A method to determine financial loss of use in a real estate setting

Thomas W. Secrest
Coastal Carolina University

ABSTRACT

When a homeowner is denied some, or all, of their property rights for a period of time, there is often financial compensation received. This research outlines a method to determine the financial loss of use suffered by the homeowners of a 48-unit condominium complex when they are denied access to the property for a 7-month period.

It is argued that, in this particular case, the loss is composed of three aspects: (1) loss of use as a home, (2) loss of use of amenities, and (3) the costs of moving and storage. Any loss of rental income that the homeowner may have collected during the period is shown to be irrelevant. There is also evidence provided that stigma damages may exist; however, recovery of compensation for this loss in value is highly state-specific.

Keywords: Financial loss, loss of use, real estate, property rights, stigma damages

INTRODUCTION

In the United States, the doctrine of eminent domain allows any form of government to condemn or acquire private property for the public good so long as fair and just compensation is paid to the property owner (Ling & Archer, 2006). It is the "police power" of a government that allows it to interfere with private property or private activity so long as the action protects the publics' health, safety, and general welfare (Cosner, 2001). Such interference is known as a "taking" and it may encompass many forms from taking physical control of the property to enacting regulations that prevents an owner from using the property as he or she had intended. In either case, property rights are negated or substantially reduced and constitutional law calls for compensation to be paid to offset the reduction in value of the property.

It is often the case that a "taking" is not permanent and that subsequently, the property owner's rights are restored. In a dissenting opinion in San Diego Gas & Electric Co. v. City of San Diego, 460 U.S. 621 (1981), Supreme Court Justice William J. Brennan, Jr. states

> "Nothing in the Just Compensation Clause suggests that "takings" must be permanent and irrevocable. Nor does the temporary reversible quality of a regulatory "taking" render compensation for the time of the "taking" any less obligatory."
>
> "This Court more than once has recognized that temporary reversible "takings" should be analyzed according to the same constitutional framework applied to permanent irreversible "takings."

When a person is temporarily denied access to their home or real property through no fault of their own, some of the real property rights afforded by law have been suspended. Although the entity "taking" those rights may not be a government unit, many of the legal principles regarding compensation still apply. The generally accepted amount of compensation is an amount that makes the property owner "whole," or as well-off as if the event had never happened.

In a temporary reversible property rights situation, there is no generally accepted method to determine the amount of compensation that the owner is due. Indeed, in the same case, San Diego Gas & Electric Co. v. City of San Diego, 460 U.S. 621 (1981), Justice Brennan writes

> "It should be noted that the Constitution does not embody any specific procedure or form of remedy that the States must adopt."
>
> "The States should be free to experiment in the implementation of this rule, provided that their chosen procedures and remedies comport with the fundamental constitutional command. The States should be free to experiment in the implementation of this rule, provided that their chosen procedures and remedies comport with the fundamental constitutional demand."

This paper presents one method that may be used to determine the compensation that should be paid to the owners of real property when they are denied access for a period of months while the structure is reconstructed due to faulty design, materials, and construction techniques used when the property was built. In contrast to a detached single family residence, the method employed is more complex and issues more numerous because it involves three multistory buildings each containing 16 condominium units.

The analysis and exhibits contained herein represent materials and methods used to determine a reasonable and specific dollar amount intended to compensate a group of condominium owners that are unable to enter or otherwise use their real property over a 7-month period. For the most part, the properties in question are used interchangeably as second homes and vacation rental units. Therefore, three primary aspects analyzed are (1) the cost to secure substantially similar property as a substitute for the inability of the owners to enter their homes, (2) forgone use of community amenities for which fees are paid to a Property Owners Association and (3) moving and storage expenses for personal property that must be removed during the repair period. Other nuances and issues are then addressed which may or may not be relevant to similar situations. Exhibit 1 (Appendix) provides a broad outline of the method detailed in this paper.

