

C3: Scope of Services

1. Scope

1.1. Background

Transnet Property, a division of Transnet SOC Ltd, hereby invites tenders for the establishment and appointment of service providers to submit proposals in Panel of Valuers for Transnet Freight Rail Investment Property Valuations and other ad hoc valuation requests for 03 months. The Selected Service Provider/Valuer should display sufficient understating of specialized rail properties.

The principles are contained in the General Standards apply to Valuations. These Standard only includes modifications, additional requirements, or specific examples of how the General Standards apply for Valuations of Investment Properties to which this Standard Applies. The exercise for IP valuation will include the first year of fully motivated valuation reports followed by two cycles of desktop valuation or reviews of the previous valuation cycles.

This document serves as a Valuation Brief to the Appointed Service Provider who will establish the best valuations practices to determine Market Value for those properties classified as IP Properties.

All the properties are held in favor of Transnet SOC Ltd.

2. References

As far as possible the Valuer should liaise with Transnet Property and Transnet Freight Rail to ensure an integrated approach to the valuation.

Annexure 1: Responsibilities of a Valuer & Basic Contents of the Report

The contact persons at Transnet Property are:

ANNEXURE 1

A. THE RESPONSIBILITIES OF A VALUER AND THE INSTRUCTING PARTY

By virtue of the fact that a person holds himself out as a Valuer of immovable property and accepts assignments to do valuations he thereby presents himself as a person competent and skilled to render that specially designated service.

1 Acquired status

Custom has in its own way conferred upon such persons a status which Van den Heever JA in *Herschel v Mrupe* 1954 3 SA 464 (A) 488C-D explained as follows:

Certain functionaries such as sworn appraisers, (as they were then known), notaries and the like have had a kind of patent of credibility and efficiency conferred upon them by public authority. Members of the public are invited to repose confidence and trust in the acts of such persons performed in their respective capacities.

The function of a Valuer is not only to estimate value – there is more to it. His responsibility to perform a specialised operation with care and skill also demands that the processing of his valuation should be carried out according to ethical standards, which underwrite his credibility, efficiency, and honesty of purpose. These standards together with a Valuer's ability to perform his function in practice go far towards upholding the status conferred upon him. He consequently assumes a responsibility not to be lightly shouldered.

2 Exercising care and skill

A Valuer cannot expect to arrive at a logical deduction from the factual data and form a responsible estimate of value unless he exercises diligent care and employs his skill to the best of his ability in making his valuation and compiling his report.

3 Instructing a Valuer and valuation research

A valuation competently made, can only be as good as the information and facts upon which it is based. It is therefore incumbent on the party instructing the Valuer to brief him in a manner, which will enable him to fulfill his function satisfactorily. The purpose and the effective date on which the valuation is required must be specified. In the absence of the former, the Valuer would be entitled to assume that a current market valuation is required and to reaffirm this in his report. When the instructing party has omitted to state a specific date on which the valuation is to be effective the Valuer must declare the date on which his estimate of value is applicable.

It is a recognized procedure that when a responsible opinion is sought, adequate information, including the known facts and circumstances relating to the problem, must be placed before the person being consulted. This practice must be followed when instructing a Valuer. Without the necessary tools, he cannot perform his function satisfactorily. The party engaging his services must therefore place all the available data at his disposal. If the courts sometimes face difficulties because adequate information has not been supplied by a Valuer in giving evidence, then the problems with which a Valuer has to contend when he is inadequately instructed can be appreciated.

The instructing party, whether or not to he knows the facts relating to the property to be valued, is usually in a position to gather them. Detailed information should be presented to the Valuer as comprehensively as possible. If he is not adequately instructed, he could be left groping in the dark and unknowingly labour under a misapprehension or proceed on misguided facts.

Sometimes a verbal request for a valuation identifies the subject property only. The details supplied are not only inadequate but a request made in this manner displays little regard for a Valuer's responsibilities and the intricacies of his function, unless it is followed up with detailed information and instructions.

There are, however, instances where a Valuer has personal knowledge of the property to be valued. Many Valuers correctly build up a bank of information about properties in general in certain localities. This advantage does not necessarily ensure that he has all the facts at his disposal.

A Valuer is sometimes pushed to complete and deliver a valuation because it is urgently required. The instructing party may also indicate that because of lack of time he is not able to supply all the necessary details, which suggests that he expects the Valuer to conduct his own investigation of the facts relating to the subject property.

Caution is necessary in instances of this nature. Even when a Valuer considers that he is of his own account sufficiently well informed he would be wise to check the facts he knows with the instructing party and if necessary get him to confirm them.

A Valuer, although adequately instructed, must nevertheless be knowledgeable about title deeds, endorsements thereon, diagrams and deeds office methods and searching procedure which includes sectional plans and the terms of "use agreements" which apply in the case of a valuation of a unit held under sectional title and also the "contents of contract" relating to the share block company concerned.

No matter what documentary information he has to hand, he never knows when he may have to make use of that knowledge. He is not only required to estimate value; he must also have regard to his reputation by ensuring that he has all the information necessary and knows how to interpret it in order to perform his function adequately.

4 The dangers of inadequate data

Physical and natural attributes, the shortcomings or advantages, which have or are likely to have a bearing on the utility or potentiality of the subject property, should, where known, be disclosed to the Valuer. For instance, building improvements may have been erected on pilings because of the nature of the subsoil; a basement may suffer from seepage of water; there may be marketable deposits on or under the surface of the land; a farmer who is a riparian owner may be experiencing the ill effects of pollution in the stream, although the cause may originate from sources beyond his control; there may be evidence of mineral substances and the like which are potentially exploitable.

Although competent Valuers are capable of summing up a property, their observations can be reinforced when they have been supplied with all the necessary data. Area measurements of land under irrigation and those portions claimed to be irrigable as well as those, which have been contoured, are all vital to a Valuer.

