



MONTHLY Bundle of Writes

NEWS AND EVENTS FOR IRWA CHAPTER 67

January 2022

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PRESIDENT'S MESSAGE

Ryan Hargrove
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Greetings Chapter 67 Members,

Happy New Year! I hope you had a great holiday season, got to spend some quality time with family and friends, and enjoyed some good food and drink. I had a relatively low-key holiday season, but it was restful and enjoyable. My wife and I toured the Brea Eagle Hills Christmas Lights Neighborhood for the second year in a row. It is one of the nicest neighborhood displays of Christmas lights I've seen in Southern California. We also managed to get away a couple of times at the end of 2022: Las Vegas for a wedding in November and Washington D.C. in early December. Meredith McDonald, our Immediate Past President, was kind enough to give me a Washington D.C. recommendation (Georgetown Cupcake). Despite how good the cupcakes looked on Yelp, I was unfortunately unable to make it to their store. I subsequently found out that there is a Georgetown Cupcake in Los Angeles so maybe I won't have to wait until I'm back in D.C. to give them a try!

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I had certainly hoped to be announcing by now that Covid-19 is in our rearview mirror and that we're back to having in-person events and meetings. Alas, it is not yet to be. Our next luncheon (to be held virtually) will be on January 11, 2022 and will feature John Ellis, MAI providing his annual economic update. IRWA Chapter 1 was hoping to reschedule The Tri-Chapter Luncheon in Spring 2022 and as of my last conversation with Chapter 1 representatives, it did not appear the event would be held in Spring after all.

Our Chapter will be hosting the Region 1 Spring Forum this year and we've put together a committee to handle the planning of this important event. We had been interested in coupling an education seminar with the Forum but have recently decided that it would be best to postpone such a seminar until the fall. For the last Forum, IRWA Chapter 57 organized a happy hour the night before the Forum and this is something our chapter is looking into as well. We will provide more details in this regard when we lock down a date for the Forum and move closer to it.

In other news, I'm very pleased to announce that Lara Boyko has been selected as the recipient of the 2022 John C. Donahue Scholarship for her commitment to the right-of-way profession and her desire to further her involvement in Chapter 67 activities. Her scholarship of \$1,000 will cover attendance at Chapter 67 lunch meetings and IRWA classes in 2022. Congratulations Lara! Lara currently serves as Seminar Chair for our chapter and she is very eager to provide a high-value seminar as soon as external factors will allow.

Thank you for reading this update. I wish you a healthy and prosperous New Year and the best of luck with any resolutions that you have made. If you have any questions about chapter activities, please don't hesitate to reach out to me. If you are interested in joining the Board, feel free to contact me or any Board member.



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Welcome back readers to the January edition of our newsletter. If you would like to contribute content to the newsletter, advertise, have questions or any ideas to improve the content, please contact us.

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UPCOMING EVENTS

January Luncheon

Tuesday January 11, 2022 12:00 p.m. - VIRTUAL
Mr. John Ellis, MAI, CRE, FRICS, Senior Managing Director with Integra Realty Resources, Los Angeles, will be presenting his annual State of the Market address.



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CH. 67 OCTOBER VIRTUAL LUNCHEON

Tuesday, January 11, 2022
12pm - 1:15pm

John Ellis, MAI

John Ellis is the Senior Managing Director of the Los Angeles office of Integra Realty Resources and has over 40 years of appraisal experience.

He holds the MAI, CRE, and FRICS designations and is a graduate of UCLA, with a degree in Business Economics. He is also a California General Certified Appraiser.

John is member of IRWA Chapter 1, and a past president of the Southern California Chapter of the Appraisal Institute. He has testified in Federal and Superior Courts on appraisal issues in more than 30 cases, in addition to testifying at many assessment appeal hearings and arbitrations. He has addressed a wide variety of appraisal issues, including many complex eminent domain assignments throughout Southern California.

This will be the eleventh annual presentation that John has made to Chapter 67.

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For questions regarding IRWA education, whether it be information on a particular course, how to register, potential upcoming courses, or the credentialing program, please reach out to James.