SITUATION AND ASSUMPTIONS

The subject property is contained within a resort-style gated community in a seasonal resort area. Two golf courses, three community swimming pools, tennis courts, and a community center are among the amenities available for property owners. The community has several condominium complexes, each with its own design, common elements, and parking areas. The complexes are interspersed among single family residences, and each complex has its own Homeowners Association (HOA) with fees specific to the complex. Further, there is a community Property Owners Association (POA) responsible for common areas of the entire community to which all individual property owners pay a fee.

The condominium complex under consideration consists of three separate three-story buildings with 16 units in each building. Each building contains 9 two-bedroom units and 4 three-bedroom units. Homeowner Association fees (HOA) are allocated based on number of bedrooms and include pro-rated payment for property insurance as well as upkeep of common areas. There is a paved lot on the property with separate parking areas for each building.

All of the units in the complex are second homes or investment property. Some are available for rent on a short-term or long-term basis either from the owner or through various local property management companies representing individual owners.

Each of the three buildings have deteriorated rapidly due to faulty construction techniques and inferior materials used when the complex was built 12 years previously. A lawsuit was filed and it was determined that the insurer of the original developer would correct the construction errors. In order to complete the repairs, each building would have to be vacant of all personal possessions of the owners and none would have access to their property for a period of seven months. One building at a time would undergo repairs with some overlap so the entire repair period would extend 19 months.

Under the theory that this situation constitutes a “reversible taking” of property rights, the property owners are to be compensated for the temporary loss of real property rights (Ackerman & Dynkowski, 2006). In addition, each owner is responsible to remove all personal property from the premises and is barred from the common areas of this particular complex during the repair/reconstruction period.

SUBSTITUTE HOUSING AND AMENITIES

When real property rights are temporarily suspended, the term "loss of use" is often used, however, the term is too vague when determining proper compensation (Borders, 2011). Therefore, it is suggested that appropriate individual components of loss be identified. In this condominium example it is determined that two components exist which aggregate to a "loss of use." The first is Loss of Access, or the ability of the homeowner to use the property for his or her own purposes or to allow others to use the property free-of-charge. The second is Loss of Amenities and Common Areas or the portion of homeowner and property owner fees that are used to support the amenities available in the community and the common areas of the individual complex during the period of inaccessibility.

When access to a property is temporarily curtailed and compensation is to be paid for this loss of access, it is usually a relatively straightforward process to determine the cost of substitute housing during the period in question. This process becomes more challenging in this subject property due to its nature and its location. Substitute housing costs can vary in a seasonal resort area so the time of year when access will be forbidden is an important issue.

Also of importance in this example are the two levels of association fees that provide for common area expenses of the complex as well as the community amenities. Although the fees do not vary by season, it is important to recognize that they are tied to the individual properties. Without access to those properties, the common areas and amenities have little to no value to the owner, yet they must be paid to avoid liens being placed on the property.

Loss of Access as a Home

This aspect includes the assumptions that (1) each property owner uses his or her condominium strictly as a residence or second home, (2) the weekly wholesale cost to rent a two or three-bedroom unit from a local property management company on a 6-month or greater lease is $480 per week, and (3) a 7-month period is equivalent to 28-weeks. Several local property management companies were contacted and the rate chosen for this example is from the company that manages the majority of properties in this particular community. It is also assumed that if an owner were to rent substitute property that they would prefer to be in the same familiar surroundings. Renting in this community would have the additional benefit that POA fees would not be in vain.

It was determined that, although the owners would be denied use of their property, the cost of utilities should not be included in the compensation. It was assumed that these costs would be borne by the owner if the property were vacant anyway, since the HVAC systems would operate to keep mold and mildew at a minimum and electricity would be needed to operate the refrigerator/freezer do cool any stored foodstuffs.

Under these assumptions, it is concluded that the cost to rent a substantially similar property during the repair/reconstruction period is ($480 per week) X (28 weeks) X (48 units) = $ 645,120.

