practical and realistic, namely 1,000 sq. ft. gross floor area.

From time to time it is necessary to accommodate new building requirements, materials and practices. A revision in 1972 published separately the specifications and the schedule of quantities and costings.

Under the title "The National Modal House Plan, Specification and Schedule of Quantities 1983" a complete revision has just been published. In the current unsettled economic situation costings are not included consequently the complete concept is available in one volume.

Measurements and units are shown for the ifrst time in metrics. The revised specification and schedules introduce greater flexibility within limits in use of materials and practices without affecting the nature and intention of the National Modal House concept.

It is essential that valuers become familiar with the revised concept particularly the important detail concerning the facilities found in National Modal House.

Copies of the 1983 edition are now obtainable from the N.Z. Institute of Valuers, P.O. Box 27-146, Wellington at $10.00 per copy postage included.

PERSONAL

Merv and Ruth Aldred were awarded Honorary Membership of the New Zealand Institute of Valuers after ten years of service in Council Headquarters. Merv and Ruth are moving to Australia and their temporary new address is:

C/- Post Office,
Buderim 3556,
Queensland, Australia.

Their permanent address will be available from around April-May 1984 and can be obtained by contacting the General Secretary in Wellington.

An Introduction to Timesharing

by Hilary J. MacLeod

Mr Hilary MacLeod is a member of the Property Management Institute. He has a background as a financier, manager and marketing specialist. He was employed over a period of 14 years with the Bank of New Zealand, was then the Manager for General Finance Limited, has worked for Security Bank and Broadbank and in the late 1970s was an Executive for Fletchers.

Mr MacLeod is the Managing Director of the Pacific International Group of Companies, deeply involved in the timeshare industry in New Zealand.

This article is intended as an introduction to timesharing, including its growth, legal forms, marketing and exchange networks, and to give an assessment of what these trends will do to the hospitality and real estate industries in New Zealand.

The term timesharing is borrowed from the computer industry in which it means the user receives access to a computer only when he needs it and pays only for the computer time actually used. In effect the user shares the cost of an expensive facility with other users. In the Resort Industry, there are many different types of programmes and a variety of names, such as an interval ownership, vacation licence, resort sharing and so on, used to describe particular timesharing plans, but timesharing is the generally accepted generic term used in the industry. Basically there are two types of timeshare interest - the first is a fee simple, or interval ownership, and in this case the purchaser receives an ownership interest in the property corresponding to the amount of time purchased. That is, one week equals 1/52nd of the unit. The second form is known as right to use or annual occupancy right for a term of years for example, one week of annual use for ten years but no ownership interest in the property. Basically a right to use programme is simply a pre-paid occupancy plan. In addition numerous types of use plans are available under either the fee or right to use formats. Some programmes sell fixed numbered weeks, others offer float or open use through the year, or within a given season. Float users are found more frequently in recent projects due to advancements in legal documentation and the need to satisfy far more sophisticated purchasers. The real key to the attraction of timesharing lies in the exchange programme to which all resorts are affiliated. This allows an owner in any particular resort to exchange his time for another period in any one of over 1000 resorts in some 37 countries around the world - all at no cost for the accommodation.

Timesharing is an extraordinarily flexible concept. One of the main reasons it has grown so rapidly is that it can be adapted to so many widely varying seasonal, locational, and developmental considerations. For example, where fee ownership is impractical, such as when converting a portion of a hotel's occupancy to timeshare, a right to use format can be used. If fixed week use is not the best answer, such as at a drive up resort, purchasers may want to break up their intervals and use it at various times over the year, then a floating plan can be employed. Each option has its advantages and disadvantages, float formats may be more appealing to purchasers in some cases but they require a more complex reservation system, the right to use may be simpler. Under New Zealand Law this form must be considered very carefully for in my view it is quite dangerous as the ownership confers no legal right of occupancy upon the user, and in the event of the developer going into liquidation or a mortgagee sale being entered into for example, the timeshare owner in a right to use project will find himself out in the cold.

Timesharing's flexibility makes it one of the most sophisticated and complex real estate concepts yet to come along and failure to recognise its inherent complexity has created many problems for the unwary developer. In the U.S. those in the tourist industry, primarily, moteliers, and hoteliers, and the developers of second homes who found their market disappearing a decade ago,

all assumed that timesharing would be the panacea to their ills. This of course has not necessarily proved the case and in many instances a bad development converted to timesharing still failed and timesharing was blamed for the failure when of course the development would never have proved successful no matter what form its development took. For instance, location in timesharing is critical as it is in any other type of development and if a standard recreational development wouldn't work in the normal sense, it is highly unlikely that timesharing can make a silk purse out of the sow's ear. But, in timesharing, location can mean different things at different times of the year, a project within walking distance of ski lifts may have an excellent winter time location, but summer time location would be poor if it is 20 miles from the nearest golf course. Viewed from another perspective, inadequate planning in furnishing or equipping an interval unit, can come back to haunt the developer with replacement costs. In short the many variables involved in timesharing call for a planning process that is far more intensive than most other types of development.

Let us have a look at how timesharing has developed.

In less than a decade timesharing has become the fastest growing holiday option in the United States of America. Indeed as an industry the growth of timesharing has outpaced all other non-technological industries over that decade. Sales of timesharing in 1983 exceeded 1.5 billion with some 500,000 purchasers having bought units in more than 1000 timesharing developments.

Timesharing, despite what people think, was originally born in France in 1963 where the first interval weeks were offered. Because timesharing made holidays at some of Europe's leading resort areas affordable to thousands of families, the concept quickly grew and reached the United States at the end of that decade. The very first timesharing project in the United States was developed on the Hawaiian Island of Kauai by Hawaii Kailani of Bellingham, Washington in 1969. This was simply a right to use project, the first ownership programme did not appear on the United States scene until 1972 at a development on Lake Tahoe, California. In 1975 which was the first year of significant activity, timesharing sales reached $50 million.

By the end of the decade, sales had topped 800 million and by 1983 they had doubled again, reaching 1.5 billion. Timesharing is now available in over 30 states of the United States of America and 38 countries around the globe. Why then, this outstanding growth in such a relatively short period of time? Well, a combination of factors evolved.

In the early 1970's, the world was on a major boom cycle. In approximately 1974 in the United States, where I now address my remarks, the property bubble burst. Suddenly, everyone was in trouble. Developers who had been building condominiums around the country as second homes in the major resort areas, had literally thousands of units of inventory sitting on their books unsold. Simultaneously, the public had found that all those plush second homes that they used to enjoy had jumped from $20 to $30,000 to $100, to $150,000. That bach at the beach, or that cabin in the mountains which one used to be able to buy for 2/$3,000 had also jumped to $60/$70,000. Simultaneously the oil crunch hit and even having the money to afford to buy the new high priced gasoline was no guarantee that you could even get it. So, suddenly the driving holiday was out, the long trip away was gone, the mini-vacation down the road on weekends had disappeared. Suddenly those holidays were no longer affordable. A few enterprising developers with this large inventory sitting on their hands in Florida particularly, looked to the Europeans to solve their dilemma. How could they shift property which was unwanted, and which was unaffordable to a population which wants holidays but can no longer pay for them. These developers looked to the European resort areas for an answer to their problem. High prices were not an uncommon problem to resort owners in those areas. Have you ever tried to buy a villa in the South of France, for example? They discovered a simple solution called timesharing. Basically what they discovered in its simplest form, was that if someone could not afford a whole pie, why not sell him only a piece of the pie! An apartment development is no different from a pie. If all someone requires is a couple of weeks use each year, why must they buy the whole apartment, why can't they buy just a couple of weeks, or a piece of the pie, so to speak? With timesharing this was made possible, he could purchase only the time he needed in a condominium which would be impossible for him to purchase on his own. He was now in a position to enjoy pleasures he had never before been able to afford. The idea had been so successful in the French Riveria and the other plush resorts in Europe, there was little doubt that the idea would soon explode on the American scene. When it did, it started a new trend in America that changed the life styles of hundreds of thousands of Americans. People who never before could afford the little extras in life, found that their status changed, they discovered the discount world of the privilege class. Simply knowing the sequence of spending and saving money can change your lifestyle very quickly. Okay, so why has timesharing grown in such an extraordinary way?

In part, it is because it is one of the few products on the market today where everybody truly wins. As has often been said, it is a product that seems too good to be true. So, why does everybody win?

Firstly, let's look at what the buyer gets. We know from studies that the average use time of a second home is only 2.3 weeks per year. This fact does not remove the buyer's mortgage obligation nor does it help to ease his financial burden through renting the property. He has a problem of maintenance, of upkeep, of vandalism, of spending most of his free time mowing his lawns, repairing broken windows, painting the roof. In short all the things he is trying to escape from on holiday. The timeshare concept makes the logical assertion that you should only pay for what you use, when you use. If you want two

weeks or 22 weeks, that is exactly what you pay for. Actually, what you are doing is buying the use of a $100,000 or $150,000 luxury apartment for a number of weeks each year forever, and for far less than the price you would pay for a second hand car. Or looking at it another way, you have a building with all its recreational facilities for far less than it would cost to simply buy a piece of land with nothing on it. When you consider the investment in the land, the building, repairs, lost holiday time in doing the repairs, keeping up the mortgage payments, rates, insurances, etc., I don't think it is hard to understand the benefits of timesharing. From a dollar and cents standpoint, purchasing holidays for the future at today's prices certainly makes sense. For example, as a sales tool, we graph the cost of having just one week of timeshareownership at a popular resort at Lake Taupo with the cost of not owning timesharing but having that week's holiday in a similar apartment in the same town. By summing your capital purchase plus the annual maintenance fee (inflated at 10%) we find that in just 20 years, as little as 20 years, you will have outlayed on your timeshare purchase the sum of approximately $12,000. If you didn't own timesharing, and had just one week's holiday a year, you would have spent over that period $52,000. Incredible isn't it? You would have spent $40,000 more to have the same quality of holiday by renting it rather than owning it. Now we all know this of course, don't we? That's why we own our homes instead of renting them. But the very bottom line to all this is that in timesharing not only have you saved yourself $40,000 over the same period, but at the end of the day, on one hand all you have is a pile of receipts to light the fire with, but, on the other, you have a standard real estate title which you can sell, mortgage, borrow against, deed it to your children, give it away, let your friends use it, with all the freedom of a second home. Sound too good to be true?!! Well it is true. Just take the receipts from your last 10 year's holiday and see what you can sell them for in the market place!

How about the developer, what is in it for him? Several things.

First of all, he is in a position to be able to do a staged development which in comparison to a standard recreational home or hotel development, allows him to proceed on a much lower capital base than would otherwise be the case. He does of course face some rather extraordinary sales and marketing costs for you will appreciate that timesharing is essentially a consumer product somewhat similar to buying a can of beans off the supermarket shelf and cannot be compared to the sale of ordinary real estate. In a traditional real estate situation the developer has to make one sale to sell one house. In timesharing he needs to make as many as 52 sales in order to sell that same unit. By extrapolation of course, if he has a 20 unit development, he has to make 2,000 sales. We know for example, that in order to make those 2,000 sales, the marketer must make approximately 750,000 contacts. Extraordinary isn't it!! Also very expensive. However, from the developer's point of view he knows that he has a saleable product, one which he has broken down into small parcels that he knows are acceptable to the consumer. He therefore gets early cash flow and a full occupancy level.

Having now looked at timesharing from a variety of angles - why has it grown? How big is it? The following chart plots the country by country growth over the period 1975/1982.

WORLD PROPERTY TIMESHARE STATISTICS

Owners and Resorts

	1975	1980	1982
	Owners/Resorts	Owners/Resorts	Owners/Resorts
Europe	15,000/25	75,000/60	110,000/150
U.K.	(150/1)	(5,000/16)	(17,500/36)
Canada/ U.S.A.	10,000/80	270,000/425	425,000/600
Mexico	1,500/5	20,000/65	30,000/80
Caribbean	1,000/5	10,000/35	13,000/40
Central/ S. America	nil	8,000/10	10,000/15
Africa	*750/3*	2,000/40	17,000/18
Asia	35,000/50	74,000/103	120,000/250
Australasia	nil	360/2	5,000/26
	63,250/168	459,360/740	730,000/1,179

Source: TAG Research Data
Estimated resorts and ownership in projects currently either under construction, being marketed, or sold out

Let's turn our attention to what is happening to the hospitality and second home industry, in the United States.

With the impact of the recession, over the last few years, the hospitality industry as a whole, has been quite markedly hit. And, the interesting thing is that it has caused a re-appraisal in the major organisations as to really what they are in business to do. Those of you who have been in the development scene in New Zealand in the hospitality industry, will have long been aware of the difficulty developers have experienced in getting the major hotel chains to come into New Zealand. The reason was quite simple. All of these companies were interested only in a management contract over the hotel. None of them would put money into the project, and with a negative cashflow in the early stages of a hotel, investment money in New Zealand was pretty scarce.

Okay, so why did they recognise this? Well the bright boys for a long time have realised that to be in the hospitality industry generally means you are in three business areas. Food, beverages and lodgings. And that is not necessarily synomyous with property ownership. Why should it be? So, how do you preserve your control of those three areas while divesting yourself of property ownership? The innovative hoteliers now see timesharing as the answer. Three years ago I was fortunate enough to hear an address from a man whom I greatly admire by the name of Kemmons Wilson.

In 1947 Kemmons Wilson was a commercial traveller. His firm required him to drive from

Memphis, Tennesee, his home town, to New York. He put his wife and children in his car and went off on his business trip. Now in those days, roads were not as good as they are today, and this was a journey of several days to get to New York and back. He was so appalled at the quality of accommodation that the travelling family man had to suffer in the United States that upon his return to Memphis he sold his home, sold his car, got several friends to do the same, built a motor hotel and called it Holiday Inns. Today Holiday Inns ranks as the largest hotel chain in the world. Kemmons Wilson is Chairman of that Company. Three years ago, he stated publicly that he feels as bullish about timesharing as he did in 1947 about the hospitality industry. He then moved to set up a division in Holiday Inns which is called the Holiday Inns Club and the executive in charge of that division has a brief that every hotel room owned by Holiday Inns throughout the world, is to be sold in a timesharing mode. Further, although he was in retirement, because he believes this is the biggest growth industry that the world has yet seen, he has placed his personal fortune into timesharing. He has personally acquired a tract of land on Orlando, Florida, just four miles down the road from Disney World and he started selling a $125 million purpose built timeshare resort 12 months ago. This resort, Orange Lake Country Club, features 600 two bedroom villas, a 27 hole golf course, 14 tennis courts, a riding academy, and a 7000 seat tennis stadium. Kemmons Wilson stated that he believes that by the end of this century, the hospitality industry as we know it today, will be revolutionised. because of the large number of people who will be holidaying by means of their timeshare ownership. Now let us assume that a man as astute as Kemmons Wilson is only 10% right, you are looking at an enormous market and a business making dramatic inroads into the hospitality industry as we know it today.

Recently the Playboy Club International Group, in the United States, placed all their hotels into a timeshare mode and have formed the Playboy International Timeshare Club, on a similar basis to Holiday Inns. The Princess Hotel Group, a major chain of hotels in the Caribbean have also formed a timesharing division and have chosen to place all of their hotels in a timesharing mode under a similar nhilosophv as that propounded by Kemmons Wilson. Why are they doing it? There seem to be several reasons. and very good reasons for a hotel to move into timesharing. First of all, in the last few years these organisations have found that they simply cannot meet their financial objectives using present strategies. Secondly, they need to free up equity from properties in order to generate working capital to stay in their main business areas. Thirdly, they have to defend their market share and already 2.3% of the total hospitality market nlace in the United States has moved into timesharing. Fourth-Iv, they need to boost off-season occunancv and timesharing does that in a major way. Fifthly, to ensure the product life cycle by generating a finite timeshare market.

The most significant and very recent move into this area has been made by Westin Hotels. The Ilikai in Honolulu is owned by Westin Hotels which in turn is owned by the same holding company that owns United Airlines which as we all know, is the world's largest airline corporation. Westin have made the decision to devote its Yacht Harbour Tower of 374 rooms and condominium units of their 800 room hotel to timesharing basing it upon the strategy of the use of the primary destination resort without the need to substantially alter the packaging. They have stated publicly that they believe a hotel makes money by rendering service, and not from the ownership of property. Offering some timeshare units will allow Westin to generate revenue from the property as well. Interestingly enough, Westin's corporate relationship with United Airlines will be employed to offer pre-paid airline packages to bring prospects to the resort and to also link it into the timeshare ownership. Their inbound flights from the West Coast will generate traffic at the resort and the hotel package will help to fill up United Airlines seats. A prime example of mutual cooperation between the hospitality and transportation industry. Their programme of course, demonstrates how a large corporation can incorporate timesharing into its marketing plan by utilising available inter-related resources. Closer to home, in Australia's Gold Coast, the Chevron Hotel has converted one wing of 100 rooms to timesharing and in Fiji the Regent has set aside a number of rooms also for this purpose.

Finally, the American superstar and multi-millionaire, Wayne Newton, the man who has today taken over from Elvis Presley, stated at the 1983 Annual Timesharing Convention in New Orleans, in his key note address that he staked his total personal fortune in the acquisition of a $30,000,000 development at Tamiment in Pensylvania's Pokeno Mountains. This is a 2,200 acre multi unit timeshare project featuring golf courses, its own lake, tennis courts, recreation facilities, etc., and has been promoted directly in the name of Wayne Newton Resorts. The man is totally committed to timesharing to the point where his whole personal fortune has been staked in its success. Says Newton and I quote from his address:-

"I believe very strongly in the timeshare concept . . . my constant travelling and my involvement with the hotel industry made me aware of the skyrocketing costs of hotels; I'm firmly convinced that vacation ownership is the logical solution to halting vacation inflation and, at the same time, providing the consumer with a total quality vacation experience".

In marketing a timeshare project it must be borne in mind that one is essentially dealing with a consumer product that must be marketed as such, and not with traditional real estate. A rough rule of thumb in the industry is that for every dollar earned from sales, 40 per cent went into producing the product, i.e. the bricks and mortar, land, furnishings, landscaping etc. 40 per cent in sales, marketing and administration costs, and 20 per cent for profit, debt servicing and taxation (if you were clever enough to still make a profit after all that!) With this in mind, there are four major lead generation programmes used by marketers.

Firstly, direct mail. At the commencement of a sales programme this is the most effective as the marketer can make contact direct with the consumer profile he has identified from market research. It is however, expensive, and administratively demanding. Without going into detail a marketer can expect to make around 50/75 sales for every 100,000 mail shots sent out which convert into a total cost per week sold after allowing for fixed overheads, salespersons commissions, etc., to around $2000 per timeshare week sold.

Secondly, O.P.C.'s (Off Premises Contact). There are either booths located in high density traffic areas such as shopping malls, tourist spots etc., or by direct contact with people on a pavement or through "take-one" stands in restaurants, car rental agencies, etc. In all cases you offer some form of premium or inducement to visit your project. Again very demanding administratively and high cost, especially as the leads are totally unqualified in any way. In order to make just 30 weeks of sales per month from this lead generation method, you would need a combined, O.P.C., sales, administration, and supervisory staff of 20 people. Plus of course, premises and the related overheads. Are you now beginning to understand the difference from a traditional real estate sale?

Thirdly, newspaper and magazine advertising. The latter can be aimed to capture the attention of specific target markets and can be quite effective whereas the former being in the nature of a "shotgun" approach results in a high proportion of responses (up to 45 per cent) being totally worthless. On an average you can expect your direct advertising cost, when using these methods, to average around $500/$750 per timeshare week sold.