The range covered is by no means complete but it suffices to show the extent to which a Valuer should augment inadequate briefing by undertaking his own research.

5 Rights

Where there are separate rights in land a Valuer should be informed of them. Full particulars of riparian rights, of leases, both registered and unregistered, should be supplied. Usufructs and fideicommissa should be clarified and bona fide possessors or occupiers should be disclosed as well as rights in connection with trees, crops, share-croppers and temporary improvements, quotas or permits. It is stressed again that the list is not complete, but it is indicative of the kind of information which should be supplied to the Valuer if it is applicable to the property he is required to value.

6 Building improvements

Unless the instructing party comprehensively lists improvements the Valuer can only gather these particulars from personal observation and inquiry during his inspection of the property. He must then note the details himself. Even though the information, or some of it, has been supplied to the Valuer, he must nevertheless check it. The procedure requires taking measurements or obtaining them from authentic scaled plans, recording the specifications, the condition of the structures and the adequacy of their functional utility. In addition, he must establish which of the improvements are permanent and which are temporary.

7 Restrictions

All restrictions appertaining to the use of the land must be taken into account. The Valuer should, however, establish (if he has not already been informed) what the possibilities are for their removal. Attempts to do so (as well as the outcome thereof) should be disclosed to the Valuer and researched by him. He should also be informed of any known infringements of the restrictions and of any encroachments. Where a non-conforming use applies, the Valuer's attention must be drawn to it. If the subject property has been rezoned or if its use has been varied with official consent (consent use) and if any town planning restrictions have been officially relaxed, the Valuer should be informed by the instructing party.

8 Assessing potential uses

On the balance of probabilities there must be a reasonable prospect that a willing buyer will take a potentiality of the subject property into consideration. A Valuer who has been made aware of an alleged potentiality must investigate the prospects of its being brought to reality and that it is not merely wishful thinking.

9 Access and egress

When the property to be valued is subject to a servitude of right of way, of necessity, the instructing party should advise the Valuer and supply him with the full particulars. That having been done, it is over to the Valuer to apply his knowledge of the implications of access and egress in making his valuation.

B. LAND AND ITS POTENTIALITIES

The potentiality of a piece of land and its future use lie in its capacity for the exploitation and development of those of its attributes that have not yet materialised or have not been brought to actuality.

It is therefore understood that land is not valued only by reference to the use to which it is being put at the time when its value has to be determined, but also by reference to the uses to which it is reasonably capable of being put in the future [Sri Raja Vyricherla Narayana Gajapatiraju Bahadur Garu v Revenue Divisional Officer Vizagapatam 1939 2 All ER 317 (PC) 321 H].

1 The effects of statutory control

The future use of land in the Republic has become largely regulated by legislative enactments. The Physical Planning Acts 88 of 1967 and 125 of 1991 present a pattern designed towards ultimately achieving the optimum use to which land can be put in the national interest. Allied to that purpose is the Subdivision of Agricultural Land Act 70 of 1970, which fits into place in the overall pattern, and in many respects the National Roads Act 54 of 1971.

These statutes and approved town planning schemes constitute instruments of control not only over the future use of land in specified areas but also over a variation in the existing use thereof as well as subdivision.

Control over use does not necessarily deprive land of its potentialities but regard must be had to the limits and restrictions placed on use by law.

Land, which escapes the curbs imposed by law often, has a potentiality capable of exploitation. Provided its potentiality is a lawful one, its effects on the market value of the land concerned will vary according to the circumstances of each case but there are certain basic requirements in that regard which must be observed.

2 Underdeveloped potentiality

Unexploited potentiality need not always have value. A latent potential which can be economically developed should, however, be taken into consideration. It has been held that 'the potentiality of an added advantage due to the existing possibilities of development is a proper subject for consideration' in the valuation process [Katzoff v Glaser 1948 4 SA 630 (T) quoting Halsbury's Laws of England 4th ed vol 6 par 43].

The advantage of further exploitation of a potential use should, however, not be confused with that which has already been transformed into a reality nor should it be re-garded as a separate potentiality because 'it is the possibilities of the land and not its realised possibilities, that must be taken into consideration' [Sri Raja Vyricherla Narayana Gajapatiraju Bahadur Garu v Revenue Divisional Officer Vizagapatam 1939 2 All ER 317 (PC) 321 H 322B].

The part of the potentiality already realised can have the effect of detracting from, or enhancing the attractiveness of the undeveloped part of the potentiality. The lapse of time for instance, between the initial development and subsequent further development, during which circumstances and conditions have altered, is frequently the cause. The character of the improvements effected in the first stage may, for example, no longer be in keeping with the type of development called for later in order to exploit the full potentiality of the land to a maximum degree at a given date.

In the circumstances described above a potentiality, which is expended in part only, while leaving further exploitation to be undertaken at a later date, must be considered as a whole when taking into account the effects thereof on the market value of the property. When considering this aspect the relationship must be taken into consideration.

3 Misguided optimism

The recognition of the possibilities, which the lawful use of land offers, should be realistic. Misguided optimism can lead to a distorted and unbalanced view of its potentialities. It may not always be easy for a Valuer to establish what potentialities present themselves. There are signs, however, in many instances to direct him. The most usual among them are considered under subsequent headings but it is emphasised here that in making a valuation the value of the potentiality must be ascertained on such materials as are available to him, and without indulging in feats of the imagination [Sri Raja Vyricherla Narayana Gajapatiraju Bahadur Garu v Revenue Division Office Vizagapatam 1939 2 All ER 317 (PC) 322B 323H].

When a Valuer has established that the land he is valuing has a potentiality and he has verified that the nature thereof has lucrative possibilities he should not overlook the fact that when taking such qualities into account he is required to make out a case that there is a reasonable prospect of their being brought to actuality.