UPCOMING COURSES

COURSE 606: THE ENVIRONMENTAL PROCESS (VIRTUAL)

March 14, 2022 8:00 AM - 5:00PM

[Click Here to Register.](#)

COURSE 102: ELEVATING YOUR ETHICAL AWARENESS (VIRTUAL)

March 31, 2022 8:00 AM - 5:00PM

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COURSE 205: BARGAINING NEGOTIATIONS (VIRTUAL)

April 4-5, 2022 8:00 AM - 5:00PM

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CASE OF THE MONTH

City of Escondido v. Pacific Harmony Grove Development, LLC, 68 Cal. App. 5th 213 (2021)

*Dedication to: Homer ("Mike) McCormick – Mentor
(d.o.d. 8/08/2021) Past President Ch. 67*

What Gives When Two Big-Time Eminent Domain Valuation Principles Clash???

Principle I: The Porterville doctrine (*City of Porterville v. Young* (1987) 195 Cal. App. 3d 1260): When property sought by condemnation would have had to be dedicated for public use as a condition of development of the larger parcel, the property taken must be valued for its H&B use that would not have required a dedication (generally, its existing undeveloped use).

Principle II: The Project Influence (or Project Effect) Rule (CCP 1263.330): The FMV of the property taken shall not include any increase or decrease in the value of the property that is attributable to the project for which the property is taken or the eminent domain proceeding in which the property is taken (or from any preliminary actions of the plaintiff relating to the taking of the property).

If the dedication requirement is for the same roadway or street widening which is the subject of the condemnation action, doesn't the Project Influence Rule require you to disregard the dedication requirement because, absent the roadway project, there would be no dedication required?

This issue was first litigated by one of our own Chapter 67 members, Erik Friess, in a case that went to the California Supreme Court, *City of Perris v Stamper* (2016) 1 Cal 5th 576. In that case our state Supreme Court held that if the dedication requirement is a valid one (meets the nexus test), and **the requirement arose before there was a probability that the condemned property would be included in the project, then the Porterville doctrine should be**

applied, and property taken should be valued for the H&B use that could be made w/o a dedication (undeveloped use). **If the dedication requirement arose after the property had a probability of being included in the project, or was a subterfuge to depress the value of the property, the Porterville doctrine will not be applied and the dedication requirement will be ignored** as a project effect. While our state Supreme Court established this rule in the Stamper case, it did not apply the rule but sent the case back to the trial court to determine how the rule should be applied given the facts of the case.

Facts of the *Pacific Harmony Grove Case*:

Pacific Harmony owned an 18 acre, industrial zoned, essentially undeveloped property over which the City of Escondido sought to condemn a 72' strip of land to connect two parts of a major road (Citracado Parkway) together. A chronology of significant events include the following:

In 1993 the City adopted a general ordinance requiring dedications of any needed road right of way through a property as a condition of granting development approvals for the property and also required the developer to improve the right of way being developed with road improvements.

In 2002 the City adopted its General Plan Circulation element that showed the extension of Citracado Parkway through the subject property.

In 2006 the City entered into a development agreement with a hospital district whereby the District agreed to construct a new hospital and the City committed itself to complete the construction of the Citracado Parkway extension within 10 years of obtaining funding.

In 2012, the City amended its general plan to provide that if developed, the subject property's main access must be on the Citracado Parkway extension to be built through the property and not on the other adjoining road where the property enjoyed access in its undeveloped state.

In 2015, the City annexed the area where the property was located.

In March 2016, the City adopted a Resolution of Necessity and filed a condemnation action to take the strip of land for the extension of Citracado Parkway.

The appellate court then analyzed whether, under these facts, the dedication requirement existed before there was a probability that the subject property would be included in the road extension project.

While the roadway was shown as routed through the subject property in the 2002 General Plan Circulation element, the court noted that such a depiction in the General Plan or other planning document does not necessarily mean that there was a probability the property would be included in a later road extension project in which the property would be acquired by purchase or eminent domain. A planning document may only reflect an expectation that the development of the property will generate impacts that require mitigation through a dedication requirement. The depiction does not necessarily mean that right of way will be acquired through the property if there is no future development of the property.