Fees Paid for Amenities and Common Areas

The two levels of fees in question are POA for community amenities and HOA for common areas of the particular complex. POA fees are $116.78 per month for each owner, regardless of location in the development. HOA fees vary by number of bedrooms and are $427.53 per month for a two-bedroom unit and $570.04 per month for a 3-bedroom unit.

An important consideration that should be taken into account is the annual cost of property insurance for the three buildings in the complex. The cost of insurance is paid by the complex HOA from homeowner dues. It is assumed that this insurance must be maintained regardless of whether or not access is denied to the homeowners. The insurance should also be maintained in case there are difficulties or further damage to the buildings during the repair period. Therefore, the total compensation for reimbursement of HOA fees is adjusted downward by the prorated annual cost of insurance.

Detail specific to this aspect is included in Exhibit 2 (Appendix) using these specific assumptions: (1) the condominium homeowners will be unable to access the amenities during the reconstruction/repair period, (2) If the homeowner desires to use the amenities, the decision must be weighed against the time, effort, distance, inconvenience, and cost of travel. These costs are assumed to be so onerous that none of the homeowners will elect to use the amenities during the repair/ reconstruction period; (3) property insurance related to the complex is not included as part of the HOA fee adjustment because it is assumed that current/existing property insurance must be maintained or new property insurance secured. Therefore, the anticipated cost of property insurance is deducted from the total regime fee adjustment.

Under these assumptions, it is concluded that the POA and HOA fee adjustment during repair/reconstruction is $ 130,700.

Total Loss of Use as a Home

The total compensation for the loss of use of their property over the 7-month repair/reconstruction period is $775,120 which is the combination of lost value for access to the property ($645,120) and a reimbursement for adjusted fees paid on both the complex and community levels ($130,700). This amount is an approximation of the expense that must be incurred in order for the property owners to have access to similar property during this temporary reversible taking, assuming that they only use the property as a residence or second home.

Loss of continuous-access property:	$ 645,120
Loss of amenities and common spaces:	$ 130,700
Total compensation:	$ 775,120

MOVING AND STORAGE OF PERSONAL PROPERTY

In order for the repairs and reconstruction of the subject property's three building to begin, condominium owners must remove all personal property from their unit. Under the legal principle that property owners' are to be made "whole," as though the taking had never occurred (Ackerman & Dynkowski, 2006), the appropriate compensation should include the cost of removal, storage, and replacement of the personal property.

Making use of county property records, it is found that the average distance that a condominium owner lives from this complex is 620 miles. Indeed, only 4 of the 48 individual owners in this complex live within 180 miles. Therefore, it is assumed that (1) the owner will not be removing nor replacing their personal property by themselves, (2) each owner will store their personal property locally, and (3) the storage facility should be climate-controlled due to the frailty of some of the personal property.

Estimating the removal, storage, and replacement cost is straightforward. Several local moving and storage companies were contacted to provide cost estimates. The companies included both nationally known brands as well as locally owned independent facilities. Several of the companies were unable to provide this service due to the number of units involved (48) and the volume of materials to be stored. Only two quotes were obtained and both included the cost of insuring the property during all phases of the undertaking.

The expense quotes of $283,300 and $259,520 were averaged to provide the final estimate of $271,410.

BASE COMPENSATION FOR LOSS OF USE

Assuming that the condominium owners in this subject use their property as a primary residence or a second home, the base compensation in order to make them "whole" is $1,047,230. This figure is the sum of $645,120 for loss of access, $130,700 for loss of amenities and common areas, and $271,410 for removal, storage, and replacement of personal property.