Fourthly, owner referrals and reloads. This is the cheapest and most effective form of all marketing programmes as the only cost is a relatively inexpensive premium to encourage early buyers to either purchase additional weeks or to give you the names of friends and relatives whom they have enthused about their purchase. These are highly qualified leads and an excellent closing ratio can be expected. The final cost is low by comparison but you need to have already created an owner base of several hundreds before you can effectively run a referral programme. Even with a relatively small 12/15 unit project you would have expended around $500,000 "priming the pump" through the various programmes detailed above before being able to capitalise on your owner base, and of course, although running at a lower level, you would still need to continue with all the other lead generation programmes at intervals.

Exchange networks for timesharing were the answer to the burgeoning industry's first critical question: Who would want to vacation in the same place every year? Even those who found timesharing most intriguing as a real estate sales concept asked that question. The answer is now the single most important factor in consumer purchases of timesharing. While the fact that a consumer can buy a week in a prime resort (or urban) location for the price of a new car is appealing, his ability to exchange that week for another virtually worldwide can be the deciding factor in his purchase.

The oldest exchange network, Resort Condominium International (R.C.I.), based in Indianapolis, was founded in 1974. By 1981, R.C.I. had more than 600 resort locations in 31 countries and served some 150,000 individual timeshare owner-members. In 1976, Interval International headquartered in Miami, became the second exchange network and had expanded to about 300 resort locations around the world and 109,000 individual members by 1981. In 1980, a third exchange network was begun, followed closely thereafter by three more exchange organisations in 1981 and another in early 1982.

R.C.I. and I.I. together have affiliated resorts in virtually every state in the U.S., as well as Canada, Europe, the Far East, the Caribbean, Mexico, South America, Africa, Australia and New Zealand. Thus, timesharing was able to promise the "world" - and deliver it through the exchange mechanism. Whether timesharing would have achieved its current success without the exchange services is a question few care to ask. Nearly every new timeshare project still seeks affiliation with an exchange network. Several of the largest timeshare companies with multiple locations operate their own intracompany exchange and also affiliate with one of the independents.

Since R.C.I. and I.I. are both large enough to be highly selective and to have the problem of geographical balance, this has no doubt encouraged the formation of new exchange groups. Even the most beautiful timeshare resort may not be admitted to an exchange service if the service already has sufficient inventory in a particular location to meet the demands of its consumer members. Other projects simply have not met R.C.I.'s or I.I.'s strict standards. Aside from other standards for legal documents, marketing, and management that a resort must meet to affiliate with an exchange network, such considerations as location, unit size, seasonality, and amenities play an important role. Both major exchange networks thoroughly inspect the resort properties before acceptance is final.

Both R.C.I. and I.I. concentrated initially on making the exchange system work. Now they have expanded beyond trading - although that will always remain their most important function - into full scale travel and vacation services. Both groups conduct seminars and provide travel assistance, rental car discounts, publications, "lost luggage" services, and a host of other helps to make the timeshare traveller's journey more enjoyable. Promotional aids for affiliated resorts, including films and video tapes, are also available.

Each group is also concerned about how its exchange is sold to consumers since misrepresentations (or simple misconceptions) are damaging not only to the exchange and individual resort, but to the industry as a whole. The exchange services have been particularly concerned that salespeople have represented exchanges as "guaranteed" (they are not) or that timeshare buyers can easily "trade up" (they cannot). While in some systems a trade up to a higher season or

larger unit is not impossible, it is usually difficult and rarely achieved. Timeshare buyers whose primary goal is to exchange should purchase units in the most desirable seasons and sizes to facilitate future trades. An owner of a prime unit in high season should have greater demand for his week in the exchange programme, and therefore a greater opportunity to trade for a similar week in a new location.

While the exchange services have performed admirably, there have been a few problems. R.C.I. has found some of its resort affiliates balked at contract renewal when the exchange service reclassified weeks for exchange purposes from a peak season designation to a lower season because of lack of demand shown in computer records. Such changes affected only new timeshare buyers; previous buyers retained their original season designations. In the summer of 1981, Interval International attempted to suspend American International Vacations (A.I.V.) - a multilocation timeshare company - from membership in the exchange because of alleged maintenance problems. A.I.V. sued I.I. for breach of contract and obtained a temporary restraining order preventing the suspension. Interval International countersued, alleging the maintenance failure and failure to forward individual consumer membership fees to Interval, among other things. Both suits were settled in late 1981 to the relief of the timeshare industry. The settlement provided for court review of the provisions and a gradual phase-out of A.I.V. from I.I. with the entire relationship to terminate in 1986. However, should the other settlement provisions work satisfactorily for both A.I.V. and I.I., continued affiliation may be considered.

Since so much of timesharing's success has been tied to exchange performance, these kinds of problems are of great concern to the industry as a whole, as well as to state and local regulatory officials worldwide. To date, such problems have been minor which is indicative of the increasing professionalism all facets of the industry have sought and for the most part, achieved success.

It is a credit to R.C.I. and I.I. and their affiliated timeshare resorts that there have been so few problems in a period of astounding industry growth. Both would admit - to say the least - that they have been highly competitive. However, exchange has worked. Whatever other services any exchange programme may provide, exchange performance is the ultimate test. The timesharing industry has now grown large enough to admit new exchange services. Their success, too, will depend upon performance.

Editor's Note:

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Assessing the Fee Timeshare Property

by Kathleen Conroy

Kathleen Conroy is a principal in Resort & Urban Property Appraisers, an affiliate of the National Appraisal Company, and is author of the book "Valuing the Timeshare Property" published by the American Institute of Real Estate Appraisers.

Introduction

Timeshare properties are organised under either a fee or a nonfee legal format. To date, most nonfee timeshare properties have been assessed and taxed in an equitable manner. However, real estate assessment procedures currently being applied to fee timeshare properties vary considerably throughout the nation, with no one universal or standardised methodology. One particular methodology gaining considerable attention and use by assessing authorities significantly overstates the real estate value and corresponding tax assessment of fee timeshare units by failing to recognise the substantial amount of non-real estate components inherent in the purchase and ownership of a timeshare. This article will analyse the above assessment methodology and suggest a logical and acceptable appraisal procedure for establishing real estate tax assessments for fee timeshare properties.

Timeshare Concept

The timesharing of real estate is a relatively simple concept. An individual pays for the time he purchases regarding the use of a condominium or hotel unit and also shares proportionately in the yearly cost of property operation and maintenance at the timeshare project. Most timeshare properties are located within either a destination or a regional resort' area, and there is usually a minimum time-purchase requirement of one week. Timesharing is frequently referred to as an extension of the condominium concept; whereas a building may be divided into 100 condominium units, one condominium or timeshare unit is, in turn, further divided into 52 weeks. A one-week ownership interest in a unit is referred to as a timeshare.

Normally, a condominium or hotel unit will have available for timeshare purchase no more than fifty weeks out of a year, the remaining two or more weeks being set aside for any necessary repairs or upgrading to be performed on the unit. Thus there is usually the potential for a maximum of fifty different timeshare purchasers occupying one unit each year. In reality, the number of different purchasers may be less than fifty, since many individuals will purchase two or three weeks (timeshares). The duration of the use of a timeshare depends upon the ownership interest or legal rights purchased.

Timesharing is frequently described as purchasing tomorrow's vacation at today's prices. Given an inflationary economy and the fact that resort rental rates have been increasing at 10-20 per cent per year, the purchase of a timeshare is a hedge against inflation. The ownership of a timeshare represents a method of guaranteeing that vacation accommodations will remain both affordable by, and available to, the timeshare purchaser.

A typical timeshare unit contains approximately 650-1,000 square feet (although size will vary depending upon project location) and is either a studio or a one- or two-bedroom design. The majority of units are professionally decorated and furnished and complete with all accessories (such as blankets, pillows, towels, silverware, dinnerware, pots and pans, cooking utensils, and so forth), so that a timeshare purchaser literally needs to bring nothing beyond his personal effects.

In addition to the accommodations, timeshare properties normally offer a wide variety of recreational amenities both on site and in close proximity to the project. According to industry surveys, swimming and tennis tend to be basic on-site recreational activities, although many projects may also offer skiing, golf, horseback riding, and other sports.

Timeshare Ownership Interests

Timeshare properties are organised under either a fee or a nonfee legal format. The purchase of a fee timeshare conveys a fractional fee ownership interest in real estate. The duration of the use of a fee timeshare is for perpetuity. Thus the timeshare purchaser receives all the rights inherent in his fractional ownership of the real estate, such as the right to sell, lease, or bequeath the interest. The purchase of a nonfee timeshare does not transfer an ownership interest in the real estate but merely conveys a use right in the property. A nonfee timeshare purchaser receives only those rights specifically granted to him by the timeshare developer. Typically, the rights transferred would involve the right to use and occupy a timeshare unit and the timeshare premises. The duration of the right to use a nonfee timeshare normally ranges from fifteen to forty consecutive years.

1 A destination resort is frequented year-round, the majority of visitors coming from a wide geographical area and arriving by air transportation. A regional resort exhibits a distinct seasonality and is usually located within a three-hour driving radius of a major metropolitan area.

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Thus, at a fee timeshare project, the developer/owner is transferring his fee-simple interest in the real estate, thereby divesting himself of any further interest in the property. Consequently, each timeshare purchaser becomes a fractional owner in the timeshare property, the operation of which is administered by a timeshare owners' association. At a nonfee timeshare project, the developer remains the fee owner of the real estate, subject to the occupancy rights of the timeshare purchasers during the term of their interests.

Assessing and Taxing Timeshare Properties

Nonfee Timeshare Properties

For real estate assessment and tax purposes, the developer of a nonfee timeshare project, as the fee-simple owner of the property, will receive one tax bill for the entire complex. Current experience within the timeshare industry indicates that most nonfee timeshare properties have continued to be assessed and taxed in an equitable manner. Hotel properties, for example, represent a large portion of nonfee timeshare projects. Hotels that have converted to a timeshare operation have experienced either no or relatively small increases in their real estate taxes, such increases as occur often resulting from various physical design changes within the hotel or additions to it, undertaken as part of the conversion process.

For nonfee timeshare projects, the personal property assessment and tax, if applied by the local taxing authority, typically will show the greatest increase. In this case, the actual tax increase normally is attributed to the increase in the number and dollar value of personal property items existing within each timeshare unit that were not present in the prior hotel operation. Examples of such items would include all or some of the following, depending upon the particular project:

1. The installation of kitchens and kitchen appliances such as refrigerators, ranges, ovens, dishwashers, and garbage disposals.
2. The increased amount and overall quality of timeshare unit furniture such as complete living-room sets, upgraded bedroom furniture, balcony furniture, and so forth.

In summary, at most nonfee timeshare conversion projects the real estate assessment and tax remain basically unchanged, the personal property assessment and tax, if applied, increasing to reflect the addition and/or upgrading of nonrealty items within the property.

Fee Timeshare Properties

In theory, all owners in a fee timeshare project should receive individual tax bills for their particular interests in the property. Since the number of owners of a fee timeshare property may be substantial, many timeshare owners' associations will accept one overall tax bill and proceed to distribute the tax among the timeshare owners. This action helps to maintain expediency within the local taxing process and prevent any unnecessary increases in the recording and servicing costs incurred by the local taxing authority.

In contrast to the experience of nonfee timeshare projects, fee timeshare properties have been subject to a variety of real estate tax assessment methodologies, with each method predicated largely on the local tax assessor's knowledge and understanding of the timeshare concept. Certain counties in Florida and Colorado, where a considerable number of timeshare projects are located, either have begun to consider or have actually initiated an assessment procedure for fee timeshare properties based on using the sale price of each timeshare interest as the real estate market value of the timeshare.

The summation of the individual sales prices for the fifty timeshares comprising one unit would then represent the real estate market value of the timeshare unit. In turn, the summation of the real estate market values of all the timeshare units would represent the total real estate market value of the timeshare property. The latter figure is now the basis upon which the assessment and corresponding tax are derived. By using the sale price of a timeshare as the "building block" on which the tax assessment is calculated, the above methodology has substantially overstated the real estate value of both the individual timeshare units and the entire property.

EXAMPLE: SUBJECT TIMESHARE PROJECT

Location

The subject property is a newly constructed timeshare project situated on a medium-sized lake that is used for recreational purposes. The timeshare units are located approximately half a mile from the Gulf of Mexico and are designed in a townhouse style. All the timeshare units are contained within two separate building clusters. There are five timeshare units (or townhouses) per building cluster. Together, the two building clusters contain 15,500± gross square feet.

Type of timeshare

Fee.

Number of timeshare units

Ten.

Unit mix

Five two-bedroom units.
Five one-bedroom units.

Description of timeshare units

All five two-bedroom timeshare units contain 1,600 square feet and consist of a living room, dining area, kitchen, two bedrooms, two baths, and adequate storage space. Three of the units have a view of the lake; the remaining two units lack any particularly significant view.

All five one-bedroom timeshare units contain 1,200 square feet and consist of a living room, dining area, kitchen, one bedroom, one and one-half baths, and adequate storage space.

As in the case of the two-bedroom unit mix, three of the one-bedroom units have a view of the lake, the remaining two units lacking any particularly significant view. As is typical for the area, all the land associated with the ten timeshare units will be commonly owned by the timeshare owners.

General comments

The general configuration and layout of all ten timeshare units is considered to be very functional. The construction quality of the units and project per se is typical for the area. The project offers the following recreational amenities: lake frontage, in-ground pool, and two tennis courts.

Table 1
FEE TIMESHARE PRICING SCHEDULE

	One-Bedroom Unit			Two-Bedroom Unit		
Season	No. of Weeks in Season	One-Week Timeshare Price	Gross Sale Price	No. of Weeks in Season	One-Week Timeshare Price	Gross Sale Price
Peak	4	$7,500	$30,000	4	$10,000	$40,000
Winter	23	5,200	119,600	23	7,000	161,000
Summer	23	3,800	87,400	23	5,000	115,000
Total	50		- $237,000	50		- $316,000

The seasons and corresponding one-week timeshare pricing schedules for the one- and two-bedroom units delineated by a professional market analysis are presented in table 1. The local taxing authority is now accepting the $316,000 and $237,000 gross sale prices of the one- and two-bedroom timeshare units as the real estate value of each unit and the summation of the unit prices ($316,000 X 5 = 51,580,000 plus $237,000 X 5 $1,185,000, or $2,765,000) as the real estate market value of the entire property. Assuming, for simplicity, that assessments are based on 100 percent of market value, application of the above methodology has resulted in a total assessment of $2,765.000 for the timeshare property.

As will be discussed, the real estate value of the subject timeshare units have been significantly overstated by use of this methodology. This article will propose a standardised and acceptable appraisal procedure for establishing the real estate tax assessment of fee timeshare properties and demonstrate its use by an illustration utilising the subject timeshare project described in the previous pages.

Timeshare Sale Price

The total of the gross sales prices of the fee timeshare units in a timeshare project is clearly not the market value of the real estate. Since the sale price of a one-week timeshare represents the "building block" upon which the real estate assesment of a timeshare unit, and subsequently of the timeshare property, is being derived and quantified, the composition of the sales price of a timeshare will be analysed in detail.

The sale price of a timeshare is comprised of the following three items: (1) the value of the intangible benefits associated with the timeshare concept, (2) the pro rata value of the personal property, and (3) the fractional value of the real estate.

Intangible Benefits

The value of intangible benefits refers to the premium in the timeshare purchase price paid by the buyer for the pricing affordability and convenience inherent in the timeshare concept. Today, with increased housing, financing, and carrying costs, the purchase of a vacation residence has simply become unaffordable for most individuals. Timesharing has provided a viable alternative to second-home ownership in making luxury accommodations available to a broader base of the population by enabling an individual to pay only for the actual time that he intends to use a timeshare unit. Consequently, a premium has been paid in the timeshare sale price for the ability to purchase a fractional interest in a vacation accommodation.

The convenience factor inherent in the timeshare concept refers to the buyer's assurance of his accommodations during the time period he has purchased. This convenience is particularly significant in highly frequented vacation areas where accommodations are difficult to obtain. Last, the intangible benefit category also encompasses the premium paid by the buyer for being able to hedge against inflation by purchasing future vacations in today's dollars.

Personal Property

Although the amount and dollar value may vary depending upon project location and market orientation, a sizable amount of personal property is contained within a timeshare unit. Timeshare unit personal property typically includes household appliances, furniture, and unit accessories. The sale price of a timeshare includes the pro rata value of the personal property existing in the unit and available to the timeshare purchaser.

Real Estate

The fractional value of the real estate is the one component of the sale price that should be the "building block" on which the real estate assessment for fee timeshare projects is derived. The tax assessor and appraiser are now confronted with the problem of equitably quantifying that portion of the purchase price attributable to the value of the real estate and ultimately estimating the real estate value of the timeshare property.

Proposed Assessment Methodolgy

In establishing the real estate value of fee timeshare units, the appraiser should be able to use all three approaches to value, although this may vary depending on the particular project. Ostensibly each valuation approach has its own strengths and weaknesses; however, it is the author's opinion that the cost and market data approaches are the most expedient valuation method for establishing equitable tax assessments. The income approach is the preferred approach for ascertaining the feasibility of a proposed development or estimating the present value of the property as a timeshare operation and involves a complete market analysis and a detailed discounted cash-flow analysis.

This procedure involves establishing the pricing and probable absorption of the timeshares and forecasting the timing and dollar amount of the revenues (cash inflows), expenses (cash outlfows), and resulting pre-tax net cash flows to be received by the equity position in the timeshare property over the projected sellout period. Each of the projected pre-tax net cash flows to equity is then discounted to a present-value estimate at an equity yield rate reflecting both the anticipated equity benefits and the overall risk inherent in the timeshare project. The summation of the individual discounted values represents an estimate of the present equity value in the property as a timeshare operation. In the case of conversion properties, the current outstanding mortgage balance, if any, on the existing property would then be added to the total present-value estimate of the property as a timeshare operation?

For tax assessment purposes, the total value of the personal property existing within the project must be deducted from the total property value estimate resulting from the application of the income approach in order to arrive at an estimate of the property's real estate value. Thus, as stated above, use of the income approach for large-scale timeshare tax assessment purposes typically will prove to be too costly and time-consuming to be used by the majority of assessment districts. For this reason, the remainder of this article will focus on the use of the cost and market data approaches in establishing equitable timeshare tax assessments.

Cost Approach

If thoroughly and properly applied, the cost aproach can be an effective and expedient valuation tool for timeshare tax assessment purposes. The cost approach deals exclusively with real estate, thereby eliminating the possibility that any personal property or intangible elements have been included in the value estimate. The approach also allows for the separate analysis of the land and improvement components of the real estate.

The largest amount of subjectivity inherent in the application of the cost approach is in the estimation of accrued depreciation. In the case of newly constructed timeshare projects, the actual dollar amount of depreciation may be nominal or virtually non-existent. From a pragmatic standpoint, those timeshare developers whose projects are currently being assessed on the basis of the gross timeshare sale price would be more than willing to accept an assessment based on the summation of the reproduction-cost-new estimate of the improvements and the land-value estimate.

The estimate of accrued depreciation, if or when charged off, could be based on some measure mutually acceptable to both the assessor and the timeshare owners, such as an effective age/economic life ratio. If the depreciation method to be used by the assessor should prove unacceptable to the developer or the timeshare owners' association, the association should authorise an engineering study performed by a third party acceptable to the tax assessor for the purpose of quantifying the amount of accrued depreciation. The cost of the study, when prorated among several hundred timeshare owners, would be small compared with the ultimate implementation of a more equitable assessment methodology.

An illustrative example of the use of the cost approach in estimating the real estate value of the subject timeshare units for tax assessment purposes is presented in table 2.

