

Editor's Note

BY PETER C. BURLEY, CRE



“We are made wise not by the recollection of our past, but by the responsibility for our future.”

—GEORGE BERNARD SHAW

PERHAPS IT IS THE ELECTION SEASON THAT HAS GOT ME thinking about it, I can't say for sure. But I was, and I remain, a fan of the television series “The West Wing.” And, one of my favorite scenes in that drama is of an exchange between the Leo McGarry (White House Chief of Staff) character and the Josh Lyman (Deputy Chief of Staff) character in which Leo tells Josh the following story:

“This guy's walking down the street when he falls in a hole. The walls are so steep he can't get out.

“A doctor passes by and the guy shouts up, ‘Hey you. Can you help me out?’ The doctor writes a prescription, throws it down in the hole and moves on.

“Then a priest comes along and the guy shouts up, ‘Father, I'm down in this hole can you help me out?’ The priest writes out a prayer, throws it down in the hole and moves on.

“Then a friend walks by, ‘Hey, Joe, it's me can you help me out?’ And the friend jumps in the hole. Our guy says, ‘Are you stupid? Now we're both down here.’ The friend says, ‘Yeah, but I've been down here before and I know the way out.’”

—West Wing, Episode #32, “Noel,” written by Aaron Sorkin (teleplay) and Peter Parnell (story)

As of this writing I have no idea how the election turned out. I'm not really sure it matters as much as the campaigns or the media would have us think. We will continue to make progress, and our industry will continue to improve regardless of the rhetoric (think prescriptions and prayers being tossed down into the hole). And, once ad buys turn from the election season to the holiday season, I have a feeling things might *feel* better anyway.

We will continue to climb out of the hole we fell into back in 2008. There are plenty of signs, in a number of quarters, that we have just about reached the edge already. The fundamentals in commercial real estate are close to some kind of normality, and any kind of acceleration in the global and U.S. economies could put us over the top sooner than we might otherwise expect.

Sure, there's plenty of uncertainty out there. And, there are plenty of reasons to be cautious. But, I am a pretty optimistic person; I know some of the best of the best in the industry, assembled among the membership of The Counselors of Real Estate®. (I can name more than a few CREs who would willingly jump—and many who have jumped—into a hole with us, if need be, because Counselors are like that.) And, while the hole may have been deeper than any of us can remember, we have those people to show us the way out. If anyone can, it'll be The Counselors in their myriad, diverse roles in this industry. The skill, talent, ability, the knowledge, wisdom, the collegiality, and the outright personal and professional generosity of the members of this organization continue to astound me.

In this edition of *Real Estate Issues* we offer a range of articles, covering a variety of areas of interest to the reader.

Authors Patricia S. Wall, J.D., CPA, Ed.D., and Lee Sarver, from Middle Tennessee State University take a hard look at federal forfeiture law in discussing property seizures under federal laws on the grounds that such properties had been used in conjunction with illegal activities (drugs). Questions raised in their article, “**Federal Forfeiture of Real Estate in Practice: A New Form of Eminent Domain?**” include whether federal forfeiture law is too

broad, whether 'equitable sharing' (in which local government share in the proceeds of the sale of such properties) is being abused, and whether a challenge of forfeiture law might result in revisions in similar fashion to revisions of eminent domain statutes after the Kelo decision.

Chihiro Shimizu, Ph.D., CRE, looks at the "Selection of the Winning Office Investment Market: Case of Tokyo," in an economy that currently faces the most rapidly aging population among developed countries. Critical questions are being raised in the Tokyo office market, as the Japanese birthrate declines and as the population decreases. A number of questions are raised in a market where future office demand is questionable and prices are at risk. The author looks at the overall market in Tokyo and the submarkets with the strongest and weakest risk-adjusted returns.

While LEED certification is the standard, with all the benefits such certification brings to high-performance, Class A assets, "real estate investors must evaluate the financial viability of LEED-certified projects using traditional valuation methodologies," say **Thomas A. Dorsey**, senior vice president of Wells Fargo's Corporate Properties Group, and **Dustin C. Read, Ph.D.**, of the Center for Real Estate at the University of North Carolina at Charlotte. In their article "Best Practices in High-Performance Office Development: The Duke Energy Center in Charlotte, North Carolina," the authors look at the development and operation of the Duke Energy Center, which was the first building to earn a LEED Platinum Core and Shell certification under version 2.0 criteria. The article covers some of the cost savings in construction and operation, the likely value premium at time of sale and the LEED certification as a marketing tool for attracting tenants.

In "Using Historical Employment Data to Forecast Absorption Rates and Rents in the Apartment Market," authors **Charles Smith, Ph.D.**, **Rahul Verma, Ph.D.**, and **Justo Manrique, Ph.D.**, of the University of Houston - Downtown, offer a simple and straightforward technique to forecast demand for apartment units and trends in rental rates. "The crux of the idea presented in this paper," the authors state, "is that there is a long term somewhat stable relationship between net new jobs created and absorption of spaced." For instance, in the data used in this analysis, for Houston, one additional apartment is occupied for each 8.79 jobs created. The authors suggest that the technique developed in the

article can be used by a number of different constituents in the field and applied to other property types as well.