4 Basic essentials

It does not follow that because a property has a potential use it necessarily has a bearing on its market value. It should create an appeal to a prospective purchaser and be reasonably and realistically possible to accomplish. Consequently a Valuer must at least establish, upon a balance of probabilities, that the property has potential uses to which it is reasonably capable of being put in the future and that a willing buyer and a willing seller would take such potential uses into account in fixing the price [Thanam v Minister of Lands 1970 4 SA 85 (D) 85F-G]. The fact that its potentiality has not been exploited does not detract from the extent to which it could possibly influence the market value of the land.

The lapse of time before a potentiality ripens requires well-reasoned consideration as the extent of its influence on the market value of the land depends, among other considerations, upon the possibility of being able to exploit it immediately, within the near future, over an extended period, or possibly not at all [Krause v SAR&H 1948 4 SA 554 (O) 559-560].

It stands to reason therefore that a potentiality which can be exploited to advantage without much delay exercises a greater influence on market value than one in respect of which a possible buyer will have to bide time in order to gain from the prospective advantage. For example, there would be no obstacle in the way of the physical development of an urban site all ready zoned for flats but, if in the locality concerned there was no immediate demand for residential units of that nature, a prospective buyer could regard the potentiality as a deferred possibility and grade his offer to purchase accordingly.

4.1 Latent potentials

Hypothetical, speculative or remote potentialities are not likely to attract or influence prospective purchasers of the land. When it is apparent that large capital sums will be required in order to investigate and exploit a potentiality, which is dubious, its possibilities should be treated with reserve. That does not mean that a possible purchaser with adequate financial resources would necessarily be deterred from displaying an interest in a potential of real substance which has definite prospects of profitable exploitation, but the fact remains that unless the circumstances are exceptional, a Valuer should have regard to the point of view that a potentiality demanding considerable capital expenditure is a factor which is not easily bridged. The greater the cost of exploration, the more difficult it becomes to realise the potentiality of the land (Ilovo Sugar Estates Ltd v SAR&H 1947 1 SA 58 (D) 67-68].

4.2 The effect of delayed exploitation

When the exploitation of a potentiality is likely to extend beyond a reasonable period of time before it can be brought to actuality, it gives a semblance of unreality to the figures of cost and profit. The possibility that a potentiality will not be ripe for development for many years to come must consequently throw an uncertain light on present estimates of development costs, which in turn will filter through to affect the ultimate profitability, which the potentiality currently offers.

4.3 Land with more than one potentiality

Some properties have more than one potential use. Prospective buyers may each have a different use in mind, and the degree of influence each may have on the market value of the land may vary. A Valuer in considering each separately would possibly arrive at a different valuation in each instance.

It has, however, been established that in respect of a potentiality the value is not a proportional part of the assumed value of the whole undertaking, but is merely the price, enhanced above the bare value of the ground, which possible intending purchasers would give [Cedar Rapids Manufacturing and Power Co v Lacoste [1914-1915] All ER Reprint 573-574 (PC)].

It is the market value of the property which is to be determined with all its potentialities and not the sum of the separate potentialities [Bestuursraad van Sebokeng v M & K Trust en Finansiële Mpy (Edms) Bpk 1973 3 SA 376 (A) 395H].

It becomes clear therefore that a potentiality cannot be given a value apart from the land. It is not a separate marketable commodity but a factor, which influences the market value of the land.

According to that principle, a Valuer must consequently determine in his own mind which of the potential uses, if there are several, or what combination of them is likely to contribute best to the most profitable use of the land at the time of valuation and under the then appertaining market conditions and circumstances. Prospective buyers, it will be recalled, are notional or imaginary, and because of this, a Valuer will have to invoke his expertise in exercising his judgment. In doing so calculated potential uses are not the only considerations to be weighed. There is also the question as to which of the potentialities is in greatest demand. The most attractive one may, however, on the surface have little appeal in the market, while one of the others may be much sought after by prospective buyers of the land.

C. MARKET VALUE

Value dwells only in the minds of men. In estimating market value the facts and circumstances appertaining at the time influence possible buyers and sellers in open competition.

The valuation process consequently calls for skill and experience, without which a Valuer would find it difficult to arrive at a logical deduction from the facts [Pietermaritzburg Corp v SA Breweries Ltd 1911 AD 501 511 516].

A Valuer's awareness of existing market conditions and trends, together with his knowledge of the circumstances and the facts relating to the property concerned, enable him to understand how the buying and selling public think, and through his skill and experience he should be able to recognise the elements most likely to influence intending purchasers.

While a Valuer's skill is composed of the way in which he applies his knowledge, displays his understanding of the circumstances and treats the facts that apply, in demonstrating his expertise he should not treat these factors separately. The co-ordination of all the elements concerned with the property should be considered as they will influence the minds of possible buyers and sellers. The relationship between land and the improvements on it, the potentialities of the land and the depreciation aspect represent forces ingrained in the market value concept.

1 Supply and demand

There is, however, another element in the general economy, which, although it is universal in character, occupies the minds of prospective property buyers and sellers. It is the matter of supply and demand, which the English Encyclopedic Dictionary describes as the process by which free competition so rules prices as to utilize available commodities fully.

Adam Smith, author of *The Wealth of Nations*, believed in the co-ordination of individual effort out of which supply would flow and demand would be adjusted through the agency of competition.

Free and open competition influenced by the economic factors at the time consequently underlines the theory of supply and demand. Competition stimulates the market for a sought-after commodity. When such commodity is in short supply its market has further impetus because demand exceeds supply. The same agency on the other hand holds the market for the commodity in check while it is in regular supply: in other words while there exists a state of balance between supply and demand. In the extreme when there is no demand, there is no market.