Table 2
SUMMARY OF COST APPROACH: SUBJECT TIMESHARE PROJECT

Replacement cost new of buildings:* 15,500 gross square feet at $65 per square foot		$1,007,500	
Less accrued depreciation: 2.5% (I year/40 years) of $1,007,500		25,200	
Depreciated value of buildings			$982,300
Replacement cost new of site improvements:			
Pool and deck area	$25,000		
Tennis courts and accessories	50,000		
Landscaping	50,000		
Total		$125,000	
Less accrued depreciation 6.7% (1 year/15 years) of $125,000		8,300	
Depreciated value of site improvements			$116,700
Market value of land under its highest and best use as a timeshare project			174,000
Total real estate value estimate for timeshare project			$1,273,000

* Includes all soft costs and entrepreneurial profit. Depreciation has been estimated by use of an effective age/economic life ratio.

Market Data Approach

When the market data approach is used, an analysis of recent sales of single-ownership condominium units will provide the best basis of comparison in relation to the individual timeshare units. The comparable condominium sales should be reduced to a "sale price per square foot of livable area" unit basis. The latter unit ifgure of each comparable condominium sale will then be market-adjusted upward or downward in relation to the subject timeshare unit in terms of time of sale, project location, unit size and configuration, construction quality, available recreational amenities, and any other pertinent or distinguishing factors.

The adjusted sales prices per square foot of livable area of each type of condominium analysed will suggest a value range within which the value estimate of the subject timeshare units should fall. Obviously, the appraiser will arrive at a final value estimate for a particular timeshare unit on the basis of both his interpretation of the quality and quantity of the data analysed and his overall judgment.

2 A discounted cash-flow analysis is best utilised by timeshare developers, condominium and hostelry owners, investors, or lenders. For further information see Kathleen Conroy, "Valuing the Timeshare Prope y" (Chicago: American Institute of Real Estate Appraisers, 19t81).

Thus, the use of the market data approach in estimating the real estate value of a timeshare unit will be most beneficial and significant when the timeshare development is located within a mature and active condominium market, thereby ensuring that there will be sufficient sales activity and data to warrant the proper application of the approach. Should such a market be available to the appraiser, the timeshare units should be valued individually or, if the units of each type are virtually identical and/or highly similar in most respects, the timeshare units may be grouped according to unit type (i.e., studio, one bedroom, two bedroom, and so on), with one "average" value estimated for each type of unit. The summation of the estimated values of the individual units can then be compared with the value estimate obtained from the application of the cost approach in arriving at a final value estimate of the project for tax assessment purposes.

Several potential problems associated with the use of the market data approach are as follows:

1. The appraiser must be certain that no intangible or personal property value was included in the sales prices of the comparable condominium units. Since we are estimating the real estate value of a timeshare unit, comparable sales should reflect only real estate value (i.e., "apples" must be compared with "apples").
2. The development of market-supported adjustment factors for time, location, and physical characteristics (i.e., size, construction quality, recreational amenities, and the like) to be applied to the comparable sales data may be both technically difficult and time-consuming. Unsupported market adjustments will lessen the overall credibility of the value estimates provided by the market data approach.
3. The market data approach does not allow for the separate analysis of the land and improvement components of the real estate. Although the condominium market will provide the best basis of market sales comparison in relation to timeshare units, theoretically the fee ownership of a condominium and the combined fee ownership of a timeshare unit are not identical.

In cases of an active timeshare market, the net return to the land in any successful timeshare development typically will exceed the corresponding net return that would be available if the same property were developed as a condominium project. Accordingly, given the same property, the underlying land value will be greater if a timeshare development is assumed as opposed to a condominium development. Thus the use of the market data approach in estimating the value of a timeshare unit will not explicitly consider or reflect any potentially higher per-unit land value that may be allocable to the timeshare units. Despite this drawback, the market data aproach, if properly applied and used in conjunction with the cost approach, will provide the appraiser with a reasonable range of value estimates from which the real estate value of a timeshare unit for tax assessment purposes may be estimated.

An illustrative example of the use of the market data approach in estimating the real estate value of the subject timeshare units for tax assessment purposes is presented on the following pages. For simplicity, the timeshare units have been grouped according to unit type, with one value estimated for each *type* of unit. The grouping of unit types resulted in the following four categories: (1) one-bedroom unit with view, (2) one-bedroom unit without view, (3) two bedroom unit with view, and (4) two-bedroom unit without view.

CONDOMINIUM SALE COMPARABLES

1-4: WATERFRONT VILLAS

Project description

The Waterfront Villas Condominium is located on the Gulf of Mexico approximately fifteen miles north of the subject property in a superior location. This condominium project was a rental conversion and began sales one and a half years ago. The project's unit mix consists of studios and one-bedroom and two-bedroom units. The one- and two-bedroom units are generally comparable to the respective units offered at the subject timeshare developmnt. The following condominium sales within the project are considered most comparable to the subject timeshare units.

Comparable condominium unit sales

Sale 1

Unit 1A.-A one-bedroom unit with a view of the gulf. The unit contains 1,200 square feet of living area and has the same room mix as the one-bedroom timeshare units. The unit sold three months ago for $110,000, or $91.67 per square foot.

Sale 2

Unit 3B.-A one-bedroom unit identical in all respects with unit IA, but having no gulf view. The unit sold six months ago for $106,000, or $88.33 per square foot.

Sale 3

Unit 2A.-A two-bedroom unit with a view of the gulf. The unit contains 1,600 square feet of living area and has the same room mix as the two-bedroom timeshare units. The unit sold three weeks ago for $145,000, or $90.63 per square foot.

Sale 4

Unit 2B.-A two-bedroom unit identical in all respects to unit 2A, but having no gulf view. The unit sold two months ago for $130,000, or $81.25 per square foot.

Comparative comments and adjustments

The condominium units at the Waterfront Villas are older than the subject timeshare units and are of a slightly inferior construction qual-

ity. Market research indicated that an upward adjustment of the unit prices by 5 per cent is appropriate in order to account for this difference. The layout and design of each of the comparable condominium units are functionally inferior to those of the timeshare units. Market research indicates that an additional upward adjustment of the unit prices by 5 per cent would be appropriate in accounting for this difference. A size adjustment was not necessary, since the condominiums are the same size as the respective timeshare units. The overall location of the Waterfront Villas is superior to that of the timeshare development; market activity indicates an appropriate downward locational adjustment of the condominium unit prices of 10 per cent. Finally, recreational amenities available to the condominiums are also superior to those available to the timeshare units. The adjustment of 10 per cent has been utilisd in reflecting this difference.

CONDOMINIUM SALE COMPARABLES 5-8: GULFVIEW TOWERS CONDOMINIUM

Project description

The Gulfview Towers Condominium project is two years old and is located on the beach a quarter-mile to the south of the subject property. The project is of first-class quality and luxury status. A private health club is available for building occupants only. The unit mix includes studios and one-bedoom and two-bedroom bilevel units. The one- and two-bedroom units are generally comparable to the respective timeshare units. The following condominium sales within the project are considered most comparable to the subject timeshare units.

Comparable condominium unit sales

Sale 5

Unit 4E.-A one-bedroom unit with a view of the gulf. The unit contains 1,350 square feet of living area and has the same room mix as the one-bedroom timeshare units. The unit sold two weeks ago for $150,000, or $111.50 per square foot.

Sale 6

Unit 3F.-A one-bedroom unit with no gulf view, containing 1,375 square feet of living area. The unit has a room mix similar to that of the one-bedroom timeshare units and sold three months ago for $140,000, or $101.82 per square foot.

Sale 7

Unit 4B.-A two-bedroom unit with a view of the gulf. The unit contains 1,850 square feet of living area and has the same room mix as the two-bedroom timeshare units. The unit sold four weeks ago at $203,500, or $110 per square foot.

Sale 8

Unit 2C.-A two-bedroom unit with no view of the gulf, containing 1,600 square feet of living area. The unit has a room mix similar to that of the two-bedroom timeshare units and sold one week ago for $182,000, or $113.75 per square foot.

Comparative comments and adjustments

The condominium units at Gulfview Towers are greatly superior to the subject timeshare units in terms of construction quality. Furthermore, all the individual units are superior in terms of design and configuration. Market research indicates that a downward adjustment of the condominium unit prices by 10 per cent for the superior construction quality and an additional 10 per cent for the superior unit conifguration is appropriate. A downward market adjustment of 5 per cent is also deemed proper for the superior recreational facilities available at the Gulfview Towers. An upward adjustment of 10 per cent was applied to comparable sale 7 for its larger-sized living area. The overall location of the Gulfview Towers is superior to that of the timeshare development; market activity indicates an appropriate downward location adjustment of the condominium unit prices of 10 per cent.

CONDOMINIUM SALE COMPARABLES 9-12: REGENCY CONDOMINIUMS

Project description

The Regency Condominiums are located on the Gulf of Mexico and contain a small pleasure boat marina in addition to the more conventional recreational facilities. The property is ten years old and is an extremely well-maintained, ifrst-class condominium. The project is considered superior in location to the subject timeshare development and equivalent in location to the Gulfview Towers. The unit mix consists of both one- and two-bedroom apartments. The following condominium sale properties within the project are considered most comparable to the subject timeshare units.

Comparable condominium unit sales

Sale 9

Unit 7A.-A one-bedroom unit with a view of the gulf. The unit contains 1,350 square feet of living area and has a room mix similar to that of the respective timeshare units. The unit sold three weeks ago for $133,500, or $98.89 per square foot.

Sale 10

Unit 5E.-A one-bedroom identical in all respects with unit 7A, but having no view of the gulf. The unit sold six weeks ago for $120,000, or $88.89 per square foot.

Sale 11

Unit 3D.-A two-bedroom, 1,850-square-foot unit with a view of the gulf. The room mix of the condominium is generally similar to that of the respective timeshare units. The unit sold

ifve weeks ago at $183,000, or $98.92 per square foot.

Sale 12

Unit 2E.-A two-bedroom unit, identical with unit 3D, except that it has no view of the gulf. The unit sold four weeks ago at $162,000, or $87.57 per square foot.

Comparative comments and adjustments

The construction quality of the Regency Condominiums is superior to that of the subject property. Market research indicates a downward adjustment of the condominium unit prices of 5 per cent to be appropriate. The design and configuration of the units are also superior to those of the subject timeshare units; consequently, a downward market adjustment of 5 per cent has been applied. An upward adjustment of 10 per cent was applied to comparable sales 7-12 for the larger-sized living area of each in relation to the respective timeshare units. Recent market activity suggests a locational adjustment of 10 per cent. Last, a downward market adjustment of 5 per cent is deemed proper for the superior recreational facilities available at the Regency.

CONDOMINIUM SALE COMPARABLES

13- 16: BROADACRES

Project description.

Broadacres is a first-class condominium adjacent to an 18-hole golf course. It is approximately an eighth of a mile north of the subject property. The property is considered generally equivalent to the timeshare development in terms of location, and offers studios and one- and two-bedroom units. The following condominium sales within the project are considered most comparable to the subject timeshare units.

Comparable condominium unit sales

Sale 13

Unit 5B.-A one-bedroom unit with a view of the golf course. The unit contains 1,150 square feet of living area and has a room mix similar to that of the one-bedroom timeshare units. The unit sold six months ago for $85,000, or $73.91 per square foot.

Sale 14

Unit 2F.-A one-bedroom unit identical in all respects with unit 5B but having no view of the golf course. The unit sold five weeks ago for $82,000, or $71.30 per square foot.

Sale 15

Unit 4D.-a two-bedroom, 1,650-square-foot unit with a view of the golf course. The room mix of the condominium is generally similar to the respective timeshare units. The unit sold three weeks ago at $130,800, or $79.20 per square foot.

Sale 16

Unit 3F.-A two-bedroom unit, identical with unit 4D, except that it has no view of the golf course. The unit sold six weeks ago for $116,700, or $70.73 per square foot.

Comparative comments and adjustments

The construction quality of Broadacres is equivalent to that of the subject property. The condominium units are slightly inferior in design and configuration to the respective timeshare units. Market research indicates that an upward adjustment of the condominium unit prices of 5 per cent is appropriate. The recreational facilities available at Broadacres are equivalent to those at the timeshare development.

Tables 3 and 4 present a summary of the comparable one- and two-bedroom condominium unit prices along with the appropriate market adjustments to be applied when comparison is made with the subject timeshare units. An estimate of the real estate value of each of the four types of timeshare units will then be established from the application of the market data approach to value.

On the basis of the preceding market research and comparative sales analysis, the appraiser has arrived at the value conclusions for each type of timeshare unit as summarised in tables 5 and 6.

Table 5

SUMMARY OF MARKET DATA APPROACH TO VALUE: SUBJECT TIMESHARE PROJECT

Type of Timeshare Unit	Square Feet of Livable Area/Unit	Value Estimate/ Square Foot	Total Value Estimate/ Unit
One-bedroom with view	1,200	$84.00	$100,800
One-bedroom without view	1,200	75.00	90,000
Two-bedroom with view	1,600	83.00	132,800
Two bedroom without view	1,600	74.00	118,400

Table 6

SUMMARY OF TOTAL REAL ESTATE VALUE ESTIMATE OF SUBJECT TIMESHARE PROJECT BY THE MARKET DATA APPROACH

Type of Unit	No. of Units	Total Value Estimate/Unit	Total Value
One-bedroom with view	3	$100,800	$302,400
One-bedroom without view	2	90,000	180,000
Two-bedroom with view	3	132,800	398,400
Two-bedroom without view	2	118,400	236,800
Total real estate value estimate for timeshare project			$1,117,600
		Rounded to	$1,120,000

Reconciliation of Value Estimates

Use of the cost and market data approaches to value in estimating the real estate value of the subject timeshare project for tax assessment purposes resulted in value estimates of $1,273,-000 and $1,120,000, respectively, or a difference of $153,000 or 13 per cent. As previously discussed, each valuation aproach has various strengths and weaknesses; thus, the final value estimate should be based on the appraiser's overall judgment and interpretation of the quality and quantity of the data available under each approach.

In the appraisal of the subject timeshare project, the market data aproach could be well utilised because of the presence of a highly developed condominium market. However, because the market data approach does not allocate or reflect the potentially higher per-unit land value of the subject timeshare project, the resulting value estimate can be considered as representing the lower limit of the project's real estate value.

Because of the newness of the subject improvements, the cost approach was also well utilised, with the estimate of accrued depreciation, although subjective, resulting in a relatively minor impact on the final value estimate. In this particular case, however, the appraiser encountered a large degree of subjectivity in estimating the value of the land. After taking this and all other pertinent factors into consideration, the appraiser estimated the real estate value of the subject timeshare project for tax assessment purposes at $1,250,000.

Comparison of Proposed Methodology and Use of Gross Sales Price

Table 7 compares the final real estate value estimate produced by the use of the proposed methodology with the value estimate produced by the use of the gross sale price methodology. For illustrative purposes, several assumptions have been made and are presented in the table. The comparison clearly demonstrates how the use of the gross sale price will significantly overstate both the real estate value and the tax burden to be borne by the subject timeshare project.

Allocating the Tax Burden among Timeshare Owners

Once an equitable real estate value and corresponding tax assessment have been estimated for a timeshare property, the corresponding tax burden must be properly allocated among the timeshare owners. In many timeshare projects there will be two or more unit designs (i.e., studio, two-bedroom, and so on) available to potential timeshare purchasers. Obviously, real estate values will differ among various unit types. In addition, when the dimension of time is considered, the real estate value of various timeshares within the same unit will differ on the basis of the actual time period owned.

For example, the real estate value of a one-week timeshare owned in a two-bedroom unit during the peak season in Vail, Colorado, is relatively more valuable than the real estate value of a one-week timeshare owned in the same unit during the summertime.

The real estate assessment and tax burden estimated for a timeshare property can be equitably allocated among the timeshare owners, under the assumption that the sum of the real estate values estimated for each timeshare interest typically will not exceed the total real estate value of the timeshare property (i.e., the sum of the parts will not exceed the value of the whole). For illustrative purposes, the real estate assessment and tax estimated for the subject timeshare project presented in the previous table will be allocated under the following assumptions:

A. The local taxing authority sends one overall tax bill to the timeshare owners' association, which then proceeds to allocate the tax burden.

B. The local taxing authority individually assesses and taxes each timeshare owner.

The method of allocating the tax burden under assumption A will be demonstrated first (tables 8 and 9), followed by the method to be used under assumption B (table 10).

Table 7

COMPARISON OF REAL ESTATE TAXES: PROPOSED METHODOLOGY VERSUS GROSS SELLOUT PRICE

	Proposed Methodology	Gross Sellout Price
Total assessed value of real estate (assuming 100% of market value)*	$1,250,000	$2,765,000
Tax rate	$13 per $1,000 of assessed value	$13 per $1,000 of assessed value
Real estate taxes	$16,250	$35,945
Average real estate taxes per timeshare (based on 500 weeks)	$32.50	$71.89

Additional yearly tax burden resulting from use of gross sellout price = $19,695

* Note that the gross sellout price produced a real estate value estimate 121 percent above that resulting from the proposed methodology.

Table 8

TAX ALLOCATION: ASSUMPTION A

One-Week Timeshare Price/ Gross Sellout Price of Project (1)	Total Real Estate Taxes (2)	Real Estate Tax of Timeshare [(1) x (2)] (3)
$10,000/$2,765,000	$16,250	$58.77
$7,000/$2,765,000	16,250	41.14
$5,000/$2,765,000	16,250	29.38
$7,500/$2,765,000	16,250	44.10
$5,200/$2,765,000	16,250	30.56
$3,800/$2,765,000	16,250	22.33

Note.-For illustrative purposes, real estate taxes have been rounded to two digits.

Table 9

PROOF OF ALLOCATION METHOD

Timeshare Season and Price	Total No. of Weeks in Project (1)	Real Estate Tax of Timeshare (2)	Total Real Estate Taxes [(1) x (2)] (3)
		One-Bedroom Units	
Peak-$7,500	20	$44.10	$882.00
Winter-$5,200	115	30.56	3,514.40
Summer-$3,800	115	22.33	2,567.95
Total, one bedroom			$6,964.35
		Two-Bedroom Units	
Peak-$10,000	20	$58.77	$1,175.40
Winter-$7,000	115	41.14	4,731.10
Summer-$5,000	115	29.38	3,378.70
Total, two-bedroom			$9,285.20
Total real estate taxes			*$16,249.55*
		Rounded to	$16,250.00v

Table 10

TAX ALLOCATION: ASSUMPTION B

Step 1: Gross sellout price of unit	Total assessed X value of	Real estate = assessment
Gross sellout price of project	real estate	of unit
Step 2: One-week timeshare price	Real estate X assessment	Real estate assessment
Gross sellout price of unit	of unit	of timeshare
Step 3: Real estate assessment of timeshare	Tax rate X	Real estate = tax of timeshare

Step 1: one-bedroom unit
($237,000/$2,765,000) X $1,250,000 = $107,142.86

Step 1: two-bedroom unit
($316,000/$2,765,000) X $1,250,000 = $142,857.14

Step 2: one-bedroom unit
Peak season: ($7,500/$237,000) X $107,142.86 = $3,390.60
Winter season: ($5,200/$237,000) X $107,142.86 = $2,350.81
Summer season: ($3,800/$237,000) X $107,142.86 = $1,717.90

Step 2: two-bedroom unit
Peak season: ($10,000/$316,000) X $142,857.14 = $4,520.80
Winter season: ($7,000/$316,000) X $142,857.14 = $3,164.56
Summer season: ($5,000/$316,000) X $142,857.14 = $2,260.40

Step 3: one-bedroom unit
Peak season: $3,390.60 X 0.013 =$44.10
Winter season: $2,350.81 X 0.013 =$30.56
Summer season:$1,717.90 X 0.013 =$22.33

Step 3: two-bedroom unit
Peak season: $4,520.80 X 0.013 =$58.77
Winter season: $3,164.56 X 0.013 =$41.14
Summer season: $2,260.40 X 0.013 =$29.38

Conclusion

Use of the gross sellout price for establishing the real estate assessment of a timeshare project is inaccurate and misleading. As discussed and demonstrated in the previous examples, the gross sellout method significantly overstates the real estate value and corresponding tax assessment of a fee timeshare property by including various non-real estate components inherent in the purchase and ownership of a timeshare.