Loss of continuous-access property:	$ 645,120
Loss of amenities and common areas:	$ 130,700
Cost of moving and storage:	$ 271,410
Total base compensation:	$1,047,230

HOMEOWNER SURVEY INSTRUMENT

Given that this subject property is located within a gated community in a seasonal resort area, and that the average distance the owner lives from the property is 620 miles, it would not be unusual if the property were made available for rent by others. In order to identify those property owners in this example that may use their condominium for purposes other than a residence or second home, both the owners in this complex and a comparable complex were surveyed. Of particular interest are those owners that identify their property as available for rent, and if so, the average annual rental income they have collected over the last two years. Also of importance is the number of days that the owner actually uses the property for personal use, or reserves its use for others without receiving rental income.

Further data collected in the survey included types of community amenities used (swimming pools, exercise room, beach access, tennis courts, etc.) and a ranking of why they purchased the property (retirement, investment, second home, etc.). A copy of the survey instrument is available upon request from the author.

Subject Property: Selected Survey Results

Responses number 35 out of 48 units for a response rate of 73%.

Of the 35 units responding, 27 (77%) are available to rent, either seasonally or for long-term periods and 19 of the 27 (70%) use a property management company for this purpose.

Of the 27 units available to rent, 20 owners supplied approximate rental income for two years prior and 22 owners provided income for the prior year. The overall (regardless of bedroom size) average income for those reporting was $6,188 for two years prior and $5,260 for the prior year.

The 30 owners responding to the question would expect to pay, on average, $1,062 per week to stay in a unit similar to their own.

Property owners spend an average of 45 days in their property. They allow others to stay free-of-charge for an average of 28 days.

Comparable Property: Selected Survey Results

Responses number 33 out of 80 units for a response rate of 41%.

Of the 33 units responding, 13 (39%) are available to rent, either seasonally or for long-term periods and all 13 use a property management company.

Of the 13 units available to rent, 11 owners supplied approximate rental income for two years prior and all 13 owners provided income for the prior year. The overall (regardless of bedroom size) average income for those reporting was $9,432 for two years prior and $8,344 for the prior year.

The 25 owners responding to the question would expect to pay, on average, $1,064 per week to stay in a unit similar to their own.

Owners in the comparable property spend an average of 53 days in their property. They allow others to stay free-of-charge for an average of 28 days (same as subject property).

FORGONE RENTAL INCOME

In this example property, it is necessary to consider that individual owners may wish to offset the cost of upkeep with rental income. Through survey results it was determined that 77 percent of the owners make their unit available for rent on either a seasonal or long-term basis. It was also determined that, on average, each unit is not available for rent for a period of 73 days during the year which includes 45 days that the owner uses the unit and 28 days that they allow others to use it without cost.

Whether a property owner in this example should be compensated for lost rental income is a legal issue to resolve in most states. The Supreme Court has a history of not awarding lost income of a business when the real property of the business is condemned and taken by a governmental entity, claiming that the entity "has not taken the business from the owner, only the real property" (Torgrimson & Robinson, 2012, May). Several states have legislatively approved the recovery of lost business income due to a taking, and there are judicial rulings that allow recovery in many states (Torgrimson & Robinson, 2012, May).

There are two methods suggested in order to determine lost rental income. One describes a market where rental income does not vary by season or may be employed for long-term rental contracts. The second is appropriate in this example of highly seasonal short-term rental activity. Additional assumptions must be made in the seasonal method in order to account for the percentage of annual rental income that may be collected each month. Although not accomplished in this example, one could approximate the monthly percentages of rental collection through publicly-available accommodations taxes or similar taxes based on transient rental property.

Lost Rental Income: Non-seasonal Method 1

This straightforward method uses reporting from a property management company that conducts the majority of the rental activity for this subject condominium complex. It was concluded that this information is more objective than the self-reported rental income collected from the owner survey. Specific detail and other assumptions used in Method 1 include:

> Survey results obtained from the property owners indicate that 77% of the 48 units are available to rent (37 units) either seasonally or long-term.
>
> Average rental rate information, provided by the property management company that is responsible for a majority of the units in the complex, indicates that the gross rental income of each rentable unit averages $4,713 per year.
>
> Gross rental income per unit is adjusted for property management fees, assumed to be 27.5% of gross rental income, in order to arrive at the more relevant figure of net rental income.
>
> Net annual rental income per unit available to rent is $3,417.