Land as a commodity remains confined to an area circumscribed by our country's de-fined boundaries. It is consequently not the commodity (land) as such but the purpose for which it can be used and the manner in which that purpose is being or can be exploited to which the factors of supply and demand are related.

Because land has so many uses its demand for a particular use may sometimes be sluggish whilst, where its use is for another purpose, demand may be brisk.

In property the forces of supply and demand must therefore be considered in relation to its utility and the need it supplies for those who want it for the use assigned to it.

The utility of a property is confined to its locality as it is there where it is or can be exploited to best advantage in keeping with the local circumstances. The demand for it is, however, not necessarily localised; it can come from outside.

When a Valuer has occasion to refer to the cogency of supply and demand he must look at it in the correct perspective.

It does not follow for instance that because there is a strong demand for industrial property in a growing industrial complex that the same demand exists in a locality where industrial development lacks impetus. While there may be a demand for single-dwelling residential property in a district experiencing substantial population growth it does not follow automatically that the demand for excessive office accommodation which has been built up in the same environment will receive a similar shot in the arm.

Beadle CJ, in *Metal Pressing and Enamelling Co (Pty) Ltd v Commissioner of Taxes* 1970 4 SA 602(RA) 604, said:

In commercial parlance a 'demand' for a product means the same thing as a 'market' for the product. Anything, therefore, which increases the 'market' for the product ipso facto increases the 'demand' for the product.

Money as a medium of exchange facilitates the buying and selling of property. Its availability and the cost of borrowing, because it exercises an influence on market value, consequently becomes a force to be reckoned with when considering the effects of supply and demand on property values. Reality establishes that there are economic considerations, which take a hand in regulating the supply and demand for property.

Operating on credit is an accepted way of business that also extends to the property field. As credit involves the use of money at a cost, which is interest, the rate thereof is in turn governed by the supply and demand for money.

Moderate interest rates usually indicate that money is readily available; high interest rates normally reflect its general scarcity.

The demand for a commodity is stimulated by the want for it. The credit system is therefore an accessory to satisfying that want which constitutes a healthy economic approach provided it is wisely exercised.

As property is the subject under consideration a firm occupancy demand is always important because it satisfies one of the wants of an investor, but the cost of satisfying it must be realistically warranted in the long run. It is this precept, which introduces the question of liquidity and the various investment channels into which money flows. Many of these sources look to property as an outlet for their funds; they buy for cash. Private investors, however, frequently need to rely on mortgage finance or to a degree on borrowed money. Bearing in mind that rental and capital growth is also relevant, the higher the cost of borrowing becomes, the slower the growth potential develops. This can reach unrealistic proportions if excessive borrowing at an unwarranted interest rate is resorted to as ultimately the loan could lead to the elimination of the capital growth potential. In brief the above are some of the economic factors, which affect the supply and demand for property.

In the valuation process regard must therefore be had not only to the commercial supply and demand factors but also to the extent to which it is tempered by the availability of money and the borrowing and receiving interest rates prevailing at the time of valuation. Valuers should consequently follow the movement of interest rates, which fluctuate in sympathy with economic trends and sway the thinking of prospective buyers and sellers.

2 Various aspects of value

Market value is the amount a willing buyer would be likely to pay a willing seller in the open market. It is a concept with many facets, all of which must be grasped if there is to be a clear understanding of what the term implies.

A variety of expressions used to depict different kinds of value have come into existence. Some require elucidation and are defined below. There are also one or two valuation terms, which are explained.

2.1 Value in use

Value in use (current or existing use value) is the utility value of a property. It is what it would cost to replace the property, if the owner occupier were deprived of its use, with a similar property elsewhere, and it includes costs of acquisition. It does not, however, follow that anyone else would buy the property for the same amount [Pietermaritzburg Corp v SA Breweries Ltd 1911 AD 501 522].

2.2 Value in exchange

This expression refers to the amount of money, which the property can be exchanged or sold for [Pietermaritzburg Corp v SA Breweries Ltd 1911 AD 501 522].

2.3 Temporary value

Market value is temporary value; it fluctuates (Katzoff v Glaser 1948 4 SA 630 (T) 638].

2.4 Fair value

When fair value has to be determined it has been held that 'fair value' in relation to property is the 'fair market value of the property as at the date of acquisition thereof' [Kommissaris van Binnelandse Inkomste v Anglo American (OFS) Housing Co Ltd 1960 3 SA 642 (A); Van Thiel's Wire Industries (Pty) Ltd v Commissioner for Inland Revenue 1954 4 SA 69 (D) 69E].

2.5 Subjective and objective values

Value is of a subjective nature when the property has a special significance to someone for personal reasons best known to himself. Objective value is based on the facts relating to the property. It has no regard for sentimental or personal attachment to the property or its value in use. It is determined in open market competition among those who desire it.

2.6 Capitalised value

The reasonably calculated expected future nett income flow of an investment property discounted to its present value, when capitalised at the prevailing rate sought by prudent investors, represents the estimated capitalised value of the property at that time.

2.7 Utility value

The usefulness of land in satisfying a human need is a material factor in determining its value. Its utility is consequently one of the ingredients embodied in the value concept. In itself utility makes no impact on capitalised value in that it is expressive of productivity. In respect of property not sought for its investment potential, utility reflects the property's usefulness in satisfying a human need, for instance in the case of home ownership. In this regard it becomes a factor to be considered when estimating market value.

2.8 Intrinsic value

An intrinsic quality is an attribute inherent in a property per se. Its characteristics are inanimate and can have a bearing on the market value of the land. In itself an intrinsic quality in land is not subject to supply and demand as it cannot be isolated. Its potentiality must be given consideration when estimating the market value of the property in which it is ingrained [see *Hirschman v Minister of Agriculture* 1972 2 SA 887 (A) 891 D-E]. It is stressed, however that intrinsic value, is not necessarily market value.