The cost and market data approaches are the most expedient valuation methods for estimating the real estate value of a timeshare project and establishing an equitable tax assessment. Also, as accepted appraisal procedures, the above valuation methods readily lend themselves to use as a standardised methodology in assessing fee timeshare properties.

Once an equitable real estate assessment and tax have been estimated for a fee timeshare property, the actual steps involved in the process of allocating the tax burden among the timeshare owners will depend on whether the local taxing jurisdiction submits one overall real estate tax bill to the timeshare owners' association or individually assesses and taxes each owner. Regardless of the local custom, the tax allocation must consider and appropriately reflect the relative real estate values of the timeshares in terms of both the type of unit and the time period in which the timeshare interest is owned.

Timesharing Practice and Operation

by G. L. Jones

A paper presented at a workshop session of the Twelfth Pan Pacific Congress of Real Estate Appraisers, Valuers and Councellors 21st-26th August, 1983.

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Introduction

This paper, titled "TIME SHARING PRACTICE AND OPERATION", had been prepared for presentation to the Australian Institute of Valuers for consideration for the 12th Pan-Pacific Conference to be held in Kuala Lumpur, Malaysia, in August of last year under the provisions of the Ronald Collier Memorial Prize.

The material reported on in the following paper represents the position of Timesharing both in Australia and Overseas, as at February, 1983.

In preparing this paper the writer has taken the opportunity of personally inspecting 9 of the present 17 resort timeshare developments throughout Australia and interviewing developers, marketers, sales personnel, financiers, and lawyers associated with the Timeshare industry in Australia and my appreciation to these various people for their helpful assistance and advice is hereby expressed.

Further research and involvement in the Timeshare industry is being carried out by the writer in anticipation that he may be fortunate enough to be the recipient of the Ronald Collier Award and in this regard I have registered to attend the 4th Annual Australasian Resort Timesharing Council Timeshare Convention to be held in Sydney from the 27th February to the 2nd March, 1983.

Definition

"Time-Shared ownership has been defined as essentially a method whereby a number of persons own and/or have the right to the use and possession of a single piece of property at different times."

Operation

In Australia timesharing has been described as the fourth dimension of real estate introducing time as a form of property ownership after length, breadth and height. In its simplest form timesharing is shared ownership of a property or holiday accommodation and facilities. If a person cannot afford his own holiday unit or cottage or does not want the responsibility of ownership he can buy a share in a project which entitles him to use the facilities for a predetermined number of weeks a year for a specified period or in perpetuity.

The attraction in purchasing a timeshare interest is that it pegs the underlying capital costs of holidays and makes it inflation proof. Once you've purchased your timeshare interest the only additional cost involved is the annual maintenance charge which tends to be minimal because costs are divided between many owners.

Timesharing also has the attraction of likely capital gain whilst securing annual holiday accommodation either at the resort the purchaser buys into or via membership in an exchange organisation in any of the approximately 1000 international resorts located around the world.

History

Timesharing is claimed to have originated in Europe in the early 1960's when fifty-two people joined together to buy a holiday villa on the Riviera, each agreeing to occupy the property for one week each year and to share the general upkeep costs. The concept soon spread to the ski-fields of Switzerland and Austria where, with rapid escalation of land values and building costs, people started to realise that the ownership of a chalet was getting dearer every month and a considerable amount of capital was being tied up with the amenity used for only a relatively small fraction of each year or each ski season, so groups of people decided to purchase a chalet jointly and severally on a share basis.

From this practical beginning the idea soon spread from the continent to America, however, its introduction in America was not as purist as its European Counterpart. Initially timesharing was used as a means to bail out distressed developers who had saturated the newly introduced condominium market in the late 1969's and early 1970's.

Nevertheless, the industry in America has overcome these uncertain beginnings and has expanded into a multi-billion dollar industry with scales predictions of over two and a half billion during 1983.

The idea has now spread world wide to resorts located in 28 countries including America, Europe, Australia, Great Britain, Japan, Fiji, Hawaii and New Zealand.

Practice

Although there are various types of timeshare schemes which I will examine shortly, timeshare resort developments operate on a method whereby each unit is divided into normally 51 timeshare weeks with the 52nd week set aside for annual maintenance. The total number of timeshare interests in a complex is calculated by multiplying the number of units by 51 weeks - for example a 10 unit complex would have 510 timeshare interests.

The 51 weeks for each unit are then categorised into periods, either:

(a) Peak periods referred to as "prime time" which usually occur during holiday periods;

(b) Shoulder or swing periods being those time periods outside peak periods but within high demand periods;

and

(c) Low periods which total the rest of the 51 weeks excluding prime time; and shoulder periods.

The purchaser of a timeshare interest will either buy what is commonly referred to as "fixed time" or "floating time." Fixed time means that the purchaser buys a specific time period each year paying a premium for peak periods, whilst lfoating time only provides the use of a unit in the complex for a given number of weeks each year outside of the prime time periods. A purchaser of a floating time interest has to make application each year to reserve his accommodation.

As mentioned before the type of timesharing scheme will determine a purchaser's interest in the resort. There are two forms of ownership:

Non-ownership Arrangements or "Right to Use" Scheme

This type of timesharing involves the payment of a once only sum in exchange for defined rights of occupancy to a certain development but does not entitle the purchaser to any proprietary interest and essentially is a licence arrangement. No title is granted to the purchaser but is retained by the developer or transferred to a body set up by the developer to operate the project.

While the non-ownership category of timesharing gives the purchaser the right of use for a predetermined period each year, the agreement is generally for a limited number of years varying from as short as 10 years up to about 30 years. This form of vacation licence or club membership is frequently found in the U.S.A. and Europe.

Generally this type of development has not been widely promoted in Australia where there has always been a high proportion of home ownership, however, an Australian development which has recently commenced marketing provides a significant extension to the mere licence arrangement.

This scheme is set up as a trust arrangement which the promoters claim is "a simplified concept of timeshare ownership ... saving time, costs and delays associated with title transfers of timesharing whilst giving security and protection after purchase." In this scheme the legal title is vested in a Trustee Company on behalf of the holders of units in the Timeshare Trust. Unit Certificates are issued to the purchasers rather than deeds, such certificates will evidence unit-holders' right to use a holiday apartment for one week in each year in relation to each unit purchased for an initial period of eighty (80) years after which the Timeshare Trust terminates and the Trustee will sell the development. The Trustee will then distribute to the unit holders, pro rata to the number of units held by them the proceeds of the sale.

Ownership Arrangements

This form of ownership entitles the purchaser to receive title to the development as a "tenant in common" with fellow timeshare owners and in respect of which he can dispose or deal with it by sale, gift, bill of mortgage, lease or exchange.

In this category of timeshare ownership there are three different forms of ownership schemes.

1. Interval Ownership

This method has been described as -

"An acquisition by the purchaser of ownership of the property for a specified time each year for a pre-determined number of years (normally the useful life of the property and improvements) with a remainder over in fee simple as a tenant in common with the other interval owners at the end of the period."

The Interval Ownership method operates in America under the condominium provisions and by this method of ownership the right to use the unit is a separate and distinct estate from the vested "remainder" in fee simple interest as a tenant in common with the other timeshare purchasers. The interval estate differs from the time span estate (to be considered) in that the right of occupancy and title of ownership coincide; the interval owner is the sole owner of the unit during his period of occupancy.

2. Time Span Estate

This method as it operates in America involves the use of a Common Law tenancy in common arrangement coupled with an agreement between the tenants concerning the time each has the absolute right to use and possession, therefore a separate agreement between all of the purchasers is required whereby each owner's specific period of occupany entitlement is clearly set out. Australian develments have basically differed from the American concept in that instead of a tenancy in common arrangement a company is formed and the property is leased to the company, each member in the company owning shares in proportion to the number of timeshare weeks he has purchased, the company being governed by articles of association.

3. Fee Simple Method

This method involves the conveyance to each purchaser of title to the desired possessory period in fee simple absolute. This method in effect, treats and deals with time as a conveyable dimension of the property - this is the reference to time sharing being the "fourth dimension of property." However, unlike the time span or internal methods of development under the "fee simple" transfer, no other estate or agreement or declaration is needed to structure or regulate the timeshare interest. By this method the purchaser is the owner of the property and what is being created is a new type of interest in land.

This form of ownership is only possible by special legislation and will require registration of specific time entitlement.

Timesharing in Australia

Although timesharing was only introduced into Australia in 1978 when two developers pioneered the industry in Australia, the concept has expanded at the time of writing this paper to a total of 17 developments throughout Australia, refer attached addendums for location and summary of current projects, with sales predictions expected to exceed $65,000,000 in 1983. Nevertheless, the timeshare industry in Australia is still in its infancy with the remnants of previous "shoddy" developments, bad publicity and severe "legalistic hangups."

The unfortunate eagerness of some developers to cash in on a new scheme to make apparent quick and easy money resulted in many early investors having their fingers burnt. In one ranch resort scheme planned at Bathurst, NSW, 39 investors lost $3000 each when the project collapsed from lack of support while another developer sold one-fiftieth shares in a unit at Surfers Paradise, Queensland, but did not at the time of selling the shares, own the apartments, only having an option to purchase which he had let expire.

As if these detrimental developments were not enough to hamper the introduction of timesharing into Australia, potential developers were yet to face an even more formidable hurdle when two timesharing projects in the State of Victoria were challenged by the Government as to the method of marketing their projects. Prior to the resulting court cases of Commission of Corporate Affairs v A Home Away Pty. Ltd. and Commissioner for Corporate Affairs v Lake Filden Country Club Limited everyone (except for the Victorian Corporate Affairs Commission) believed that timesharing was the same as most other real estate interests and was sold accordingly based on a contract for the sale of land which was subject to a lease of the land to a public company with the right of the purchaser to become a member of the company.

However, the Supreme Court found that the developers were marketing "interests" under the Local Companies Act which provides strict restrictions on the method by which a developer could market his scheme. To further compound the adversities developers were facing, each state took differing attitudes as to the methods whereby exemptions could be granted to timeshare developments and at one stage it was not uncommon for a developer to be able to market his development in Queensland without any conditions while say in New South Wales operators and marketers were required, in order to market their development in N.S.W., to be a public company subject to annual audits and licensed under the Securities Industry (NSW) Code selling units by way of a prospectus and in the event of breaches of the Act were liable to fines or imprisonment.

Fortunately, following extensive negotiations between The Australasian Resort Timeshare Council (ARTC) and the various State Corporate Affairs Commissions and the National Companies and Securities Commission, exceptions were uniformly granted and while it is not practical to state all the exceptions allowed under Part IV of the Companies Act 1981, the maximum provisions relate to title based schemes and require the establishment of trust schemes to administer purchasers' deposits until settlement whereby the building has been completed and transfer of title in the scheme is handed over.

It may be appropriate at this stage to consider the future of timesharing in Australia. The following is a comparison of the incidence of resort timesharing ownership of the U.S.A., United Kingdom, Japan and Australia.

TABLE 1

COMPARISON OF THE INCIDENCE OF TIMESHARE

OWNERSHIP IN THE GENERAL POPULATION AS AT MID 1982

Country	Total Population	Industry Commenced	No. of Yrs. Involved	No. o;i Time-Share Owners	Incidence of Timeshare Ownership in General Population
United States of America	230 Million	Early 1970's	12	400,000	1 owner in every 575 persons
Japan	117 Million		-	100,000	1 owner in every 1170 persons
United Kingdom	56 Million	*1975*	7	11,250	1 owner in every 4978 persons
Australia	15 Million	1977	5	2,655	1 owner in every 5650 persons

As you can see, Australia's comparison of timeshare ownership on a population basis is significantly less than the U.S.A., but comparable to Britain where the industry has only been established for a slightly longer period.

The fact that the industry is being established and growing during a recessionary period, while in general real estate prices are falling, particularly on the Gold Coast where the majority of the timeshare resorts are located, is further evidence that the future of the timeshare industry is assured in Australia.

Valuation of a Timeshare Development/Interest

In assessing a proposed timeshare development, it is considered essential to initially undertake a comprehensive feasibility study having particular regard to the following major considerations:

Location - The valuer will already be aware of how important a consideration location is to any development, but the location of a timeshare development is critical to the potential marketing and viability of the project. Ideally, it should be located within a popular tourist resort area close to major drawing attractions, for example, a capital city, beach or snowfields.

Seasonal Usage - Does the resort enjoy year round patronage or does it only attract tourists for a few months of a year? If so, how do you sell the other weeks?

Type of Project - What type of development should be constructed? Should it be a High Rise Building, Three Storey Walk-up, or Country Club style? These have all been successfully marketed in Australia! It depends upon where the project is situated. High Rise should be successful in the Capital cities and coastal areas. Three Storey Walk-ups in major towns that attract tourism while Country Clubs are best within driving distance of Capital Cities.

Design of Building - Successful projects have tended to be up market developments with accommodation being of 70 to 120m2 for two bedroom accommodation and including a kitchen, bathroom, bedroom(s) and a lounge area. They should be tastefully furnished with all units furnished the same so that items can be interchanged and spare furniture can be held in stock.

Amenities - As most developments are catering for the holidaying family, the following facilities are normally provided:

Outdoor Facilities: These should include a swimming pool, spa, tennis court, childrens' playground and b-b-q. Country Club Developments would include other facilities like horse riding, canoeing or sailing.

Indoor Facilities: Depending on the type of development, it could include such items like sauna bath, gym, adult games room, childrens' game room and library. Restaurant and bar facilities could be included in the Country Club style development or in a High Rise Development.

Market Research - This aspect is commonly overlooked but market researchers should be employed to test the market and collect data on what the average holidayer in that particular locality would require in his holiday unit.

Marketing - As the concept is relatively new in Australia, a developer would need to appreciate that his marketing expenses will be proportionately high, in fact in America they are currently running at between 30 to 50% of the total costs. However, due to the small number of timeshare resort developments in Australia which has not so far developed into strong competition, most developers interviewed stated their marketing costs were running at between 25 to 30%.

Legislation Limitations - This issue has previously been discussed and to recapitulate the selling of timeshare in Australia is considered to be the selling of an interest and not real estate. Legislation is a problem which not only faces the Australian developer but also still affects the overseas developer. It is hoped that Australia will follow the United States example where several individual States have introduced their own Timeshare Act. At the time of preparing this paper only the State of Queensland is considering separate timesharing legislation and a draft bill is presently being prepared.

Financing - Because of its infancy in Australia and the general public's unawareness of the concept, finance for construction and marketing has been difficult to obtain.

In assessing the values of a timeshare development the traditional valuation approaches provide the basic framework for assessing a proposed development or timeshare interest, namely:-

The Income Approach: This method is the preferred approach for ascertaining the feasibility of a proposed development or estimating the present value of the property as a timeshare development and involves a complete market analysis and undertaking a detailed cash flow analysis.

The valuer would need to establish the pricing and probable absorption of the timeshares and forecast- the timing of the sales, expenses and resulting nett cash flows to be received in the timeshare property or during the projected sellout period. The nett cash lfows will need to be discounted to a present value estimated at an appropriate yield rate reflecting both the anticipated return and the ,overall risks inherent in the timeshare projects.

As a "rule of thumb" guide developers have relied on an accepted formula in the timeshare industry of a third a third, a third, that is if the product costs you $x to build, it will cost you $x to market and you will make $x as a return."

The Cost Approach: If thoroughly and properly applied the cost approach can be an effective and expedient method of assessing a timeshare property. One method is to begin with the estimating of the unit under single ownership as established by direct comparables. Expenditure connected with converting the unit development to timesharing is added to this amount as is developers' profit and overheads i.e.

TABLE II

Normal cost of land and unit under single ownership			$100,000	65.63%
Additional expenditure conversion				
Furniture	$, 8,000	5.23%		
Amenities	$10,000	6.54%		
Marketing Exp.	$20,000	13.07%		
Developers Profit and overhead	$15,000	9.8%	$ 5,300	34.64%
Indicated value of the unit by Cost Approach ...			$153,000	100%

The indicated value is that of all of the intervals. It is not possible to estimate the individual interval values by this approach due to the variance between seasons. In valuing an existing timeshare development under the cost approach method it is of prime importance to have regard to the accrued depreciation of the complex.

Includes all soft costs and entrepreneurial profit. Depreciation has been estimated by use of an effective age economic life ratio.

The Market Approach

This approach, if uniformly adopted, provides solid support for the valuation, however in Australia in particular, the accumulation of sales data is a relatively formidable task in the sense that comparable projects are likely to be scattered throughout several states and from coast to coast. Because of the newness of timesharing in Australia, and the different schemes, there simply is not a great deal of comparable data available in any one region.

However, if adopting this approach the value of an interval under timesharing is a function of many variables, the most notable are:

- Seasonal variations.
- Location.
- Physical characteristics (i.e. size, construction quality, recreation amenities, etc).
- This approach does not allow for the separate analysis of the land and improvement components of the real estate.

The importance of comparison between comparable properties with similar amenities cannot be overstressed as the comparison of an interval in a high rise complex next to the beach with a countryside resort is of dubious relevance.

The unit of comparison for use in the market approach is the sale price per square metre per one week interval in each season. The unit figure of each comparable timeshare sale will then be market adjusted upward and downward in relation to the subject timeshare unit in terms of time of sale, location, unit size, construction standard, available recreational facilities and any other pertinent or distinguishing factors.

Table IV is an example of comparable projects in Queensland analysed by this method.' s

Alternatively, in the absence of sales data of timeshare interests an analysis of recent sales of single ownership, home units/condominiums will provide a basis of comparison in relation to the individual timeshare units - refer Table V' 4.

Table III shows an example of a valuation under this approach

TABLE Ill

Replacement cost new of buildings: 1,440 gross square metres $700 per ml		$1,007,500	
Less accrued depreciation 2.5% (1 year/40 years) of $1,007,500		$ 25,200	
Depreciated value of buildings			$ 982,300
Replacement cost new of site improvements:			
Pool and deck area	$25,000		
Tennis court and accessories	50,000		
Landscaping	50,000		
Total :		$ 125,000	
Less accrued depreciation 6.7% (1 year/ 15 years) of $125,000		$ 8,300	
Depreciated value of site improvements			$ 116,700
Market value of land under its highest and best use as a timeshare project			174,000
Total real estate value estimate for timeshare project			$1,273,000

TABLE IV

Time Sharing Interval Prices

Season	Comparable 1 74m2	Comparable 2 61m2	Comparable 3 74m2	Indicative Values
Peak	$ 3,995 ($ 54/m2)	$ 3,975 ($ 57/m2)	$ 5,900 ($ 80/m2)	$3975-$5900 (54.00-80/m2)
Shoulder	$ 3,595 ($ 48.50/m2)	$ 3,975 ($ 57/m2)	$ 4,396 ($ 60/m2)	$3595-$4395 (48.50-60/m2)
Low	$ 3,095 ($ 42/m2)	$ 3,975 (57/m2)	$ 2,900 (40/m2)	$2900-$3975 (40-57/m2)

TABLE V

Market Adjustments Two-Bedroom Unit

Comparable Sale No.	Sale Date (1)	Sale Price Per Se. Ft. (2) (3)	Time Adjust. Unit Price (4) (5)	Location	Size/ Configuration	Construe-Lion Quality (6)
1. 148m2	2 Mths. ago	$ 81.25	$ 81.25	-10%	without view z + 5%	15%
2.148m2	1 week ago	113.75	113.75	-10	z/-10%	-10
3.172m2	4 weeks ago	87.57	87,57	-10	+10'%/-5%	-5'%
4.153m2	6 weeks ago	70.73	70.73	x	z/+5%	X

	Recreational Amenities (7)	Net Adjustment (8)	Adjustment Factor (9)	Adjusted Unit Period (9) x (3) (10)
1.	-10%	-10%	0.90	$ 73.13
2.	-5	-35	0.65	73.94
3.	- 5	-15	0.85	74.43
4.	X	+5	1.05	74.26

Another factor of significance is that a time-share development will have attributed to it a greater land value as opposed to a home unit/ condominium development and accordingly the nett return to the land will normally exceed the corresponding nett return that would be available if the same property was developed as a home unit/condominium project.