Net rental income for the complex over a 12-month period is therefore ($3,417 per month) X (37 units) = $126,430, or $10,536 per month using the non-seasonal method. Therefore, an estimate of net rental income lost over the 7-month repair/reconstruction period is ($10,536 per month) X (7 months) = $73,750.

Lost Rental Income: Seasonal Method 2

The subject property is located in a highly seasonal rental market. Published rental rates may be as high as $880 per week in the summer, $700 in the spring and fall and as low as $450 per week in the winter. Therefore, the timing of the start and finish of the repair/reconstruction period may significantly affect the amount of rental income lost. Exhibit 3 (Appendix) provides an example of this seasonal method using the following considerations and assumptions:

> 75% of annual rental income ($126,430) is collected during a 5-month summer season (15% per month).
>
> 18% of annual rental income is collected during a 6-month winter season (3% per month)
>
> 7 % of annual net income is collected during the shoulder month of September.
>
> Repairs/reconstruction will occur one building at a time and will last 7-months per building. This includes a 6-month actual work period with two weeks prior and two-weeks after the work period for set-up and dismantling of equipment.
>
> During the dismantling period for one building, another building will be closed for setup for the actual work period. As a result, two buildings will be inaccessible during these set-up and dismantling procedures.
>
> Lost rental income will occur one-building at a time over a 19-month period.

Given the above assumptions:

If the repair/reconstruction is begun in September, it is determined that the total lost rental income is $56,895.

If the repair/reconstruction is begun in April, it is determined that the total lost rental income is $85,550.

Under the above seasonal parameters, it is concluded that the foregone income over the 7-months that the subject property owners will be unable to rent their homes to others is the average of a September and April start date or: $ 71,220.

COMPENSATION SUMMARY INCLUDING LOST RENTAL INCOME

Although recovery of compensation for lost rental income is apparently a matter for the courts to decide, this exercise is included in order to provide alternative solutions to providing just compensation when a person is subject to a temporary reversible taking. Of interest is that the lost income should only be applied to those condominium owners that actually allow their units to be rented

A further nuance presents itself if lost income is pursued. Part of the previously computed base compensation includes recovery for the loss of access and amenities. If the owner chooses to rent the property to another for payment of rent, the owner would not be occupying the unit nor enjoying the amenities, and so should not be compensated because they have not "lost" anything. During these times, the "loss" is the ability to rent; to generate income. Therefore, if lost income is pursued, a corresponding amount of loss should be deducted from the compensation intended for loss of use as a home. The resulting total is identical to the base compensation suggested as the "loss of use as a home" stands, amount unchanged, as "loss of use as a home and income-generating rental property."

In this example, if the non-seasonal method is used to determine lost rental income, $73,750 is deducted from the loss of access compensation of $645,120, and added as a separate line item for compensation. So compensation for loss of access becomes $57,370 and $73,750 is then added separately, leaving the total compensation package unchanged: $1,047,230.

Loss of continuous-access property:	$ 571,370
Loss of amenities and common areas:	$ 130,700
Cost of moving and storage:	$ 271,410
Loss of rental income:	$ 73,750
Total compensation:	$1,047,230

The astute reader will conclude that the pursuit of lost income is irrelevant to the overall monetary package compensating for the temporary, reversible taking. However, there may be situations where it is necessary to complete this exercise and it does assist in documenting this type of loss when rental property is involved.

STIGMA DAMAGES

The idea that individual properties may suffer or benefit based on a reputed association with property-specific events or conditions is not surprising. Primarily associated with negative connotations, a positive stigma may be associated with a property because of a famous (or infamous) former owner, people involved in its design or construction, or positive events that took place on the property. One may expect that a property having a positive stigma would command a premium above the typical market price of the property.