2.9 Highest and best use

The optimum likely use to which land can be most advantageously exploited within the confines of all the restrictions imposed upon its use by law, due regard being had to the possibility of their modification or removal, is referred to as its highest and best use.

2.10 Arm's length transaction

An arm's length transaction is generally understood to be a voluntary transaction completely devoid of subjective elements.

2.11 Plottage

Plottage is a value consideration representing a degree of enhancement in the individual value of each of two or more sites which can be lawfully exploited together and where the combined use advantage is greater than that of each of them separately.

3 The 'willing-buyer-willing-seller' basis

A Valuer must visualise notional buyers and sellers, none of whom are under any compulsion to buy or to sell in the open market, on the basis that both parties are able and willing to conclude a sale on terms that are usual at the time. Consequently, these aspects, those which would tend towards a higher offer and those which would tend towards a lower offer, must be weighed in the process of determining upon a practical basis, what a willing buyer would be likely to offer and a willing seller to accept [Margate Hotel (Pty) Ltd v Town Council of the Borough of Margate 1961 1 SA 384 (N) 388C-E].

Until reaching agreement both the buyer and the seller should, during objective and impersonal bargaining, have taken stock of the circumstances relating to the property concerned.

In order to recognise the circumstances which apply to the property being valued, a Valuer, in arriving at his estimate of market value, must therefore 'take into consideration the potentialities of the land; the uses and purposes to which it may be put, its lucrative possibilities; all the considerations which would induce a prospective buyer to offer a higher price than the land would otherwise be likely to command. At the same time any disadvantages and features which would be likely to depreciate the price, must be taken into consideration' [Margate Hotel (Pty) Ltd v Town Council of the Borough of Margate 1961 1 SA 384 (N) 388C-E].

The reliance to be placed on a Valuer's estimate of the price a willing buyer and a willing seller would, in the circumstances, be likely to agree upon will depend largely upon his ability to recognise the elements emphasised above and to correlate them with the facts and particulars ascertainable about the property, always having regard to the various facets of market value which, unless they are fully comprehended and have been observed, can lead a Valuer unwittingly to stray from the purpose which his valuation is intended to serve.

The 'willing-buyer-willing-seller' basis should consequently not be treated merely as an expression to convey market value. There is more to it than that; it has an in-depth significance in the valuation process.

3.1 When a buyer or a seller is willing

"Willing", according to the Shorter Oxford Dictionary, means disposed to consent or comply, ready to do (what is specified or implied) without reluctance; this implies without pressure being brought to bear and without compulsion.

A 'willing seller' is 'one who is a free agent' not a person willing to sell his property without reserve for any price he can obtain for it [Davies Law of Compulsory Purchase and Compensation 116-117]. Cripps, in Compulsory Acquisition of Land at 4-181-4-182 summarised it as follows:

A 'willing seller' does not mean a person willing to sell without reserve for any price that he can obtain, but one who is willing to sell making the most, in the circumstances, of his property; and the most in the circumstances he can make of his property cannot be determined without consideration of the circumstances, and, in particular, cannot be ascertained, while excluding the consideration of the known wants of a probable purchaser.

Occasions arise, however, when an owner is not in fact a willing seller but is compelled, in the valuation process, to be regarded as one. When land is taken by the state by virtue of statutory powers, as is the case in expropriation, the owner if unwilling to part with his land is in effect under compulsion to do so for a consideration to be determined. In these circumstances a Valuer must nevertheless regard him as a willing seller.

A Valuer should consequently 'not take into consideration any disinclination of the person interested to part with his land' [Sri Raja Vyricherla Narayana Gajapatiraju Bahadur Garu v Revenue Divisional Officer Vizagapatam 1939.

A similar situation presents itself when valuations are made for fiscal purposes, such as municipal valuations and the like.

A prospective purchaser is also a free agent. If he so wishes he can make an offer for a property. His offer, even when not accepted by the owner, nevertheless establishes his willingness to be a purchaser. A Valuer confronting such a situation when drawing comparisons between various sales should not disregard an unacceptable offer currently made as a pointer to market value without having investigated the circumstances under which it was made and the reason why it was refused, especially if he has reason to believe that it was made sincerely, genuinely, without compulsion and with an objective motive.

This coincides with the view of Lord Romer in the Sri Raja case, in which he said, that the wish of a particular purchaser, though not his compulsion, might always be taken into consideration for what it is worth [Sri Raja Vyricherla Narayana Gajapatiraju Bahadur Garu v Revenue Divisional Officer Vizagapatam 1939 2 All ER317 (PC) 312C].

In Bonnet v Department of Agricultural Credit and Land Tenure 1974 3 SA 737 (T) Bliss AJ remarked: After all, what better testimony could be placed before a Court than the fact that, before expropriation was even mooted, there was a willing purchaser who was aware of the potential attaching to, and had made an offer to purchase, the very property in question [748E].

It does not follow of course that it is the value to the purchaser that matters but his offer does not warrant being excluded from consideration without considerable thought, especially when comparable sales are not freely available.

3.2 "Rare" buyers

The question is sometimes raised whether the sale of a property to a 'rare' buyer, usually with considerable capital resources, is in fact a reliable indication of the general market value of other properties in the locality concerned.

A Valuer who is dubious about regarding a sale of this nature as a fair indication of market value at the time can take a lead from a summary of what Rabie J said in the original record in *Estate Marks v City Council of Pretoria* [Tvl provincial division -unreported, confirmed in *Estate Marks v Pretoria City Council* 1969 3 SA 227 (A) 250A]:

The evidence satisfies me that there are various kinds of buyers. . On the evidence, which I have heard, there is no justification for excluding buyers of the allegedly 'rare' kind. There may not be many individuals who buy land on the basis of the allegedly 'rare' buyer, but the evidence is that large institutions are investing in land on an increasing scale and that they are satisfied with a lesser yield than private investors. I can see no reason for excluding the institutional investor, and I agree with the submission of plaintiffs' counsel that the hypothetical purchaser of plaintiffs' properties or some of them might well have been an institutional investor rather than a private individual.