The court provided a tad more guidance as follows:

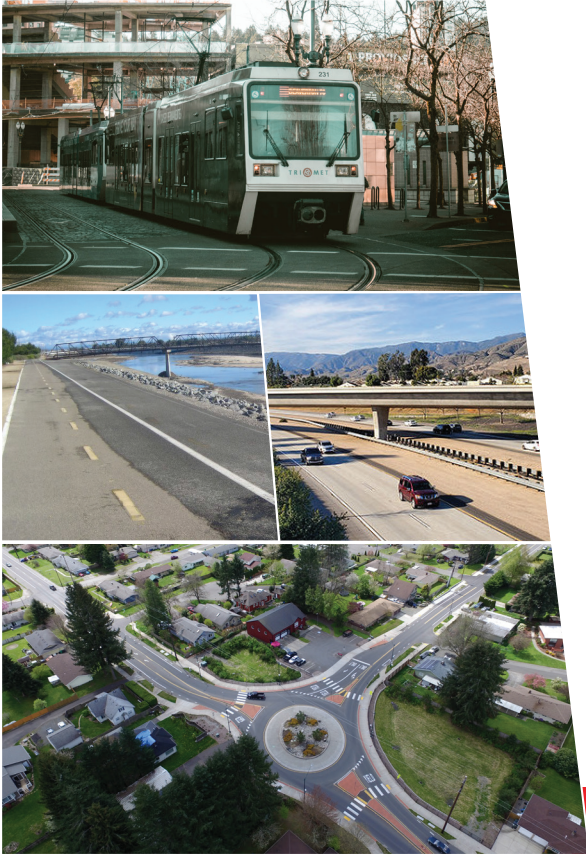
First, the city must be "engaging in a 'project'—that is, a public work the government intended to pursue—for which it intended to acquire property by purchase or condemnation, if necessary, as opposed to a contingent plan to mitigate possible development on adjacent property through dedications.

In other words, the City may show a road on its General Plan and Circulation element, and even

though it requires properties through which the road goes to dedicate right of way as a condition of development approvals (and may even require the developer to construct roadway improvements within the dedicated right of way), the City may have no intent to pursue a project itself to construct the road if it has to use its own resources to purchase or condemn the remaining right of way.

If, on the other hand, the City commits to a project to pursue the construction of the road, including using its own resources if necessary to purchase or condemn the right of way, and the property involved is going to be within the area of the roadway, then, as of the date of the commitment, there is a probability of inclusion in the project.

In the Pacific Harmony case, the court had little trouble finding that the dedication requirement attached long before the City had committed to such a project. At the earliest, the City committed to such a project in 2006 when it reached agreement with the hospital district itself to complete the construction of the roadway extension within 10 years of obtaining funding. The court found that the dedication requirement was established by a combination of the 1993 ordinance requiring dedications of needed road right of way in general and the adoption in 2002 of the General Plan Circulation element that showed extension of Citracado Parkway through the subject property. While those actions established a dedication requirement, they did not result in a reasonable probability that the subject property would be included in a City project whereby the City was committed to acquire the subject property. As a result, the subject property being condemned had to be valued based upon its undeveloped use value.



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ARTICLE

SCOTUS Says Eviction Bans Intrude on a Fundamental Element of Property Ownership



*Bradford Kuhn, Esq., Partner
Debra Garfinkle, Esq., Staff Attorney
Law Firm of Nossaman LLP*



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The U.S. Supreme Court ruled recently that the Centers for Disease Control and Prevention (CDC) exceeded its authority when it imposed a national eviction moratorium. More precisely, in *Alabama Association of Realtors v. Department of Health and Human Services*, the Court agreed with a district court determination that the CDC acted unlawfully in banning evictions of residential tenants who declare financial need in counties with high COVID-19 rates. In its decision, the Supreme Court concluded, “If a federally imposed eviction moratorium is to continue, Congress must specifically authorize it.” While the decision is based on the CDC’s authority, it is filled with unconstitutional takings undertones.



Even if Congress were to authorize a further eviction moratorium, the Supreme Court could still find it unconstitutional. In the *Alabama Association of Realtors* decision, the Court considered the moratorium inequitable because “preventing [landlords] from evicting tenants who breach their leases intrudes on one of the most fundamental elements of property ownership—the right to exclude.” To support this statement, the Court cited its famous 1982 holding in *Loretto* that requiring landlords to

allow installation of cable television equipment on their property was an unconstitutional taking. The Court also emphasized the importance of the right to exclude in its June 2021 *Cedar Point Nursery* takings decision, in which it struck down a California regulation allowing labor organizations to access agricultural employers’ property for up to three hours per day, 120 days per year. In sum, the Court has ruled that violations of the “fundamental right to exclude” are unconstitutional takings, and in its recent ruling, the Court stated that the right to exclude tenants who breach their leases is also fundamental. Although this ruling is based mainly on the CDC’s lack of authority to impose an eviction moratorium, the Court left the door wide open for property owner claims that eviction bans unconstitutionally violate their fundamental right to evict or exclude non-paying tenants.