Of course, the opposite is true as well. A negative stigma may attach to a property making it difficult, if not impossible, to sell at the true market price (Alfert, Collison, & Tate, 2005). Such may be the case with the subject property. The design, materials, and construction techniques that lead to rapid deterioration of the subject property may attach a negative stigma such that the owners must accept below market prices when selling their units.

Evidence that this negative stigma surrounding the property seemed to exist when the survey of owners in the subject and the comparable property indicated a relatively large difference in rental income received. Each complex was built around the same time, is in the same gated community, enjoys the same community amenities, and had similar use patterns. If the subject property had not had construction defects, it is reasonable to assume the rental income would be less dissimilar.

During the prior year, the self-reported gross rental income from the comparable property averaged $8,344 per unit rented, while our subject property reported $5,260. The subject property gross income would have to be 58.6 percent higher in order to reach that of the comparable. Two years prior the reported incomes were $9,432 and $6,188 for the comparable and subject properties respectively. The gross income of the subject would have to increase 52.4 percent to reach the comparable.

Other evidence that the properties in this condominium complex suffer from a negative reputation was found in property tax records. The county in which these properties are located provides online access to property records so long as one has an identifying Tax Map Sequence (TMS) number. There is a TMS number associated with each titled parcel, so it is possible to determine appraised and assessed values for each piece of property in the county. Appraised values were obtained for each condominium in the subject property as well as those in two other comparable properties within the same gated community.

Each of the three condominium complexes were built around the same time, have basically the same design, and are in different locations within the community (they are not in proximity to one another). One comparable has 80 condominium units and the other is comprised of 64 units. The average appraised value of each unit in the two comparable properties is very similar at $157,913 and 157,836; a difference of only $77. The average appraised value of each of the 48 units in the subject property is $127,750, a full $30,000 below that of the comparable properties. Exhibit 4 (Appendix) contains a summary of these findings.

That the values of the subject properties are appraised at 19 percent below that of comparable properties in the same community may be indicative of a stigma associated with this condominium complex. If complete remediation could be achieved and measured, the average value of the units would have to rise by 23.6 percent.

The Inclusion of Stigma Damages

Whether or not a property has suffered a stigma damage is often irrelevant to the court system. Alfert, Collison, & Tate (2005) note that:

> "Florida law affords the impacted property owner an opportunity to seek full redress for the costs of remediation and for other consequential damages, such as lost income. Less clear, however, is whether the property owner can also recover the diminuation in market value that is directly attributable to the stigma."

Alfert, Collison, & Tate (2005) explain cases in several states where recent rulings included compensation for stigma-related damages. Sabovich and Hearn (2009) write "Once limited to property that had suffered actual injury, courts have been increasingly asked to award money for damage to a property's reputation, even absent any physical injury."

In sum, the pursuit of stigma, or property reputation, damages will be highly case-specific. However, for the benefit of complete analysis, this possibility and example methods for estimating damages presented here are offered for completeness when attempting to compensate a wronged property owner.

SUMMARY

When a person has had his or her real property rights denied or suspended for a period of time and then restored, a temporary reversible taking has occurred. The legal system in the United States interprets that this action falls under the 5th Amendment which provides for "just compensation," such that they be made "whole," or put in the same position as if the reversible taking had not occurred (Cosner, 2001 February).

This paper has outlined and discussed a method that may be employed in order to arrive at an appropriate amount of compensation when property owners are denied access to their property over a particular period of time. Depending on the situation, a simple estimate of the cost of obtaining substitute property over the period is necessary, but may not be sufficient to completely compensate the property owner. The example provided is that of a condominium complex with 48 separate property owners and located in a gated community. The community is located in a highly seasonal resort area.

The nature of the example provides an opportunity to explore compensation for lost use of amenities, moving and storage costs, loss of rental income, and potential reputational (stigma) damages. It is suggested that all aspects should be considered in order to completely restore a property owner that has suffered damages to be adequately compensated.