The Summation Approach

This approach is not recommended as the summation of individual sale prices overstates the real estate value of both the individual timeshare costs and the entire project.

The following illustrates how misleading this approach can be;

Assuming there is a total of 5 x 2-bedroom units and 5 x 1 bedroom units containing a gross area of 1440m2 (15,500) with pricing schedule as follows:

The summation of the unit prices ($316,000 x 5 = $1,580,000 plus $237,000 x 5 = $1,185,000 or $2,765,000) far exceeds the real estate value of the timeshare units, compare Table VI with Table II, as this method allows for various non real estate components, excessive marketing costs and a premium rate paid by purchasers for the ability to purchase a fractional interest in vacation accommodation.

This growth of a new industry in such a small period of time has been nothing short of phenomenal and with a worldwide tendency of reduced working hours and increased leisure time, the future potential of timesharing appears to have very strong foundations to build upon.

It can only be hoped that the regulatory bodies while not completely stifling the initiative of developers can effectively control and regulate this new form of property ownership so as to protect the consumer. This can only be achieved, I believe, by creating specific legislation to deal with timesharing and one can draw comparison with the growth of strata title units and condominiums when Government bodies introduced special legislation to cover the subdivision of horizontal space.

To the valuer the prospect of being involved in a revolutionary form of property ownership offers an exciting challenge and although the basic principles of valuation will apply the valuer will need to be aware of the special characteristics associated with timeshare developments and the various types of ownership arrangements.
over 1000 resorts.

TABLE V

FEE TIMESHARE PRICING SCHEDULE

	One Bedroom Unit			Two Bedroom Unit		
Season	No. of Weeks in Season	One Week Timeshare Price	Gross Sale, Price	No. of Weeks in Season	One Week Timeshare Price	Gross Sale Price
Peak	4	$ 7,500	$ 30,000	4	$ 10,000	$ 40,000
Winter	23	5,200	119,600	23	7,000	161,000
Summer	23	3,800	87,000	23	5,000	115,000
	50		237,000	50		316,000

Conclusion

In just over two decades timesharing has developed from a practical form of shared property ownership into a prospering multi-billion dollar industry established in 28 countries with

1 Suriside Palms
2. Palm Court
3. Pacific View
4. Golden Leaf
5.u Cedar Lake
6 Jerdon Place
7. Chevron
8. Tiki Village
9 Voyager
10. Korora Bay Village
11. Vacation Village
12 Tuncurry Lakeside Village
1 3. Manly National
14. Bay-
15. Leke Elden Country Club
16. Woodleigh Heights Timeshare Resort i,
17. Busselton Beach Resort

Melbourne

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Addendum 1

AUSTRALIAN TIMESHARE RESORT AS AT FEBRUARY, 1983

Location	Name	No. of Units	Unit Size (Sq. Metres)
QUEENSLAND			
1. Magnetic Island	Surf side Palms	6x1B	57
		proposed 45 x 2 B	91
2. Noosa Heads	Palm Court	14 x 3 B	186
3. Caloundra	Pacific View	31x2B	74
4. Caloundra	Golden Leaf	6x1B	49
		4x2B	61
5. Nerang		1 x 3 B	72
6. Broadbeach	Cedar Lake	60x2B	75
Surfers Paradise	Jardan Place	6x1B	56
7. Broadbeach		9x2B	74
Surfers Paradise	Chevron		
8. Broadbeach	Tiki Village	69x 1 B	69-82
Surfers Paradise	(under construction		
Village.	expected occupation		
	date April, 1983)		
9. Broadbeach	Voyager	62x1B	46
Surfers Paradise	(under construction		
	expected occupation		
	date early 1984).		
NEW SOUTH WALES			
10. Goffs Harbour	Korora Bay Village	7x1B	56
		16x2B	93
11. Port Macquarie	Vacation Village	24x2B	102
12. Tuncurry	Tuncurry Lakeside Village	48 EFF.	33
13. Manly	Manly National	7x1B	44
VICTORIA			
14. Phillip Island	Bayview	7 x EFF	34
		2x1B	54
		1 x 2 B	71
		1 x 3 B	92
15. Mansfield	Lake Eildon Country	36 x 2 B	56
	Club. proposed	14x2B	56
16. Kyneton	Woodleigh Heights	23x2B	74
	Timeshare Resort		
	proposed	111x2B	74
WESTERN AUSTRALIA			
17. Busselton	Busselton Beach	7x2B	84
	Resort	2x3B	95

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Table III. is illustrative only and is reproduced from Kathleen Conroy's VALUING THE TIMESHARE PROPERTY, American Institute of Appraisers 1981, p. 75.

13. Table IV. is based on Queensland resorts but Table is reproduced from Crosson S.T. and Dennis, C.C.; TIME SHARING OWNERSHIP IN RESORT DEVELOPMENT; Readings in the Appraisal of Special Purpose Properties, Chapter 4. American Institute of Real Estate Appraisers.

Table V. reproduced from Conroy K. OP CIT p. 82.

Table VI. reproduced from Conroy K. OP CIT p. 71.

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Queensland Corporate Affairs Commission.

National Companies and Securities Commission.

COMPUTER WISE

DOES THE COMPUTER HAVE A PLACE IN YOUR OFFICE?

by R. V. Hargreaves

Bob Hargreaves is a Lecturer in Valuation at Massey University, Palmerston North, He is also the Councillor for Central Districts and is a member of the New Technology Committee. Bob has a deep knowledge of the subject and a clear view of the future place of computers for the valuing profession in New Zealand. Any articles or items of interest on the subject of computers should be directed to Bob through the Editor.

Part 1: Computer Applications To Valuation

Articles about the use of computers in the valuation process have regularly appeared in this publication over the last fifteen years. Up until 1980 virtually all the articles dealt with the application of statistical methods, such as multiple regression analysis, to mass appraisal. While computer assisted statistical methods appear to be cost effective for rating valuation work such methods have generally been uneconomic for valuers faced with one off valuations. As a result until quite recently computer applications in New Zealand have largely been confined to the mass appraisal operation of the Valuation Department.

Major technological changes in the computer industry during the 1970's resulted in a dramatic reduction in both the size and cost of computing equipment. McGlynl pointed out in 1979 that a 50 mm silicon sliver costing $10 had the computational capacity of a desk sized computer that would have cost several hundred thousand dollars in the early 1960's. The reductions in computer costs brought about by silicon chip technology now means that we are at the threshold of being able to economically use computers for a wide range of valuation related tasks. An American valuer, Dorchester,2 writing in 1980 listed sixty real estate applications for small computers. This list is reproduced in Table I.

Table 1:

Real Estate Applications for Small Computers

A. General Business
1. Payroll preparation
2. Accounts receivable
3. Accounts payable
4. General Ledger
5. Financial Statements
6. Employee Records
7. Asset inventory
8. Word processing
9. Income tax preparation
10. Lease/purchase decisions

B. Appraising
1. Data storage and retrieval
2. Form typing
3. Income/expense projections
4. Trend analysis: prices, etc.
5. Adjustment factor calculation
6. Stepwise MRA
7. Comparable sales analysis
8. Rates(s) of return analyses
9. Ellwood analysis
10. Financial analysis

C. Real Estate Brokerage
1. Company dollar accounting
2. Comparative internal results
3. Comparative external results
4. Sales associate performance
5. Branch office performance
6. Sales/listing source analysis
7. Ad cost and effectiveness
8. Sales associate training
9. Closing statements
10. Work flow scheduling-progress

D. Real Estate Sales
1. RNMI forms analysis
2. Market trend analyses
3. Competitive market analysis
4. Goal setting progress
5. Buyer qualification
6. Installment sales analysis
7. Exchange analysis
8. Sales and listing searches
9. Investment analysis
10. Income tax analysis

E. Real Estate Management
1. Rent roll management
2. General accounting
3. Deposit records
4. Maintenance scheduling
5. Reports to owners
6. Rehabilitation feasibility
7. Conversion 'feasibility
8. Subcontractor control
9. Escrow controls
10. Inventory record keeping

F. Other Applications
1. Market forecasting
2. Survey results and tabs
3. Statistical analysis
4. Area/location analysis
5. Amortization schedules
6. Depreciation schedules
7. Cost/price comparisons
8. Critical path scheduling
9. Analytical model building
10. Sensitivity testing

Many of the potential computer uses pointed out by Dorchester have not yet been adopted by valuers. This is due to a variety of reasons with perhaps the most fundamental one, the lack of good computer programs in certain areas.

There is some published information available regarding the actual use of computers by valuers in New Zealand and the U.S.A. A 1981 survey by the American Institute of Real Estate Appraisers3 of valuing firms known to be using comp.ters she-:ved that 69 per cent of the respondents ranked word processing as the primary use for their computer system. Fifteen per cent of the respondents ranked financial analysis as their primary computer use with the other main primary uses split between time-sharing applications and data base management. The overall rankings of computer applications, in order of usage, are shown in Table 2.

Table 2: 1981 AIREA Survey Ranking of Computer Uses

Category	Rank
Word Processing	1
Financial Analysis	2
Data Base Management	3
Statistics	4
Time-Sharing	5
Accounting	6
Single Family Form	7
Personal Use	8

In 1982 a computer usage survey of New Zealand valuers was carried out by the authors. Responses were received from 190 valuing organisations including 14 firms that were using computers and 73 firms intending to use computers. The overall rankings of computer applications combining both users and intending users is shown in Table 3. These results need to be treated with some caution due to the small number of existing computer users and the lack of experience of intending users.

As firms are likely to utilise the computer for several uses the percentages shown in Table 3 add up to more than 100 per cent. The ranking of computer uses in this questionnaire can be interpreted as meaning that the higher the ranking the more firms there were that used the computer for this purpose. Follow up telephone interviews of the existing computer users confirmed the rankings shown in Table 3 also applied within most firms.

Table 3: NZIV Survey Ranking of Computer Uses

	Existing Users		Intending Users	
Category	Rank	Percent	Rank	Percent
Word Processing	1	43	3	70
Storage and Retrieval of Sales Data	3	35	1	87
Analysis of Data	4	28	2	74
Accounts	4	28	4	67
Miscellaneous*	2	42	5	31

* The main miscellaneous use was using computers for estimating the replacement cost of buildings.

A more recent American survey was carried out by the Society of Real Estate Appraisers' in 1983. Just over 300 valuing firms that use computers were identified and their responses to the questions related to computer use are summarised in Table 4.

Table 4: SREA Survey Ranking of Computer Uses

Category	Rank	Percentage
Word processing	1	75
Data Base (filing comparables, general data)	2	53
Numbercrunching (statistical analysis, financial modelling, cash flows)	3	49
Forms Processing	4	31
Accounting	5	23
Telecommunications	6	14
Other Uses	7	6
Office Management (scheduling, worklog, etc.)	8	5
Multiple Listing Service	9	2

As with the NZIV survey the respondents generally used computers for several tasks. In this case 75 per cent of the firms used computers for word processing purposes.

Although there is some overlap in the categories of computer uses in the three surveys it does seem clear that current computer users both in New Zealand and the U.S.A. rank word processing as the most important computer function. This is probably not surprising considering the increased productivity and quality of reporting that word processing can offer for both valuers and secretarial staff.

As some readers may not feel comfortable with the `computer jargon' that has been introduced in the computer use categories, these computer uses are discussed in the following section.

Word Processing

The concept of word processing is to use the computer to input, edit, and print written material. The input phase is much the same as using a conventional electric typewriter except that instead of seeing the printed copy in the typewriter the text appears before the operator on a TV like screen. The main advantage of a word processor is at the editing stage of a report. Additions, deletions and corrections can be made on the screen without the operator having to retype the complete report. In practice a number of valuers produce a printed draft report, make the necessary changes, and then print the final copy.

Several word processing programs now incorporate spelling checks, and graphics options. Standard programs offer automatic page numbering, different spacing options, automatic positioning of left and right margins, and headings centred.

Print quality depends on the type of printer that is used. The more expensive daisy wheel printers achieve a print quality comparable to an electric typewriter. The less expensive dot matrix printers are generally only suitable for draft quality work.

Data Base Management

A data base is commonly described as a collection of related information stored together to serve one or more applications. The computer can be thought of as an automated filing cabinet that has the capacity to store large amounts of

information and quickly retrieve any information as desired.

An example of a computerised data base system will exist when the `Valpac' program, that is being developed by the NZIV, is used to store and retrieve sales information. Whereas currently a valuer may have to spend long periods extracting comparable sales by hand from a microfiche viewer the objective of `Valpac' is to be able to use the power of the computer to rapidly retrieve any desired set of sales data and print these out.

This sales data base is likely to be of interest to a variety of people in land related occupations including real estate sales and planning.

Accounting

The use of computers for accounting purposes is now well established in the business world. There are a number of good accounting computer programs that are available for microcomputers. To minimise the difficulties in converting to a computer system of accounting users should try to find an accounting package that uses similar accounting procedures to their existing manual system.

Time Sharing and Telecommunications

Up until about 1980 the cost of computers was such that many small businesses could not contemplate purchasing or leasing their own computer. One solution to this problem was to purchase time on a computer owned by another firm. Another reason for timesharing may be that although an organisation has a small computer they may also need to have access to the power, storage capacity, and programs available on a larger machine. The article by Graeme Bums' in the December 1983 issue, outlines some of the advantages of a timesharing arrangement for a Dunedin based valuation practice.

When the computer user is physically located away from the computer a system has to be devised to enable access to be achieved. Within office buildings and between buildings on, say, a University Campus, the usual solution is to use special cable to wire remote terminals to the main computer. Over longer distances the telephone system can be used to link computing facilities. A number of New Zealand librarians routinely use remote terminals connected to the telephone system to access a variety of overseas statistical and bibliographic data bases. Remote terminals normally consist of a type-writer-like keyboard, a visual display unit (TV like screen) and sometimes, a printer. To connect computing equipment over the telephone requires an additional piece of equipment called a modem (modulator/demodulator).

Analysis of Data

Data analysis is a very broad area and includes a variety of `numbercrunching' tasks that are applicable to the three main approaches to valuation.

Real estate orientated computer programs are now available for the analysis of sales information by the appropriate unit of comparison, charting sales data, and regression analysis. Programs that estimate the replacement cost of buildings have also been developed to assist valuers with the cost approach. Valuers can now obtain programs to assist them with all the main variations of the income approach including discounted cash flows, internal rates of return, various types of residual valuations including development valuations, hypothetical subdivisions etc. In addition there are a variety of electronic spread sheet programs available to assist with the calculation of the income and expenditure statement.

The main advantage of applying computers to data analysis is that in many cases they offer very significant time saving for the user. Further, the user is more likely to test the effect of changing the assumptions on the final answer since the calculations can often be redone very quickly.

Multiple Listing Service

A number of valuers in the U.S.A. subscribe to a computerised real estate multiple listing service. Current information about properties for sale and properties that have sold is available. The main advantage of a multiple listing service over the NZIV sales system is that multiple listings do not rely on lawyers having to supply sales information and thus may be more up to date.

Processing Forms

Most valuers will have certain clients who prefer to have the valuation report submitted using a set format or possibly a set of forms that have been designed by the client.

This type of work can often be set up to run very efficiently on a word processing program.

Office Management

Computers can be a valuable tool for keeping track of the flow of work in an office, automatically sending out reminder advice, and setting up electronic diaries. They can even be scheduled to work away on time consuming tasks such as printing long reports when the office is closed. Several enterprising real estate agents now use computers to control a screen in the office window which displays property listings.

This article has taken a broad overview of the main computer uses in valuation. Subsequent articles in this series will look at computer equipment (hardware), computer programs (software), and the costs involved in owning a computer.

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World Valuation Congress June 1984

First Press Release

The first World Valuation Congress is to be held in Cambridge from June 3rd to June 6th, 1984. Sponsored by the Incorporated Society of Valuers and Auctioneers, together with major universities from several countries, the Congress theme is "Professional Valuations for Commercial Purposes".

Bringing together practising valuers, appraisers and academics in the field, the Congress aims to identify the general codes of principles and methods of valuation in use throughout the free world.

Within the general theme three major contemporary issues have been chosen - real estate portfolio performance and investment analysis; the valuation of variable rents; and valuations for corporate purposes.

Each has become a "new" problem in that it poses novel questions to which traditional methods provide unsatisfactory answers. Conventional assumptions and hypotheses are being called into question to a degree that warrants broadly-based examination and discussion. The programme provides a flexible structure for such inquiry: indeed a major purpose of the Congress is to stimulate the exchange of ideas between valuers and appraisers from different countries.

Leading speakers from the United Kingdom, Canada, the United States and New Zealand will give the major papers and head discussion.

The Congress fee is £275, inclusive of accommodation: details from The Organising Secretary, World Valuation Congress, The Incorporated Society of Valuers and Auctioneers, 3 Cadogan Gate, London SW1X OAS.

It is notable that Squire L. Speedy of Auckland will be one of the speakers. His topic is "Valuation for Corporate Purposes: Current Cost Accounting Perspectives". The programme is outlined below.

"Professional Valuations for Commercial Purposes"

Joint Chairmen

Professor Philip H. White, MSc CA(Hon) BC FRICS.

W. Martin Hattersley, BSc FRICS FIS(M) FSVA.

PROGRAMME

Sunday June 3

PM Registration.

PM Reception, Pembroke College, Cambridge, by courtesy of the Department of Land Economy and by kind permission of the Master and Fellows of the College.

Host:
Professor
Gordon C. Cameron.

Monday June 4

AM "Real estate portfolio performance."
Adrian R. Wyatt
Jones Lang Wootton
UK.

AM "Real estate investment analysis."
John B. Bailey
Landauer Associates Inc.
USA.

PM Discussion groups.

PM Delegates meetings - special topics.

Evening Dinner - University Centre.

Tuesday June 5

AM "Valuation of variable rents: the British experience."
Christopher W. Jonas
Drivers Jonas
UK.

AM "Valuation of variable rents: the North American experience."
Lincoln W. North
Lincoln North & Co. Ltd.
Canada.

PM Discussion groups.

PM Delegates meetings - special topics.

Evening Banquet - University Arms Hotel.

Wednesday June 6

AM "Valuation for corporate purposes: asset valuations."
J. Geoffrey Powell
Gerald Eve & Co.
UK.

AM "Valuation for corporate purposes: current cost accounting perspectives."
Squire L. Speedy
New Zealand.

PM Discussion groups and Final Plenary Session.

To ensure a high level of input maximum numbers for the Congress are limited to 200, and applications will be considered on a selective basis.

All sessions will take place at the University of Cambridge and accommodation has been reserved at the Gonville and Arundel House Hotel (single); the Garden House Hotel and the University Arms (twin or shared) in the city. The Congress registration fee is inclusive of hotel accommodation and meals. There are a limited number of double rooms available for those who wish to bring their wife/husband as a guest. The fee for such guests is £200, which covers hotel accommodation and all meals and receptions but not attendance at the sessions.