It is unclear whether the Supreme Court will decide another eviction moratorium case. Property owners and property management companies have sued the State of California, local cities, and other public entities to overturn eviction bans, citing the Takings Clause among other arguments. However, the moratoriums in California and many other states and cities are set to expire this month. Thus, they may end before the lawsuits filed against them ever reach the Supreme Court. On the other hand, the State of New York just extended its eviction moratorium until January 2022. We will wait and see if the Supreme Court rules on whether eviction bans violate the Takings Clause.



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If you are facing the difficult choice of paying for your dues out of your own pocket or letting your membership lapse altogether, we encourage you to call IRWA Headquarters to discuss options on how you can maintain your membership for the upcoming year.

Don't let your membership lapse. Renew your IRWA membership today by going to www.irwaonline.org and clicking on "Membership" at the top of the homepage then "Dues Renewal Invoice" on the right side. Alternatively, you can contact Silvia Smith, Assistant to the Controller, Member Services, by phone at 310-538-0233, ext.120, or by email at smith@irwaonline.org.

Thank you, and we look forward to earning your membership.

MEMBER SPOTLIGHT

Lara Boyko Receives John C. Donahue Chapter Scholarship



The Chapter was excited to learn that a Chapter member was approved to receive the John C. Donahue Education Scholarship this last month. Ms. Lara Boyko of Paragon Partners was the successful candidate to receive the scholarship for a total amount of \$1,000.00. We want to commend and congratulate Ms. Boyko for her pursuit of further education and professionalism in the right of way industry.

The John C. Donahue scholarship was established in honor of Mr. Donahue because of his proactive effort by promoting education, skills, techniques, and knowledge to right of way practitioners throughout his career. To receive the scholarship, a Chapter member must show good professional or academic standing, be working or studying in a right of way related field, write an essay of their goals in the right of way industry and submit a resume. Ms. Boyko proved her worthiness and became the successful recipient.

Ms. Boyko works as a Senior Real Estate/Right of Way Leasing Agent for Paragon Partners consulting firm. She works at the Cypress headquarters Paragon office and is the current Chapter Seminar Chair. She received her Bachelor's degree from the University of Southern California (USC) and her juris doctorate (J.D.) from the University of West L.A. She lives in El Segundo and was born in Anaheim, CA.

Lara enjoys Mexican, Peruvian, and Greek cuisines

and her favorite restaurant is the "Girl and the Goat" in L.A. Her favorite TV show is "Top Chef." Lara enjoys stand up paddle board, watching movies, cooking, traveling, and listening to 80's pop music. Ms. Boyko has a dog named Kirby and he's a mix between a Jack Russell and West Highland white terrier. During relaxing time, Lara can be found reading books like Dirty Dealing by Jeff Grosso (actually coming out this year!). Lara's last movie, which she loves, is "Girl with the Dragon Tattoo" (Swedish Version). She's seen it before, however, its just a great movie she says!

When asked about Lara's pet peeve she says "People who drive slow in the fast lane" (oh no, are there any Chapter members who do this?) and people who lie when it is not necessary." Lara's favorite quote is "Live with mistakes, not regrets." Lara's proudest accomplishment was finishing law school while working full time. When asked about her secret to success, she says, "Keep your mouth shut and your ears open."

Ms. Boyko says that her dad is the most influential person in her life because he has taught her that hard work is noticed and appreciated more than being flashy. He is a semi-retired attorney and is still curious about the world and looks at things objectively and reasonably.

When asked about Lara's biggest challenge faced, she says "Balancing work and life. I still have yet to figure out how to do this." In regard to her last vacation, Lara says "What's a vacation? HA HA! Last memorable one was in 2011 when I went to Turks and Caicos for 2 weeks. It was probably the best two weeks of my life."

Lara says her most important unrealized goal is passing the California Bar Exam. She says "I really just want to pass it to help feel proud of myself for what I went through in law school." In regard to other highly ideals for Lara, she says food is her second love language after communication!