It follows therefore that when other properties are compared with sales of that calibre they should, in accordance with the general principles of comparison, have similar characteristics and qualities and be located in a like neighbourhood and surroundings.

4 The open market

Although in the case of shares, wool, metals, produce and other transportable commodities, regular bulletins and frequent quotations are often made available to keep buyers and sellers informed of the prices being obtained in the open market, no like facilities exist for reporting regular sales of immovable property except where a local authority makes available lists of properties sold from time to time in its area.

With the advent of computerised deeds office land registers however, Valuers are becoming increasingly able to research recent sales on a national basis. The pulse of the property market cannot however, be felt as readily as that of other marketable commodities and, although there is no 'market place' in the form that the expression normally implies, there nevertheless exists an 'open market' in which operators can negotiate, bargain, buy and sell.

The open market exists 'under conditions enabling every person desirous of purchasing to come in and make an offer and if the proper steps are taken to advertise the property and let all likely purchasers know that the land is in the market' [*Inland Revenue Commissioners v Clay* 1914 3 KB 466].

The proviso that it should be made known through suitable media that a property is for sale, relates to a procedure which is commonly used, especially among estate agents and land auctioneers.

Since 1914, when the definition referred to above was first advanced, a much wider process has evolved as many properties, which have not been advertised, or openly offered, frequently change hands.

It is submitted therefore that, at present, it is more readily understood that an open market exists under conditions enabling every person desirous of purchasing immovable property to make an offer on terms and conditions which are not abnormal but which are usual in a voluntary sales transaction.

Unless the open market test is acknowledged in these wider terms a vast number of sales which could be usefully considered by a Valuer employing the method of comparable sales would have to be disregarded once it has been established that it was not widely known that a sale could be negotiated.

Support for this broader view is to be found in *Jacobs v Minister of Agriculture* 1972 4 SA 608 (W) 615D where Colman J indicated that every relevant transaction not shown to have been abnormal must be given due weight as a pointer to value.

The question arises whether, in determining the open market value of a property, the matter of payment of the purchase price in cash, in contrast with instalment payments, should be regarded as an abnormal or unusual term or condition. It has been held that in open market transactions the instalment provision is a normal basis to accept [*Bon-net v Department of Agricultural Credit and Land Tenure* 1974 3 SA 737 (T) 737D].

It should also be observed that as the open market is widespread it cannot be confined to a limited area. 'The relevant price is the price at the place where the thing was sold. . Under modern conditions the existence of a market for land at a place other than the site, is of frequent occurrence' [*Katzoff v Glaser* 1948 4 SA 630 (T) 636-637]. For example, it is well known that when a township at a coastal resort is opened the stands are frequently sold at various centres all over the Republic.

D. THE PRINCIPLE OF COMPARABLE SUBSTITUTION

Normally a prospective purchaser is not likely to pay more for a particular property than the price at which he can buy a comparable substitute property, which satisfies his requirements equally well.

The same reasoning applies in the market valuation process. A Valuer must take his cue from the prices being obtained in the open market for properties, which can be regarded as reasonable substitutes for the one being valued. He can then compare those with similar features in order to obtain a realistic pointer to the value of the subject property.

While the element of comparison remains at the root of the valuation process, the maxim of comparable substitution represents the culminating point of balance at which one property compares favourably with another on the grounds of functional utility at a particular point in time in the open market.

The principle is invoked in the valuation process by assembling details of like properties recently sold which are regarded as suitable for comparison with the one being valued. Thereafter a narrowing down operation becomes necessary in order to sort out from the sales recorded those properties which are characteristic of the attributes of the one being valued.

In this way only those recent sales, which are relevant, present the Valuer with a selection of reasonable substitutes.

The substitution principle consequently dominates the comparison process.

1 The comparison method

When a market valuation is required this method becomes the vehicle for processing the facts in order to arrive at a logical deduction from them. The comparison method or the market data approach, as it is frequently referred to, is no exception to this valuation rule.

It has been established by the courts in actions involving market value disputes that comparable transactions afford a sound basis for arriving at a satisfactory guide in determining market value [Minister of Water Affairs v Mostert 1966 4 SA 690 (A) 723F], and the comparison method has been readily accepted as a sound valuation principle [Estate Marks v Pretoria City Council 1969 3 SA 227 (A) 253H-254B]. It need not be laboured therefore that the prices paid for comparable properties in the neighbourhood are the usual evidence as to the market value [Cripps Compulsory Acquisition of Land at 4-031].

The object of the comparison method is to enable a Valuer to arrive at a norm, which will serve as a guide in estimating the market value of the subject property. By analysing his selection of comparable properties currently sold on the basis of the ordinary voluntary sales standard he should be able to deduce a reliable yardstick to assist him in his valuation.

A norm is a standard of comparison derived from a typical example. It must not be confused with an average, which is simply an arithmetical calculation, which, if used in price comparisons, can result in misleading conclusions being reached.

1.1 Price and value

As a norm arrived at in the comparison process is derived from prices currently being paid for comparable properties it does not necessarily follow that price and value mean the same thing.

While there is a tendency to assume this the inference nevertheless cannot be regarded as absolute as the reliance placed on sale prices depends not only on the nature of the property sold but also on the circumstances and the conditions of sale.

Except when there are exceptional features attached to a property or the circumstances and conditions of sale are abnormal, the price paid in an open market transaction can ordinarily be assumed to reflect market value at a specific date, which is the date of sale. If it relates to the sale of a comparable property price and value can usually be equated, provided that the price paid was obtained in a bona fide arm's length transaction.