The Computer Challenge

by Tan Tek Lum

This paper was presented at a workshop session of the Twelfth Pan Pacific Congress of Real Estate Appraisers, Valuers and Counsellors 21st-26th August, 1983 at Kuala Lumpur.

Tan Tek Lum is a Counsellor of Realtor Estate (CRE) of The American Society of Real Estate Counsellors, a Member of ASREC Board of Governors and Executive Vice President of Lum Yip Kee Limited, Honolulu.

The broad use of computers in the real estate industry has always been considered a viable possibility. Because of recent technological advances in the computer industry, both in terms of hardware and software coupled with recent changes in the nature of the real estate market and industry, the possibility has now become a reality. Today, the question is not if computers can be used, but how and when computers can and should be used.

These significant technological changes and advances in microcomputer hardware and software in the last three years have reduced the cost of acquisition and operation to a level affordable by many real estate professionals yet providing an increase in their computational ability and work output.

The real estate market, especially in the United States, has changed in nature and form in the past decade in terms of its participants and structure of its transactions. There is growing evidence that sole reliance on traditional assumptions to analyse a real estate investment may no longer be appropriate in today's investment climate.

For example, William S. Harps, M.A.L. the 1981 president of the American Institute of Real Estate Appraisers, when he addressed the Eleventh Pan Pacific Congress in Melbourne and presented his paper entitled "Valuation Reforms - Current Concepts under Question," observed that changes in the real estate industry and market have caused a rethinking of ". . . the traditional valuation process especially as it affects the Income Approach . .." Harps contended that the discounted cash flow analysis has become the preferred method, especially because the use of the computer and sophisticated electronic calculators with multiple programmes for real estate and financial analyses is now available to professionals in the field.

In a more recent discussion which appeared in the January, 1983 issue of The Appraisal Journal by Peter F. Korpacz, M.A.I., and Mark I. Roth entitled "Changing Emphasis in Appraisal Techniques: The transition to Discounted Cash Flow" they suggest that investors and buyers in the market ". . are not interested in a contrived single NOI reflecting average or stabilized income expectancy, but they are keenly interested in how much income they are going to receive and when they are going to receive it."

The real estate market in the United States which had been primarily dependent upon its own national economy is now significantly and intimately interrelated with the world's economy. International economic and political events now have an economic impact on many segments of our economy. The profile of investors in the real estate market has changed. In the United States, institution investors and foreign investors have become primary participants. Their goals and objectives are different from those of the traditional private, domestic investor who dominated the market one or two decades ago. The influence of the attitudes and perceptions of these new investors, the high cost of money, and the increased volatility and sensitivity of the market now mandates the prudent investor to carefully scrutinise the nature of his investment accurately and realistically.

Using the capabilities of today's microcomputer, the techniques and concepts of valuation and evaluation can now be more comprehensive and realistically detailed to meet the requirements of today's investors that market analyses investigate a wide range of alternative assumptions. Both the investor and the real estate consultant/appraiser are no longer limited in terms of time and capability to the hand-held calculator or the cost and complexity of using the large mainframe computer in making their assumptions and analytical computations. Many calculations can now be made to test a variety of assumptions before a final, reasoned decision is made without incurring much additional cost and time.

Many other aspects of real estate are also able to benefit from and utilise the power and speed of microcomputers. For example, in real estate development, the largest to the smallest developers are able to use computers for accounting, project estimation, and critical path analysis. In real estate sales, especially for residential properties, computers are used by real estate agents in many communities in the United States to access large data bases of properties available for sale or to search for listings which meet the requirements and desires of a particular client. Real estate sales persons and real estate appraisers are able to use a data base made up of properties that have recently sold to provide a source of "comparable sales" data. The information search for "comparable sales" may be for appraisal purposes or for use by sales persons as a tool for establishing listing or bid prices for their clients. In real property management, computers are effectively and efifciently used for budgeting, forecasting, and property accounting. In real estate appraisal and counselling, primary uses of the computer are used

for sophisticated analysis of proposed acquisition, disposition, or development of properties as well as for report writing and for data storage and retrieval.

A more pragmatic reason for considering the use of microcomputers in the real estate appraisal and consulting office is the increasing cost of doing business in terms of overhead and economies of scale. The complex associations of professional individuals into partnerships, joint ventures, and corporations which are efficient and cost-effective in form, are made more economical and efficient because of joint sharing of facilities such as office space, secretarial and reception help, and rentals and purchases of high-cost, sophisticated office equipment. On the other hand, the complexity of the association forces the requirement for more sophisticated accounting and filing systems, appointment scheduling, and time charging and record keeping systems, all of which can be efficiently handled by microcomputers today.

Finally, in order to survive and keep abreast of the competition, real estate professionals must be able to efficiently monitor and selectively utilise all forms of relevant data. In his book, Megatrends: Ten New Directions Transforming Our Lives John Naisbitt suggests that we have now progressed into an information society with our primary and strategic resource being information. Naisbitt contends that information will be the new source of power. As he predicts, "the new source of power is not money in the hands of a few, but information in the hands of many. Change is occurring so rapidly there is no time to react; instead, we must anticipate the future." Our problem, however, is that there is and will be so much information made available to us that we are in danger of facing a pollution of information unless we are able to shift from information supply to information selection, and the solution may lie in the use of the microcomputer which will enable us to meaningfully and selectively access large data bases.

While a discussion of computers may refer generally to a broad range of equipment and software from the large mainframe computers, to the mid-sized minicomputer, and to the desktop microcomputer, it is now the microcomputer which is causing the greatest impact on our society, business, and economy. And this impact should continue in the foreseeable future. Neither the large mainframe computers nor the mid-sized minicomputers have made such an impact on our work functions as the small microcomputer.

The microcomputer is the fastest growing type of computer hardware today. In the United States alone, the sales of microcomputers are expected to exceed US$6 billion in 1983. This figure alone exceeds the total sales projected for the mid-sized minicomputers which is an established 20-year-old industry. Moreover, it has been predicted that microcomputers will eventually squeeze all but the most powerful minicomputers from the market place, just as the minicomputers squeezed out all but the most powerful giant mainframe computers. The relative low cost, ease of operation, and use by potentially all segments of society will make the microcomputer a significant influence on our real estate profession.

The capabilities of the present microcomputers were not even available as recently as three years ago. Yet today, these computers are really as powerful as the so-called "mainframe" computers of the 1970's while requiring only a fraction of their space and cost. Their proliferation has been fostered and encouraged through the development and use of relatively easily learned higher order, English-like programming languages such as BASIC and Pascal, as well as through the adoption of more or less "standard" operating systems such as CP/M and MS-DOS. More importantly, however, the microcomputer industry has recognised that, coupled with the easier use, the lower price, and smaller physical size of their products, both hardware and software, have opened a tremendous market potential of individuals and businesses who are generally inexperienced in computer skills and knowledge.

This industry was able to develop hardware and software for this market based on the concept of the integrated, interactive workstation being relatively easy to understand and use for a wide variety of generalised user applications not predictated by either the software or hardware manufacturer. The concept is integrated because the hardware and software work together as a complete stand-alone unit available for the user whenever he or she wants to use it. The concept is interactive because the user and computer interact with each other directly without delay. Most importantly, the programmes and equipment are developed and designed so that they do not require the care and operation of a specially trained technical operator or require a specially constructed computer environment. As a result, the microcomputer hardware and programmes have gained acceptance because they can be used by all operational and managerial levels within an organisation and by the one-man business as well as by the large, multi-division organisations.

The general use of microcomputers in the real estate consulting and appraisal office is a recent introduction. Their present, primary uses appear to be for word processing and investment analysis applications. These uses, however, may be only a fraction of the full potential and uses for computers in these offices.

Word processing applications were one of the first user interactive, stand-alone computer applications in appraisal and consulting offices. Their use primarily relates to report generation, revision, and preparation; correspondence; and for repetitive and form typing. Initially, these word processors were dedicated computers; that is, they were single-function computers, specially wired and with fixed programming using special function keys for word processing and text editing uses. This equipment was not designed nor intended for alternate, general computer use.

Another initial computer application in the appraisal and consulting office was the investment analysis programme with its ability, for example, to remove the complexity and drudgery of comp,,tation from the Ellwood analysis. These pro grammes. however, were written for a specific an-fl ation for a specific computer, and unless one was nrofi.-;ent in comnnter programming, there was no other use for the hardware.

It was not until the development of the microcomputer and its related new software, specifically the "second generation" word processing programmes and the electronic spreadsheet programmes, that it made real economic sense for the use of computers in the real estate appraisal and consulting office.

The "second generation" word processing software was written for general or multi-purpose computers such as the microcomputer. This software is more flexible, faster, and easier to use. The multitude of special codes and special keyboard combinations are unnecessary; instead, the monitor screens display the text as it will actually appear in its final printed form without the addition and confusion of special codes which serve only to confuse user and secretary. These new programmes are easier to use because they have internally programmed tutorial or help instructional messages which are displayed at the touch of a designated key giving a brief explanation of the function or operation in use at that time. Moreover, the programmes are either portable (or transferrable) between some makes of computer equipment.

Another primary use of microcomputers in real estate appraisal or consulting is to analyse property transactions either prospectively or retroactively under a variety of assumptions or conditions. The complexities of the real estate market have resulted in a multitude of variables and possibilities. The complexity of a proper analysis was often beyond the time, cost, and capability not so much of the user, but of his desktop or hand held calculator.

With the use of generalised software programmes such as the electronic spreadsheet programmes or one of the many investment analysis structured programmes, a real estate appraiser/consultant can now test a variety of assumptions surrounding a prospective or actual transaction and accomplish this task quickly and cost effectively.

The electronic spreadsheet programme aside from word processing programmes is perhaps one of the most significant software developments. Its potential was immediately recognised by users in many different types of business and specifically accounted for the acceptance of the microcomputer in the business environment. The grandfather and most widely known electronic spreadsheet programme today is VisiCalc. Today, there are probably two dozen major imitations or variations as well as a half dozen so-called second generation integrated electronic worksheet programmes available in the market.

Simply, the electronic spreadsheet or worksheet is a user interactive programme which allows the user working with a computer keyboard and display screen to lay out columns and rows on his terminal screen in the same fashion as an accountant's multi-column worksheet. The columns can represent years or months or anything else. The rows can represent the items in an income and expense statement or anything else. A projected budget or proforma income and expense statement can be laid out on the terminal screen. Depending upon the programme and size of the computer's memory, many programmes will allow a worksheet up to 64 columns by 256 rows, although a recent programme has the capability to handle a spreadsheet 256 columns by 2,048 rows.

The results of any cell, which is the intersection of a row and a column, can be used to express a mathematical formula for computing simple arithmetic, or complex discounting calculations, or to perform true-false logic comparisons, or merely to contain a single number, label, heading or title. The heart of the electronic spreadsheet is its ability to instantaneously recalculate the entire worksheet with all its formulae when any variable or assumption is changed. The new results are almost immediately available to the user on his screen for further analysis or printout.

Input of the formulae and data is simple and does not require special programming language or experience once the user has learned the primary programme commands. The user merely enters the information by typing on the keyboard like a typewriter in the user's normal, native language or using conventional algebraic or mathematical expressions. Coupled with the ability of the computer to save the worksheet format, its formulae, calculations, and data on a magnetic storage disk for reuse at another time or for another purpose, these electronic worksheet programmes now provide the appraiser and consultant with an unusually flexible analytical tool with impressive potential and power to perform computations or make assumptions which were not expediently available.

Because of this new capability, there has also been a change in emphasis on the methodology to analyse and evaluate real estate. This ability to make more detailed assumptions about income and expense patterns in a projection period and to refine one's assumptions about future growth and interest rates has increased the application, for example, of analyses employing discounted cash lfow concepts as opposed to analytical techniques which for the expediency of time and cost used generalised assumptions about the pattern of the income and expense and other variable elements in an analysis.

The real potential of the computer in the real estate environment, especially for appraisers and counsellors, however, lies in its ability to eventually access reliable, comprehensive, accurate data bases of market history, economic trends, demographic data, and a multitude of information for analytical or statistical purposes. The computer will ultimately link these results and findings to an electronic spreadsheet analysis programme for processing as well as for use with word processing programmes for inclusion in a report or presentation.

Unfortunately, although computers and programs are available to communicate with data bases, the development of the data bases themselves has not kept pace. For the present, the major real estate data bases available are those maintained by multiple listing services around the United States. Unfortunately, the information is often limited or incomplete, difficult to access for purposes required by appraisers and counsellors, and the quality of the information is not uniformly consistent.

Here is where the real computer challenge lies. There are many more areas where the computer can aid and assist us. Our business is becoming

more complex, and our clients are more sophisti. cated and knowledgeable. Our human resources are more expensive and scarce. It behooves us to develop methods and techniques that can and will make us more useful and efficient to our market and profession. As appraisers and counsellors we must assume leadership in the co-ordination of the development and design of common information bases, to introduce applicable and appropriate technology to our profession, and to conceive uses and applications to enchance the quality of our work product.

I would be remiss if I did not make this final comment. While much of this discussion has emphasised the application of the microcomputer, the human element cannot be disregarded. No matter how much time is saved, how much more work can be done, or how much our horizons can be expanded by the computer, it is the user who must decide when, how, and why it is to be used. Data processing and computer systems work well only when they are carefully selected, programmed wisely, and used by a well-trained staff. Once a system provides the information, it is the user who must ultimately decide its best possible use. In the future, while we will lean heavily on data processing and computer systems for assistance to do the drudgery and to expand our horizons and abilities, we must still recognise that they cannot and will not make the final decision, render the reasoned judgment, or resolve the difficult situation. What they can do is provide us with the best available tools to make maximum use of our own uniquely human, personal, and professional abilities.

Mr Lum distributed a detailed set of computations and computer assisted information as a demonstration. His demonstration involved an after tax income property analysis on a condominium development including investment analysis work sheets, after tax cash flow tables, investment returns and comparable sales analysis. The detailed analysis is not printed in this issue of `The Valuer' having regard to its complexity and length.

PRELIMINARY NOTICE

CANTERBUY-WESTLAND BRANCH

August Seminar On:
PRACTICAL COMPUTER APPLICATION

Venue: Lincoln College

Dates: August 23rd-25th (21 days)
i.e. end of first week of school holidays.

Programme: A simple explanation of:

Discounted cash flow, Internal rate of return, and Ellwood analysis technique, plus two evening sessions for demonstrations and personal use of Valuers' Software with the accent on Valpak.

(Specific programme itinerary yet to be published).

Accommodation: Will be available at LincolnCollege

Enquiries to: Canterbury/Westland Branch Secretary
P.O. Box 1397
CHRISTCHURCH

VALUERS' REGISTRATION BOARD DECISIONS.

Disciplinary Decision

Penalty of 4 Months' Suspension

Date of Hearing: 25 November, 1982

Heard Before: Mr R. P. Young (Inquiry Chairman), Messrs D. J. Armstrong and M. R. Hanna

Date of Decision: 22 March, 1983.

This Inquiry arose from a complaint lodged by the New Zealand Institute of Valuers in respect of a valuation report dated 26th June, 1980, prepared by a registered valuer.

In terms of Section (32) (1) of the Valuers Act, the complaint was referred to the Valuer-General who investigated the matter and reported thereon in writing to the Board. The Valuer-General's report is dated the 13th September, 1982 and on the basis of that report the Board decided to hold an inquiry into the matter.

By notice dated 18th October, 1982, the valuer was advised of the Board's intention to hold an inquiry to take place on 25th November, 1982. He was also advised of the charges which were framed in terms of Section 31 (1) (c). These charges allege that in compiling the valuation report dated 26th June, 1980, the valuer grossly over-valued the leasehold interest in the property; made a mortgage recommendation that was excessive for a leasehold property; failed to apply the correct provisions of the Trustee Act, 1956, relating to leasehold properties; incorrectly stated that the lease had 19 years to run and failed to point out the effect that road-widening would have on the property.

At the hearing of the Board on 25th November, 1982, the complaint was prosecuted by counsel, being the person appointed by the Valuer-General in terms of Section 32 (5) of the Valuers Act, 1948. All charges were denied by the valuer who was present throughout the hearing but was not represented by Counsel.

In prosecuting the complaint, counsel called the Valuer-General; the District Valuer for the relevant city, who is a registered valuer; and a registered public valuer for the city. Each witness was sworn and each witness was cross-examined by the valuer.

In presenting his evidence the Valuer-General produced his report of 13th September, 1982, but excluded therefrom the valuation reports prepared by the district valuer and the public valuer, both of whom later gave evidence. Included with this report was a copy of the report and valuation complained of and dated 26th June, 1980; a copy of a report and valuation dated 9th March, 1979, prepared by another (unregistered) valuer; a copy of the Certificate of Title; a location plan and various other correspondence including a letter from the Chairman of the local sub-branch of the New Zealand Institute of Valuers dated 24th June, 1982, which contains the following chronological summary of events relating to the lessees interest in the subject property:

9/3/79	Valued by the unregistered valuer	$ 9,180.00 (L/H)
26/3/79	Valued by public valuer witness	$12,500.00
20/5/80	Sale	$ 5,000.00
29/5/80	Change of Ownership	$ 5,000.00
26/6/80	Valuation subject to complaint	$36,000.00
29/9/80	Sale	$36,000.00
7/4/82	Mortgagee Sale	$ 5,000.00

The above events were all confirmed in subsequent evidence presented to the Board, with the exception of the item "29/5/80 Change of Ownership $5,000.00 (L/H)". The Valuer-General also produced a letter dated 16th September, 1982, received by him from an Auckland legal firm. Attached to this letter are copies of correspondence between that firm and the valuer and between the firm and the valuer's lawyer.

In answer to a question put by the valuer, the Valuer-General advised that he did not know that the valuer's report of 26th June, 1980, was one of several reports provided to the addressee.

The District Valuer produced his valuation report on the subject property. This report advises a value of the lessee's interest at $15,000.00 assessed as at 26th June, 1980, although inspection was made on 26th August, 1982. The District Valuer subsequently produced a schedule of 9 sales of dwellings on similar leasehold residential sections, these sales having taken place between May, 1979 and August, 1981, at prices ranging from $9,900.00 plus chattels up to $23,000.00 plus chattels. Of these nine sales six took place at prices between $8,000.00 and $13,600.00 plus chattels and the District Valuer advised that in his opinion these six properties are all inferior to the subject property. The remaining three sales took place at prices between $20,000.00 and $23,000.00 plus chattels and the District Valuer advised that in his opinion and in valuation terms these three properties are either superior to or equivalent to the subject property. In. answer to questions put by the valuer, the District Valuer advised that he is not involved in making mortgage valuations on leasehold residential property and he further advised that he has not read the "Clayton Report" to Parliament. In answer to questions nut by Board members the District Valuer advised that the pattern of sales of residential leasehold property in the area is rather erratic; that within the city there is a large amount of residential property held on leasehold tenure under terms similar to the terms of the Hospital Board lease pertaining to the subject property.

In analysing the nine residential leasehold sales, the Valuer valued the lessee's interest in the land by calculating the present value of the "benefit rent" (i.e. the difference between a market rent and the actual rent) over the unexpired period of the existing lease terms - i.e. until the next rent review. This analysis does demonstrate the rather erratic pattern of leasehold sales but it also indicates that sale prices for residential property with land held on leasehold tenure, are at a lower level than sale prices for equivalent freehold residential property. In dealing with this analysis the valuer put it to the District Valuer that other valuers in the area would disagree with his method of analysis. The District Valuer's answer was that among valuers practising in the city there is general agreement as to this method of analysis.