When asked why she is involved in the IRWA, she says "It has opened my mind to this part of the real estate industry which few people know about." Next time you see Lara, please congratulate her as the newest John C. Donahue scholarship recipient scholar!

IN MEMORIAM

Homer L. ("Mike") McCormick
November 11, 1928 - August 8, 2021

Obituary of Homer L. "Mike" McCormick by Tamra Kingsley

Mike was born on Nov. 11, 1928 in Frederick, Maryland and passed on August 8, 2021. He was married to Jacquelyn and survived by two children: Deidre Ann Paroske and Thomas Lee McCormick and 5 grandchildren. Mike served in the Navy and Marine Corps during the Korean conflict as a fighter pilot and flight instructor. Mike obtained a Juris Doctor from Hastings Law School in 1961 and joined the law firm of Holiway and Jones in San Francisco. In 1963 he joined the law firm of Rutan & Tucker as an associate and then becoming a senior partner and managing partner. In 1988 he founded his own law firm: McCormick, Kidman & Behrens. In 2006 Mike started McCormick Mediation Services and served as judge pro tempore in the OC Superior Court. At various times in his law career he served as President of the OC Bar Association, OC City Attorney Association, Hastings Alumni Association, American Bd. of Trial Advocates, and Committee Chair of the American Bar Association.

Eulogy by Mike Rubin

When I joined Rutan as a green novice in 1974, Mike was already an institution in Orange County. He had a reputation in the office as a tough guy, a no-nonsense former Marine, who was also shrewder than anyone in the law firm. Of the 5 new associates who started with me, I was the one who got assigned to Mike, and at the time, I figured that it was my ticket to doom. Mike was tough, but he also proved to be very generous. He was very generous with his time, patiently teaching me the art of advocacy, the techniques of sharp writing, and the fundamentals of legal reasoning. Back then, he was one of the few partners that would take a young lawyer out to lunch and pay for it. He loved fine restaurants, - La Brasserie, Villa Fontana, Nieuport 17, Lafayette, the Riviera, to name a few. When he walked in, the Maitre d' always knew his name - "Mr. McCormick", and the owners (often a husband and wife couple) would always make it a point to visit with him. He looked and acted the part of a "power lawyer". And he lived the part, ... viewed as the "Dean" of the eminent domain attorneys in Southern California. The Judges showed him respect that was extremely unusual. There were times in settlement conferences when a Judge would treat him like a second Judge in the room rather than as an advocate for one of the parties. I am not sure how he pulled that off, but I saw him do it several times.

He was not flashy - that would be too flim-flam for him. That was not the way of a Marine. Appraisers who were subject to his cross-examination feared him. They did so because no one prepared for a hearing, deposition or trial more than Mike, and no one had as detailed a command of the facts. His clients revered him and were fiercely loyal to him. I remember getting tickets to the Rose Bowl one year from one of his clients, just because I carried Mike's brief case.

Over the years I became a pretty good lawyer. I was lucky to have Mike as my mentor and teacher. Thanks Mike for being generous with a young lawyer wanna-be, who once was intimidated to be in your presence.

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City of Riverside - Real Property Agent

The City of Riverside is accepting applications for the position of REAL PROPERTY AGENT to fill one (1) vacancy in the REAL PROPERTY DIVISION of the COMMUNITY & ECONOMIC DEVELOPMENT DEPARTMENT. The eligibility list established may be used to fill the current and/or upcoming vacancies within this classification for up to six (6) months.