APPENDIX

Exhibit 1: A Method to Determine Loss of Use in a Real Estate Setting Overview		
Basic Compensation for loss of use: Temporary Reversible Taking		
	Real Property	Loss of Access Loss of Amenities and Common Areas
	Personal Property	Removal Storage Replacement
Other Considerations		
	Loss of Income	Non-Seasonal property Seasonal property
	Stigma Damages	Decreased rental income Decreased property value

Exhibit 2: Monthly HOA Fee Schedule							
Unit Size	**Community Fee**	**Complex Fee**	**Monthly Cost per Unit**	**Number Of Months**	**Total Cost Per Unit**	**Number of Units**	**Total**
2 Br.	$ 116.78	$ 427.53	$ 544.31	7	$ 3,810	36	$ 137,166
3 Br.	$ 116.78	$ 570.04	$ 686.82	7	$ 4,808	12	$ 57,693
							$ 194,859
Annual Property Insurance			$ 110,000				
Monthly Property Insurance			$ 9,167	7	Deducted:		($64,167)
Total cost of adjusted HOA dues collected during 7-month repair period							**$ 130,692**

Exhibit 3: Example of Seasonal Method to Determined Lost Rental Income

Assumes 75% of complex income is received during the five-month summer season (15% per month)
Assumes 18% of complex income is received during the six month winter season (3% per month)
Assumes 7% of complex income is received during the month of September

Month		**Number Closed**	**Average Income For Complex**	**Percent of Income Collected by Month**	**Complex Income Per month**	**Average Lost Per Building Closed**	
1	Sept.	1	$ 126,429	7%	$8,850.0	$ 2,950.00	First building closes
2	Oct.	1	$ 126,429	3%	$ 3,792.9	$ 1,264.30	
3	Nov.	1	$ 126,429	3%	$ 3,792.9	$ 1,264.30	
4	Dec.	1	$ 126,429	3%	$ 3,792.9	$ 1,264.30	
5	Jan.	1	$ 126,429	3%	$ 3,792.9	$ 1,264.30	
6	Feb.	1	$ 126,429	3%	$ 3,792.9	$ 1,264.30	
7	Mar.	2	$ 126,429	3%	$ 3,792.9	$ 2,528.60	Second building closes
8	Apr.	1	$ 126,429	15%	$18,964.4	$ 6,321.50	First building opens
9	May	1	$ 126,429	15%	$18,964.4	$ 6,321.50	
10	June	1	$ 126,429	15%	$18,964.4	$ 6,321.50	
11	July	1	$ 126,429	15%	$18,964.4	$ 6,321.50	
12	Aug.	1	$ 126,429	15%	$18,964.4	$ 6,321.50	
13	Sept.	2	$ 126,429	7%	$ 8,850.0	$ 5,900.00	Third building closes
14	Oct.	1	$ 126,429	3%	$ 3,792.9	$ 1,264.30	Second building opens
15	Nov.	1	$ 126,429	3%	$ 3,792.9	$ 1,264.30	
16	Dec.	1	$ 126,429	3%	$ 3,792.9	$ 1,264.30	
17	Jan.	1	$ 126,429	3%	$ 3,792.9	$ 1,264.30	
18	Feb.	1	$ 126,429	3%	$ 3,792.9	$ 1,264.30	
19	Mar.	1	$ 126,429	3%	$ 3,792.9	$ 1,264.30	Repair ends on third building
		TOTAL LOST RENTAL INCOME:				**$ 56,893.1**	