The Public Valuer produced a report and valuation on the subject property dated 26th March, 1979, and completed on instructions from the City Council. His value of the lessee's interest in the property at that date was $11,500.00 (land and improvements). His method of assessing the value of the lessee's interest in the leasehold land is similar to that adopted by the District Valuer. In the same report he advised that his assessment of the freehold value of the property as at 26th March, 1979, was $23,500.00. The Public Valuer further stated that between March, 1979, and June, 1980 (the date of the disputed valuation) there would have been an increase in the value but this would have been off-set in the case of the subject property by further physical deterioration of the main building.

In answer to a question put by a Board member, the public valuer advised that in his opinion the lessee's interest in the subject property could not possibly have a value equivalent to its freehold value as at June, 1980. He advised that he has valued approximately 20 properties in the street concerned approximately half of which were held on freehold tenure and half on leasehold tenure.

The Public Valuer also provided to the Board some information on four sales of leasehold residential properties at prices ranging from $11,500 to $18,500. In his opinion all of these properties were superior to the subject property but unfortunately his evidence was rather vague on several important factors relating to these sales, including lease terms and exact dates of sales. Specific information on these sales would have been of considerable assistance to the Board.

In defending the charges, the valuer was sworn as a witness at his request and then presented verbal evidence to the Board. He advised that prior to writing his report of 26th June, 1980, he took his

client to the property and to the offices of the City Council including the Town Planning Department and Building Department. He further advised the Board that he considered there to be no difference in value between freehold and leasehold residential property in the city and that in his opinion Section 10 (b) of the Trustee Act, 1956, permits the granting of a mortgage of up to two-thirds of the value of the lessee's interest when dealing with leasehold property held under leases such as the one pertaining to the subject property. He advised the Board that he was aware that the property was held on leasehold tenure and that he examined sales evidence at the time of his valuation. Under cross-examination he stated that he was completely aware of the provisions of Section 4 of the Trustee Act, dealing with advances of first mortgage on certain leasehold property. He further stated that in his opinion perpetually renewable leasehold property is "as good as freehold" land and therefore Section 10 of the Trustee Act applies. Under cross-examination he also advised that he was aware that the lease had 15 years to run and not 19 years as stated in his report. He indicated that the mention of 19 years in his report was an error. He further advised that he supplied to his client (the recipient of his 26th June, 1980, report) copies of Town Planning maps and a copy of the Title. He contended that it should therefore have been apparent to the client that there was a designation for road widening purposes affecting the property.

On several occasions the valuer emphasised his belief that once a residential leasehold property is built on, and provided that the lease is renewable in perpetuity, then it is as good as freehold property and has an equivalent value. In support of this opinion he cited a report to Parliament which report he claims states that freehold and leasehold properties are equivalent in value. In answer to a question he confirmed that the report referred to is the "Clayton Report" which is dated May, 1982, and is a report of a committee of enquiry into Crown Pastoral Leases and Lease in Perpetuity.

Having heard and studied the evidence presented to it, the Board considers that the following are the most important factors when considering the charges against the valuer:

1. The Valuer's Report of 26th June, 1980, together with his Verbal Evidence to the Board.

The report is addressed to a client who was apparently contemplating purchase of the property at the time he instructed the valuer. The first paragraph of the report states that the valuer inspected the property to ascertain its value for a prudent investor to use as security for first mortgage investment. On page three of the report is a recommendation for first mortgage purposes in terms of the Trustees Act. It is therefore clear that the valuer was aware that this particular report was intended to be used and relied upon by a mortgagee and in his letter to the Valuer-General dated 23rd August, 1982, this point is conifrmed by the statement that the valuation was made for the client to obtain finance.

In his verbal evidence and in cross-examining other witnesses, the valuer implied that this particular report is one of several reports submitted to his client. However, his report of 26th June, 1980, does not refer to other reports or to other information, conditions or restrictions which a first mortgagee should be aware of. A first mortgagee was entitled to rely on the valuer's report of 26th June, 1980. As a registered valuer he must have been aware that this would be the case and that the existence of other reports not referred to in this particular document does not diminish his responsibility to a first mortgagee acting in reliance on this report.

In his 26th June, 1980, report the valuer advises that his valuation of the lessee's interest in the property at that date was $36,000.00 and he recommends an advance of $24,000.00 by way of first mortgage in terms of Section 10 of the Trustee Act, 1956. The report further notes the fact that the property is held on leasehold tenure and that the valuer has knowledge of the Trustee Act.

In giving his verbal evidence to the Board, the valuer was adamant that once a residential leasehold section is developed with a residential building, and provided the lease is renewable in perpetuity, then it is "as good as freehold" and has a value equivalent to its value if the land were held on freehold tenure.

2. The Evidence of the District Valuer and the Evidence of the Public Valuer.

In essence the District Valuer's valuation of the lessee's interest in the property as at 26th June, 1980, is $15,000.00 while the Public Valuer's valuation of the lessees interest in the property as at 26th March, 1979. is $11,500.00. The evidence of both these registered valuers, together with the sales evidence presented by the District Valuer confirms that in this city the market value of the lessee's interest in a residential property held on leasehold tenure, is somewhat lower than is the market value of equivalent residential property where the land is held on freehold tenure.

CONCLUSIONS

The Board's conclusions in this matter are summarised as follows:

1. The Board is entirely satisfied that the valuation assessed by the valuer as at 26th June, 1980, at $36,000.00 for the lessee's interest in the subject property, represents a gross over-valuation of the leasehold interest in the property. Furthermore, it appears to the Board that the valuer did not possess an adequate knowledge and appreciation of the value of leasehold residential property nor of the techniques commonly used to assess that value. The valuer's insistence that, in valuation terms, there is no difference between leasehold and freehold residential property is totally unacceptable to the Board and his reliance on the "Clayton Report" affords him no assistance. The "Clayton Report" deals essentially with rural land held on Crown Pastoral Leases or on Leases in Perpetuity, some of these leases being for 999 years without rent review.
2. The Board is in no doubt that the valuer's mortgage recommendation was also excessive for a leasehold property. Furthermore, the Board agrees that he failed to apply the correct provisions of the Trustee Act, 1956. In presenting his evidence. the valuer displayed confusion and lack of logic in his interpretation of the Trustee Act and as a consequence his report of 26th June, 1980, is potentially dangerous and misleading to a mortgagee
3. With regard to the charge that the valuer incorrectly stated that the present period of the lease had 19 years to run; the Board notes that he has acknowledged this error. The Board notes however that the error occurs twice in the report and is concerned at this lack of attention to detail.
4. With regard to the charge that the valuer failed to point out the effect that road widening would have on the property, the Board believes this aspect to be of somewhat less importance than are the other factors summarised above. The possibility of part of the land being acquired for road widening purposes should have been mentioned in the report but the designation for road widening may in fact have little effect on the present value of the lessee's interest. If compensation law and prince nles are properly applied, the purchaser of this property should receive full and proper compensation when the land is acquired for road widening purposes and it can therefore be argued that no present loss in value is suffered as a result of the Town Planning designation.

The charges laid against the valuer are in ,three sections.

Charge number I alleges gross over-valuation, charge number 2 alleges an excessive mortgage recommendation and charge number 3 alleges that the valuer failed to apply the correct provisions of the Trustee Act. 1956, relating to leasehold property, incorrectly stated the remaining term of the lease and failed to point out the effect that road widening would have on the property.

The Board's finding is that the valuer is guilty of all charges laid against him. The Board further notes

that it regards the third part of Charge number 3 (dealing with road widening) to be of somewhat less significance than the other charges.

The Board has given careful consideration to the question of penalty.

The charges against the valuer are serious and the standard of work which he has displayed in valuing and reporting on this particular property falls below that required of an expert in the field of urban valuation. The Board is in no doubt that the recipients of such reports are entitled to expect a much higher degree of competency and protection.

However, this is the first occasion on which the valuer's work has been brought to the attention of the Valuers' Registration Board and for this reason the Board considers it inappropriate to apply the maximum penalty provided for in section 31 of the Valuers' Act. Accordingly, a penalty has been imposed in terms of Section 33 of the Act and the Board has decided that the valuer's registration shall be suspended for a period of four months. According to subsection 4 of section 33 the suspension will take effect on and from the 22nd day following notification of this order unless notice of appeal is received prior to that day.

IN THE MATTER of Section 34 of the Valuers Act 1948.
AND

IN THE MATTER of an appeal by a Registered Valuer following a decision of the Valuers Registration Board dated 22nd March 1983.

The Valuers Board of Appeal: His Honour Judge Bate, chairman, Messrs R. J. Maclachlan and M. L. Svenson.

Date of Hearing: 4 July, 1983.

Date of Decision: 15 August, 1983.

RESERVED DECISION OF THE BOARD OF APPEAL

This is an appeal pursuant to Section 34 (1) of the Valuers Act 1948 from a decision of the Valuers Registration Board dated 22nd of March, 1983. At the outset it was agreed by the parties that no question would arise during the appeal upon which it would be necessary for the Valuers Registration Board to be represented and leave was accordingly granted to Counsel for the Board to withdraw.

This matter first came before the Board of Appeal on the 21st of June, 1983 in order to comply with the Statutory requirements as to the time limits within which the appeal hearing must commence after notice of appeal had been received by the Registrar. The hearing was then adjourned to the 4th of July, 1983. After hearing counsel the Board of Appeal decided that the appeal should not be by way of rehearing. It is appropriate to record that the evidence given at the hearing before the Valuers Registration Board was voluminous and detailed. It is noted that the Appellant elected not to be represented by counsel at that hearing and this was advanced as one reason for conducting the appeal by way of a rehearing. The record of the original hearing however discloses very clearly that the members of the Valuers Registration Board went to considerable lengths to assist the valuer in the conduct of that hearing and to ensure that he was not prejudiced by a lack of representation. Indeed the Appellant himself is recorded in the transcript as acknowledging that the Board had given him a very good hearing. In addition it is noted that for some period beforehand the Appellant had been taking the advice of a solicitor whom it would be natural to assume could readily have represented the Appellant at that hearing had the Appellant wished.

Accordingly at this appeal the Board of Appeal has heard detailed submissions from counsel representing the parties. Counsel for the Appellant has brought out all that can be said for the Appellant against the findings of the Valuers Registration Board and against the penalties imposed. He examined in great detail the evidence on record to support his submission that the evidence does not establish the three charges laid. The Board of Appeal has examined that evidence and the conclusions of the Valuers Registration Board drawn from it together with the reasons given by the Board for their finding that the three charges were proved. It would be merely repetitive in this decision to give in any great detail our reasons for concurring in their decision as to guilt and their reasons therefor.

Viewed as a whole the evidence establishes that the valuation of the subject property made by the Appellant and dated the 26th June, 1980 was a gross over-value of the leasehold interest in that property and that the mortgage recommendation made in the same report was excessive for a leasehold property. Counsel made the point that at least in respect of these two charges it is proper to examine the end result and recommendations contained in the Appellant's report rather than the means adopted by him to reach his conclusions. While that may be a view nevertheless the methods and bases which the Appellant himself has described are quite at variance with accepted practices adopted by competent valuers. In particular the Appellant's assertion to the bitter end that the value of a leasehold interest can be equated with that of a freehold interest where a lease is perpetually renewable and the property is built upon makes the resulting gross over-value by him of the subject leasehold interest not surprising but no less reprehensible. This is particularly so when the Appellant supports this view by reference to the report referred to as "The Clayton Report" which was not published until may, 1982 and refers to a quite unrelated class of lease of pastoral as opposed to urban land.

Counsel also questioned the use of the words, "grossly over-valued" in the first of the charges. He compared the valuations of the other witnesses with those of the Appellant and submitted that the difference did not satisfy the test required to establish a gross over-valuation by the Appellant. He stressed that the Valuers Registration Board in its own decision at page 180 of the transcript used the word "somewhat" and counsel urged that a finding which incorporates that word does not meet the test inherent in the word "gross" as in the charge.

The Board of Appeal does not accept that submission. The use by the Valuers Registration Board of the word "somewhat" was in the context of its consideration of the evidence given by the witnesses relating to relative values of leasehold and freehold tenure. It is not inconsistent with its conclusions by reference to the wording in the charge when the evidence is viewed as a whole. Taking the ordinary meaning of the wording in the charge the Board of Anneal finds nothing exceptional in the reasons of the Valuers Registration Board given in support Of its conclusion that this charge was proved.

Referring to the third charge counsel criticised the decision of the Valuers Registration Board saying that it seemed to regard subsections (a), (b) and (c) of the third charge as being separate charges whereas the third charge must be regarded as one charge only but with three elements labelled (a), (b) and (c). The Board of Appeal finds nothing exceptional in the way the Valuers Registration Board expressed itself on this subject. It has simply proceeded to examine, as it must, the elements labelled (a), (b) and (c) to reach the conclusion that the Appellant was guilty of such incompetent conduct in the performance of his duties as a Valuer as to render him liable to a penalty provided by the Act.

After closely examining the evidence, the submissions and the decision of the Valuers Registration Board and for the reasons contained in that decision and amplified herein, the Board of Appeal finds each of the three charges proved.

Counsel submitted that in the event of a finding of guilt the penalty imposed by the Valuers Registration Board was manifestly excessive. As pointed out by the Valuers Registration Board the maximum penalty faced by the Appellant is to be removed from the Register under Section 31 (1). A much lesser penalty was imposed under Section 33 (1) by suspension for a

period of four months without the imposition of any further fine. The Board of Appeal notes that that penalty does not preclude the Appellant from pursuing his livelihood during the period of suspension, the effect of which is that the Appellant cannot represent himself to be a Registered Valuer during that period. In view of the serious lapses in the standards to be expected of a Valuer in completing the report in question, it is the view of the Board of Appeal that the penalty imposed is entirely appropriate and is not excessive.

The decision of the Valuers Registration Board both as to guilt on the three charges and as to penalty is accordingly confirmed. The appeal nevertheless was a proper one and there will be no order as to costs. For the purposes of the proviso to Section 33 (4) the order of suspension shall commence on the 1st day of September, 1983.

LVP 231/80.

VALUERS REGISTRATION BOARD

DISCIPLINARY DECISION

Valuer Reprimanded for Failure to Disclose Relationship with Property Owner and Failure to Inspect Property.

Heard Before: Mr D. J. Armstrong (Inquiry Chairman), Messrs M. R. Hanna, L. M. Sole, R. P. Young.

Date of Hearing: 27th April, 1983.

Date of Decision: 14th July, 1983.

This inquiry arose from a complaint to the New Zealand Institute of Valuers on the 28th of September, 1982 by the General Manager of a Mortgage Guarantee Company. The complaint was considered by the Institute's Executive Committee and referred to the Valuers Registration Board for investigation.

The complaint alleged inter alia that the Valuer in making a valuation of a property owned by his brother-in-law, failed to disclose that he was related to the owner of the property which was the subject of the valuation report and loan recommendation made by him. The letter of complaint also queried -

(i) The Valuer's qualification to carry out a valuation on a rural property.

(ii) Intimated that the Valuer had not inspected the property to prepare the report which was submitted to a company pension fund and guaranteed by the complainant company.

(iii) Suggested that the Valuer did not support his valuation with recent sales.

(iv) That he merely changed the address on a previous valuation to facilitate the provision of the Trustee certificate. Accordingly it was alleged by the complainant that unless there had been a truly independent instruction, and a re-assessment of the value of the security, the Valuer should not have proceeded to provide a Trustee certificate.

The complaint was referred to the Valuer-General for investigation and his report was placed before the Board at a meeting on the 16th of February, 1983. The Board decided that there were reasonable grounds for the complaint and that an inquiry should be held. By notice dated 18th of March, 1983 the Valuer was advised of the inquiry and the charges against him which were framed under Section 31 (1) (c) of the Valuers Act, 1948 as:

(a) You did on or about the 6th of September, 1982 accept instructions to undertake a valuation for the Company Pension Fund while failing to disclose to your client the nature of an interest or affiliation you had in connection with the service to the client namely that you were a relative of the registered proprietor of the subject land, in breach of Article 4 of the- Code of Ethics of the New Zealand Institute of Valuers.

(b) You did on or about 6th of September, 1982 undertake valuation work namely a valuation of a rural property for the Company Pension Fund for which you were not qualified and lacked professional experience to undertake in breach of Article 3 (3) of the Code of Ethics of the New Zealand Institute of Valuers.

(c) You did on or about the 6th of September, 1982 certify a Valuation report addressed to the Company Pension Fund in respect of rural land which omitted a material fact namely that you were a relative of the registered proprietor of the subject land in breach of Article 15 of the Code of Ethics of the New Zealand Institute of Valuers.

(d) On or about the 6th of September, 1982 in giving a valuation report addressed to the Company Pension Fund in respect of rural land you failed to make an up-to-date inspection of the property and ascertain and weigh the facts relating to the value of the property, in breach of Article 17 of the Code of Ethics of the New Zealand Institute of Valuers.

The Inquiry was duly held in Wellington on April the 27th, 1983. In opening the case for the prosecution counsel for the Valuer-General outlined the basis of the complaint and further advised that the Valuer was an urban qualified valuer practising in a certain town, that he carried out the valuation complained of on a dairy farm situated in another district.

Counsel then called the Valuer-General, who gave formal evidence concerning the processing of the complaint and submitted copies of the valuations prepared by the Valuer. These valuations were prepared in the ifrst instance on the 14th of January, 1982 and addressed to the Valuer's brother-in-law, and in the second instance on the 6th of September, 1982 addressed to the Secretary of the Company. The Valuer-General noted that these reports were identical apart from the addressee and some spelling mistakes. He also noted that neither report had reference to a date of inspection. He submitted a copy of a letter written by him to the Valuer on the 5th of November, 1982 outlining the complaint, together with the Valuer's response in a letter of reply dated 24th of November, 1982. In that letter the Valuer outlined his educational qualifications and experience in rural property obtained by working for a rural valuer in the first instance and latterly working in partnership with that valuer. He also advised that with regard to the second valuation he was in his view independently instructed by a mortgage broker to carry out a valuation for the Company Pension Fund and that his original value of the property prepared in January, 1982 could still be sustained in September of that year.

Prosecuting counsel then called the District Valuer from the local office of the Valuation Department, a registered valuer. The District Valuer submitted valuations prepared by him as at the operative dates being 14th of January and the 6th of September, 1982. These were:

14th January, 1982 -	
Land Value	$479,000
Value of improvements	189.000
Capital Value	668,000
6th September, 1982 -	
Land Value	500,000
Value of Improvements	200,000
Capital Value	700,000

The District Valuer agreed that there was no material difference between his figures and those of the Valuer which were on both dates:

Land Value (including fencing, grassing and races)	$483,000
Value of Improvements	191,500
Current Mortgage Value	675,000

Both the District Valuer's and the Valuer's valuations were supported by similar sales evidence which was presented to the Board. The Board notes that both valuers arrived at a similar final figure while the District Valuer did not agree with the quantum of loan recommendation made by the Valuer on his Septem-

ber valuation. The District Valuer recommended a ifgure of $315,000 while the Valuer recommended an advance of up to $450,000. The District Valuer outlined his reasons for limiting the loan recommendation to $3;15,000 being the result of a financial investigation into the ability of the property to debt service the advance at 16 per cent interest.

The matter of mortgage recommendation was not being considered in this instance by the Board, however the Board does comment that it was impressed and greatly assisted by the evidence and the manner in which that evidence was presented by the District Valuer.

Opening the defence, counsel called the property owner who stated that he was married to the Valuer's sister. He also advised that he had owned the subject property for seven to eight years and that at or around June, 1981 he was contemplating either investment into more land or off-farm investment such as commercial or industrial property. In order to set a base for making the decision to proceed with such investments he consulted a Mortgage Broker to enquire about the availability of mortgage finance. Arising from that meeting it became apparent that his farm property would have to be valued. Witness stated that as he did not know any local valuers he enquired of the Mortgage Brokers about his brother-in-law's firm and was advised that they were a reputable firm. Subsequently the Valuer was briefed to carry out a valuation and visited the property in January, 1982.