Other than a description of a property and the price paid for it, the conditions of sale and the circumstances under which it was concluded are not always available. Most sales usually represent an arm's length transaction and suitable comparables are normally selected from among those recently recorded. It therefore often becomes difficult for a Valuer to establish if there are any of them which embody abnormal features and which should for that reason be regarded as unsuitable for purposes of comparison.

When a Valuer has reason to follow this line an obligation is imposed on him to establish the facts which have caused him to disregard a particular sale, as was made clear by Colman J in *Jacobs v Minister of Agriculture* 1972 4 SA 608 (W) 615C when he said:

If there were any abnormal features of the transaction, it is for the party who wishes the Court to disregard the price reflected therein to prove those features'.

It is, however, remarkable how news and views, spread via the grapevine, frequently enable an alert Valuer to find reasons to look more closely into the conditions under which a particular sale was concluded. In practice this information is not easily obtained especially in the case of an abnormal transaction as it is generally closely guarded. If a Valuer can obtain it authentically he has facts to guide him, but rumor is not sufficient-

There is, however, a realistic alternative approach, which was referred to in the above-mentioned case:

Every relevant transaction, not shown to have been abnormal, must be given due weight as a pointer to value. And when the price paid in a particular sale seems to be consistent with the prices paid in others, its probative effect is thereby strengthened [615D].

It should be noted that the judge referred to relevant transactions. The observation is significant as a property sold and used as a comparable example must have the characteristics of a reasonable comparable substitute for the property being valued if it is to be relevant.

The alternative referred to above brings custom and reality into a balanced perspective. The buying public interested in property is not altogether unacquainted with prices being paid for properties in general and is thereby influenced in making decisions. A consistency pattern, which adjusts itself to the times, can therefore be regarded as a fair basis for selecting comparables. When a Valuer in comparing sales finds that prices being obtained currently, once they have been adjusted to a common basis of comparison are reasonably close to one another the consistency pattern establishes the reliability of the examples. A sale, which stands out as an exception, is obviously one for closer investigation. It does not necessarily mean that an exception represents an abnormal sale but, when there are a reasonable number of sales available, which reflect a pattern of consistency, a reliable norm can usually be obtained by confining the selection of comparables to them.

1.2 Unusual type sales

When a Valuer observes that the price paid for a particular property with comparable characteristics is so much higher or lower than others being considered, the inconsistency may not necessarily be due to abnormal conditions of sale. The state and condition of the property when sold or some unique feature or extraordinary characteristic attaching to it could be responsible for the price difference. The circumstances under which the sale took place could also have influenced the price paid.

Upon investigating a sale, which does not appear to conform to the more-or-less normal market, pattern revealed in other comparable sales a variety of reasons for the inconsistency could present themselves. When the Valuer has established the cause and comes to the conclusion that a particular sale cannot realistically be taken into account in arriving at the norm he is endeavouring to establish, he will have satisfied the requirement that he must prove his case. Among the several instances, which may be the cause of inconsistency, are the following:

1.2.1 Property exchanges

In this type of transaction, even though the parties accept the respective values as being in fair proportion, the consideration agreed upon for each individual property may not necessarily be indicative of its market value. If upon investigation of the transaction the Valuer is unable to reconcile the exchange value apportioned to each of the properties with the consistent pattern of prices being paid in the market at the time when the exchange took place, the transaction would for that reason not be of much help to the Valuer in the comparison process.

1.2.2 Family transactions

In a family property transaction a price adjustment for sentimental reasons does not warrant a sale of this nature being included among others being used for comparison purposes. As this may not always be the case it is a question of the Valuer satisfying himself whether or not the price paid is consistent with the pattern of prices being obtained in the market at the time of the transaction.

1.2.3 Insolvency or deceased estate sales

When it has been established that there was an urgent necessity for disposing of a comparable property, for instance in cases of insolvency or in order to wind up a deceased estate or when a forced sale has taken place, it is generally effected by public auction. The implications thereof have already been reviewed. On the other hand if the property has been disposed of by private treaty (a forced sale accepted) a Valuer should follow the procedure of establishing whether or not the price obtained was consistent with normal market trends.

1.2.4 Transfer duty payments

When transfer duty has been paid on an amount, which differs from that of the declared purchase price the Valuer should endeavour to ascertain the reason for the variation before categorically accepting the sale as a comparable transaction.

1.2.5 Company transactions

Before the sale of a property concluded by way of a share transaction can be validly considered for purposes of comparison certain details must be known. They are necessary for the purpose of establishing at what amount the value of the property was taken in arriving at the price paid for the shares in the company and loan accounts respectively.

The ideal position is that the Valuer should inspect the sale contract and copies of the company's audited accounts and balance sheet. These documents are, however, rarely available. Nevertheless in many instances an authentic statement can be obtained to satisfy the Valuer that items such as undistributed profits, investments allowances or accumulated loss, if any, as well as shareholders' loan accounts, tax provisions, contingent liabilities, cash and the like have been taken care of, apart from the amount apportioned to the value of the property disposed of, in arriving at the sale price of the shares in the company.

These items indicate why it is essential that the actual amount, which has been obtained for the property, should be authentically established. Without this information the Valuer has no means of determining whether or not the amount allocated to the property warrants considering it as a comparable.

1.2.6 Expropriation awards

When a property has been expropriated the amount received by the owner is arrived at either by way of legal proceedings or through the medium of a negotiated settlement or as a result of a straightforward offer and acceptance.

Because a thorough investigation has been made and the presented facts considered by a court or an arbitrator in legal proceedings, as the case may be, the market value of the property as determined cannot be disregarded as a helpful guide in the comparison process. The facts and the time factor must, of course, be relevant.

Although the aggregate compensation award may include an amount for actual financial loss suffered by the owner and a solatium, the actual market value finding relating to the property is usually separately stated in the judgment.