Exhibit 4: Average Appraised Value per Unit; Subject Property versus Comparables County Property Tax Records					
	No. of Units	**1st and 2nd Floor Two Bedroom**	**1st and 2nd Floor Three Bedroom**	**3rd Floor Two Bedroom**	**All Units Wt., Avg.**
Subject	48	$ 119,900	$152,208	$ 118,992	$ 127,750
Comparable A	80	$ 147,400	$ 179,737	$ 157,200	$ 157,193
Comparable B	64	$ 140,484	$ 187,250	$ 163,125	$ 157,836
Dollar Difference in Appraised Values from Subject Property					
Comparable A	80	$ 27,500	$ 27,529	$ 38,208	$ 30,163
Comparable B	64	$ 20,584	$ 35,042	$ 44,133	$ 30,086
Percentage Difference in Appraised Values from Subject Property					
Comparable A	80	22.9 %	18.1 %	32.1 %	23.6 %
Comparable B	64	17.2 %	23.0 %	37.1 %	23.6 %

REFERENCES

Ackerman, Alan T. & Dynkowski, Darius W. (2006). *Calculation of Damages in Temporary Takings*. Working paper. Ackerman, Ackerman, & Dynkowski. Retrieved from http://www.ackerman-ackerman.com/Calclulationofdamages.pdf

Alfert, Robert Jr., Collison, Harry W. & Tate, George W. III. (2005). Recovering "Stigma" Damages in Mold-related Construction Defect Cases: Making the Property Owner Whole. The Florida Bar Journal, 79(6), 78-87

Borders, Christopher J. (2011, March 10). *"Loss of Use" Property Damage Does Not Mean Permanent Loss."* Martindale-Hubbell. Retrieved from http://www.martindale.com/insurance-law/article_Hinshaw-Culbertson-LLP_1252398.htm

California Civil Jury Instructions (CACI). (2003, September). *3903G Loss of Use of Real Property (Economic Damages)*. Justia.com. Retrieved from http://www.justia.com/trials-litigation/docs/caci/3900/3903g.html

Eaton, James .D. (1995). *Real Estate Valuation in Litigation, 2nd Edition*. Chicago, IL. Appraisal Institute.

Cosner, Susan. (2001 February). *Rights in Property and Land-use Regulation, Tradition and Tensions in a Changing World*. Iowa State University, University Extension. Land Use Series. Retrieved from http://www.extension.iastate.edu/Publications/PM1868C.pdf

Galaty, Fillmore W., Allaway, Wellington J., & Kyle, Robert C. (2003). *Modern Real Estate Practice*. Chicago, IL. Dearborn Financial Publishing.

Geschwender, Arlyne. (2000). *Real Estate Principles and Practices, 6th Edition*. Upper Saddle River, NJ. Prentice-Hall.

LaGrasse, Carol W. (2002). Supreme Court Rejects "Categorical" Compensation for Temporary Takings. Lake Tahoe Planning Agency Took only a "Temporal Slice" of the Property Interest. *Property Rights Foundation of America, 6(1)*. Retrieved from http://prfamerica.org/2002/SupremeCourtRejects.html

Lawschoolhelp.com (n.d.). *Torts Damages*. Retrieved from http://www.west.net/~smith/tdamages.htm

Ling, David C., & Archer, Wayne R. (2008). *Real Estate Principles a Value Approach, 2nd Edition*. New York, NY. McGraw-Hill/Irwin.

Lusvardi, Wayne C. & Warren, Charles. (2001, March 22). Three Rules for Forensic Real Estate Damage Valuation: Deductive, Adductive, or Reductive Rule? *Real Estate Issues, 26(1)*.

Reis, John W. (2002, October. Rev. 2012, February 10). *Measure of Damages in Property Loss Cases*. The Florida Bar Journal, 76(9), 32-39.

Sabovich, James M. & Hearne, Heather D. (2009, February 19). Diminished Property Value Claims in a Diminished Real Estate Market. *Toxic Law Reporter*, 24 TXLR 250.

Torgrimson, Christian, & Robinson, Angela. (2012, May 20). *The Case for Recovery of Business Loss in the Takings of Real Property*. State Bar of Georgia, Real Property Law Section. Retrieved from http://garealpropertylaw.com/2012/05/the-case-for-recovery-of-business-loss-in-the-taking-of-real-property/