The witness stated that the Valuer carried out a thorough and complete inspection of the property. The valuation was completed and handed to witness on the occasion of a family gathering. The amount of $1300 for fees was paid and evidence of the amount and receipt were produced by the witness. The valuation was subsequently handed to his Mortgage Brokers who presumably used it to assist them in seeking the ifnance required. The witness stated that the Valuer did not visit the property to prepare his report dated 16th of September, 1982 but that during the winter of 1982 the Valuer visited the property and had "a run over the property". He stated that his solicitors and accountant were aware of the relationship between himself and the Valuer but he was not sure as to whether or not his Mortgage Broker knew that relationship though at no time did he attempt to hide the fact that the Valuer was his brother-in-law. As far as the witness was aware the Mortgagee Company officers were quite happy with the report and were not concerned about the relationship between himself and the Valuer if in fact it was known to them.

The Valuer was then called to give evidence. He outlined his academic training as being a Diploma in Urban Valuation from Auckland University completed in 1978. He stated that he went to work for a rural valuer in 1976 and subsequently entered a partnership with him. That partnership carried on until 1982 when it was reorganised and the Valuer essentially commenced practice on his own with some limited association from his former partner who operated from another office. The Valuer presented a schedule of rural valuations prepared by him over the years of his practice. He stated that these reports were initially certified by his employer/partner who was a rurally qualified valuer. He estimated that 30 per cent of his work had been rural and 70 per cent urban. He also said that his employer/partner had given him a good background training in the principles of rural valuation.

He also advised that he had been involved in running his own dairy beef farming operation based on leased land for three years up to 1981.

Instructions to value the property on the second occasion had come from a Mortgage Broker who gave the Valuer a copy of a letter from the Mortgagee Company dated 13th of August 1982 setting out the terms and conditions of a possible mortgage advance of up to $320,000 subject to a number of conditions, two of which were that a Trustee report would be prepared by the Valuer's firm and also that the mortgage would be guaranteed by the Guarantee Company. The Valuer confirmed that he did not inspect the property prior to preparing the second report but that he did visit the property during the winter of 1982 for a social call. He said further in evidence that he thought he went over the property and that there were no changes. He did re-investigate sales by searching microfiche records and concluded that there was no substantial evidence of any movement in the market in the County concerned, as was the case in the County where he normally operates.

The Valuer stated that at the time of preparing his report he considered that he did not need to disclose his relationship with the owner but as subsequent events have turned out he would now make such a disclosure and probably would not accept a brief under similar circumstances. He referred to an item from the Branch Newsletter of the New Zealand Institute of Valuers dated in 1979 quoting Garrows interpretation of the effects of Section 10 of the Trustee Act. The Valuer's response to this passage was that a valuer had no other responsibility than to determine the security value of the property. The Board has previously commented on these matters in noting the District Valuer's approach to ascertaining a level of mortgage recommendation and would prefer that approach to the one made by the Valuer.

The Valuer's former partner was then called and gave confirming evidence of the Valuer's experience in valuing rural property and stated he considered that the Valuer was a very competent valuer.

Having heard the evidence and summing up by Counsel the Board concludes that the Valuer's valuations as prepared in January, 1982 and purportedly prepared again in September, 1982 did represent a fair value of the subject property. However, there were areas in the Valuer's approach to preparing and reporting this valuation which were open to question, the most notable of these being:

- the failure of the Valuer to inspect the property prior to preparing the September report. It is considered to be a serious omission of good practice. Over a period of nine months significant changes can be made to a farming property that only an inspection can reveal. In this instance the Valuer was unable to report the new garage had been erected, he was fortunate that this was the only change that took place.

The Board cannot accept that a social visit to the property in mid 1982 was sufficient in any way to base a report prepared in September of that year.

Notwithstanding the deficiencies the Board finds that the valuations produced by the Valuer did display an adequate level of competency in valuing dairy farms in as much as his resultant figures were close to the report prepared by the District Valuer and presented in evidence by the prosecution. The Board is of the opinion however that the Valuer was at the limit of his experience in making this valuation but in this instance there was no evidence showing his valuation to be incorrect notwithstanding his urban academic training and his rather limited rural experience. Accordingly the Board finds that there was no breach of Section 3 (3).

Turning to the other matters raised by the complainant the Board concludes that there is clear evidence as to Charge A that a breach of Article 4 of the Code of Ethics of the New Zealand Institute of Valuers did take place. The Board notes that the Valuer stated in evidence that he would not now accept such a brief to value property owned by a relative.

Charge D asserts that the Valuer failed to make an up-to-date inspection for his report dated September, 1982. This fact was admitted and again there is a clear breach of Clause 17. Obviously without a recent inspection a valuer cannot ascertain all the facts relating to a property and cannot therefore make properly balanced assessments.

A further matter which was raised by the complainant and considered by the Board was the manner in which the Valuer was instructed. The complainant in his letter of complaint states that "the whole question of the provision of Trustee certificates where valuers have not been independently instructed is one which causes us a good deal of concern from time to time and we have many examples of them". The Board in this instance agrees with the complainant that having considered all of the circumstances in this

case, it is difficult to see that the Valuer was acting independently of the owner of the property. The Board strongly recommends that practising valuers should if in doubt as to the source of their instructions and the use to which their report and recommendation is to be put, that they should seek clarification before proceeding with preparing the valuation and always ensure that the valuation certificate complies with the appropriate section of the Trustee Act or any other legislation that the valuer may have been instructed to base the valuation and loan recommendation on.

The Board finds, having considered all the evidence, that Charges A, C and D as set out in the Notice to the Valuer pursuant to Section 32 (2) of the Valuers Act, 1948 dated 18th of May, 1983 to be proven. In making this finding the Board notes that Charge C substantially duplicates Charge A.

As to penalty, the Board notes the references to competency and good character presented in defence of the Valuer. It also recognises that already he had paid dearly in defending these charges. However, the Board is concerned that the public must be protected from valuers who do not and will not comply with the intention and direction that the Statute and New Zealand Institute of Valuers Code of Ethics defines. The Board is concerned that there may be valuers who are undertaking work for which they are not trained or adequately experienced. Accordingly the Board will pursue a rigorous approach to ensure that professional standards are upheld when such matters are brought before it.

In the case now before it the Board accepts that the Valuer has not previously been the subject of a complaint and states that he would not now take a brief under the circumstances we have been considering in this case.

After due consideration therefore and acting under the powers vested in it by Sections 31 and 33 of the Valuers Act, 1948 the Board has determined that the Valuer shall be reprimanded for his conduct.

The fact that this penalty is not more severe is only a recognition of the considerable costs that the Valuer has already incurred in defending the charges, his relative youth and the fact that he had not previously been before the Board on any matter.

Legal Decisions

CASES RECEIVED

Notice of cases received are given for members' information. They will be printed in the "Valuer" as space permits and normally in date sequence.

CASES NOTED

Cases `noted' will not normally be published in the "Valuer".
Copies of cases `received' and `noted' may be obtained from the Registrar of the Court under whose jurisdiction the cases was heard. (A charge is normally made for photocopying.)

Maori Appellate Court

MAORI APPELLATE COURT vs TE RAU WHIRO TIBBLE.

RE LEASE TIKI TIKI D7B TO PINE DIBBLE.

Appeal dismissed on the grounds that a "change of mind" on the part of the owners between the date of the meeting of the assembled owners and the date of the hearing of the application for confirmation of the resolution would be a substantial breach of the code and contrary to law:-

Decision in Re Mangawhero 2 and in Re Papatupu 5A2.

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STOP PRESS

RENT LIMITATIONS REGULATIONS 1984

Editor's note:

The following article and amendments have been prepared by Mr R. M. (Bob) McGough, based on a talk he gave recently to the Building Owners and Managers Association in Auckland.

The subject is considered to be of such importance to valuers over the next twelve months that it has been added as a "stop press" item in the current issue, as a guide to practitioners dealing with this problem on a day to day basis.

It must be stressed that this article has not been officially prepared on behalf of the New Zealand Institute of Valuers.

Bob is a leading practitioner in Auckland and well known to members of our institute throughout the country as the Institute's immediate Past President. Considerable weight may be placed on his article as proving a logical interpretation of the Rent "thaw" Regulations.

There has been a trend for valuers in Auckland to advise clients that their interpretation of the Regulations should be checked with the client's legal adviser.

BASIC NOTES AND EXAMPLES OF "RENT LIMITATIONS REGULATIONS 1984"

Introduction:

The following basic notes and examples were used in an address to The Building Owners and Managers Association in Auckland on 13th March, 1984. The examples were perused, and prior to completion amended, following discussions with the solicitor also involved in the forum.

It is important to recognise that, in the ultimate, only the Courts can decide on the proper interpretation of the Regulations and therefore readers should not accept these notes as a final authority. This is particularly so with Regulations that could well be the subject of a variety of interpretations.

The group concerned were primarily interested in "controlled property" rather than "dwelling houses" and as such, only "controlled property" is covered.

Certain basic principles need to be recognised:-

(1) There has been a freeze on increased property rentals along with similar restrictions on wages and prices.

(2) The Rent Limitations Regulations are designed to thaw that freeze.

(3) The intention of the Regulations must be recognised.

(4) The contract between the parties remains paramount. The Regulations are then superimposed on that contract and do not take the parties beyond it. Less yes. More no.

Hence the need to view the interpretations from both sides of the fence - The lessor's side - The lessee's side.

POINT 1: Regulations cover both "dwellinghouses" and "property" that were let:-

(a) on 22nd June, 1982

(b) were not let on that date but were let on the 13th June, 1983.

If not let on either of these dates don't worry.

POINT 2: The Regulations expire on 28th February, 1985 but their effect does not expire until 28 February, 1986.
Reason: Regulations expire subject to Regulation 25 which states that any increase between 1 April, 1984 and 28 February, 1985 may not be further increased for another 12 months.

POINT 3: For "`Property" the "3 Year Rule" applies. No increase is permissable until the later of the following dates:

(a) The 1st day of April 1984

(b) The date fixed by the lease (or Agreement or any Act)

(c) The date 3 years after the present rent first became payable.

The "3 Year Rule" is critical as is the word "payable".

POINT 4: (a) The Regulations are framed around the Quarterly publication of the Consumers Price Index.

(b) For this reason precise dates are important.

POINT 5: The maximum permissable increase after 3 years is:-

(a) 10% of the present (or previous) rent

(b) The percentage increase in the C.P.I.

(c) Add the maximum permitted increase under (a) and (b) for each complete year

Thus, only complete years are permitted (not part years) and the percentage increases are not compounded.

POINT 6: Full details of the Consumer Price Index are available from the Statistics Department but for guidance in this talk, are summarised in Quarterly form over years as follows:-

Annual % For Quarters Ending

	March	June	Sept.	Dec.
1976	17.2%	17.7%	17.2%	15.6%
1977	13.7%	14.1%	14.5%	15.3%
1978	14.6%	12.2%	11.1%	10.1%
1979	10.4%	12.4%	15.2%	16.5%
1980	18.4%	17.9%	16.3%	16.1%
1981	15.2%	15.0%	15.4%	15.7%
1982	15.8%	17.0%	16.6%	15.3%
1983	12.6%	8.3%	5.4%	3.6%

Examples:

Example 1: A standard 3 year lease from 1 August 1979 when the rental at that time agreed at $50,000 pa and a negotiated agreement for 1 August 1982 at $70,000 pa.

Step 1: (Historic) Rent Frozen by 22 June 1982 Regulations at $50,000 pa and therefore increase to $70,000 pa on 1 August 1982 was not permitted.

Step 2: In June 1983 the Regulations were further extended and increase to $70,000 pa was not permitted.

Step 3: In February 1984 the Rent Limitations Regulations permit an increase in the later date of:

(a) 1 April 1984

(b) The date of the lease

(c) The "3 Year Rule"

- 1 April 1984 is the later date as the date of the contractural review or the "3 Year Rule" would have been 1 August 1982.

Step 4: From the Quarter ending June 1979 (the last quarter prior to our August 1979 present rental) come through in whole years and base on rental now being paid, $50,000 pa, as our reviewed $70,000 pa has never been paid.

Step 5: The permissable rent as at 1 April 1984 would be:-

C.P.I. Index June 1979-June 1980 17.9% take 10 %

C.P.I. Index June 1980-June 1981 15.0% take 10 %

C.P.I Index June 1981-
June 1982 - 17.0% take 10 %
C.P.I. Index June 1982-
June 1983 - 8.3% take 8.3%
Rental Applicable 1 April 1984
= $50,000 + 38.3%

$50,000 pa plus 38.3% _ $69,150

Step 6: NB If the permitted increase in Step 5 is more than the agreed 1 August 1982 rent (in this example $70,000 pa) then the lower agreed rent would apply because that is the contract between the parties and remains paramount.

Step 7: The permitted increase of $69,150 pa will apply for 12 months following 1 April 1984 i.e. to 1 April 1985, from when our August 1982 agreed rent of $70,000 pa will be due until the next review on 1 August 1985.

Example 2: Why are precise dates so critical?

Take 2 identical factory bays side by side:-

Bay 1 Let 20 June 1979 at $50,000 pa
Bay 2 Let 1 July 1979 at $50,001) pa

It is agreed that both are worth $70,000 pa as at 20 June and 1 July 1982.

Owner of Bay 1 receives over 6 years:-

20 June 1979 to 20 June 1982 3 years @ $50,000 pa =	$150,000
Rent legally payable 22 June 1982 = $70,00 pa 3 year @ $70,000 pa	= $210,000
Total income over 6 years	= $360,000

Owner of Bay 2 over the same 6 years receives:

1 July 1979-1 July 1982 3 years @ $50,000 pa	=$150,000
1 July 1982-1 April 1984 - 1 year 9 months @ $50,000 pa	= $87,500
1 April 1984-1 April 1985 1 year @ $69,150 pa	= $69,150
1 April 1985-1 July 1985 3 months @ $70,000 pa	= $17,500
	$324,150

This may take the worst possible situation but imagine the problem of the valuer carrying out a Company Asset Valuation as at 1 March 1983. Two identical bays side by side, one returning $70,000 pa and the other "frozen" at $50,000 pa, with the possibility of the freeze being extended.

Example 3: A lease commenced 1 June 1981 but a 3 months rent free fitting out period was given and the rent did not become "payable" until 1 September 1981. The "3 Year Rule" will take you through to 1 September 1984 before any increase is permissable. Not the lease date of 1 June.

Example 4: There is a contract between the parties for a 4 year term from 1 January 1981 and the rental is to be reviewed 1 January 1985.

1 January 1981 Rental	$50,0010 pa
Market Rent 1 January 1985 say	$80,000 pa
Maximum permitted increase say 35%	$67,500 pa

Can you forego the maximum permitted increase of $67,500 pa in 1 January 1985 and say, "no, I will wait until 1 March 1985 when the Regulations expire because otherwise, I will not be able to obtain my $80,000 for a further 12 months."

If I were either the Lessee or the Judge I would say - No, we deal with the contract between the parties first - We agree the 1 January 1985 rental - we then superimpose the Regulations on that and we will pay $67,500 for a further 12 months to 1 January 1986 and then we will pay $80,000 pa.

It was generally agreed that the contract between the parties would need to be carefully studied. Example 4 would apply where the lease required the rent to be reviewed on 1 January 1985 but would probably not apply in the following cases:

(a) Where the lessor may review the rental
(b) Where the lease expires on 1 January 1985 and the lessor may hold over the granting of a new lease until 1 March.

Example 5: A stepped rental. Lease commenced 1 September 1981 and stipulates:

Year 1 to 1 September 1982	$30,00,0 pa
Year 2 to 1 September 1983	$35,000 pa
Year 3 to 1 September 1984	$40,000 pa

Despite the lease contract the increases are not permitted.

Example 6: Extension of the "3 Year Rule" beyond 28 February 1985.

A 2 year lease from I June 1982 @ $50,000 pa
Agreed rent from 1 June 1984 $65,000 pa

Because of the "3 Year Rule" 1 June 1984 rent cannot be applied but there is no provision for the "3 Year Rule" to apply beyond 28 February 1985 and despite the fact that on 1 March 1985, 3 years has not elapsed, $65,000 pa would be payable at that time.

Example 7: "Improvements"

(a) A 5 year lease from 1 July 1978 at $50,000 pa
(b) Agreed rental on improvements payable from 1 July 1979 $10,000 pa
(c) Agreed rental further improvements payable from 1 July 1981 $15,000 pa
(d) Agreed rental encompassing original property and all improvements as at I June 1983 $140,000 pa

As at 1 April 1984:-

Original Rental $50,00.0 pa + 48.3%	=$74,150
July 1979 impts $10,000 pa + 38.3%	=$13,830
July 1981 impts do not comply "3 Year Rule"	=$15,000 pa
	$102,980

Debatable Point:

1. No further increase for 12 months
2. Could the July 1981 improvement rental be increased on 1 July 1984 as that portion of rental has not been increased for 3 years.

It appeared as though Example 7 may only apply to identifiable additions as the definition of improvements could well be a grey area.

Example 8: Percentage of Turnover Rentals -

Understood to be awaiting a High Court decision but as those leases have an alternative basic rental will be surprised if the decision does not permit increases based on turnover. It transpired the writer was wrong ! . See Fletcher Trust and Investment Company Limited v. Guthries Pharmacy Limited - decision of Tompkins J. - Auckland Registry A.No. 934/83

In essence the judgment states agreement with Ongley J. in Mutual Life and Citizens Assurance Co. Limited v. Takapuna Hardware Supplied Limited (Auckland A 1302/82, 4th May, 1983), that decision holding that for any shopping centre where rentals are based on percentage of turnover, the rent legally payable on the 22nd June, 1982 was the base rent plus the percentage of turnover which, in turn, was not capable of calculation until after the end of the financial year concerned.

In that decision there is this quite delightful sequence of logic.

"Clause 2 of the First Schedule makes clear that the monthly payments required to be made thereunder are monthly instalments on account of a yearly rent. They are monthly payments of rent but they are not payments of a monthly rent."

"That distinction is crucial."

"The reasons for that is the use of the phrase "as on the 22nd day of June 1982". Clearly, except in a rare case where it coincides with a rent day, no rent would actually be payable on the 22nd of June. What is meant by the phrase is the rent that is payable in respect of the rental period which includes that date."

Hence the M.L.C. case applied only to the financial year within which the June 22, 1982 date fell.

The subsequent Fletcher case which came within the next year was the opposite, Tomkins J. holding that for the financial year following the M.L.C. case, the total payment could not exceed the prior year. That principle was made on the effect of the thaw regulations. However, the "3 year rule" would probably apply and percentage rents further held.

Example 9: Running costs or Variables - Yet to be tested but would doubt if freeze applies as it is not a rent but rather a cost. While running costs have generally been held, could well be contested in Auckland City following increased Government Valuations of land which will materially affect land tax commitment.

Example 10: 21 year leases - This regulation is to say the least, confusing. As I understand its intention:-

1. For non residential property, if your 21 year lease fell due for review between 22 June 1982 and 31 March 1984 you can have the full reviewed rental on 1 April 1984.
2. If the lease falls due for review during these Regulations then you may implement the full increase.
3. However, if the property is principally used for residential purposes (e.g. Ground Rental of residential site or a house with office attached) you wait out the term of the Regulations.

Example 11: Hardship - Forget it! !

Example 12: Improvements -

1. They must be agreed to by the tenant.
2. They must be structural alterations, extensions or additions but not anything done by way of decorations or repairs.

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