When it comes to considering whether prices offered and accepted or resulting from negotiations are reliable indicators of market value cognisance can be taken of what Fagan JA said in *Union Government v Jackson* 1956 2 SA 398 (A) 425A-B:

The fact remains that they were paid in transactions of a very special type, not the ordinary voluntary sales between parties who have a free choice whether or not they will consider the bargain at all. To equate them therefore with the prices obtainable at such sales -which are the proper test of 'fair market value' -is an assumption that, in the absence of evidence that they do correspond, is not necessarily correct.

On the same subject Cripps [4-193] says:

The sales must also be sales on a free market, and sales by agreement to an acquiring authority having compulsory powers are not reliable evidence of value on the open market since they would not, generally, satisfy the assumption of a willing seller derived from the statutory requirement of market value.

It is apparent, therefore, that while transactions of this nature may not be of some guidance in the comparison process, in the absence of a full disclosure of the facts, which because of privacy are not always available, it is questionable whether they present sound examples unless their comparability can be substantiated in the light of the facts when known.

1.3 Pre- and post-valuation sales

The property market does not fluctuate daily. In a normal transaction in the open market the price obtained for the property at the date of sale can ordinarily be regarded as a reasonable reflection of the established market trend at that time.

If the prices paid for comparable properties are to serve the intended purpose they consequently cannot be confined only to the pre-valuation period. Contemporary sales suitable for comparison with property being valued, whether they have taken place before or after the valuation date, should be considered provided they are relevant and have been concluded under market conditions similar to and not divergent from the relevant time period. The degree of relevance is influenced by the incidence of time. The closer the date of sale is to the valuation date the stronger is its effectiveness.

It goes without saying that a Valuer might not know about post-valuation sales. If necessary he can, however, refer to any of them, which are relevant in an addendum to his valuation or in giving evidence.

According to Rabie J it is permissible to have regard to post-expropriation sales if they are reasonable comparable [*Estate Marks v City Council of Pretoria* 14 May 1968 Tvl provincial division -unreported].

In a subsequent case Bliss AJ in taking a similar line, said:

I am entitled to have regard to such sales if they are reasonably comparable, and also that I am similarly entitled to have regard to pre-expropriation sales, if they are reasonably comparable. As a safeguard, however, I will require that pre- or post-expropriation sales must be correlated with the expropriation period by means of suitable evidence, which indicates to what extent prices or values have increased or decreased between the date of those sales and the expropriation period. Care should also be exercised in regard to unusual factors, if any, which might have resulted in the escalation of prices, such as for example, the establishment of a large factory after the expropriation period (Bonnet v Department of Agricultural Credit and Land Tenure 1974 3 SA 737 (T) 753E-F].

1.4 Area identification

When the property to be valued has been described and its situation is known the Valuer is in a position to localise the area in which his search for comparable sales must be conducted.

1.4.1 Locality grouping - urban

In urban and peri-urban areas where town planning schemes are in operation the recognition of the prescribed use of each and every defined and registered piece of land is elementary. The necessary information can readily be obtained from the scheme provisions.

The recognition of a zoned area is the initial stage in the search for comparable properties. There is often a locality distinction within a zoned area. In a retail trading area the difference is sometimes noticeable from one street to another or from block to block. It is consequently not only the zone use, which must be identified, but also the trade impact grouping within it.

Town planning does not limit zoned areas to one of each kind of use. When no sales or too few are recorded in the area in which the subject property is situated it is permissible to draw on sales which have currently taken place in other localities zoned the same within a similar environment and having a standing similar to the subject property, provided there is no marked difference in the zone restrictions.

ANNEXURE 2

MOTIVATED VALUATION REPORT

BASIC CONTENTS OF REPORT

The valuation report should at all times comply with the current standards as laid down by the International Valuation Standards Committee (IVCS).

1. INTRODUCTION

- (i) The clients brief and purpose of the valuation, including definitions of value applicable.
- (ii) Declarations of interest.
- (iii) The date(s) of valuation.
- (iv) The date of inspection of the subject property.

2. TITLE DEED INFORMATION. (Depending on what valuation method is used)

- (i) Title Deed (number, date registered and office of registration)
- (ii) Full description of property in terms of the Deed.
- (iii) Conditions in the lease that may have an influence on the value of the property.
- (iv) Registered rights against the property that may influence the value of the property.
- (v) Surveyor diagram(s) of property.
- (vi) Area required for purpose of the valuation.
- (viii) Date of acquisition by owner.
- (ix) All relevant title conditions (including servitudes, endorsements and caveats).
- (x) Mineral Rights – if applicable.
- (xi) Any unregistered rights and how it impacts on value.

3. LEASE INFORMATION.

- (i) Lease contract details.
- (ii) Period of lease. (Options if any).
- (iii) Full description of the property in terms of the lease.
- (iv) All improvements on the property.
- (v) Lease area(s).
- (vi) Conditions of the lease that may have an impact on the value / rental.
- (viii) Usage of the property. (Use limitations in lease).

4. LOCAL, PROVINCIAL AND CENTRAL GOVERNMENT INFORMATION.

- (i) Local Authority.
- (ii) Town Planning information (Zoning, structure plans, special development frame-works, site development plans, etc.).
- (iv) Municipal Valuation (including the date of valuation, effective date, rates and taxes payable).

TRANSNET PROPERTY

ENQUIRY NUMBER: TPNT/NAT/025 (T)

DESCRIPTION OF THE SERVICES: Panel of Valuers for TFR Rail Investment Property Valuation.

5. GENERAL

- (i) Valuation approach.
- (ii) Market inference.
- (iii) Motivation.
- (ix) Calculations.
- (x) Conclusion.
- (xi) Escalation rate.
- (xii) What is included and excluded from the value. (in example VAT, survey and transfer costs, etc.).
- (xiii) General Comments.