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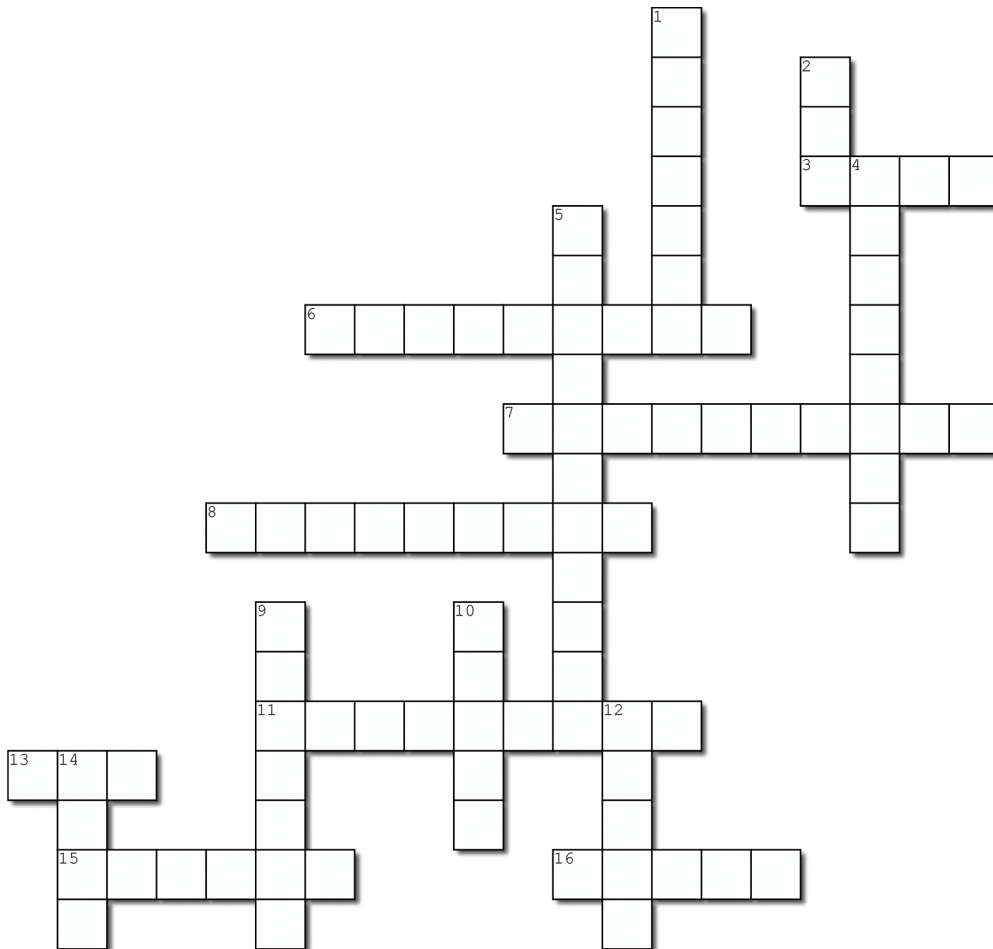
Clark Land Resources - Permitting Specialist

Clark Land is a professional right of way service company providing acquisition, relocation, and permitting services to public agencies and private utilities. We currently have an opening for an experienced permitting specialist in Southern California. Clark Land has immediate and future openings for individuals with 3-5 years of experience in permitting utility infrastructure projects and working with Caltrans, Department of Water Resources, and Army Corp of Engineers. Knowledge of California Building Code is a plus. Clark Land offers competitive salaries, extensive benefits (medical, dental, vision, LTD/STD, paid holidays, etc.), and education reimbursement (per company guidelines). Clark Land Resources, Inc. is an equal opportunity employer. If interested, please fill out an application, and submit your resume, at our website www.clarklandresources/careers or pass this on if you know someone that might be interested.

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FOR FUN

Complete the crossword puzzle below



Created using the Crossword Maker on TheTeachersCorner.net

Across

- 3. The most important and controversial eminent domain case in US History was '_____' v. New London, CT. (New London won)
- 6. A loan _____ is a contractual obligation between the government, private creditors, and a borrower.
- 7. A goal someone gives themselves after the first of a new year.
- 8. Two conditions must be met for the government to exercise eminent domain: just compensation and....?
- 11. A person who determines the value of an asset.
- 13. 3 letter acronym for another name for a Termite Report?
- 15. Legal arrangement with third party
- 16. Which amendment requires just compensation when a government entity takes ownership of private property?

Down

- 1. Type of sale when a homeowner dies without a will.
- 2. American Baptist minister and activist who became the most visible leader in the American civil rights movement (Initials)
- 4. Most common activity brought on by New Year's resolution
- 5. Often offered by Sellers to incentivize Buyer to purchase a home.
- 9. What is an actively licensed real estate agent and a member of NAR called?
- 10. Where does a title examiner typically begin his search for historical records of a home? In a title _____
- 12. This King of Rock and Roll has a birthday in January
- 14. Legal document pursuant to property ownership or legal rights