"With more purchasing power moving towards Internet sales, communities need to think about what factors sustain their retailers and how much retail is sustainable," says **Christine Carlyle** of Solomon Cordwell Buenz (SCB) in Chicago. In her article "Retail Space in the Future," Carlyle discusses how the use of technology is transforming retail real estate models. While in the past, the retail experience was a physical one, focused on convenience and price and experience, technology has added a new virtual dimension. As we have learned in the not-so-distant past, there are many communities that are heavily 'over-retailed' and the competition from technologically oriented retailing is an enormous challenge to property owners and local planners and governments. Carlyle concludes, "Convenience shopping is transforming into concepts around place-making, lifestyle and event programming to create a greater interactive experience."

Short sale scams, foreclosure 'rescue' scams, builder bailout scams, straw buyers, and loan origination schemes have become nearly epidemic in the recent housing market downturn that has put extraordinary pressure on homeowners. Authors **Nicole Forbes Stowell, J.D.**, of University of South Florida, **Katherine Barker-Cagwin**, Zayed University - Abu Dhabi, and **James A. Fellows, Ph.D.**, offer a discussion of current developments in "Mortgage Fraud: Current Trends and Issues." The authors tell us that there are two distinct ends for which fraud is perpetrated: 1) to obtain housing; or 2) strictly for profit. Interestingly, they tell us that, according to the FBI, a high percentage of mortgage fraud involves collusion by industry insiders, including bank officers, appraisers, mortgage brokers, attorneys, accountants, notaries and other professionals. Best practices to reduce and guard against fraud are shared by a number of professional organizations, including The Counselors of Real Estate, American Bankers Association and the National Association of REALTORS®.

The collapse of the real estate bubble caused a downturn in the issuance of Commercial Mortgage-Backed Securities, or CMBS. A major restructuring of the CMBS industry has been ongoing. **Thomas A. Fink, CRE**, of Trepp, LLC, offers an overview and an outlook for the CMBS industry and market in his article, "The Case for the Return of CMBS." "As near term uncertainties have continued to keep current issuance muted," Fink says, "it

is prudent to examine the long-term health and prospects for CMBS.” In Fink’s view, “the U.S. CMBS market is likely to reset itself ...before resuming its growth with new issuance recovering to approximately \$100 billion per year.” Behind that view: 1) continued improved property performance; 2) scheduled debt maturity over the next five years; and 3) commercial real estate property sales activity that has been recovering.

There has been some discussion among governments, planners and real estate professionals about the market and economic benefits, or detriments, of hosting the Olympic Games. In 2010, the City of Vancouver, British Columbia, hosted the Winter Olympics. In a sweeping discussion of the plans, intentions, the expectations and the pitfalls of the development of the 2010 Olympic Village, CRE Bill McCarthy describes where things went wrong in his article “The Failed Experiment of Vancouver’s 2010 Olympic Village,” and what the costs and political repercussions have been for the City of Vancouver. He offers acute details and his conclusions and recommendations for those inclined to take on a similar endeavor.

In their article, “Real Estate Counseling in Class Action Litigation: Determining Real Estate Damages from Natural Disasters,” CREs Richard J. Roddewig, Charles T. Brigden and Gary R. Papke provide us with a case study, discussing the role of counseling in the Levee Case Class Action in the wake of Hurricane Katrina. The “Levee Case” was the largest of many lawsuits against the U.S. Army Corps of Engineers and others, involving between 140,000 and 180,000 properties in New Orleans and Jefferson Parish. From evaluating the extent of damages, types of damage, and sources of damage to measuring the impact on property impairments, to determining the appropriateness of a ‘class action’ in the first place, the article covers a range of issues. Various approaches, which might be considered customary, are found to be lacking in “identifying and handling all of the independent variables affecting prices both before and after an event like Hurricane Katrina...” making the process and the task immense. A worthy read.

Finally, a resource review from Peter Holland, CRE. Holland reviews *A History of the U.S. Army’s Residential Communities Initiative, 1995-2010* by Matthew Godfrey and Paul Sadin with Dawn Vogel, Joshua Pollarine and Nicolai Kryloff (U.S. Government Printing Office). The book was prepared for the Assistant Secretary of the Army responsible for housing and describes the successful public-private partnership driven, in large part, by CRE Mahlon “Sandy” Apgar, IV. Apgar played an important role in carrying the Residential Communities Initiative (RCI) from concept to reality, with help from the Urban Land Institute and Jones Lang LaSalle. Holland tells us, “For those already engaged in public-private partnerships, this book will be of value. For those interested in knowing more and entering this field...the book will be more valuable still.” [A quick editor’s note: you can also read Apgar’s own account of the RCI in “Public-Private Partnerships: Lessons from Military Housing” in *Real Estate Issues*, Volume 36, Number 2, 2011].

I am humbled and honored to be a part of this organization that is comprised of so many brilliant professionals who are willing to jump in the hole for their colleagues and their industry. Even more so to have been Editor in Chief of this journal for the past four years—I extend my deep gratitude to the Leadership for letting me do it for so long. I also want to thank all members of the Editorial Board, past and present, for their tireless, unselfish efforts as well. Importantly, thanks to Carol Scherf for keeping everything (including me) moving in one, focused direction and for ensuring that this continues to be the fine journal it is.

Looking ahead, we pass the Editor’s pen over to Mary Bujold, CRE, whose very capable hands and discerning eye should elevate this publication to an even higher standard. I hope you will support her efforts with the creative, forward-thinking, exceptional work for which this journal and The Counselors are known around the globe. Mary, I hope I didn’t wreck it.

So the writer who breeds more words than he needs, is making a chore for the reader who reads. —DR. SUESS



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